

# Notice of Instruction

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Notice of Instruction Number: 062608-Legal Hold-MW-kp

**TO:** All Lead Agencies  
**FROM:** Katie Parkinson, Senior Program Manager  
**DATE:** June 26, 2008  
**SUBJECT:** Notice of Legal Hold  
**cc:** WCFAAA Program and Fiscal Staff

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The purpose of this Notice of Instruction is to inform you that the Department of Elder Affairs and the Agency for Health Care Administration are named defendants in a lawsuit brought by Medicaid eligible adults who are currently or have recently resided in a nursing home.

The individuals have alleged that their continued placement in a skilled nursing facility is a violation of the Americans With Disabilities Act (ADA), 42 U.S.C. sec. 12132, and sec. 504 of the Rehabilitation Act, 29 U.S. C. sec. 794(1). The lawsuit is pending before the United States District Court for the Northern District of Florida. It is possible that this lawsuit will become a class action, which will greatly expand the potential number of plaintiffs.

We are required by the court to preserve not only the case files and records pertaining to the named individual plaintiffs, but all potentially relevant records. This would encompass records pertaining to all Medicaid eligible adults with disabilities who are, or may be placed in a nursing facility that receives Medicaid funds.

You are receiving this notice because pursuant to our contract, you, or one of your subcontractors, may have provided service to one of the individual plaintiffs or will likely serve individuals who may later be included in the same class as the current named plaintiffs in the lawsuit.

Please note the following documentation requirements:

- If you believe you may have documents that pertain to this case including e-mail, electronic documents, drafts, whether electronic or hard copy, memoranda, letters, or any other type of document or record, you should take steps to ensure that each document is maintained and not destroyed.
- Even if the responsive documents are several years old and would otherwise be subject to destruction under your retention schedule, you must separate these documents and retain them until you receive further instructions from this agency or the Department of Elder Affairs.

Specifically, you should either print or retain relevant documents or save them in an easily accessible electronic file.

- Most importantly, you should not delete relevant e-mail.
- If during the pendency of this litigation, employees who have e-mails or electronic information that pertain to the issues noted above terminate employment with your organization; please take steps to preserve that information.

The court has imposed these requirements, and destruction of records that should have been preserved may result in sanctions for spoliation of evidence.

Our contracts require your organization to have a retention policy, and this notice requires that you retain documents beyond what is normally required under your contract.

Please direct your subcontractors to retain their documents in accordance with this notice until you provide them further instructions.

We appreciate your cooperation in this regard, and we will be in touch with you with additional detail regarding the sorts of documents we may need you to produce for us as part of the discovery process.

Should you have any additional questions regarding the nature of a Legal Hold, please contact your own legal counsel who should be able to fully advise you of its impact on your operation.