



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.  
*Commissioner*

James W. Clyne, Jr.  
*Executive Deputy Commissioner*

September 21, 2010

**DAL#: DAL 10-10**  
**RE: ALR Lawsuit**

Dear Adult Care Facility Operators:

The Assisted Living Regulations promulgated on March 26, 2008 were the subject of litigation brought by the Empire State Association of Assisted Living (ESAAL) and the New York Coalition of Quality Assisted Living (NYCQAL). This letter provides information regarding the changes to the regulations stipulated and agreed upon as a result of the settlement of the litigation.

Section (j) of 10 NYCRR 1001.11 which requires Enhanced Assisted Living Residences (EALRs) and Special Needs Assisted Living Residences (SNALRs) to have a registered professional nurse on duty eight hours per pay, five days a week and a licensed practical nurse on duty the remaining two days per week have been annulled and is no longer in effect. Compliance with ALR Regulations 1001.11(j)(k)(l)(m)(n) and (p) regarding nurse and home health aide staffing have been annulled and are no longer required. All other requirements of 1001.11 remain; including nursing coverage as determined necessary and documented by the resident's medical evaluation, the resident's attending physician, and/or the resident's Individualized Service Plan (ISP).

The requirements of 10 NYCRR §1001.13 have been modified as indicated below:

- Any Adult Care Facility (ACF) licensed as of July 15, 2010 that seeks licensure as an ALR, but does not seek certification as an EALR and SNALR, will be deemed to have satisfied the building code, architectural and environmental standards imposed by the Department of Health's regulation to the extent that it is compliance with ACF regulations set forth in 18 NYCRR § 487.11 or § 488.11 as applicable to the facility and the building code standards under which its certificate of occupancy was issued subject to compliance with State Existing Building Code of New York, chapter 1, section 102.8.
- All applicants seeking to establish a new ACF with ALR licensure without EALR or SNALR certification, must demonstrate compliance with the applicable regulations set forth in 18 NYCRR § 487.11 or §488.11, with the applicable provisions of the New York State or New York City Building Codes as referenced in 10 NYCRR § 1001.13(c)(3) and (4), and with any additional requirements imposed by their local code enforcement officer. A change of operator or other changes to a licensed facility shall not be considered the establishment of a new ACF.
- If an applicant for an ACF or an ACF with ALR and/or EALR and/or SNALR certification:
  - Complies with 18 NYCRR § 487.11 or § 488.11, as applicable;
  - Complies with the standards set forth in 10 NYCRR § 1001.13(b)(4)(i)-(v) and (5)(i);
  - Provides to the Department written documentation that the local code enforcement agency with jurisdiction over the facility as approved the structure as it exists, or an proposed in the architectural submission to the Department, for the facility's intended use; and
  - The Department believes that the safety and welfare of residents will not otherwise be compromised:

then the Department shall approve the applicant's architectural submission.

Operators of Assisted Living Residences will not be required to obtain prior written approval from the Department before the sale or lease of real property, as currently required in 10 NYCRR 10 NYCRR §1001.4(i)(3).

10 NYCRR § 1001.8 pertaining to resident rights is modified to annul paragraph (b)(2)(xvi) pertaining to the forty-five day written notice of any fee increase. Other sections of section 1001.8, including description of the type and amount of services to be provided to the resident, the base rent to be paid, a description of additional services available for additional fees, a rate or fee schedule, including additional, supplemental or community fees, and detailed explanation of which services and amenities are covered by such rates, fees, or charges, still apply.

The Department will create a workgroup consisting of experts in the field of adult care facility operations and architectural standards to review architectural standards applicable to ACFs, Assisted Living Programs (ALPs), ALRs, EALRs and SNALRs, including application of the New York State Building Code. This workgroup will include members of the Department of Health, the Department of State, local Code Enforcement representatives, a representative of ESAAL and New York State registered architect(s).

The Department will be revising the Assisted Living Regulations as necessary to comply with the settlement. You will be notified of these changes in the near future.

If you have any questions on the above, please contact Mary Hart at (518) 408-1133.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark H. Kissinger". The signature is fluid and cursive, with a horizontal line at the end.

Mark Kissinger  
Deputy Commissioner  
Office of Long Term Care