IOWA DEPARTMENT OF INSPECTIONS & APPEALS

**Dean A. Lerner,** Director

# Department Clarifies Purpose and Use of Surety Bonds

DES MOINES, IOWA (April 6, 2007) - The federal regulations require that nursing facilities "must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary (of Health and Human Services), to assure the security of all personal funds of residents deposited with the facility." [42 CFR 483.10(c)(7)] Recently questions have been raised regarding whether agreements can specify the State of Iowa as the obligee.

The Iowa Constitution does not allow the State of Iowa to be designated as an obligee or payee of any bond. The Constitution provides that the State shall never assume or become responsible for the debts or liabilities of any individual, association or corporation. Being designated as the obligee or payee on a surety bond places the State in the position of assuming such responsibility.

As indicated above, the purpose of the surety bond is to guarantee that the facility will pay the resident for losses occurring from any failure by the facility to hold, safeguard, manage, and account for the residents' funds, i.e., losses occurring as a result of acts or errors of negligence, incompetence or dishonesty. A surety bond is an agreement between the facility, the the insurance company, and the obligee wherein the facility and the insurance company agree to compensate the resident for any loss of residents' funds that the facility holds, safeguards, manages, and accounts for. Note that self-insurance is not an acceptable alternative to a surety bond. Likewise, funds deposited in bank accounts protected by the Federal Deposit Insurance Corporation (FDIC), or similar entity, also are not acceptable alternatives.

Facilities are encouraged to review their existing insurance agreements regarding the safeguarding of resident's money to assure that the obligee is the residents of the facility versus the State of Iowa.