



The NYAHSA Center
for Senior Living & Community Services

*A division of the New York Association
of Homes & Services for the Aging*

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MEMORANDUM

TO: All Members

FROM: Dan Heim, Vice President for Public Policy
Ken Harris, Director, The NYAHSA Center for Senior Living and
Community Services

DATE: September 23, 2009

SUBJECT: **Member Education on Recent Court Decisions**

ROUTE TO: Administrators, Directors

ABSTRACT: NYAHSA audioconference on recent assisted living and "impacted homes" court decisions.

Introduction

Earlier this month, three significant court decisions were issued which have the potential to impact assisted living residences, adult care facilities, senior housing, and other long term care providers in New York State. NYAHSA has arranged for Brian McGovern, NYAHSA's general counsel with the firm of Cadwalader, Wickersham & Taft LLP, to provide via phone conference an overview of the decisions, and to discuss their possible implications for our membership and consumers and the steps the State may take in response to the decisions. There will also be an opportunity for members to ask questions on the court decisions. **The call is scheduled for October 23 from 10:30 to 12:00, and is offered to members only, free of charge.** No registration is necessary.

Court Decisions

The NYS Supreme Court issued favorable decisions in lawsuits filed by the Empire State Association of Assisted Living (ESAAL) and the New York Coalition for Quality Assisted Living (NYCQAL) on the assisted living residence (ALR) regulations. The associations filed separate proceedings challenging the regulations imposing licensure requirements for ALRs, EALRs, and SNALRs as either inconsistent with Article 46-B or in excess of the Commissioner's authority under that statute. By a separate Decision & Judgment, issued September 11, 2009, Supreme Court (Justice Michael C. Lynch) in part

granted each petition, annulling discrete sections of the ALR regulations on those grounds.

Another important decision was issued on September 8, 2009 by the U.S. District Court for the Eastern District of New York, in the case of Disability Advocates, Inc. (DAI) v. David A. Paterson et al. DAI argued that the State had discriminated against mentally ill people in New York City who live in adult homes. The judge, Nicholas G. Garaufis, ruled that the State, in administering the mental health service system, violated the “integration mandate” of the federal Americans with Disabilities Act and the Rehabilitation Act by housing mentally ill people in adult homes, characterized by the Court as “institutions”. Judge Garaufis explained that the State had “denied thousands of individuals with mental illness in New York City the opportunity to receive services in the most integrated setting appropriate to their needs.” In particular, according to Judge Garaufis, adult homes that are large (120 or more residents) and “impacted” (25 mentally disabled residents or 25% of such residents) are not the most integrated setting appropriate to the needs of DAI’s constituents. The ruling suggests that the State will have to find alternative smaller, community-based residences for these individuals to live. The State currently has until October 23rd to submit a remedial plan to the Court.

Clearly, all three of these court decisions could have an impact on our members who already provide these services or are exploring doing so. With regard to the ALR lawsuits, the decision nullifies several aspects of regulation which were problematic and costly to implement.

The DAI lawsuit raises many questions about how the State can develop a more viable plan to serve the mental health population in more integrated settings than the adult home setting. Moreover, the Court’s decision may have broader implications for long term care and senior housing, beyond the discrete adult home setting and mentally disabled population at issue in the DAI case. Relying on *Olmstead v. L.C.*, the U.S. Supreme Court’s landmark ADA decision, Judge Garaufis issued a memorandum and order, spanning 210 pages of factual findings and legal conclusions, that DAI and other litigants will likely seek to extend even further. There is already one other pending federal lawsuit -- involving the care of the mentally disabled in New York State nursing homes -- also filed by DAI, where Judge Garaufis’ ruling may have an immediate impact on the outcome. There is opportunity in all cases, however, for an appeal.

This call is designed to give you the most up-to-date information available on the status of these decisions and subsequent actions, help explore potential implications, with time for questions and answers.

How to Participate in the Call

The call is scheduled for October 23 from 10:30 to 12:00. To join the call, **dial 1-866-380-9615 and enter code number 779812#.** (Please be sure to press the # button.) You will be asked to state your name for entry. If you experience difficulties during the call, you may dial 0* for operator assistance.

Conclusion

If you have any questions or comments regarding the contents of this memo, please contact Dan Heim at dheim@nyahsa.org 518-449-2707, ext. 128, or Ken Harris at kharris@nyahsa.org or ext. 139.

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