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## ASSISTED LIVING UPDATE

### PROPOSED ASSISTED LIVING REFORM ACT PASSES SENATE

On August 12, 2004, the New York State Legislature passed the "Assisted Living Reform Act." Such Act is expected to be signed by the Governor who was actively involved in negotiations of several modifications of the Act.

The following discussion highlights some of the more significant provisions of the Act:

***Assisted Living Licensure.*** The Act requires all entities holding themselves out as assisted living residences to apply for licensure and be approved by the State. In order to operate as an assisted living residence, an operator must be licensed as an adult home or enriched housing program (collectively referred to as "Adult Care Facilities") and apply and be approved for licensure by the Commissioner of Health. Licensure shall be on a biennial basis. The licensure fee will be Five Hundred (\$500.00) Dollars per license, plus Fifty (\$50.00) Dollars per resident whose annual income is four (4) times the federal poverty level, up to a maximum fee of Five Thousand (\$5,000.00) Dollars. There are additional fees if the residence is an enhanced assisted living residence and/or has a specialized service certificate.

In addition to the requirements of the Act, the assisted living residence must also comply with the Adult Care Facility laws and regulations. To the extent there is any conflict, the requirements of the Act shall govern.

***Existing Adult Care Facilities (i.e., Homes and Enriched Housing Programs).*** Licensed Adult Homes and Enriched Housing Programs do not have to be licensed as assisted living residences if they are not utilizing the term "assisted living" or any derivation thereof, or required to obtain an enhanced assisted living certificate.

***Enhanced Assisted Living Certificate.*** Is a certificate issued by the Department of Health which permits the assisted living residence to retain residents that would otherwise not be suitable for assisted living, such as residents who are chronically chairfast, require assistance with transferring,

and/or suffer from chronic urinary or bowel incontinence. An operator of an enhanced assisted living residence may hire care staff directly or contract with a home care company.

**Specialized Services.** Any residence that holds itself out as serving individuals with special needs, such as dementia and alzheimers, must submit a special needs plan to the Department of Health setting forth how the residence will provide for the special needs of such residents in a safe and appropriate manner.

**Residency Agreements.** The Act contains specific requirements for residency agreements. Such Agreement must be maintained by the residence for three (3) years after termination and must be made available for inspection by the Department of Health.

**Individualized Service Plan.** A written individualized service plan must be developed for each resident and reviewed and revised as frequently as necessary but at least once every six (6) months.

**Penalties.** The knowing operation of an assisted living residence without a license is a Class A Misdemeanor.

**If you would like additional information, please free to contact Patrick Formato, Esq. at (516) 328-1763.**

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