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**TO:** South Dakota Nursing Homes, Assisted Living Facilities, and Other Long-Term Care Residential Facilities

**FROM:** Donna Fischer, State Long-Term Care Ombudsman

**DATE:** June 29, 2020

**SUBJECT:** Stimulus Payments Provided Pursuant to the CARES Act to Residents of Long-Term Care Facilities

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, provides direct cash assistance to individuals and families affected by the coronavirus pandemic. Section 2201 of Title II of the CARES Act sets out means-tested eligibility criteria, providing for a one-time cash payment called a “recovery rebate,” also known as the “stimulus payment” of up to \$1,200 for each eligible individual.

If an individual’s income exceeds the Act’s threshold, they may receive a reduced payment or no payment. If an individual is eligible for the stimulus payment, those payments will be direct deposited into an account on file with the Internal Revenue Service (IRS), mailed via the United States Postal Service to the address on file with the IRS, in the form of a check or prepaid debit card. The debit card is known as the Economic Impact Payment (EIP) card. The address on file with the IRS may be the long-term care home where the resident resides.

The Centers for Medicare and Medicaid (CMS) prohibit nursing homes, assisted living communities, and other long-term care communities from seizing, retaining, or otherwise confiscating stimulus payments from their residents, regardless of payer source or debt owed to anyone.

Facilities that receive recovery rebates in the mail for residents must immediately deliver the payments to the residents. For facilities that have already confiscated a payment from a resident, those facilities must immediately return the funds to the resident.

Facilities failing to comply could be subject to federal enforcement actions, including termination from participation in Medicare and Medicaid.

According to 26 U.S.C. §6428(a), (c) tax credits, including the recovery rebates, are not considered income for public benefit eligibility purposes. The payment residents receive through the CARES Act is not income for Medicaid eligibility purposes. The funds are not considered assets for Medicaid eligibility purposes until twelve (12) months after receipt of the funds (May 2021) 26 U.S.C. §6409. If the resident retains the funds for a year from receipt of the payment, it is then considered a resource for Medicaid eligibility purposes.

If a facility has concerns that a resident's existing guardian or legal representative is using or may use the resident's stimulus payment for an improper purpose and not for the resident's needs, please contact your local law enforcement agency or Dakota at Home 1-833-663-9673. If the facility has any other concerns, please contact the South Dakota Attorney General's office 605-773-3331.