



Oklahoma State
Department of Health

Ad Hoc Assisted Living Regulation Review Committee

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

September 27, 2006 Special Meeting

1:30 p.m.

OSDH – 1000 NE 10th Street – Room 1102 – Oklahoma City, OK

Minutes

Consensus reached January 9, 2007.

1) Call to Order

Esther Houser called the special meeting to order at 1:40 p.m. Thursday, September 27, 2006. The meeting notice was filed and posted with the Secretary of State's office August 22, 2006. The meeting notice was posted on the OSDH website on September 21, 2006 and the agenda was posted at the front entrance of OSDH on September 26, 2006.

Introductions proceeded. Identified attendees were: Esther Houser, Committee Chair, State Long-Term Care (LTC) Ombudsman and LTC Facility Advisory Board (LTCFAB) member; James Joslin, Assistant Chief, LTC, OSDH; Sue Looney, OKALA; Macy Tooke, AL-Family; Don Caffey, OAH; Diane Hambric, Residential Care (RC) and LTCFAB Chair; Loree Smith, The Parke Assisted Living; Tricia Clemens; Penny Ridenour, Executive Director, Oklahoma Assisted Living Association (OKALA); Jennifer Buckles, OKALA; J. Wiley, Legend Senior Living; Ginny Rahme, AL and LTCFAB member; Keith Singletery, Family; *first name illegible* Singletery, Family; Linda Smith, BGAL; Melissa Mahaffey, Rambling Oaks Courtyard; John Gatliff II, Attorney, C. Craig Cole & Associates and OKALA; Jan Ellis; Jeanene Bales, Timberwood; Brenda Watson, Family Member; Amy Talley, Sunrise – Tulsa BG; Norma Noles, Silver Oak Senior Living; Gerald Duehning, Silver Oak Senior Living; Regina Glen, LTC, OSDH; Mary Womack, General Counsel, OSDH; Jenni Massengill, Amedisys Home Health Services; Amber Wagaman, Amedisys Home Health Services; Patty Scott, LTC, OSDH; Terri Doughtie, HRDS, OSDH; Aaron Bastrum, Alzheimer's Association; Donna Kelgore, Brighton-OKC; Patricia Shidler, LTC Ombudsman Program; Betty Brinley, Arbors Assisted Living-Enid; Greg Guymon, OKALA; Debbie Hudson, Amedisys Home Health Care; Belinda Arguello, Silver Oak Senior Living; Tammy Crawford, OKALA; Joe Wolfe, OKALA; Chris Mahen, Brookdale Senior Living; Dirk O'Hara, Norman Senior Care; Holly Mattingly, Norman Senior Care; Scott Brasier, Norman Senior Care; Gwen Voegeli, Rambling Oaks Assisted Living; Bill Pierce, Baptist Village Communities; Kim Cryer, Focus on Function/Functional Rehab and OKALA; Suzanne Harris, AL Resident Family Member; Mary Brinkley, Oklahoma Association for Homes and Services for the Aging (OKAHS); Greg Frogge, McAfee & Taft; Mary Fleming, Director, LTC, OSDH; Vickie Trent, Countrywood Assisted Living-Silver Oak; Wendell Short, RC Administrator and LTCFAB member; Rick Garrett, OKAHS; Nicholas Kliewer, BVHL; Janine McCullough, APS, DHS; Paula Avery, Alzheimer's Association; Jewel D. Brimer, VA-LTC; L. Louise Drake, OK Board of Nursing; Deborah Holmes, Sojourn Care; George Gibbs, Attorney, Gibbs & Armstrong and BVRC; Marcy Gardenhire,

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>

Alzheimer's Association; Amy Steffen, Angelwood; Mark Fried, Alzheimer's Association; Clara Haas, LTCFAB member; Chris Kincaid, AL and LTCFAB member; Sheryl Miller, Choice; John Carey, AL; Cindy Fansler, LTC, OSDH; Karen Nelson, Jefferson Garden; Laura Wagner, Crossroads Hospice; Laura Linds, Ombudsman; Martin Hall, OKAHSA & Corn Heritage Village; Tom Welin, Medical Facilities, OSDH; Donna Bowers, Daily Living Centers and LTCFAB member; Rachel Boggess, TALC; Kristina Bolin, Silver Oak; Jack Rabbit; and Leslie Roberts, LTC, OSDH.

2) Review of the August 17, 2006 Special Meeting Minutes

Brief review of the August 17, 2006 special meeting minutes.

After a brief discussion, amendments to the August 17, 2006 special meeting minutes will be made as follows:

- On page 4, the fourth sentence of the last paragraph will be amended to read, "Discussion involved the facility's responsibility to identify if a resident is missing *and if it could be reported to the Department on the next business day versus 24-hours*. The sentence *Ms. Huser will check on the reporting requirement.*" will be added.
- On page 5, the second sentence of the first paragraph will be amended to read, "Ms. Cassell stated her uncle was a resident at *a nursing center.*" The fourth sentence will be amended to correctly identify "*Silver Alert*".

The amended minutes will be provided at the October 12, 2006 meeting for consensus.

Mr. Gatliff stated he wanted a note placed in the record there were no votes taken and that consensus was not reached on proposed language. He further stated OKALA disagrees with all of the proposed language from OSDH. Ms. Houser reminded members and attendees no voting is allowed in Ad Hoc Committees.

Ms. Houser noted the Alzheimer's Association provided a handout of proposed language. She announced she wanted caregivers and/or family members to feel free to speak at these meetings.

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. This special meeting is to focus on the proposed amendments and continue the line-by-line discussion. The goal of the Committee is to discuss and try to reach consensus on the proposed amendments and present them to the LTC Facility Advisory Board.

i) 310:663-1-2. Definitions

There was disagreement among the group regarding the definition of 'direct care staff' including the proposal to remove the definition altogether. However, it was noted that 'direct care staff' is located in other sections of the current rule. A proposed change to the definition was "*Direct care staff*" *in an assisted living means nursing, activity, social and therapy staff employed by or*

under the supervisory control of the assisted living center. Mr. Joslin will take the group's comments under advisement and work further on the definition.

Mr. Joslin stated the 'Assisted living center' definition needs correcting. The Statute reference will be corrected from 63:1-890.1.1 to 63:1-890.2.1 and the complete Statute definition will be inserted. Ms. Ridenour requested to table the definition discussions regarding transfer and discharge until that section of the rule has been discussed. Ms. Brinkley recommended less institutionalized terms that are resident friendly be used such as 'move out' vs. 'discharge.'

Mr. Joslin noted a correction was needed in section 310:663-1-4. The reference 59 O.S. §1367.3. will be corrected to 59 O.S. §367.3.

ii) 310:663-3-4. Appropriateness of placement in assisted living center

Mr. Joslin provided an overview of the proposed changes. He stated the Department is seeing pressure sores more frequently in the survey findings at assisted living centers. Mr. Joslin clarified that section (b)(6) is from the fire code.

(b) 'The resident shall not be eligible for placement in the assisted living center under one (1) or more of the following circumstances:

(6) 'The resident is not capable of self-preservation through exiting the building by: wheelchair under their own motivation; or, ambulation with only verbal instruction or cueing.'

Mr. Joslin stated that OKALA and OKAHSAs proposed change to section (b)(5) was the same. There was spirited discussion regarding appropriateness of placement. Family members expressed concern. Family members present did not want limits, felt they should have the right to choose and pick their own caregivers. Ms. Ridenour clarified that the facility, resident, and physician, each have to accept liability. A contract between the facility and resident identifies what will be provided. There was much negativity expressed toward the Department stating OSDH is negating premise – taking away choice – saying resident cannot stay. Bill Pierce stated a provider applies for a license to do certain things. There is a system of licensure in our state for different types of facilities and the services provided. The administrator has the right to decide whether a resident can stay in the facility. Other discussion included appropriate staffing, third party options, and skilled services.

Dr. Carey read a prepared statement to the group regarding his non-ambulatory wife who is in an assisted living center. He stated he is against moving her from an assisted living into a nursing home, but officials [OSDH] state the assisted living center has exceeded the level of care in which the facility is licensed. Dr. Carey added that it is unnecessary to move his wife.

Ms. Houser stated the law defines the licensing of facilities and 'intermittent' care is in the Statute. The law does not provide for skilled care in an assisted living center. Ms. Brinkley emphasized that the rules are for the protection of the residents.

After a brief break, Ms. Hambric announced that Mr. Paul Klaasen, CEO & Founder of Sunrise Senior Living is coming to Oklahoma City to speak on assisted living October 25, 2006. The time and place is pending.

Mr. Gatliff stated that not one family member [in attendance] has said they want their family member to move out [of assisted living center] or agree with OSDH. He further stated [the residents] would rather die than go to a nursing home. Mr. Gatliff stated the OSDH proposal is “out there”. Ms. Houser reminded the group that [we] have a Statute to work within.

There was discussion regarding the possibility to streamline a process for another level of assisted living center. A proposal included establishing different levels of the assisted living center license, which would provide the ability to enforce and protect residents, yet retain freedom of choice. Ms. Womack informed the Committee and attendees in order to create assisted living tiers or levels of care would require a statutory change.

Greg Frogge stated Olmsted applies to all assisted living centers. There was discussion of providing reasonable accommodation on a case-by-case basis. An attendee from a home health agency stated we are a ‘nation built on choices’ – a ‘free enterprise system.’ Mr. Gatliff stated OKALA has the best proposal in which to address all of the issues. He added that all proposals go beyond the Statute and that OKALA’s proposal is the only one that covers all rights.

Wendell Short reminded everyone that a facility is required to have a license and all facilities need to operate within the scope of that license. Mr. Joslin suggested defining ‘assistance’ in relation to AL centers. Further discussion included levels of care and service individual operators offer. Ms. Rahme added that each facility submits the levels of ‘services’ offered to the State. Some family members had difficulty understanding the position of the Department and why the Department has to oversee these facilities.

Mr. Gatliff expressed his opinion regarding the differences in the three proposals presented:

- OSDH does not recognize any rights.
- OKAHSa only provides an option to go to a nursing home.
- OKALA is the only proposal that gives the best options.

Ms. Houser postponed discussion of agenda items ‘iii’, ‘iv’, ‘v’ and ‘vii’. Agenda item ‘vi’ regarding incident reports was briefly discussed.

iii) **310:663-3-5. ~~Inappropriate placement or length of stay in assisted living center~~
Involuntary transfer or discharge**

iv) **310:663-9-6. ~~Minimum staff for services to cognitively impaired residents~~**

v) **310:663-13-1. Resident service contract**

vi) 310:663-19-1. Incident reports

Mr. Joslin provided an overview of the proposed change: section (a) Timeline for reporting now identifies 'business' day and section (b) Incidents requiring report includes proposal of a clear standard that all fires be reported, deletion of the term 'medical device', and language regarding incidents occurring at the facility requiring treatment.

Mr. Gatliff stated OKALA disproves. The definition of 'treatment' was questioned. Mary Fleming, Director of Long Term Care Survey stated 'treatment' is an order signed by a physician; a diagnostic evaluation would be like an x-ray. Ms. Houser stated she would like reports for x-rays and such also.

Mr. Gatliff repudiated consensus to any proposed language on behalf of OKALA.

Ms. Houser announced that the next meeting will be held October 12, 2006 in room 1102 at 1:30 p.m. She also thanked Mr. Joslin for all of his hard work on the proposed language.

vii) 310:663-25-4. Notice of violation, plans of correction, and right to hearing

4) Adjournment

The meeting was adjourned at 4:55 p.m.

For reference, the link to the current and complete Continuum of Care and Assisted Living Rules is <http://www.health.ok.gov/PROGRAM/condiv/663ccast.pdf>.