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## MEMORANDUM

**TO:** ACF and Assisted Living Members

**FROM:** Diane Darbyshire, Senior Policy Analyst

**DATE:** September 19, 2011

**SUBJECT:** Updates on Various ACF and AL Issues

**ROUTE TO:** CEOs, Administrators

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ABSTRACT: DOH provides NYAHS with updates and answers to policy questions.

### Introduction

The following provides an update on a variety of ongoing issues and answers to policy questions that will be of interest to ACF and assisted living members. This information stems from a recent meeting with DOH. During regular meetings and discussions with DOH, NYAHS brings forth member concerns, so be sure to let us know if there are issues that you need assistance with or clarification on.

### *Resolution to DOH Architectural Review Delays*

Those of you awaiting architectural approval for an ACF, ALR or ALP application are painfully aware that DOH's Division of Assisted Living has been without an architect for several months. NYAHS has been advocating persistently for resolution of this issue and proposed various solutions. While we are pleased that DOH has announced in a *Administrator* letter (DAL) that they have resolved the issue, we are concerned that the resolution may be a costly one. The Division of Assisted Living does not intend to hire any new architects and instead is requiring that projects receive architectural certification by a third party that has not been involved in the project. One NYAHS recommendation, "self certification," will not be allowed. This new process applies to those applications currently pending architectural approval with DOH. Members should have received notification from their DOH project managers if this is the case.

Various questions about this third party certification have already been raised, such as liability issues, the process for waivers, and why an engineer certification would not be allowed. DOH will be issuing a Frequently Asked Questions document to address this and other questions. If you have any questions regarding this matter, you are advised to contact your project manager. Please also [let us know](#) what issues or questions arise so we can help ensure they are addressed.

On a related note, DOH is unsure when the ALR Architectural Workgroup will reconvene, given that the Division of Assisted Living does not have an architect. NYAHSA member Janet Palazzolo and NYAHSA's Diane Darbyshire sit on the workgroup.

### *Law passed regarding Medical Evaluation streamlining*

NYAHSA was extremely pleased that the governor signed into law legislation that helps streamline paperwork for **ACFs and ALRs**. NYAHSA worked with the Empire Association of Assisted Living to get this law passed, which has two points: 1) It allows nurse practitioners (NPs) and physician assistants (PAs) to conduct an exam and complete the Medical Evaluation for ACFs and ALRs; and, 2) you will no longer need to obtain a new Medical Evaluation for an ACF or ALR resident who returns to the facility from a hospital or residential health care facility stay. Members are encouraged to review the DAL to view the specific information that must be obtained upon return to the facility. If a facility is using a discharge summary to address the required components, the document must be signed by a physician, NP or PA, must state that the individual is appropriate for the facility/level of care and must be ready to go with the resident upon return.

There are two important clarifications to be noted. The DAL fails to mention that the law applies to ACFs. DOH plans to issue a clarifying DAL in the future. It should also be noted that the law is silent regarding assisted living programs (ALP). That is intentional, as there are concerns that failure to obtain a physician signature could jeopardize Medicaid payments due to federal requirements. Thus, while the law may technically allow an ALP these efficiencies by virtue of being an ACF, it is not advised given this risk.

NYAHSA will be working with DOH as this new process unfolds. The purpose of the law is to make it simpler for individuals to be admitted to facilities and transition between settings; however, we acknowledge that this change may be confusing, and we want to assist in ensuring that members get the information they need to properly care for their residents. We also want to ensure clarity to help ensure consistent surveillance practices. There was some discussion about how best to standardize the kind of information required upon readmission, including developing a new form or shading those elements of the existing medical evaluation form to indicate the areas required. [Your feedback](#) on this matter is requested.

### *ALR paperwork task force continues to make progress*

The ALR paperwork task force, which involves NYAHSA, DOH and other associations, is continuing to make progress on improving and streamlining the DOH 3122 ALR Medical Evaluation form. We have developed many recommendations, including removing unnecessary items, clarifying questions and shortening the form. We hope to finalize this new version of the form shortly. NYAHSA ACF/Assisted Living Cabinet members Mike Helbringer, Mike Seelig, Amy Kennedy and Janet Palazzolo sit on the task force.

### *EQUAL*

Those who qualified for EQUAL payments should be receiving checks, if they have not already. As you may recall, NYAHSA worked with other associations and DOH to arrive at a substitution for the 2 percent reduction to ALPs called for in this year's budget. This reduction will be seen in EQUAL checks for ALPs in this round.

### *Implementation of Palliative Care Requirements*

DOH will issue guidance to providers shortly regarding the implementation of the palliative care requirements outlined in the budget for enhanced assisted living residences (EALRs) and special needs assisted living residences (SNALRs). **Given that these requirements apply to home care, the requirements apply to ALPs as well.** NYAHSA is working with DOH to help develop a mechanism to assist providers in clarifying their role to facilitate access to palliative care services and how this new requirement will be evaluated in survey. One recommendation being considered is including a question on the medical evaluation forms to trigger the physician to consider whether the individual may be appropriate for palliative care, and if so, to order it. We are interested in members' ideas and feedback regarding this and will provide members with more information when we learn more.

### *Feedback wanted on disaster response*

DOH reports that, from their perspective, things worked well in terms of the communication, coordination and response to Hurricane Irene and Lee. Facilities were evacuated calmly and cooperatively. DOH also reported that associations were helpful in coordinating the response and addressing provider need. There are regions of the state that are still struggling, and we encourage those members to let us know how we can be of assistance. We also thank those members who have come to the aid of others in their community. When those involved have time to reflect, we encourage you to let us know what went well and what did not. We will provide feedback to DOH so that processes can be further improved for the future.

### *DOH staffing and restructuring update*

The department is undergoing some structural and staffing changes. Guy Warner, the Deputy director of the Division of Assisted Living, has moved to work in the Department of Vital Records and Statistics. Keith Servis has returned to become the director of Surveillance while also continuing his duties for Professional Medical Conduct. Servis will oversee surveillance not only for ACFs and assisted living, but also nursing homes, home care, hospice and hospitals. Surveillance will now be under the Office of Health Systems Management (OSHM). Mark Kissinger will move to the Office of Health Insurance Programs (OHIP), where he will focus his efforts on Medicaid Redesign Team (MRT) initiatives. He will also oversee ACF and assisted living licensure. In addition, several DOH staff who work in other areas such as nursing home and home care are retiring. In the months to come, we expect to learn more about what these changes will mean for you.

## **Conclusion**

As noted above, NYAHSA is in regular communication with DOH and encourages members to make us aware of any concerns or questions you might have that we can bring to the department's attention. Contact me at [ddarbyshire@nyahsa.org](mailto:ddarbyshire@nyahsa.org) or 518-867-8828.