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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 86 SSM 42
In the Matter of New Surfside
Nursing Home, LLC, et al.,
 Appellants,
 v.
Richard F. Daines, &c., et al.,
 Respondents.

Submitted by David N. Yaffe, for appellants.
Submitted by Mark H. Shawhan, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs, and the certified question not answered as
unnecessary. Petitioners' challenges to the audit results are
untimely, as this hybrid CPLR article 78 proceeding/declaratory

judgment action was not commenced within four months after petitioners' receipt of the audit results (see CPLR 217 [1]; Matter of Terrace HealthCare Ctr., Inc. v Novello, 54 AD3d 643, 643 [1st Dept 2008], lv denied 12 NY3d 712 [2009]; Concourse Rehabilitation & Nursing Ctr., Inc. v Novello, 45 AD3d 366, 367 [1st Dept 2007]). The authority cited by petitioners and relied upon by the dissent, including New York State Assn. of Counties v Axelrod (78 NY2d 158, 165 [1991]), did not involve the circumstances presented here, where audit results were issued to particular nursing facilities, which they knew would reduce their reimbursement rates, and where an article 78 proceeding could have been commenced to challenge those audit results.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question not answered upon the ground that it is unnecessary, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided January 21, 2014