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NCAL Releases 2007 State Regulatory Review

Last year, about one-third of states changed their assisted living regulations, with seven states making major regulatory changes. A majority of the states, however, made regulatory changes to address higher resident acuity, according to NCAL's recently published "2007 Assisted Living State Regulatory Review."

California, Ohio, and Utah initiated Medicaid waiver programs that cover assisted living services. "In the last year, states continued making regulatory changes in response to increasing levels of resident acuity and needs for health services," says NCAL Senior Policy Director Karl Polzer, who prepared the report. "New Hampshire and Missouri created new licensure categories in part to accommodate higher resident acuity levels."

The trend toward creating enhanced standards for the care of residents with Alzheimer's disease and other dementias also continued, as evidenced by a comparison with last year's report, according to Polzer.

Many states added staff training requirements, general staffing requirements, and other standards to ensure appropriate care for people with Alzheimer's. Massachusetts created a new Special Care Residence certification category that includes care for people with dementia. Florida began requiring facilities to monitor and manage residents who wander and are at risk for elopement.

A new section entitled "Life Safety," which summarizes each state's fire safety standards, has been added to NCAL's "Regulatory Review."

"We thought it was important to add this feature because of the increased attention being paid to life safety by policy makers, the National Fire Protection Association, and assisted living providers themselves," Polzer says.

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Senate Bill Would Expand Research On Preventing Falls Among Seniors

Sens. Michael Enzi (R-Wyo.) and Barbara Mikulski (D-Md.) recently introduced Senate Bill 845, which directs the secretary of Health and Human Services to expand and intensify research and education programs that are related to preventing seniors from falling.

According to the Keeping Seniors Safe From Falls Act of 2007, the bill, if enacted, would take a national approach to reducing falls among older adults, focusing on the daily life of senior citizens in residential, institutional, and community settings.

The bill asks for \$25 million annually over three years starting in fiscal year 2008 to help implement the research and education portions of the bill. The bill asks that a report be delivered to Congress three years after enactment.

Its three main purposes are:

- 1.) To develop effective public education strategies in a national initiative to reduce falls among older adults in order to educate elders, family members, employers, caregivers, and others;
- 2.) To intensify services and conduct research to determine the most effective approaches to preventing and treating falls among older adults; and
- 3.) To require the secretary to evaluate the effect of falls on health care costs, the potential for reducing falls, and the most effective strategies for reducing health care costs associated with falls.

Under the research portion, the bill lists specific goals, including: "Conduct research to develop, implement, and evaluate the most effective approaches to reducing falls among high-risk older adults living in communities and long term care and assisted living facilities."

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Vigilan Authors Assisted Living Administrator Courses

Portland, Ore.-based Vigilant recently released two assisted living administrator certification programs that have been approved by the National Association of Boards (NAB) and the American College of Health Care Administrators (ACHCA).

The first program is developed as an introduction to assisted living administration and serves as a resource for preparation for NAB's national assisted living administrator exam and as a study resource that fulfills many state requirements. This program is approved by NAB's Continuing Education Review Services (NCERS).

The second course is an advanced curriculum designed to enhance an assisted living administrator's knowledge base about residents, residential service management, human resources, leadership, governance, physical environment, and financial management. This program is also approved by NCERS and is recommended by ACHCA for experienced professionals preparing to take its assisted living certification exam.

Both exams are available online at

www.ceusite.com and hosted by Provider Management, an educational online company designed for the senior living industry.

The programs are a first for the profession, according to Vigilant spokeswoman Jeni Cantley. Vigilant's founder and Chief Executive Officer Chris Mason put together a team that developed the materials based on years of teaching, combined with current research on industry issues. Provider Management took Vigilant's finished product and adapted it for the Internet.

"Our industry is becoming more complex every day. Success today is measured in knowledge of care delivery, systems management, and more," says Mason, who is also an NCAL board member. "Knowledge provides us with tools to deliver both quality care and financial success."

Professional educators are raving about the programs.

"The Provider Management Assisted Living curriculum authored by Vigilant raises the bar for every state to deliver the highest in quality care," says Lisa Poskanzer, chair of ACHCA's Assisted

Living Task Force. "The curriculum is comprehensive, well written, and well organized in a user-friendly format for assisted living audiences. Its online availability will appeal to a broader audience, creating an equal opportunity for all administrators."

Colleges have also begun to offer the curriculum through their distance learning programs. The first college to offer credit for the program is Saint Joseph's College of Maine. The courses can be applied toward St. Joseph's requirements for a bachelor's degree with a long term care administration major, or toward a long term care administration certificate. Six three-credit classes are available and can be applied to the certificate. "This new program provides a critical level of learning not previously available to our students," says John Pratt, director of the Long Term Care Management Institute at St. Joseph's College.

Vigilant's Cantley says, "The interesting aspect about this course is its flexibility—it can be done online, through a manual and self-study, or through a classroom format."

Sales Prices For Assisted Living Remain Strong In 2006

After purchase prices for assisted living facilities nearly doubled in 2005, a new report shows prices remained strong in 2006. However, prices declined about 5 percent because there were fewer high-end properties available for sale, according to "The Senior Care Acquisition Report, 12th Edition," published by Irving Levin Associates, Norwalk, Conn. The report showed that the average price per assisted living unit declined from record levels in 2005 by 5 percent, to \$132,900 per unit in 2006. The 2006 median price per unit declined by 3 percent.

"The small decrease in the average price per unit is not a reflection on the state of the market," says Stephen Monroe, author of the report. "Demand has never been stronger, and bidding has never been as aggressive for the high-quality properties."

Assisted Living Nurse Certification Exam Online

The American Assisted Living Nurses Association (AALNA) has posted information about their newly created assisted living nurse specialty certification.

To prepare for the exam, the study guide, suggested books for taking the certification exam, and the Scope and Standards of Assisted Living Nurse Practice can be found at www.alnursing.org/alnursecert.htm.



National Assisted Living Week Releases Logo

NCAL is pleased to release the 2007 National Assisted Living Week (NALW) Legacies of Love logo.

This year's theme highlights the privilege, value, and responsibility of passing the legacies of our elders' lives down through the generations. Each assisted living resident has a unique story to tell, a proud heritage to celebrate, mementos, and keepsakes that can be acknowledged and shared.

NALW begins on Grandparents Day, Sunday, Sept. 9, 2007, and ends Saturday, Sept. 15, 2007. Each year, assisted living providers and their residents eagerly anticipate the week and throughout the year develop special programming for the whole community to enjoy.

NALW was created in 1995 by NCAL and is a registered servicemark. NCAL is the official vendor for products with the 2007 NALW logo. The logo is available for facilities to use, such as adding to facility activity calendars or invitations, and can be downloaded from the NALW Web site at www.nalw.org.



NCAL Releases 2007 State Report

NCAL, continued from front page

"Many states require at least some types of facilities to have sprinkler systems." According to the "2006 Assisted Living Overview," 90 percent of assisted living facilities (ALFs) are equipped with sprinkler systems.

In the aftermath of Hurricanes Katrina and Rita, states have focused more on emergency preparedness, as well. Delaware, Maryland, and Virginia added requirements for at least some facilities to have emergency power generators.

Among the most unusual changes was a move by Maryland, which made it a felony to operate an assisted living facility without a license and established penalties for false advertising. In Massachusetts, all ALFs are required to have a quality improvement and assurance plan.

According to Polzer, several states initiated or added to facility disclosure and information requirements. Other areas of regulatory change in 2006 included

medication management, general staff training requirements, and resident rights.

The 210-page report summarizes assisted living regulations across 21 categories in the 50 states and the District of Columbia and is available free of charge.

The report also includes phone numbers, e-mail addresses, and Web site information for state agencies that oversee assisted living regulation.

NCAL produces the "Regulatory Review" annually as a service to its members, policy makers, and the public. The report is the only summary of state assisted living rules that is updated annually.

An electronic copy of the report is available on the NCAL Web site at www.ncal.org.

To obtain a printed copy, call Martece Yates at (202) 898-2855 or send an e-mail to myates@ncal.org. Be sure to include your name, address, and phone number.

Elder Wisdom Circle Seeking Seniors

Assisted living activity directors, do you have an Internet-savvy senior in your residence? Or how about a senior who's looking to offer advice? Now both types of people can be satisfied at the facility's computer center by accessing a Web site called, the Elder Wisdom Circle, www.elderwisdomcircle.org.

The San Francisco Bay-area non-profit organization of the same name created the interactive advice column to pair seniors who have life experience with people who need and want their advice.

Their mission is to promote and share elders' know-how and accumulated wisdom and to elevate the perceived value and worth of seniors.

Seniors interested in volunteering their advice must be over 60 years of age. All prospective elders or elder groups must complete an application and screening process and be approved by the Circle's Advisory Board. All elders are expected to participate on a regular basis. Elders may browse the database and select those letters that best suit their areas of expertise and interest.

Elder Wisdom Circle welcomes all applications but is focusing on adding new elders with backgrounds and experience that are under-represented in the current pool of elders. All groups are strongly encouraged to apply.

For more information, contact: Elder Wisdom Circle, 506 Tampico, Walnut Creek, CA 94598, or call (925) 945-8814, or contact the group via e-mail by going to www.elderwisdomcircle.org and clicking on the "contact us" button.



Fair Labor Standards Act: Are You Compliant?

The Department of Labor continues to track compliance of long term care—including assisted living facilities—with the Fair Labor Standards Act (FLSA). NCAL is committed to helping our members understand the law and have the tools to ensure they are compliant, avoiding major fines and penalties.

Meal Breaks And Hours Worked

A true meal break (typically 30 minutes or more) is not work time, and an employer does not have to pay for it. However, employees must be completely relieved from duty. Thus, when automatically deducting 30-minutes per shift, it is the employer's responsibility to ensure that the employees are receiving the full meal break.

For example: An hourly paid registered nurse works at an assisted living

residence that allows a 30-minute meal break. Residents frequently interrupt her meal break with requests for assistance. Must she be paid for these frequently interrupted meal breaks? Yes, if employees' meals are interrupted to the extent that the meal period is predominantly for the benefit of the employer, the employees should be paid for the full 30 minutes.

Rounding Employee Hours

The FLSA allows an employer to round employee hours worked to the nearest 15-minute increment. It is important to note that an employer may violate the FLSA minimum wage and overtime pay requirements if the employer always rounds down. The law states that employee time from one to seven minutes may be rounded down, and thus

not counted as hours worked, but employee time from eight to 14 minutes must be rounded up and counted as a quarter hour of work time.

For example: An employee's schedule is 7:00 a.m. to 3:30 p.m. with a 30-minute unpaid lunch break. The employee receives overtime compensation after 40 hours in a work week. The employee clocks in 10 minutes early every day and clocks out 7 minutes late each day. The employer follows the standard rounding rules. Is the employee entitled to overtime compensation? Yes, because the employer must round back the start time to 6:45 a.m. and round back each evening to 3:30 p.m. The employee will, therefore, show a total of 41.25 hours worked during that work week and thus be entitled to additional overtime com-

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2007

AHCA·NCAL CONGRESSIONAL BRIEFING MAY 9-10, 2007

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[PRELIMINARY SCHEDULE]

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TODAY

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- Establish new relationships or build upon an existing relationship with Members of Congress from your delegation and their staff. Brief them on the challenges of the new leadership's agenda and how it impacts you and your residents.
- Meet with key congressional decision makers and discuss your long term care experiences and AHCA's legislative agenda.
- Receive advocacy training on "How to conduct a Hill visit" and network with other long term care peers.
- Earn valuable CEUs.

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National Center for Assisted Living

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Assisted Living Directors Help Residents With Long Term Care Insurance Policies

Increasingly, Joleen Klausman, assisted living director of Lexington Park Community, Topeka, Kan., is seeing more residents entering the residence with long term care insurance policies.

"Fifteen of our 50 residents have long term care insurance policies," Klausman says, "and the number who come in for tours and tell me they have a policy is growing."

Klausman and other providers are seeing similar increases in the number of residents who have long term care insurance coverage. Although sales of long term care policies have been slow, according to industry reports, currently about 10 percent of Americans over the age of 55 have private insurance protection for long term care costs, according to American Health Insurance Plans.

Assisted living providers are helping prospective residents decipher their long term care policies and submit their claims to the insurer.

Klausman says she asks for a copy of the resident's long term care insurance policy as soon as she learns from the resident or the responsible party that there is such a policy.

Other administrators also ask prospective residents if they have policies. At Valley Memorial Homes in Grand Forks, N. D., Nancy Andrews, director of housing and assisted living, asks potential residents if they have a policy and then asks them to provide Valley Memorial personnel with a copy of the policy. Andrews says Valley Memorial, the resident, and family members review it together. Often times, a Valley Memorial staff member will place a conference call to the insurer and guide the family in asking questions about aspects of the policy. Andrews says she refrains from making comments.

"Most of the time the prospective resident or the family member will ask us if we think their policy will pay,"

Andrews says, adding that Valley Memorial Homes' policy is not to give an opinion about the insurer's determination. Instead, the Valley Memorial Homes representative places a conference call to the insurer's claims office. Andrews says she coaches the family as to what questions to ask, such as: What are the triggers for qualification? What factors are involved in identifying a qualified facility? What is the elimination period? What is the daily benefit? How many activities of daily living (ADLs) must the resident require assistance for in order to qualify? Does the insurer require the facility to be licensed?

Most times the insurance company will not give any comments on the phone until the facility faxes a copy of its license, says Andrews. Typically, Andrews sees payment within 30 days of submitting the claim. Klausman's experience differs. "I tell [residents] at the time of admission that it usually takes 90 days or more to begin receiving benefits if [they] qualify."

Marj Shell, administrator of Fall Creek Retirement Village in Pendleton, Ind., says the licensure provision is the first thing she looks for when she reviews a resident's long term care policy, because Indiana does not issue licenses for assisted living facilities.

Last September, the National Association of Insurance Commissioners (NAIC), a national group consisting of all state insurance regulators, adopted several revisions to the Long Term Care Model Act and regulation. The model act added several consumer protections, including a

provision that will increase access to care through licensure requirements.

"The amendments ensure that long term care insurance policies would pay for services in facilities in other states, even if the facilities are licensed or registered in a different way from those in the state in which the policy was sold," according to an NAIC statement.

"Carriers often require the long term care facilities they reimburse to be licensed or registered to ensure the highest quality of care for their beneficiaries. This requirement has, at times, resulted in nonpayment to facilities in other states because they are not properly certified. The modification to the model act will allow carriers to protect their beneficiaries, without the unintended consequences."

Klausman says assisted living administrators should know their state insurance commissioners by name and call the office whenever they need help.

"I've filed complaints with the Kansas insurance commissioner only a few times, but have found that it results in immediate action by the insurance company," says Klausman.

In Indiana, Shell has also contacted the state insurance commissioner because long term care policies have tied coverage to licensure and Medicare-covered hospital stays, practices discouraged by NAIC.

Klausman says she has seen three major reasons for denial of claims: insufficient information, the resident's failure to need assistance with two ADLs, and the policy does not cover assisted living.

In the case of insufficient ADLs, Klausman recommends the following: "It's very important to score the resident at their highest level of assistance

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AHRQ To Research Falls In Assisted Living

The Agency for Healthcare Research and Quality (AHRQ) has proposed a project to design, implement, and evaluate an intervention program that would prevent “injurious fall[s] in assisted living,” according to a notice published in the *Federal Register*.

The AHRQ project will involve four major activities: 1.) adapting a multifaceted, evidence-based falls-prevention program to a protocol tailored to the assisted living environment; 2.) implementing the pilot protocol and collecting clinical and process data pre- and post-intervention; 3.) evaluating the results of the intervention; and 4.) widely disseminating the protocol, training materials, and research findings.

The project is designed to be a multi-component falls intervention program that will include medication review, resident assessment, environmental modification, and exercise. Its goal will be to reduce risk factors and fall and fracture rates among assisted living residents.

Data collection for the falls inter-

vention project will be approved by the University of North Carolina, Chapel Hill, and Research Triangle Institute International Institutional Review Boards.

The evaluation will use several methods to examine the efficacy of the intervention, including record review, in-person surveys, and in-depth interviews.

The in-depth interviews of residents and staff will use both open-ended questions and items with categorical response options to facilitate analysis. Items will include the degree to which the facility has changed its practice, the degree to which residents accept and adhere to the intervention, facilitation of and obstacles to implementation, reports of staff and resident satisfaction, reactions and experiences related to the use of volunteers, and lessons learned.

These data will be gathered in 60-minute interviews with up to four facility administrators or clinical personnel and 30- to 40-minute interviews with up to four residents.

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needed, even if that help is needed intermittently.

“You would never put your resident or yourself [in the position] where the claim could be construed as fraudulent, but do score that resident at their truthful worst on the claim form,” Klausman says. While Klausman is hearing fewer denials from insurers because they don’t cover assisted living, Kansas has since made it mandatory for long term care insurance policies to cover assisted living.

Klausman often files the claim for the resident and the family.

“The process is so cumbersome that I don’t believe most elders would be able to collect benefits without someone to

assist and advocate for them,” Klausman says.

The amended NAIC Long Term Care Model Act and Regulation also addresses how state insurance departments can fulfill their responsibility under the Federal Deficit Reduction Act to provide assurance that an insurer who sells a partnership policy demonstrates an understanding of such policies and their relationship to public and private coverage of long term care.

“The market for long term care insurance is rapidly growing and changing,” said NAIC Vice President and Kansas Insurance Commissioner Sandy Praeger.

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Assisted Living Conversion Program Available To Nonprofits

The Department of Housing and Urban Development (HUD) has announced that about \$30 million is available in grants under its Assisted Living Conversion Program (ALCP). Applications must be received and validated by no later than June 7, 2007, according to the March 13 *Federal Register* announcement.

According to the announcement, “only private nonprofit owners of eligible multifamily assisted housing developments specified in section 683(2)(B), (C), (D), (E), (F), and (G) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved Oct. 28, 1992) may apply for an ALCP grant.”

ALCP funding can cover the costs of converting some or all of the units of an eligible multifamily development into an assisted living facility, including unit configuration and related common and services space and any necessary remodeling, consistent with HUD or the state’s statutes or regulations (whichever are more stringent). Typical funding will cover basic physical conversion of existing project units, as well as related common and services space.

Individuals who have questions about the application process may contact the Multifamily Housing Service coordinator contact person in their local HUD field office. According to the *Federal Register*, owners of Section 515 developments should contact the HUD field office that monitors their Section 8 contract. If HUD field staff are not able to answer questions, individuals can call Carissa Janis, housing project manager, in HUD’s Office of Housing Assistance and Grants Administration, at (202) 402-2487.



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pensation for 1.25 hours. To find out more about the FLSA and “Hours Worked or Rounding Employee Hours to Nearest 15-Minute Increments,” visit: www.dol.gov/esa/regs/compliance/whd/whdfs53.pdf.

In accordance with the FLSA, hourly employees—“nonexempt employees”—must be paid at least time and one-half their “regular rate” of pay for all hours worked over 40 hours in a workweek.

It is important to note that the “regular rate” includes an employee’s hourly rate plus the value of some other types of compensation, including bonuses and shift differentials. A common error in calculating overtime pay by many health care employers is that they often do not include all applicable types of compensation when calculating the regular rate of pay. To learn more about calculating overtime pay, please visit www.dol.gov/esa/regs/compliance/whd/whdfs54.pdf.

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“As regulators, we are working to make sure consumers have confidence in the policies they are buying.”

The benefits of assisting residents and their families navigate the long term care insurance policy are many. “The families are usually very appreciative of the service we provide,” says Andrews. “It creates a lot of good will.”

RESOURCES: To file an online complaint in any state and the District of Columbia, visit NAIC at www.naic.org/cis/fileComplaintMap.do.

To report suspected insurance fraud, visit NAIC at <http://external-apps.naic.org/ofrs/>.

To download the AHCA/NCAL brochure, “Understanding Long Term Care Insurance, A Consumer’s Guide,” visit www.longtermcareliving.com.

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