

# **Ad Hoc Assisted Living Regulation Review Committee**

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

## **March 30, 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 30, 2006. The meeting notice was filed and posted with the Secretary of State's office March 13, 2006. The agenda was posted March 27, 2006 on the OSDH website and at the front entrance of the OSDH building on March 28, 2006.

Introductions proceeded. Identified attendees were: Esther Houser, Committee Chair, State Long-Term Care (LTC) Ombudsman and LTC Facility Advisory Board (LTCFAB) member; Leslie Roberts, LTC, OSDH; James Joslin, Assistant Chief, LTC, OSDH; Wendell Short, RC Administrator and LTCFAB member; Diane Hambric, Residential Care (RC) and LTCFAB Chair; Ginny Rahme, Assisted Living (AL) and LTCFAB member; Penny Ridenour, Executive Director, Oklahoma Assisted Living Association (OKALA); Melissa Mahaffen, Rambling Oaks Courtyard AL; Holly Mattingly, Norman Senior Care; Scott Brasier, Norman Senior Care; Dirk O'Hara, Norman Senior Care; Janine McCullough, APS/DHS; Kimberly Crawford, Ombudsman Supervisor; Rebecca Moore, Oklahoma Association for Health Care Providers (OAHCP); Grant Gilchrist, Arbor House; Kay Stewart, Tamarack Retirement Center; Greg Guymon, Gold Medallion; Chris Mahen, Alterra; Paul J. Williams, Assisted Living Federation of America (ALFA); Danny Eischen, Fountains at Canterbury; Sean Voskull, AARP; Mary Brinkley, Oklahoma Association for Homes and Services for the Aging (OKAHSa); Jeanene Bales, TSG Incorporated; Karen Nelson, Jefferson Garden; Norma Noles, Silver Oak Senior Living; Bryan Moore, Legend Senior Living; Darlene Simmons, Director, Health Facility Systems, OSDH; Patty Scott, LTC, OSDH; Dorya Huser, Chief, LTC, OSDH; Rocky McElvany, Deputy Commissioner, OSDH; Patricia Shidler, LTC Ombudsman; Clara Haas, LTCFAB member; Mary Fleming, Director, LTC Survey, OSDH; and Lisa McAlister, Director, Nurse Aide Registry.

This is the second meeting of 2006 and is a continuation of the review of Assisted Living Regulations initiated on March 2, 2006. Ms. Houser expressed her appreciation of how much the Committee accomplished at the March 2, 2006 meeting. She stated she understands that each of us comes with our own opinions, including some who have based their hopes on how things can be and some who fear the changes that might come. Ms. Houser added that all come by those opinions honestly and she is sure the group can continue to discuss the rules in a civil manner. She also expressed appreciation for the willingness of everyone partaking in the discussion.

#### **2) Review of the March 2, 2006 Special Meeting Minutes**

Meetings are posted at:

<http://www.health.state.ok.us/calendar/mtngs/index.html>  
<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>

*Brief review of the March 2, 2006 special meeting minutes.*

Ms. Ridenour requested a correction to the minutes on pg. 3 from Ms. Houser to herself.

**3) Review, Continued Discussion, and Consensus of Proposed Amendments to OAC 310:663, Continuum of Care and Assisted Living Rules**

*These proposed amendments were presented at the February 8, 2006 LTC Facility Advisory Board Regular Meeting. There was consensus on some of the proposed amendments at the March 2, 2006 special meeting. This special meeting is to further review the proposed amendments and continue discussion with a goal of reaching a consensus to present to the LTC Facility Advisory Board.*

James Joslin provided an overview of previously reviewed amendments and identified the amendments on which consensus was reached at the March 2, 2006 meeting. Regarding the Food Code, Mr. Joslin stated Tressa Madden, Director, Consumer Protection was unable to attend today's meeting but she would like to attend and discuss this topic possibly at the next meeting. Consensus was reached on **Medication administration, 310:663-19-2(a)** located on page 11 of the handout. Mr. Joslin pointed out the previously omitted section 310:663-19-3(b) in the March 2, 2006 handout has been included in today's copy, but there is no change being proposed to it.

Regarding **310:663-19-3. Maintenance of records**, Mr. Joslin stated he does not have an answer yet as to the use of 'digital' vs. 'electronic' record. He added that 'digital' has been previously used. As to the information relating to record retention, HIPPA and National comparisons were found. Nationally, the standard record retention minimum was five (5) years. The maximum found was ten (10) years. The proposed amendment is for five (5) years. Some of the retention provisions in HIPPA were six (6) years for statements of disagreement and complaint records. It also references federal statute of limitations under Medicare and Medicaid as being six (6) years. Members raised the question of how long to keep resident records - do providers keep them for 5-6 years *or* from time of admission until 5-6 years following discharge of resident. Mr. Joslin will research for clarification. Discussion included (f) and (g) of this section, (pg. 12-13 of handout). There was agreement to change the term 'immediately' to reflect 'within five business/working days'.

Mr. Joslin will get with Hank Hartsell regarding the proper language to reference **310:663-25-3. Outcome standards in Appendix B** (pg. 16-17 of handout).

Ms. Houser added that consensus was also reached on **310:663-25-3. Outcome standards** and **310:663-29-2. Notice of voluntary closure**. She provided an overview of sections yet to be covered, adding that **310:663-3-8. Food storage, preparation and service** will be continued until the next meeting.

Discussion of **310:663-1-2. Definitions** commenced. Clarification for 'direct care staff' was discussed. Discussion included modifying the definition to reflect 'direct care staff' means nursing and therapy staff in the nursing home section of a continuum of care (CC) facility and in assisted living facilities it includes activity and social staff as well; strike definition for 'direct care staff'; defining is a precursor to staffing ratios for AL facilities; no need to define; facility contract covers

residents' needs; could be anyone in the building. 'Direct care staff' is in existing rule. This is not new language. (310:663-9-6. Minimum staff for services, pg. 7-8 of handout.) Recommendations included striking the definition and amending the language from 'direct care' to 'one staff'. Mary Fleming described her thoughts of a direct care staff person in an assisted living as uniquely qualified to meet the needs of the resident. After an in-depth discussion, Dorya Huser stated she would support taking the comments provided and reviewing them to further look at the language. Ideas may be submitted to Mr. Joslin or Leslie Roberts.

Mr. Joslin stated the basis for the proposed changes to **Subchapter 9. Staffing Requirements** was largely due to issues found with the dementia/locked units. It is a safe practice to have a minimum of two staff in locked units. Penny Ridenour stated this staffing proposal would put a big burden on the AL facilities with 20 beds or less, as this would require a minimum of staff inside and outside of the locked unit. These are mostly located in the rural areas. Ms. Fleming described a deficiency being seen with secured units where a facility has one staff person who leaves the locked unit of cognitively impaired residents unstaffed. Ms. Huser spoke regarding this issue and provided examples of problems the Department has encountered with secured/locked units, including concerns about Alzheimer residents requiring cues and exhibiting unpredictable behaviors. She stated to the group that (the Department) has not had the staff to get into facilities as often as needed. Ms. Huser asked the group to work with (the Department) on this and try to come to an agreement on what would be good from both perspectives. One person is generally not enough to staff these units. Clarification that 'locked' may be the wrong word, and the rule should refer to them as dementia units. Wendell Short suggested the Department take this section and revisit the language. Mr. Joslin agreed.

Mr. Joslin revisited discussion from the previous meeting regarding trends in complaint allegations. Discussion included complaints triaged at IJ (immediate jeopardy) level had increased 43% in the last three years and actual harm triaged had increased 9%. After breaking down the actual number of complaint intakes, the total number of intakes had increased 125%. Increases in quality of care allegations had increased 126%. Mr. Joslin reported there are 126 facilities. This includes the stand-alone AL and Continuum of Care (CC)/AL facilities. In 2003, there were 125 facilities (an increase of .8%). The beds have increased from 6,922 to 7,049 or 1.8%. The intakes per bed went from .02 intakes per bed in 2003 to .024 intakes per bed in 2005. Though this may seem like a small increase, it is an overall 22% increase of the intakes received. Thirty-one percent of allegations were substantiated in 2003 and 37% in 2005. This is a 19% increase of substantiated allegations.

Ms. Ridenour introduced Mr. Paul Williams of Assisted Living Federation of America (ALFA) in Washington D.C. He came to Oklahoma today specifically for this meeting. Mr. Williams stated he was pleased to hear the dialog on the rule promulgation. Whether regulating assisted living facilities or providing the care, the underlying goal is that the residents' needs are met. ALFA's interests include ensuring that residents can reside in a setting of their choice and receive services of their choice, whether in their home, an assisted living center, or a skilled nursing facility. Mr. Williams stated with the changing needs of the resident, the standard for staffing should maintain some flexibility. An ALFA concern in rule promulgation is to ensure that services such as hospice and

Alzheimer's will continue to be available to AL residents. ALFA works with these groups on a nationwide basis and hopes that they will continue in Oklahoma.

Discussion of national trends followed. Mr. Williams added that the federal government is looking to provide innovative programs targeted or tailored for specialties such as Alzheimer's care in the least restrictive setting. Also involved is affordability as almost 90% of AL centers are private pay. While regulatory and safety matters are first and foremost, ALFA encourages an affordable model. Mr. Williams added the government is interested in promoting these models. Ms. Houser asked if he has seen a growing population of younger persons with disabilities moving into AL settings or any particular providers who specialize in AL care for younger clients. The largest clientele of younger residents generally need mental health care. Mr. Williams stated that some states have specialty licenses within AL as appropriate, which provide greater care needs. There are more inspections of facilities that have a specialty license. The acuity level is rising in Oklahoma AL centers. In some states, specialty licenses as appropriate are successful. They are specific regarding what services can be provided. If a facility performs services above the level of care at which they are licensed, the facility may lose their license. Mr. Williams informed Mr. Joslin that other states are facing the same as Oklahoma in dealing with the growing acuity.

Some discussion of **310:663-9-6. Minimum staff for services** included amending some of the language proposed. Ms. Ridenour expressed issues with staffing not being able to be shared across the locked door of a unit. Mr. Williams stated Texas, Florida and Illinois would be good state regulation models to look at for examples and can share that information with Oklahoma. In Florida, if a standard licensed assisted living facility performs those services that are distinctly detailed under a specialty license, then the facility is out of compliance, will be cited and may lose their license. Medicaid waivers are only for services, not room and board. In Florida, providers must have one of two specialty licenses to qualify for Medicaid. Lisa McAlister asked if specialty licensed facilities with Medicaid waivers in Florida have correlating staffing ratios for higher acuity residents. Mr. Williams replied yes. Mary Brinkley stated the national assisted living center varies so much and should staff according to the needs of the resident. Mr. Joslin added a problem is there are competitive pressures and profit pressures that at times outweigh the needs of the residents. A standard of care should be set which identifies a 'floor' level, which the standard of care will not go below. Mr. Joslin stated he is open for discussion on the needs of the resident versus what 'floor' or level will resident care not be allowed to fall below due to market pressures. Jeanene Bales stated the residents aging in place that go outside the scope of services provided have limited options, such as moving in with their child or to a nursing home. She would like to see an option to obtain a specialty license.

Discussion included inspecting facilities to see if they are operating above their license. Mr. Joslin stated the plan of correction (POC) area in the proposed rule is strengthened (**310:663-25-4.**). The reasoning is to get better plans of correction from facilities for compliance and better performance. Ms. Huser added the Department cannot be in a building all of the time and the status of a resident can change quickly in these settings. Therefore, the goal of the Department is to set floors and be proactive such as with the Food Code. Ms. Hambric agreed that some sort of standards should be set. She asked to keep in mind one of the needs of the resident is the cost of services to that resident.

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If we mandate too much, the cost will increase to where the resident will have to move out and become Medicaid residents. Costs to the consumer increase in order to meet bank payments. Ms. Hambric stated she wanted to be clear that this is also a need of the resident. (See page 6-7.) Ms. Huser stated the Department understands and agrees that we do not want to increase the cost, but when dealing with dementia residents this is not the typical assisted living fairly independent resident. Ms. Houser stated residents are assessed upon admission and charged based on their level of needs. Some AL centers charge more than a nursing home; Ms. Houser wants to ensure that the resident is receiving the service they are paying for, at the level of care in which they were assessed, whether or not they have dementia. Her concern is what is provided to the resident is reflective of what the facility has contracted to provide but also what the resident believes they will receive based on the assessment. Ms. Ridenour suggested if facility is out of compliance, without adding regulation but instead holding the AL center to their contract. Mr. Williams defined a resident in bed for 14 days would be past the assisted living care level.

Sanctions against AL administrators were discussed. Mr. Joslin informed the group there are currently no sanctions for AL administrators.

**4) Review, Discussion, and Consensus to Add the Provider's Bill of Rights to the Proposed Amendments of OAC 310:663, Continuum of Care and Assisted Living Rules**

This agenda item was postponed to be discussed at the April 27, 2006 Committee meeting.

**The next meeting will be held Thursday April 27, 2006 at 1:30 pm at AGING SERVICES DIVISION of DHS, which is located in Suite 40 of Shepherd Mall, 2401 NW 23<sup>rd</sup> Street, Oklahoma City.** Maps to Shepherd Mall and of the Mall itself will be included with the meeting packet. Another meeting was tentatively scheduled on Thursday June 1, 2006 at 1:30 pm.

Mr. Joslin requested a consensus overview prior to adjourning.

*The Committee reached consensus on 310:663-1-4. Other provisions applicable to continuum of care facilities and assisted living centers with one amendment, which is to list statutes in a column.*

*The Committee reached consensus on 310:663-7-2. Privacy and independence.*

*The Committee reached consensus on 310:663-15-1. Resident rights and 310:633-15-2. Guardians and power of attorney.*

**5) Adjournment**

The special meeting was adjourned at 4:20 pm.

Handout Provided by Diane Hambric  
 March 30, 2006 LTCFAB Special Meeting  
 Ad Hoc AL Regulation Review Committee

**SCHEDULE OF ADDITIONAL FTE'S AND INCREASE IN RENTAL PER UNIT  
 TO COVER THE ADDITIONAL FTE'S**

	Per Unit Rent	Number of Units	Monthly Rental Income	Yearly Rental Income
Studio Apartments	1,840	12	22,080	264,960
One Bedroom Apartments	2,210	3	6,630	79,560
Efficiency Apartment	1,470	1	1,470	17,640
<b>Total Rental Income 100% Capacity</b>	<b>5,520</b>	<b>16</b>	<b>30,180</b>	<b>362,160</b>

**Average Unit Rental Per Month Per Above State 16 30,180**

Yearly Rental Income per Financial 12-31-05 1,886.25 Units Monthly Ave Rental Income 25,249 Yearly Rental Income 302,989

Average Occupancy for 2005 1,886.25 13.39  
 Percent Occupied for 2005 84%

	Increase for Add'l FTE's	Adjusted Numbers
Net Income per December 2005 Financial	137,351	217,845
Less: Allocated Management Fee	(10,178)	(10,178)
Less: Allocated Dietary Expenses	(57,455)	(57,455)
Less: Allocated Other Administrative Expenses	(34,036)	(34,036)
Less: Allocated Telephone Expenses	(1,050)	(1,050)
Adjustments before Add'l FTE's	(102,719)	(102,719)
Net Income before Add'l FTE's	34,632	115,126
Less: Add'l 3.2 FTE's for New Regulations	(80,494)	(80,494)

**Adjusted Net Income for 2005 (45,862) 80,494 34,632**

**Increase in Average Rental for New Regulations**

Cost of Additional FTE's from above	80,494
Divided by Average Number of Units for 2005	13.39
Dollar Increase per average unit per year	6,012
Dollar Increase per average unit per month	501
Percentage Increase per unit	26.56%

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<http://www.health.state.ok.us/calendar/mtns/index.html>  
<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>

Handout Provided by Diane Hambric  
 March 30, 2006 LTCFAB Special Meeting  
 Ad Hoc AL Regulation Review Committee

<b>Increased Rates for New Regulations</b>	<b>Original Rates</b>	<b>Percentage Increase</b>	<b>Revised Rates</b>	<b>Increased Amount</b>
<b>Studio Apartments</b>	1,840	0.2656	2,329	488.70
<b>One Bedroom Apartments</b>	2,210	0.2656	2,797	586.98
<b>Efficiency Apartment</b>	1,470	0.2656	1,860	390.43