



2009 Accomplishments

- **ESAAL challenged the ALR Regulation and the NYS Supreme Court issued a decision in our favor.** In 2008, the Department of Health promulgated well-intentioned but overly burdensome and costly regulations to implement the Assisted Living Residence Law. ESAAL did not sit on the sidelines. Rather, we pursued legal remedy and earned a very favorable court decision. Most of the parts of the regulation that we challenged were struck down and invalidated. Most notably, ESAAL maintained and the Court agreed that:
 - Existing ACFs applying for ALR should not be required to resubmit information already provided when originally obtaining licensure or subsequent approvals.
 - To obtain basic ALR licensure, existing ACFs should not be held to **structural/architectural standards** greater than what was required to obtain their original ACF license.
 - EALR and SNALR minimum **nurse staffing requirements** should be nullified because they were not contemplated by the Legislature, have no rational relation to the actual needs of the residents, are costly, and will make these levels of care unaffordable for many seniors.
 - The regulation pertaining to **exception to the 45-day notice of fee increase** when additional care/services are needed is nullified.
 - The regulation pertaining to **mandatory Department approval for sale of real property** is nullified.
 - Like ACFs, ALRs are entitled to have **30 days to fix non-endangerment violations** without facing civil penalties.

This outcome will save members seeking ALR licensure tens of thousands of dollars each year.

- **ESAAL supported lawful, effective and cost-efficient medication assistance practices in ACFs:** In January 2009 the New York State Court of Appeals issued two important decisions related to the NY Coalition for Quality Assisted Living's (NYCQAL), and the NYS Nurse's Association, lawsuit against the NYS Department of Health, in which they challenged the practice of assistance with the self-administration of medications in adult homes, arguing that it is a violation of the Nurse Practice Act. In this multi-year effort, ESAAL supported current practice for medication assistance in ACFs, and was pleased that the state's highest court:
 - Accepted and considered our Association's Friend of the Court brief in support of the Department of Health's position that assistance with self-administration is lawful and appropriate; and
 - Denied NYCQAL's request to have the highest court reconsider the case.

This outcome will save you tens of thousands of dollars each year.

- **ESAAL moved to intervene in the remedial phase of the Disability Advocates lawsuit in order to advocate for our members:** The fall, 2009 Disability Advocates Inc. court decision is likely to have sweeping effect on the adult care facility/assisted living residence industry in New York. While the court decision is primarily directed at larger NYC adult homes serving individuals with psychiatric disabilities, many ACFs have been labeled "impacted" simply because they serve a number of seniors that have a diagnosis of depression or take an anti-depressant. The Court decision refers to adult homes as "institutions" that are not the most integrated setting and directs the state to develop and offer other housing options for them. ESAAL stepped in with a request to intervene to ensure that the Court



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understands our members' resident population and their needs, and that the Court decision not be misdirected at individuals with ongoing personal care assistance and/or supervisory needs.

- **ESAAL advocated on your behalf with the New York State Department of Health on a number of regulatory issues:** Our efforts included achieving improvements to the Inspection Review (IRP) process so that members may appeal undesirable decisions to the Department's central office, and challenging endangerment violations, which is when the stakes are highest; ensuring that the Department of Health not issue violations pertaining to the new emergency evacuation plan submissions; and seeking clarification of the agency's position on use of resident companions so that residents' rights are preserved.
- **ESAAL assisted ALP members pertaining to the Office of Medicaid Inspector General's (OMIG's) audits, and its new compliance program regulation:** In 2009, ESAAL hosted the first meeting for ALP members and representatives from the OMIG to learn about the agency's audit protocols for ALPs. In addition, ESAAL developed a Compliance Program template and guidelines to assist ALPs in their new OMIG regulatory obligation.
- **ESAAL successfully advocated with the NYS Legislature on a number of ACF, ALR and ALP related issues:** We successfully opposed legislation that would have imposed onerous and unnecessary regulatory requirements on ACFs; and that would have subjected ALPs to the ALR statute and regulation. In addition, during these difficult financial times for the state, we were successful in maintaining QUIP and EnAbLE funding for our members. We also warded off proposed cuts to the ALP rate.
- **ESAAL formed a committee of our non-profit members:** While ESAAL's growing number of non-profit members shares most of the same challenges as their proprietary colleagues, they also have unique needs pertaining to their non-profit status. In fall, 2009 we conducted an initial conference call and our members enthusiastically supported that we proceed to organize a formal committee.
- **ESAAL addressed hot topics in its *Vision* newsletter.** These included the popular "Counsel's Corner" provided by Hinman Straub on issues including staff directives re: CPR; disclosure requirements for employers that do criminal background checks; business succession planning; a summary of various litigation affecting ACFs and ALRs; and dealing with potential residents that have sex offender status. Our newsletter also included information-filled articles reporting on the quarterly meetings that ESAAL attends with the Department of Health on a host of regulatory issues.
- **ESAAL issued the results from its first Wage & Salary Survey:** ESAAL collected salary and benefit information from approximately one-quarter of the industry, and issued the survey results to members.
- **ESAAL carried out several initiatives to continue to educate the public and long-term care stakeholders about assisted living in NYS.** They included: Obtaining a Proclamation from Governor David Paterson declaring September 13-19 Assisted Living Week in New York State; Designing material for public view on our website titled "*Unlicensed Assisted Living Facilities – A Risky Business*", and producing 3 advertisements for members' use in their local media to educate the public about unlicensed vs. licensing and; and issuing material about unlicensed facilities to all of the state's local planning and zoning boards.