

## Rate of Regulatory Change Quickens As States Respond To Industry Development, NCAL Report Says

Changes to states' assisted living regulations are widespread, according to the recently published "Assisted Living State Regulatory Review" just published by NCAL. Some federal laws impact assisted living, but oversight of the profession occurs primarily at the state level.

"If you look at the last three years, the level of regulatory activity in 2007 was probably double that in either of the previous two years," says Karl Polzer, NCAL's senior policy director.

The 230-page "Assisted Living State Regulatory Review" summarizes assisted living regulations across 21 categories in the 50 states and the District of Columbia. Also included are phone numbers, e-mail addresses, and Web site information for state agencies that oversee assisted living regulations.

The report is free to members and nonmembers alike.

"2007 saw many more states making changes to their regulations as the assisted living industry continued to develop and diversify," says Polzer, who prepared the report.

More than 20 states made statutory and/or regulatory changes affecting assisted living residents and families. Of these, about 12 states overhauled or made significant changes to their assisted living regulations in 2007—many more than in each of the previous two years, NCAL reports. Several states intend to make major regulatory changes in 2008.

"Providers are still diversifying, the Alzheimer's population continues to grow, and states are reacting" with more regulation, says Polzer. "The market has continued to evolve, and policy changes have followed."

One of the important trends is "you see more states developing multi-tiered licensing systems," says Polzer. In some states, regulations for smaller group homes were

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## NCAL Webinar Features Interactive Financial Feasibility Tool

NCAL is offering a new Webinar—a seminar held over the Web—that teaches providers and developers how to determine whether a new affordable assisted living community or a new service line would be profitable down the road. The Webinar is available at [ahcancal.org](http://ahcancal.org), under "events." The Webinar and the Excel-based projections tool it features are free to both members and nonmembers of NCAL.

The Webinar, called "Affordable Assisted Living and Community Based Care: An Interactive Feasibility Tool," was developed by NCB Capital Impact, a nonprofit organization providing financing and technical advice, and Terri Sult, president of Vista Senior Living, based in Fair Oaks, Calif., using a grant from the Robert Wood Johnson Foundation.

Sult and Candace Baldwin, senior policy advisor for NCB, narrate the Webinar, going step by step through the use of the interactive financial feasibility tool.

The purpose of the tool is to allow providers to test, prior to the start-up of a new development, the launching of a new service type, or the modifications to existing services, whether doing so is financially feasible. The model creates profit and loss projections for each service type for which data are entered into the tool.

The spreadsheet model features linked project development and facility operations worksheets that are integrated and automatically populate costs, possible revenue, and balance sheets to provide information on the financial feasibility of new facilities or myriad co-located services.

Although the instrument automatically plugs in national averages for many line items, these averages are not based on research but on the experiences of providers, so customizing the data is strongly encouraged.

To obtain the financial feasibility tool, e-mail Margaret Callahan of NCB at [mcallahan@ncbcapitalimpact.org](mailto:mcallahan@ncbcapitalimpact.org). Once received, those who need technical support may e-mail Baldwin at [cbaldwin@ncbcapitalimpact.org](mailto:cbaldwin@ncbcapitalimpact.org).

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## Committed And Engaged Employees Drive Performance

Most people agree that listening to the voice of their customers is important. But is listening to the voice of employees equally essential?

Research shows and practice supports the fact that occupancy, clinical outcomes, quality of resident life, and business success are directly related to satisfaction of employees. Resident and family satisfaction is directly correlated to employee satisfaction. Understanding the needs of employees and working to improve their satisfaction and commitment will have a direct impact on resident satisfaction, clinical outcomes, and the financial health of a community.

With today's challenges of finding and keeping the right people, it is more important than ever that assisted living leaders begin to take a proactive approach to managing employee satisfaction. By focusing on satisfaction, leaders enable themselves to stabilize turnover, which directly relates to better financial and quality outcomes. By taking an evidence-based approach, leaders are enabled to proactively approach employee satisfaction within a community. Leadership can address employee concerns before they escalate into low employee engagement, decreased loyalty, or turnover.

Employee recommendation strongly impacts a community's reputation. We all know that a community's reputation drives occupancy. If a community has happy and satisfied employees, their employees will speak more highly of their job and of the community, which leads to a better reputation, better care, and better financial health. Additionally, by having a satisfied workforce, communities are more likely to receive positive employee referrals.

In order to know if leadership is meeting the needs of their workforce, leaders must listen to the voice of their employees. Ultimately, leaders will be better equipped to serve customers and employees using the crucial insight

employee feedback delivers. NCAL's data partner, My InnerView, can help leaders listen to the voice of their employees, while allowing them to benchmark their data with other providers to get a clear and accurate picture of employee satisfaction within

their community.

To learn how simple the process is for surveying employees within your community, contact My InnerView at [www.myinnerview.com](http://www.myinnerview.com) or call My InnerView's Julie Flaig Smith at (952) 426-5543.

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used as a basis for regulating the entire assisted living market, but now more states are developing licensing systems that provide different tiers of regulations depending on the type and size of the facility, such as a tier for larger, more sophisticated facilities that can take care of people with more disabilities, says Polzer.

"As the levels of care expand that providers are offering, so the licensure system is developing to accommodate that," Polzer says.

Other continuing trends are new regulations centering on the growing Alzheimer's population, disclosure standards, fire safety standards, and an increasing amount of regulation around food safety and dietary issues. "States are also developing regulatory processes, including those for appeals of provider decisions, and what happens when facilities close, he says.

"A couple more states are considering beginning Medicaid waivers," says Polzer, which would "bring us up to about 44 states with some kind of Medicaid coverage for assisted living." However, although more states have decided to offer Medicaid coverage for assisted living, a new federal report shows that the number of Medicaid beneficiaries in assisted living facilities declined from 2006 to 2007, even as the industry continued growing overall. This decline may be evidence of a variety of systemic issues, including reimbursement rates in many states

that are not adequate to cover the cost of care, Polzer says.

Areas that the new state regulations address include the following:

- Licensure levels. Three states initiated new levels of licensure in 2007, in part to accommodate increased resident acuity.

Pennsylvania and the District of Columbia began offering "assisted living" licensure alongside their existing licensure categories, while Wyoming added new rules allowing secure dementia units under a tiered licensing system. Other states continued refining multi-tiered licensing systems.

- Alzheimer's disease. The trend toward enhancing standards for residents with Alzheimer's or dementia continued. These states included Missouri, New Jersey, Ohio, Oklahoma, and Wyoming.

- Consumer disclosure. In 2007, states continued the trend toward developing standards for disclosure of information to consumers. States that added disclosure requirements included Maryland, Ohio, and Oklahoma.

- Background checks. States that established or tightened criminal background check requirements included Alaska, Kentucky, Nebraska, Virginia, and Wyoming.

- Fire safety and emergency preparedness standards. These states included California, the District

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## Sunrise's Klaassen Steps Down As Chair; Accounting Irregularities Addressed

Paul Klaassen, Sunrise Senior Living's chief executive officer, has stepped down as chairman. Klaassen, founder of the company, remains as chief executive officer, according to a company spokesperson. Klaassen and his wife, Teresa, will also remain on the board. The company also announced that Mark Ordan will take over as chief investment and administrative officer.

The changes are the latest in a series of actions being taken to remedy accounting irregularities disclosed by the company two years ago. The board has separated from Sunrise all officers who had any substantial involvement in, or direct or supervisory responsibility for, the accounting function that cause the errors in the restatement, which included the president, chief financial officer for the period prior to August 2005, and treasurer (who had been the chief accounting officer from 2000 through 2004).

Klaassen has voluntarily repaid to the company all of his bonus compensation awarded in 2003 through 2005 (net of taxes) and has disclaimed any opportunity to receive bonuses for 2006 and 2007.

The new senior finance management has undertaken numerous initiatives to improve internal controls around manual

journal entries, balance sheet account reconciliations, and written documentation requirements. At the board's direction, it created a formal disclosure committee charged with reviewing draft disclosures and filings for accuracy and compliance with applicable laws and regulations.

In May 2006, Sunrise announced an earnings restatement that could lower profit by more than \$130 million.

The company announced that it has completed its financial restatement and accounting review. In addition, the company announced that by filing its 2006 10-K it has met the New York Stock Exchange (NYSE) extended deadline of filing in time for the company's common stock to continue to trade on the NYSE. As a result, trading in the company's stock on the NYSE won't be suspended, a potential crisis the company narrowly averted.

"The board is pleased that the restatement is now complete," said Lynn Krominga, the new board chair. Krominga is an attorney who entered the firm in September of last year. "We appreciate the collaborative efforts of the NYSE staff, particularly over the past several days, which have enabled our stock to continue uninterrupted trading."



## Brookdale To Repurchase Up To \$150 Million Of Common Stock

The board of directors of Brookdale Senior Living, Chicago, has decided to purchase up to \$150 million of the company's common stock.

"We believe that our current share price reflects a substantial discount to our net asset value given the quality, location, and performance of our assets and the long-term growth prospects of our business," said Bill Sheriff, Brookdale's chief executive officer. "This repurchase authorization underscores our confidence in our business and our continued commitment to maximizing value for our long-term shareholders."

The board of directors has also declared a quarterly cash dividend on its common stock of \$0.25 per share for the quarter ending March 31, 2008.

The reduction of the quarterly dividend payment from \$0.50 per share to \$0.25 per share was done in order to partially fund the repurchase program, said Sheriff.

### Brookdale 2007 Revenue Up 40 Percent

Brookdale's revenue for the fourth quarter of 2007 was \$469.5 million, up 8.6 percent from the fourth quarter of 2006. Revenue for the full year was \$1.8 billion, a 40 percent increase from \$1.3 billion for 2006.

Average occupancy for the fourth quarter was 90.6 percent and for the full year was 90.7 percent, up from 90.4 percent for the full year of 2006.

Net loss for the quarter and 12 months ended Dec. 31, 2007, was \$(49.2) million and \$(162) million, respectively.

"Despite the difficult economic environment, we grew our reported 2007 cash from facility operations per share greater than 35 percent over 2006," said Bill Sheriff, Brookdale's chief executive officer.

"We believe that the fundamentals of our business remain solid with demand from an aging population growing faster than supply of new senior housing units. We maintained our overall occupancy throughout the year, and we remain positive given our new initiatives, particularly in sales and marketing. In addition, our new integrated operating platform puts us in a much stronger position for 2008."

"During the fourth quarter, we substantially completed the integration of our multiple legacy platforms," said Mark Ohlendor, co-president and chief financial officer. "We continue to report strong same-store results. The ancillary services business is also maturing—we started providing therapy service to over 12,000 legacy Brookdale units in 2007."



## A Community Garden Draws Residents, Staff, Neighbors

In many parts of the country, spring has sprung, and assisted living facilities are preparing to start their gardening programs.

Epoch Assisted Living at Melbourne, in Pittsfield, Mass., is about to launch its third year of an innovative gardening program designed to draw in people from the community as well as their own residents and staff.

The Melbourne Community Garden, located next to the assisted living facility, which is set on 50 acres that used to be a farm, provides residents and people from the community at large with a free 13' x 26' plot of land on which to grow vegetables, flowers, and herbs. Residents or community members who take advantage of the program are responsible for all planting, weeding, watering, and harvesting.


The facility ensures the plots are freshly tilled at the beginning of the growing season, and provides a good water source and gardening tools. Residents who need ergonomic tools in order to participate are provided with them. Gardeners have access to their plots seven days a week from 7 a.m. to 7 p.m., according to Diane Weinstein, the facility administrator who came up with the idea. Shuttle transportation is available from the local senior center for senior citizens who would like to participate in the community garden.

"I just had the idea one day," says Weinstein. "What a great opportunity for our residents to participate in gardening either with their families or on their own, or to watch other gardeners come and till the soil and to give their feedback. We have a lot of rear-seat gardeners here."

The program, though small, is growing. "The first year we had four gardeners and last year we had seven gardeners," says Weinstein. She hopes to have 10 gardeners this year. "We figure

if we get to 10 that will be plenty. We don't have to have a lot of gardeners to be successful. It's just a really nice addition to the community."


The facility offers raised-bed gardens for residents as well as its community garden.



**Weinstein recommends five tips for successfully starting a community garden:**

1. Start small.
2. Be sure to offer plots to residents, families, and neighbors.
3. Get buy-in from other departments: plant management, activities, and marketing.
4. Be clear about the assisted living facility's responsibilities.
5. Set clear parameters for gardeners, such as hours, access to the building, their responsibilities for their plot's upkeep, and how and where to dispose of weeds and trash.

And finally, she says, ENJOY!



Community gardeners who need to use the restroom, get a glass of water, or simply cool off in the air conditioned building are welcome to come into the facility, provided they use the front entrance and sign in as a guest.

The community garden has

"absolutely" helped to foster a positive public perception of the facility, says Weinstein, "although we're well-known in the community anyway. We offer a lot of programs. It's one more thing, but it's not the only thing" they do to be involved in the larger community, she says. "I can't say that a move-in has resulted, but certainly it's one more piece of our visibility, viability, and hospitality. It's also about community service, and it's wonderful to be a back-seat watcher, so it's a nice activity."

The program did encounter an unexpected obstacle when someone ate someone else's tomatoes. "The person whose tomatoes disappeared was very angry. I was very apologetic and couldn't make it up to him, but we worked it out," Weinstein says. The person who ate the tomatoes genuinely thought the vegetables being grown were community property. The individual who lost the tomatoes eventually came back and apologized to Weinstein for overreacting.

In fact, many of the tomatoes and other vegetables grown in the community garden end up in the kitchen, says Weinstein. "Basically all of the vegetables and herbs raised by residents and staff go to the kitchen, where we make salsa or gazpacho [or other dishes] and it gets eaten with great pleasure," she says.

One of the facility's chefs does special cooking demonstrations, and one time the featured item was pesto, and basil from the community garden was used. "And then, of course, we had to eat that," she says hungrily.

The facility doesn't offer specialized gardening classes, but "our life enrichment director and a number of the residents are great gardeners, so they're kind of in charge, and they're great teachers" for residents, staff, or community members who could use some help or advice, says Weinstein.



## NIC Releases Latest Key Financial Indicators

Despite the slowing economy and credit crunch, the long term care profession appears to be holding its own, according to a recent report by the National Investment Center for the Seniors Housing & Care Industry (NIC). The report, "Key Financial Indicators" (KFI), is updated quarterly and tracks loan performance, loan volume, occupancy, and other financial indicators in the long term care sector. The current KFI reports on the fourth quarter of 2007.

"The percentage of performing loans during the fourth quarter continued to be very strong at 99.5 percent," said Robert Kramer, president of NIC, in a news release. Loan performance was 99.5 percent in the third quarter as well. "So far, we're not seeing any impact in our sector in terms of troubled loan performance."

Kramer doesn't see the credit crunch impacting the sector any time soon. "In fact, other seniors housing and care industry metrics would suggest that the performance of loans during the first half

of 2008 will be similar to that from the fourth quarter of 2007," he said.

The volume of loans placed during the fourth quarter "continued to be strong" at \$1.64 billion, although it was down over the previous quarter (from \$2.15 billion) and the same quarter a year ago (from \$2.22 billion).

Loan data are gathered from non-real-estate-investment-trust major lenders making permanent and short-term loans, including Fannie Mae, Freddie Mac, and large credit companies and banks.

Occupancy rates held fairly steady, although the rates were down in both the independent living and skilled nursing sectors. More than 3,100 properties reported their fourth-quarter occupancy data for the report.

Capitalization rates also remained stable.

NIC's "Key Financial Indicators" report can be read free of charge online at [www.nic.org](http://www.nic.org).

In related news, NIC has also announced that its fourth quarter 2007

### Assisted Living Concepts Reports \$4.1 Million Net Income In 2007

Assisted Living Concepts (ALC) has reported net income of \$4.1 million in the 2007 fourth quarter, as compared with net income of \$4.6 million in the same quarter last year. For the year ended Dec. 31, 2007, ALC reported net income of \$17.2 million, as compared with net income of \$9 million in the year before.

"We have achieved an important milestone of almost 90 percent of our revenue being derived from private-pay sources," said Laurie Bebo, president and chief executive officer of ALC.

MAP reports are available. This report provides market data on the nation's top 100 metropolitan markets. Local reports can be purchased for \$299. To view a sample report, visit [www.nicmap.org](http://www.nicmap.org).

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of Columbia, Missouri, Nebraska, Oklahoma, and Virginia.

- Food safety and dietary standards. States changing these rules included Alabama, Missouri, Ohio, Oklahoma, Oregon, and Wyoming.

- Staff training and staffing. States that made changes to staff training requirements included the District of Columbia, Kentucky, Ohio, Oregon, and Wyoming. Those specifying staffing requirements included New Jersey, Ohio, and Oklahoma.

- Medication management. States that changed medication management rules included Missouri, New Jersey, and Ohio.

- Reporting and record keeping.

Several states specified reporting and record-keeping requirements, including Alabama, Kentucky, Nebraska, and Oklahoma.

- Infection control. Alabama and Kentucky implemented infection control measures.

- Medicaid coverage. At least two of the few remaining states without Medicaid coverage for assisted living services took steps toward including such coverage under Medicaid waivers. These two are the District of Columbia and Oklahoma.

- Smoking. North Carolina passed legislation that bans smoking in licensed assisted living facilities statewide.

Other areas in which state assisted living regulations changed included

survey procedures, licensure fees, requirements when closing or expanding operations, resident rights, dispute resolution procedures, move-in/move-out requirements, and resident assessments.

The "Assisted Living State Regulatory Review" is intended to be a service to members, policy makers, regulators, researchers, and the public. It 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](http://www.ncal.org). To obtain a printed copy, call Martece Yates at (202) 898-2855 or send an e-mail to [myates@ncal.org](mailto:myates@ncal.org). Be sure to include your name, address, and phone number.



## NCAL To Hold Webinar On The Effect Of FHA And ADA On Assisted Living

Join NCAL for a Webinar May 15 on “The Effect of the Federal Fair Housing Act [FHA] and the Americans with Disabilities Act [ADA] upon Assisted Living Providers.” The Webinar will be held from 2 p.m. to 3 p.m.

The presentation will provide an overview of the effect of FHA and ADA on such topics as admission agreements, transfers between levels of care, and motorized carts and will discuss recent FHA cases impacting seniors housing providers.

The Webinar will be narrated by two attorneys: Barbara Duff, chair of the Lane Powell Long Term Care and Seniors Housing Client Service Team, and Robin Dale, a member of the same group.

To register, go to <https://ww1.gotomeeting.com/register/547708374>.

## NCAL 2008 Award Program Material Now Available

NCAL has published the guidelines and nomination forms for the 2008 NCAL Awards: NCAL Administrator of the Year, Noble Caregiver in Assisted Living, and Best Programming for National Assisted Living Week. All nominees must be members of NCAL and in good standing at the time of nomination. All nominations must be submitted to NCAL through the NCAL state affiliate. The deadline to submit nominations is June 6, 2008. Visit the Members Only Web site at [www.ncal.org](http://www.ncal.org) to find more information, including application forms.

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Your suggestions and feedback about NCAL FOCUS are welcome. Contact Lisa Gelhaus by e-mail ([lgelhaus@ncal.org](mailto:lgelhaus@ncal.org)), by phone (202-898-2825), or by writing to the address above.

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