

Ad Hoc Assisted Living Regulation Review Committee

Appointed by the Long Term Care Facility Advisory Board August 11, 2004

March 2, 2006 Special Meeting

Held at 1:30 p.m. in Room 1102

Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK

Minutes

1) Call to Order

Esther Houser called the special meeting to order at 1:35 p.m. Thursday, March 2, 2006. The meeting notice was filed and posted with the Secretary of State's office February 15, 2006. The agenda was posted at the front entrance of the OSDH building on February 27, 2006.

Introductions proceeded. Identified attendees were: Esther Houser, Committee Chair, State Long-Term Care (LTC) Ombudsman and LTC Facility Advisory Board (LTCFAB) member; Margaret Wallace, Nursing Home (NH) Administrator and LTCFAB member; Penny Ridenour, Oklahoma Assisted Living Association (OKALA); Mary Brinkley, Oklahoma Association for Homes and Services for the Aging (OKAHSa); Diane Hambric, Residential Care (RC) and LTCFAB Chair; Ginny Rahme, Assisted Living (AL) and LTCFAB member; Wendell Short, RC Administrator and LTCFAB member; Kay Parsons, LPN and LTCFAB member; Chris Kincaid, AL and LTCFAB member; Tracy DeForest, LTCFAB member; Dr. Peter Winn, LTCFAB member; James Joslin, Assistant Chief, LTC, OSDH; Dorya Huser, Chief, LTC, OSDH; Regina Glen, Licensure and Life Safety Code Coordinator, LTC, OSDH; Darlene Simmons, Director, Health Facility Systems, OSDH; Mary Fleming, Director, LTC Survey, OSDH; Lisa McAlister, Director, Nurse Aide Registry; Chris Mahen; Norma Noles, Silver Oak Senior Living; Danny Eischen, Fountains at Canterbury; Holly Mattingly, Norman Senior Care; Melissa Mahaffen, Rambling Oaks Courtyard AL; Scott Brasier, Norman Senior Lake; Jason Wiley, Legend Senior Living; Karen Elliott, Areawide Aging Agency-Ombudsman; Shari Beguir, Gold Medallion; Greg Guymon, Gold Medallion; Juneann Murphy, PhD; Janine McCullough, APS/DHS; Rhea Ann Lee, RN, Frontier Hospice; Donna Kilgore, Brighton Gardens; Bill Whited, Ombudsman; Regina Ray, Ombudsman; Jeanene Bales, TSG Incorporated; Karen Nelson, Jeffersons Garden; Jennifer Shelley, OKALA (intern); Dirk O'Hara, AL; Alicia Menefee, RN; Tammy Brown; and Leslie Roberts, LTC.

2) Presentation of Proposed Amendments to OAC 310:663. Continuum of Care and Assisted Living rules and rationale

James Joslin provided an overview of the handout titled 'Applicable Rules and Statutes for Continuum of Care and Assisted Living Centers'. The handout furnished references to include within Title 63 of the Oklahoma Statutes (O.S.) Section 1-890 through 1-891 known as the Continuum of Care and Assisted Living Act; O.S. Sections 1-1909, 1-1910, 1-1918 within the Nursing Home Care Act; O.S. Section 1-1944 through 1-1948 known as the Long-term Care Security Act; O.S. Section 1-1950; Chapter 663 of the Oklahoma Administrative Code (O.A.C.); Chapter 677 of the O.A.C and Chapter 680.

Mr. Joslin presented an informative slide show and spoke about the rationale for change proposals in the Continuum of Care and Assisted Living rules. He also provided a handout providing further

information on 'Why These Rule Amendments at This Time'. Department surveyors have found rising acuity needs of residents in AL facilities. Since 2003, complaints alleging problems with quality of care have increased 126% and complaints alleging neglect have increased 92%. The number of AL surveys has declined over the past two years due to a lack of Department staff yet the number of cited deficiencies reflects a 36% increase. The handout provided a detailed review of survey findings in AL centers.

The proposed rule is identified as underlined text with the strike-through text identifying removal. Two definitions are proposed to be added to the rule 'direct care staff' and 'discharge'. Insertion of the referenced Oklahoma Statutes (O.S.) is proposed for 310:663-1-4. Other provisions applicable to continuum of care facilities and assisted living centers. There is nothing new proposed in this section, as the referenced statutes already apply to AL.

The changes to 310:663-3-4. regarding the appropriateness of placement are proposed to avoid the level of care confusion among facilities, residents and the Department. (i.e.: avoid quality of care problems identified at an increasing frequency with consequence of harm to residents; avoid the threat of harm when staffing is not present to assist residents in the event of a facility emergency.) The primary proposed change to 310:663-3-5. regarding involuntary transfer and discharge is amending the written notice requirement from ten days to at least thirty days in advance. Further proposed changes included insertion of 'referred to' language located in the residential care rules. The majority of the proposed language provides how the Department will conduct a hearing.

The proposal to 310:663-3-8. establishes the use of the Food Service Establishment regulation. This is relating to food storage, preparation and service. It provides for food service training to all food service area staff. The proposed change to 310:663-7-2. Privacy and independence is to clarify the language for easier reading.

Proposed changes to 310:663-9-6. regarding minimum staffing will provide increased supervision to address issues the Department has found with level of care. Establishment of minimum staffing seeks to reduce incidents of resident elopement and resident-to-resident abuse. Currently, there is no requirement to have staff present in a locked unit. The amendments provide for limitations on one-person staffing, two person staffing at all times in locked units, and two person staffing for facilities housing more than six residents.

The change to 310:663-13-1. Resident service contract is proposed to address facilities that fail to provide services specified in the resident service contract including staffing or licensed nurse coverage. Currently, there is no rule prohibiting the practice. The proposed changes to 310:663-15-1. Resident rights and 310:663-15-2. Guardians and power of attorney adapts the rule to current legal practices.

The proposed 310:663-15-3. Complaints require facilities to develop, distribute, and post their procedures for receiving resident complaints and a provision for distributing and posting the Department's complaint procedures. The new requirement is based on the Long Term Care Security Act, §63-1-1909. Documents and papers required to be displayed.

The changes proposed to 310:663-19-1. Incident reports include additional incidents, requirements to report incidents to the Department, 24 hour reporting timelines, notification of the Nurse Aide Registry, and guidance of what information to include in the incident report.

There is no new language proposed for 310:663-19-2. Medication administration. Instead of referencing the language from Residential Care rules, the language has been inserted. The proposed change regarding 310:663-19-3. Maintenance of records provides for content, confidentiality, protection, retention time frames, and possession in case of closure or ownership change. The proposal to 310:663-25-3. Outcome standards updates the professional standards of practice. The changes proposed to 310:663-25-4. Notice of violation include defining an acceptable plan of correction and provisions for the right to appeal. The rule for plan of correction submission is in existence. The proposal to change the rule defines an acceptable plan of correction and the penalties for failure to submit. These proposed changes also include provisions for the extension, rejection and the right to appeal in response to plans of correction that do not provide assurance that identified problems will be corrected. Mr. Joslin added that the Department has encountered problems with plans of correction received, which did not meet the requirements. This proposal for change provides the facility with information to submit an acceptable plan of correction in accordance with existing rule.

The last proposed change Mr. Joslin presented in his slide show is in regards to voluntary closure notices, 310:663-29-2. These proposed amendments define the content required in the closure notice to residents and provides for a final notice of closure to the Department. The final notice of closure provides for the preservation of resident records [310:663-19-3(g)]. Mr. Joslin explained the Department needs to know when the facility closed, where the residents went, and how the residents' records can be obtained if needed.

Mr. Joslin thanked the Committee and attendees. Ms. Houser expressed her appreciation of Mr. Joslin's presentation.

3) Review and Discussion of Proposed Amendments to OAC 310:663. Continuum of Care and Assisted Living rules presented at the February 8, 2006 LTC Facility Advisory Board Regular Meeting

As group discussion began, Penny Ridenour interposed and requested to read a letter^{*} from OKALA (Oklahoma Assisted Living Association) addressed to the Ad Hoc Committee dated March 2, 2006. Ms. Ridenour stated it was helpful to hear Mr. Joslin delineate the kinds of issues and provide summary copies of some problems the Department has found on inspection visits that caused the Department to bring forth proposed amendments. Discussion commenced and revealed controversy regarding some of the proposed rule amendments and the justification for them. Dorya Huser provided clarification on some issues. She stated Mr. Joslin worked on the rule amendments at her direction due to problems found in facilities. It is a part of the work of Long Term Care. It was not the intent to circumvent providers. Ms. Huser further stated there has been ongoing discussion about the problems, which has brought these amendments to the forefront. There has not been an organized group meeting discussing these issues. People have given the Department feedback including people from the provider community, from the resident community, and from the constituents of Oklahoma. The job of the Department is to serve the people of Oklahoma.

* The OKALA letter is attached as part of the official meeting minutes.

Ms. Huser also addressed complaints and the need for these changes such as the food code. She stated that people need to have a 'clean and sanitary' environment in the kitchen and in the facility. Ms. Huser hopes complaints will continue to decrease, which is what has occurred the last couple of years in the nursing facilities. Ms. Huser further stated the Health Department feels that when it comes to very important issues of health, safety, welfare, and sanitation people should have the right to address those somewhere. Ms. Houser added that some of things discussed last year in the Committee* meetings are incorporated but there are many other things not thought of, we can have a lot of discussion now that we have something on the table and start fresh. Dirk O'Hara stated everyone needs to understand the problem being focused on and how each rule is going to help that problem. Ms. Houser recalled from discussions last year at the Committee meetings there was no agreement problems even existed. Comments included the presentation given by Mr. Joslin was great and provided some insight to problems being encountered.

Chris Kincaid requested clarification from Mr. Joslin regarding the complaint numbers provided asking for the number of complaints that were actually substantiated vs. unsubstantiated. Mr. Joslin replied when talking about the (Department) staffing issues earlier he did not mention the Department has a lot of complaints that are not worked. He did not look at the number of substantiated complaints for lack of data. The Department's priority has been the IJ (immediate jeopardy) and the actual harm complaints. Therefore, the data is incomplete for all complaints but added he can put together the information available and provide it.

The Committee decided to address the "simpler" proposed amendments to determine consensus, then allow for further discussion of the more complex proposed amendments. Ms. Huser reminded everyone to remember AL facilities bear a license and that is what makes them different from an independent living or an apartment complex. If anyone finds information that would help the Department with the process, please share it.

While discussing 310:663-3-8, Food storage, preparation and service, the group found this section in need of some further revisions and clarifications as follows:

- Add a paragraph stating facilities that do not store, prepare, and serve food shall not be subject to this rule.
- Revisit the language in section (c) regarding 'approved sources'; provision for gardens.
- Clarify section (d)(2) with Consumer Protection regarding powdered or evaporated milk products approved by the 'U.S. Department of Health and Human Services' vs. U.S.D.A.
- Clarify section (d)(4) regarding 'all eggs shall be thoroughly cooked'; question of ability to serve eggs sunny side up.
- Clarify section (f) with Consumer Protection regarding the maximum kitchen room temperature shall not exceed 90° F.

The Committee reached consensus on 310:663-19-2. Medication administration.

The Committee discussed 310:663-19-3. Maintenance of records. The Committee identified some items for clarification and for additional provisions. In section (a), a provision for 'electronic' record needs to be added. Mr. Joslin will check on the preferred term of 'digital' vs. 'electronic' so the language in sections (a) and (c) will be uniform. Mr. Joslin will check with the Department's legal

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office regarding the standard practice of record retention, section (b) and clarification of the word 'immediately' in sections (f) and (g). Suggestions included striking the word 'immediately' in section (f) and/or inserting 'within 72 hours of recognition'.

The Committee reached consensus on 310:663-29-2. Notice of voluntary closure.

The Committee reached consensus on 310:663-25-3. Outcome standards.

The Committee reached consensus on Appendix B. and to insert a reference of 310:663-25-3. to Appendix B.

The Committee projected the next possible meeting dates of March 30th or 31st, then possibly meet again on April 27th or 28th.

4) Adjournment

The special meeting was adjourned at 3:55 pm.

Attachment: March 2, 2006 OKALA letter

Attachment

