



ESAAL'S 2011 ACCOMPLISHMENTS

- **ESAAL achieved legislative and administrative reform of Assisted Living Residence (ALR) and Adult Care Facility (ACF) paperwork and operations.**
 - **3122 reform-resident return from hospital/rehab:** In response to growing resistance from hospitals and nursing homes to complete the required ALR or ACF 3122 Medical Evaluation, ESAAL drafted legislation ultimately passed by the NYS Legislature and signed into law by Governor Cuomo to limit the required paperwork for resident return from hospital or rehab to information pertinent to the hospital or rehab stay. Since passage into law, ESAAL has worked with Department officials to provide members with several options to comply with the streamlined requirement.
 - **3122 reform-ability of nurse practitioner to independently co-sign:** The new law also discontinued the requirement that a physician co-sign an ALR or ACF 3122 completed by a nurse practitioner.
 - **ALR 3122 reform-revised form:** In spring, 2011, at ESAAL's request the Department of Health convened an ALR workgroup tasked with reviewing current ALR forms and recommending changes to streamline them. The workgroup's first task was to revise the lengthy and onerous ALR 3122 Medical Evaluation. We are pleased to report that the form has been reduced to three pages, with ample space for the residents' list of medications, and the removal of a significant amount of unnecessary or redundant information. The revised form is in the final stage of approval within the Department and we expect its release in the very near future. Our work will not stop there: ESAAL has also requested further ALR paperwork streamlining of the ALR 4397 (Resident Personal Data and Resident Evaluation Form), as well as ISP and Case Management evaluation processes. (Refer to our 2012 goals document for more information.)

- **ESAAL continued its multi-year effort to review Assisted Living Program (ALP) standards and reimbursement in order to effect necessary regulatory/legislative changes to protect operational and financial feasibility, and to position the ALP in the new Managed Long Term Care/Care Coordination Model environment.** Like all Medicaid-funded long term care programs, the ALP is being reviewed to determine its place in the planned conversion of all long term care services into Managed Long Term Care or other Care Coordination model. In 2011, ESAAL's Executive Director Lisa Newcomb represented ALPs on the Medicaid Redesign Team's Affordable Housing Workgroup, charged with making recommendations for ALP redesign. We were pleased to secure the endorsement of the MRT's Affordable Housing Workgroup, as well as the full MRT, for the following positive changes:
 - Allowing the ALP's LHCSA registered nurse to conduct assessments—the proposal includes a provision whereby like the CHHA, the ALP would access additional Medicaid reimbursement for the pre-admission assessment, at a rate less than the current CHHA rate in order to produce state savings;
 - Expediting enrollment into ALPs by allowing for admission prior to final authorization by the local Department of Social Services/HRA—this would affirm the legitimate practice of “start date of care” in all counties in the state.
 - Repealing the law that requires a reduction in nursing home beds to create new ALP beds, but maintain the expansion of the ALP—*this has been one of ESAAL's top priorities and we will not stop until this law is repealed and ALP capacity can be increased in existing adult homes and enriched housing programs—the program's natural environment;*



- Lifting the moratorium on new CHHAs so that ALPs may access the licensure to provide Medicare-funded services to residents-the Department has recently proposed to lift the moratorium on new CHHAs if the project would forward the state's managed long term care goals. Clearly the ALP meets many of the state's stated principles for care coordination within a managed care environment. This provision would further enhance and align the ALP with those principles;
- Allowing the ALP/LHCSA home health aides (HHAs) to perform all tasks within their scope of practice-Currently HHAs are limited to performing personal care/ADL services, and the proposed change would be an efficient use of human and financial resources;
- Enabling the ALP to contract with more than one CHHA or Long Term Home Health Care Program-this is intended to ease growing access problems, especially in rural communities;
- Allowing ALP residents to access Medicare-covered therapy services from providers other than the CHHA/LTHHCP with which they contract;
- Improving the ALP survey process so that ACF, LHCSA and ALP survey standards reviews are more coordinated;
- Developing a workgroup of ACF, ALP, ALR providers and other stakeholders to continue to evaluate the ALP and its place in the new Managed Long Term Care redesign.

Many of the proposals above will require changes to the ALP law. In 2012, ESAAL will advocate with the NYS Legislature to secure the necessary statutory changes to make these reforms a reality.

- **ESAAL secured \$6.9 million in EQUAL funding for eligible ACFs for fiscal year 2011-2012.** Despite the state's difficult financial situation, EQUAL funding was appropriated at the same level as the two previous years. This was a direct result of ESAAL and our individual members' communications with members of the Legislature about the critical need for this funding.
- **ESAAL pursued the introduction of legislation to allow ALPs/assisted living providers to operate Medicaid-funded Adult Day Health Care.** Our legislation was introduced in both the Senate and Assembly late in the 2011 legislative session. In 2012 we will pursue passage of this legislation which would allow for the natural alignment of assisted living with Medicaid funded day care services.
- **ESAAL pursued and accomplished an alternative option for ALPs to the 2% across-the-board Medicaid cuts.** Our proposed and accepted alternative for the state to secure the needed savings from ALPs' EQUAL payments rather than from their Medicaid rate prevented the loss of federal funds and in total saved ALP providers approximately \$1 million.
- **ESAAL continued to protect the interest of our members in the remedial and appeal phases of the Disability Advocates lawsuit.** Plaintiffs in this case allege that the state is in violation of the federal American with Disabilities Act and the United States Supreme Court Olmstead decision by allowing placement of disabled people in certain adult homes. This case can potentially impact the entire ACF/assisted living industry. In 2011 ESAAL continued to support and monitor the status of the State's appeal of the lower court ruling and remedial order.
- **ESAAL took action to ensure that assisted living continues to be considered an important home and community based services option.** We submitted comments on a proposed regulation issued by the federal government/Center for Medicaid and Medicare Services (CMS) that in our view



would place inappropriate parameters on what constitutes “home and community based” services as it pertains to assisted living. While the proposed regulation continues to be of concern to us, we were pleased that the federal government’s second draft incorporated many of ESAAL’s earlier remarks and concerns. Also, with regard to the issue of what is “community” housing, as 2011 comes to a close we are also developing a response to a recent legal settlement between the Department of Health and Disability Advocates Inc. related to appropriate nursing home placements. The legal settlement defines “community housing” in a manner that excludes all adult homes in New York City as well as impacted adult homes outside of New York City. We view this to be an inappropriate interpretation and will vigorously pursue a more appropriate interpretation as the state makes future policy decisions.

- **ESAAL advocated with the Department of Health on proper implementation of the new Palliative Care Access Law for Enhanced ALRs, Special Needs ALRs, and ALPs:** This important new law was directed not only at assisted living, but at hospitals, nursing homes, home care and other health care providers. This presented us with the familiar challenge that assisted living needed to be understood by Department decision makers so that the new law is properly implemented and enforced in our setting. Since passage of the law which became effective in September 2011, ESAAL has worked closely with the Department to develop appropriate protocols for publication in its Frequently Asked Questions (FAQs) about the law. We are pleased that the FAQs scheduled to be released in the near future accurately reflect ALR/ALP operations. Moreover, ESAAL has developed and provided to our members a sample policy and procedure to assist them in complying with the new law.
- **ESAAL addressed hot topics in its *Vision* newsletter.** These included the popular “Counsel’s Corner” provided by Hinman Straub on issues including application of the HIPAA law in ACFs and ALPs; local municipalities’ second look at tax exemption for not-for-profits; contract “do’s and don’ts” to protect Administrators/Executive Directors from personal liability and unsolicited deliveries; seven areas where ALRs may want/need to update their ALR Residency Agreements; and recent developments in Advance Care Planning, Palliative Care access and Surrogate Decision Making. *The Vision* newsletter also included information-filled articles reporting on a host of regulatory issues discussed at our quarterly meetings with the Department.
- **ESAAL offered new, low-cost training products and seminars for member assisted living providers.** In 2011 ESAAL’s Assisted Living Services and Conference & Education Committees determined to provide our members’ supervisory case management and wellness director staff with training that provides a comprehensive overview of adult home, enriched housing program, and other regulations from the case management/wellness perspective. In their evaluations, seminar attendees overwhelmingly praised the seminar and its content as being directly pertinent to their day-to-day responsibilities. ESAAL’s newly issued “*Adult Home & Enriched Housing Program Regulation, Notes & Good Practices Manual*” provided the foundation for the training and contains even more guidance and back up documentation that is crucial to ACF operations.
- **ESAAL continued to educate the public and long-term care stakeholders about assisted living in NYS.** In 2011 we obtained a Proclamation from Governor Andrew Cuomo announcing September 2011 as Assisted Living Month in New York State. In addition we released a video for members’ use educating the public about the importance of licensure in senior living, assisted living settings. Our Public Relations Committee began a new initiative to receive input from members as to how we can support them in the marketing/public relations efforts, and as 2011 comes to a close we are developing a plan based on that input to produce marketing/public relations literature and resources that we will make available to members in 2012.