

Long-Term Care Survey Alert

DIRECTED SETTLEMENTS A WIN-WIN PROPOSITION

The government's eagerness to cite and fine nursing facilities actually pulls money out of the direct-care coffers an approach that government officials are beginning to question.

In some cases, enforcement authorities are allowing facilities cited for quality-of-care violations to invest civil monetary penalties in their buildings to do something positive for residents, according to **Marie Infante**, a Washington attorney who spoke at the October **American Health Care Association** convention in New Orleans. In Infante's view, these negotiated settlements can be a "win-win" proposition for facilities, which aren't having the best of luck in today's litigious environment winning appeals of survey sanctions. "The government is winning 98 percent of these cases, and they are expensive," she emphasized.

"Litigation in the context of enforcement has been a fairly uphill battle, which is no less true if a facility is dealing with the **Department of Justice** on a false claims allegation," Infante added. The government brings FCA cases against nursing homes under the theory that billing for care found to be substandard defrauds government programs. Federal prosecutors in Virginia are allowing some facilities hit with FCA charges to use their fines to improve staffing ratios or training or to hire independent monitor to oversee quality changes.