

# LONG-TERM CARE FACILITY ADVISORY BOARD

## Regular Meeting

**February 8, 2006 at 1:30 p.m. in Room 1102**

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

## MINUTES

*Approved May 10, 2006*

### 1) **Call to Order**

Diane Hambric called the meeting to order at 1:35 p.m. Wednesday, February 8, 2006. The 2006 Long-Term Care Facility Advisory Board meeting notices were filed and posted with the Secretary of State's office website on November 18, 2005. They were filed November 18, 2005 and posted on the Oklahoma State Department of Health (OSDH) website. The February 8, 2006 agenda was posted February 1, 2006 on the OSDH website and at the OSDH building's front entrance on February 6, 2006.

### 2) **Roll Call**

Leslie Roberts called roll. The following members were present: Donna Bowers; Jane Carlson; Alice Cash; Ed Chappel; Theo Crawley; Clara Haas; Diane Hambric, Chair; Ann Hays; Esther Houser; Chris Kincaid; Mich Magness, Vice-Chair; Dawn Mendenhall; Ralph Palmer; Kay Parsons; Ginny Rahme; Cindy Roberts; Dewey Sherbon, Secretary-Treasurer; Wendell Short; H.F. Timmons; Margaret Wallace; and Dr. Peter Winn.

The following members arrived late: Tracy DeForest.

The following members were absent: Gayla Campbell; Steve Cox; Dr. Terence Grewe; Juana Meadows; and Jane Mershon.

Identified OSDH staff present were: Regina Glen, LTC Licensure and Life Safety Code Coordinator; Nancy Atkinson, Chief of Quality Improvement & Evaluation Service (QIES); Sue Davis, LTC; Boyd Murphy, Health Resources Development Services (HRDS); Espa Bowen, HRDS; Mary Fleming, Director of LTC Survey; Dr. Timothy Cathey, OSDH; Henry Hartsell Jr., Chief of HRDS; James Joslin, Assistant Chief of LTC; Dorya Huser, Chief of LTC; Patty Scott, LTC; Darlene Simmons, Director of Health Facilities Division; Lisa McAlister, Director of Nurse Aide Registry; and Leslie Roberts, LTC.

Identified guests present were: Danny Eischen, The Fountains at Canterbury; Jessica Guillory, The Fountains; Donna Kilgore, Brighton Gardens; Kane S. Sherman, Senior Management Group; Greg Frogge, McAfee Taft; Chris Mahen, Alterra; Sarah Cioli, Francis Tuttle; L. Louise Drake, OK Board of Nursing; Crystal *unidentifiable last name*, Health Back; Sharen Bosewell, Reunion Plaza; *unidentifiable name*, ODCTE; Greg Guymon, Gold Medallion; Susan Moon; Tonya *unidentifiable last name*, Village AL Center; Lavonne *unidentifiable last name*, Golden Oaks; Kristi Allison, Oklahoma Residential Assisted Living Association (ORALA); Sharral Tye, ORALA; Rita Cook, Angel House/ORALA; James Perryman, Northeast Tech Center; Dirk O'Hara; Mary Brinkley, Oklahoma Association of Homes and Services for the Aging (OKAHSa); Lynne Taylor, Autry Technology Center; Sharen Mitchell, CVTC; Andrea Pogue,

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Pontotoc Technology Center; Ned Gray, OK Dept. of Career Tech; Juneanne Murphy; Martha Elshire, Metrotech; Deborah Weiss, Metrotech; Patricia Shidler, LTC Ombudsman; Cassell Lawson, Oklahoma Health Care Authority (OHCA); Kay Stewart, Tamarack-Altus; Penny Ridenour, Oklahoma Assisted Living Association (OKALA); and Becky Moore, Oklahoma Association for Health Care Providers (OAHCP).

**3) Review and Action to Approve/Amend the November 2, 2005 Regular Meeting Minutes**

*Approval/Amendment of minutes for November 2, 2005 regular meeting.*

*After discussion, Alice Cash made a motion to approve the November 2, 2005 regular meeting minutes with the exception of a name correction. The name 'Louise Drove' will be corrected to reflect 'Louise Drake' located on page one, the second line in the last paragraph.*

*Seconded by Ginny Rahme. Motion carried.*

**Aye: 18      Abstain: 3      Nay: 0      Absent: 6**

Donna Bowers	Aye	Mich Magness	Aye
Gayla Campbell	Absent	Juana Meadows	Absent
Jane Carlson	Aye	Dawn Mendenhall	Aye
Alice Cash	Aye	Jane Mershon	Absent
Ed Chappel	Abstain	Ralph Palmer	Aye
Steve Cox	Absent	Kay Parsons	Aye
Theo Crawley	Abstain	Ginny Rahme	Aye
Tracy DeForest	Absent	Cindy Roberts	Abstain
Dr. Terence Grewe	Absent	Dewey Sherbon	Aye
Clara Haas	Aye	Wendell Short	Aye
Diane Hambric	Aye	H.F. Timmons	Aye
Ann Hays	Aye	Margaret Wallace	Aye
Esther Houser	Aye	Dr. Peter Winn	Aye
Chris Kincaid	Aye		

**4) Discussion of Long-Term Care Issues**

*Provider training workshops and facility emergency action plans.*

Dorya Huser announced this is the third year for the provider training offered by the Department. She added this year's provider trainings are currently in the rough stages of planning. Ms. Huser is excited about the upcoming trainings. The Department is offering three trainings this year including one for intermediate care facilities of the mentally retarded (ICFs/MR). The projection for the first provider training is sometime in June or July.

James Joslin informed the Advisory Board that the Department has received approximately 400 facility emergency action plans (EAP's) to date. He provided information for facilities to consider when

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developing their EAP. Evacuation/emergency plans should include disaster plans for situations such as grass fires, water supply, short-term relocation, and transfers. Mr. Joslin stated he has spoken with some local emergency management staff and was informed they do not have space to store copies of facility EAP's. In addition some emergency management offices cannot sign the acknowledgement form per their attorney. Mr. Joslin stated the Department is looking to scan the EAP plans, which will help with the storage issues. Ms. Huser mentioned there is a link on the Department website for the model EAP and supplement. (<http://www.health.ok.gov/program/ltc/index.html#actionplan>) She also informed the Advisory Board she recently attended the CMS Region VI meeting. Ms. Huser stated they were happy to see Oklahoma's proactive approach and the stand in which Oklahoma has taken with disaster planning. Facilities may email their EAP's to Mr. Joslin at [james@health.ok.gov](mailto:james@health.ok.gov).

##### **5) Discussion of the Informal Dispute Resolution and Appeal Processes for Licensure Only Facilities**

*The discussion is at the request of a Board member. Current agency policy does not allow informal dispute resolution (IDR) for Assisted Living, Residential Care and Adult Day Care facilities. The IDR process was created for nursing homes by federal regulation in 42CFR488.331. The IDR process was initially extended to all facility types under Long-Term Care. This practice was later withdrawn due to funding shortages and understaffing. The practice was later extended to Intermediate Care Facilities for the Mentally Retarded through Oklahoma statutory amendments.*

James Joslin explained the informal dispute resolution (IDR) process. It is an informal opportunity for a nursing facility to dispute a deficiency. This process was set forth by federal government regulations not state. Therefore, licensure only facilities did not fall within the federal realm. The Department did for a time offer this as a courtesy to licensure only facilities; however, due mostly to funding shortages and lack of staff the Department was unable to continue this practice. The Department does not see the fines and penalties in licensure only facilities as in nursing facilities. Mr. Joslin noted that the Oklahoma Statute was changed to include intermediate care facilities for the mentally retarded (ICFs/MR). He stated that the Department does take and receive calls from licensure only facilities regarding questions on a cited deficiency. Mr. Joslin added there have been occasions of amending a deficiency based on an administrative review. Ms. Hambric asked if it is an issue for the Department to offer licensure only facilities an IDR. Mr. Joslin replied there are staffing and time issues. Ms. Ridenour stated there is no place for an appeal for licensure. Discussion included the cost attached to the process of allowing licensure only facilities an IDR and no funds for licensure IDR's. Mr. Joslin added that any facility can request an appeal. (Ms. Carolyn Guthrie, Hearing Clerk, Office of Accountability Systems, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299) Ms. Huser reiterated that the Department is short-staffed and short-funded. Cindy Roberts provided an explanation of FTE's and recommended the Department put it in a budget request to OHCA. Mr. Joslin stated it is rare to see fines on licensure. Ms. Hambric requested the Department to look at that and see what the numbers are.

##### **6) Review, Recommendations and Action on Proposed Amendments to OAC 310:663, Continuum of Care and Assisted Living**

*Notice of Rulemaking intent has been published for the proposed rules. The proposed rules are scheduled for hearing before the Oklahoma State Board of Health on March 9, 2006. The proposed amendments and new language update the rules based on survey experience, history of complaint allegations and*

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*investigations, and public meetings held by the Long-Term Care Facility Advisory Board. The proposed amendments and new language address: definitions; other provisions applicable to continuum of care facilities and assisted living centers; appropriateness of placement in assisted living center; involuntary transfer or discharge; food storage, preparation and service; privacy and independence; minimum staff for services; resident service contract; resident rights; guardians and power of attorney; incident reports; medication administration; maintenance of records; outcome standards; notice of violation, plans of correction, and right to hearing; notice of voluntary closure; reference list for standards of practice. The Advisory Board may review, make recommendations regarding, and act to approve in its advisory capacity the proposed rules and amendments.*

James Joslin stated he is receptive and wants feedback on the assisted living rules. There were many questions raised.

***After discussion, Alice Cash made a motion to reconvene the Ad Hoc Assisted Living Regulation Review Committee in which Esther Houser is Chair to further review the proposed amendments to OAC 310:663, Continuum of Care and Assisted Living and report consensus back to the Advisory Board.***

***Seconded by Dewey Sherbon. Motion carried. Roll was not called.***

**7) Update on the Ad Hoc Committee on Safety of Medication Administration by CMAs**

Dr. Hartsell provided a handout and an overview of changes the Committee discussed.

Discussion proceeded to agenda item 8.

**8) Review, Recommendations and Action on Proposed Amendments to OAC 310:675, Nursing and Specialized Facilities**

*The proposed amendments are intended for adoption as permanent rules to supersede emergency rules that became effective October 6, 2005 regarding pain management and December 22, 2005 regarding paid feeding assistants. Proposed amendments to Subchapters 7 and 13 implement the recommendations of the Pain Management Advisory Council and implement statutory requirements for pain assessments. The amendments include requirements for nursing policies to address pain assessment and treatment, resident pain assessments, and facility staff training. A new section is added to Subchapter 15 establishing a fund for the Department to financially assist temporary managers of nursing facilities to ensure continuation of care of the residents when funds are not available from any other source. A proposed new Subchapter 19 establishes standards for training and registration of feeding assistants in accordance with Title 42 of the Code of Federal Regulations, Parts 483 and 488, and Section 13 of Enrolled House Bill 1688 of the 1st Session of the 50th Oklahoma Legislature. The Advisory Board may review, make recommendations regarding, and act to approve in its advisory capacity the proposed amendments.*

Hank Hartsell provided an overview of the proposed rule amendments explaining these amendments are intended for permanent adoption and will supersede the emergency rules now in effect. James Joslin worked on the proposed rule amendments regarding pain management and Dr. Hartsell worked on the proposed rule amendments regarding feeding assistants. The proposed new Subchapter 19 will establish standards for training and registration of feeding assistants.

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The other proposed amendment will establish a new section, Subchapter 15, to address the funding of temporary managers. Temporary managers have had to borrow money, use their own money, and/or use personal collateral. This proposed new section will establish a fund for temporary managers and are also proposed for permanent adoption. If the Advisory Board approves these amendments, they will be presented to the Board of Health on March 9, 2006.

*After discussion, Esther Houser made a motion to approve for permanent adoption the proposed amendments to OAC 310:675, Nursing and Specialized Facilities regarding pain management, paid feeding assistants, establishment of a fund for temporary managers, and new subchapter 19 which establishes standards for training and registration of feeding assistants.*

**Seconded by Alice Cash. Motion carried.**

**Aye: 19 Abstain: 0 Nay: 0 Absent: 8**

Donna Bowers	Aye	Mich Magness	Absent
Gayla Campbell	Absent	Juana Meadows	Absent
Jane Carlson	Aye	Dawn Mendenhall	Aye
Alice Cash	Aye	Jane Mershon	Absent
Ed Chappel	Aye	Ralph Palmer	Aye
Steve Cox	Absent	Kay Parsons	Aye
Theo Crawley	Aye	Ginny Rahme	Aye
Tracy DeForest	Aye	Cindy Roberts	Absent
Dr. Terence Grewe	Absent	Dewey Sherbon	Aye
Clara Haas	Aye	Wendell Short	Aye
Diane Hambric	Aye	H.F. Timmons	Aye
Ann Hays	Aye	Margaret Wallace	Aye
Esther Houser	Aye	Dr. Peter Winn	Absent
Chris Kincaid	Aye		

**9) Review, Recommendations and Action on Proposed Amendments to OAC 310:677, Nurse Aide Training and Certification**

*The proposed amendments are intended for adoption as permanent rules to supersede emergency rules that became effective December 22, 2005. The proposed amendments to Subchapter 13 establish competency and practice standards for medication aides, create a list of skills and functions that medication aides may perform, specify certification and recertification requirements for medication aides, provide criteria and procedures for approval of training programs, and establish procedures for administrative sanctions against certified medication aides. The amendments establish advanced training and certification requirements for administration of diabetic medications, and for administration of medications via nasogastric and gastrostomy routes, and administration of oral metered dose inhalers and nebulizers. The phrases "stable diabetes" and "unstable diabetes" are defined. Requirements for facility policies and procedures on certified medication aides are established. The amendments affect the administration of medications in nursing facilities, specialized nursing facilities including ICF/MR and*

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*Alzheimer's facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes. The Advisory Board may review, make recommendations regarding, and act to approve in its advisory capacity the proposed amendments.*

Dr. Hartsell provided an overview of the proposed rule amendments explaining these amendments are intended for permanent adoption and will supersede the emergency rules now in effect. Dr. Hartsell also provided an additional handout outlining further changes as a result of this morning's meeting of the Ad Hoc Committee on Safety of Medication Administration by CMA's. These amendments regarding medication aides are proposed for permanent adoption. If the Advisory Board approves these amendments, they will be presented to the Board of Health on March 9, 2006.

***After discussion, Esther Houser made a motion to approve for permanent adoption the proposed amendments to OAC 310:677, Nurse Aide Training and Certification, Subchapter 13 as presented with the following exceptions:***

**310:677-13-1(g) is changed as follows:**

- (d) A certified medication aide shall renew ~~their~~ certification every 12 months. Recertification requires the following:
- (2) Current certification as a long term care aide, home health aide **and or** developmentally disabled direct care aide. CMAs may also be certified in the other two (2) categories in addition to the required certification as a long term care aide, home health care aide and developmentally disabled direct care ~~aides~~aide; and

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**310:677-13-4(c)(2)(I)(iv) is changed as follows:**

- (iv) Demonstrate in a minimum of ten tests **each** the accurate measurement and correct technique for preparation of a single and a mixed dose of insulin;

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**310:677-13-4(d) is amended with a new paragraph (3) as follows:**

(d) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes, and for administration of oral metered dose inhalers and nebulizers, shall include:

- (1) A combined minimum of 6 hours of classroom and supervised practical training; and
- (2) Training in at least the following subject areas:
- (A) Gastrointestinal system and alternative methods for providing medications and nourishment;
- (B) Nasogastric and gastrostomy equipment and supplies;
- (C) Procedures and techniques for insertion of nasogastric tube by a licensed nurse, and assessment of patient by registered nurse after placement of nasogastric or gastrostomy tube and before administration of medication or feedings;
- (D) Methods and techniques for administration of medications and nutrition via nasogastric and gastrostomy tubes; and
- (E) Identification of and responses to potential problems associated with administration of medications and nutrition via nasogastric and gastrostomy tubes.

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- (F) Respiratory system and methods for delivery of medications;
  - (G) Equipment and supplies for administration of medication via metered dose inhalers and nebulizers;
  - (H) Methods and techniques for administering medications via metered dose inhalers and nebulizers; and
  - (I) Identification of and responses to potential problems associated with administration of medications via metered dose inhalers and nebulizers; and
- (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.**

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**310:677-13-5 is amended as follows:**

- (a) The written competency examination shall:
  - (1) Be drawn from a pool of test questions that address the course requirements.
  - (2) Be administered and scored by a Department approved entity.
  - (3) Comply with the examination administration requirements in OAC 310:677-3-9.
  - (4) A minimum score of seventy percent (70%) shall be required to pass the written competency examination for certification as a medication aide.**
  - (5) A minimum score of eighty percent (80%) shall be required to pass the written competency examination for insulin administration.**
  - (6) A candidate who fails to score at least the required minimum on three consecutive written competency examinations shall be required to retrain before retesting.**
- (b) The skills demonstration shall:
  - (1) Be performed in **the a laboratory or a site comparable to the** setting in which the certified medication aide will function.
  - (2) Be administered and scored by a physician, licensed nurse or registered pharmacist.
  - (3) The student shall achieve one hundred (100) percent accuracy on a medication pass on at least twenty (20) or more individuals under direct observation by an instructor.
  - (4) **The medication pass may be performed in a facility.**
  - ~~(5)~~ The successful completion of the medication pass shall be documented and retained in the certified medication aide's training file.
  - (5) Comply with the examination administration requirements in OAC 310:677-3-9 and the content requirements in OAC 310:677-3-10.**

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**310:677-13-7(b) is amended with a new paragraph (8):**

310:677-13-7. Skills and functions

- (b) Limitations. A certified medication aide shall not:
  - (1) Administer medication that requires assessment unless a registered nurse is available to perform the assessment within the required time;
  - (2) Perform oral, nasal or tracheal suctioning;
  - (3) Apply topical wound care medications that involve decubitus treatment ordered by the attending physician;
  - (4) Act as preceptor for a medication aide in training;

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- (5) Administer PRN medication without a documented assessment unless authorization is obtained from a licensed nurse on duty or on call, and unless fully documented by the certified medication aide;
- (6) Perform blood glucose testing unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for care of diabetes;
- (7) Administer insulin unless the CMA has successfully completed a Department-approved advanced training program and competency and skills examination, and unless a physician or licensed nurse is on-site if the individual:
  - (A) Is newly diagnosed with diabetes;
  - (B) Requires insulin administration based on blood glucose levels and does not have clear physician orders for variable or sliding scale insulin; or
  - (C) Has unstable diabetes;
- (8) **Administer medications or nutrition via nasogastric or gastrostomy tubes, or administer oral metered dose inhalers or nebulizers, unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for such services;** or
- (9) Take or note physician orders.

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**310:677-13-8(a) is amended as follows:**

310:677-13-8. Certification and recertification

(a) **Effective August 1, 2006,** the following, to be evidenced by the aide's attestation, are prerequisites for certification as a medication aide:

- (1) Minimum age: 18;
- (2) Minimum education: high school or general equivalency diploma;
- (3) Current Oklahoma nurse aide certification with no abuse notations;
- (4) Experience working as a certified nurse aide for six months; and
- (5) Physical and mental capability to safely perform duties.

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**Seconded by Alice Cash. Motion carried.**

**Aye: 18      Abstain: 2      Nay: 0      Absent: 7**

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Donna Bowers	Abstain	Mich Magness	Absent
Gayla Campbell	Absent	Juana Meadows	Absent
Jane Carlson	Aye	Dawn Mendenhall	Aye
Alice Cash	Aye	Jane Mershon	Absent
Ed Chappel	Aye	Ralph Palmer	Aye
Steve Cox	Absent	Kay Parsons	Aye
Theo Crawley	Aye	Ginny Rahme	Aye
Tracy DeForest	Abstain	Cindy Roberts	Absent
Dr. Terence Grewe	Absent	Dewey Sherbon	Aye
Clara Haas	Aye	Wendell Short	Aye
Diane Hambric	Aye	H.F. Timmons	Aye
Ann Hays	Aye	Margaret Wallace	Aye
Esther Houser	Aye	Dr. Peter Winn	Aye
Chris Kincaid	Aye		

#### **10) New Business**

*Not reasonably anticipated 24 hours in advance of meeting.*

Cain Sherman asked about residential care tag 020, routine nursing services. Routine nursing services are not time limited.

Mary Fleming added that the administration of insulin is no longer a skilled service. Ms. Huser added there are a lot of variables involved. Every situation is different.

Kay Parsons requested recognition be placed in the minutes for Leslie Roberts. She expressed great appreciation to Mrs. Roberts for all of the hard work and assistance she provides the Advisory Board. Members agreed this recognition should be included in today's meeting minutes.

#### **11) Public Comment**

*Please limit comments to three (3) minutes.*

Public comments were made throughout the meeting.

#### **12) Adjournment**

The meeting was adjourned at 3:40 p.m.

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