



Oklahoma State
Department of Health

Ad Hoc Assisted Living Regulation Review Committee
Appointed by the Long Term Care Facility Advisory Board August 11, 2004
Special Meeting

January 9, 2007 – 1:30 p.m.

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

Minutes

1) Call to Order

Esther Houser called the special meeting to order at 1:38 p.m. Tuesday, January 9, 2007. The meeting notice was filed and posted with the Secretary of State's office December 11, 2006. The meeting notice was posted on the OSDH website December 11, 2006. The meeting agenda was posted on the OSDH website and at the front entrance of OSDH on the morning of January 8, 2007.

Ms. Houser provided an overview of today's meeting. She stated there would be no new proposed rules presented today. Introductions proceeded.

The Long-Term Care Facility Advisory Board (LTCFAB) members present were: Esther Houser, Committee Chair; Diane Hambric, LTCFAB Chair; Wendell Short; and Kay Parsons.

Identified OSDH attendees were: Dorya Huser, Chief, LTC, OSDH; James Joslin, Assistant Chief, LTC, OSDH; Mary Fleming, Director, LTC, OSDH; Mary Womack, General Counsel, OSDH; Darlene Simmons, Director, Health Facilities Division, OSDH; Patty Scott, LTC, OSDH; and Leslie Roberts, LTC, OSDH.

Identified guests were: Mary Brinkley, Oklahoma Association for Homes and Services for the Aging (OKAHSAs); Penny Ridenour, Executive Director, Oklahoma Assisted Living Association (OKALA); Patricia Shidler, LTC Ombudsman Program; Belinda Arguello, Silver Oak Senior Living; Sean Voskuhl, AARP; Mary Ann Duncan, Alzheimer's Association; Shirley Inglis, Seretean Wellness; Barry Harlow, DHS/LTCI; Janine McCullough, DHS/LTCI; Chris Hamilton, SWODA, Ombudsman Supervisor; Christi Christian, RN, SWODA, Ombudsman Supervisor; Marcy Gardenhire, Alzheimer's Association; Greg Frogge, McAfee Taft; Susan Osborne, RN, Choice homecare & hospice; Bryan Moore, Legend Senior Living; D. Coffey, OAHCP; Rebecca 'Becky' Moore, Executive Director, Oklahoma Association of Health Care Providers (OAHCP); and Marietta Lynch, OAHCP.

2) Review of the September 27, 2006 Special Meeting Minutes

Brief review of the September 27, 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>

After a brief review, the Committee reached consensus on the September 27, 2006 special meeting minutes.

3) Review of the October 12, 2006 Special Meeting Minutes

Brief review of the October 12, 2006 special meeting minutes.

After a brief review, the Committee reached consensus on the October 12, 2006 special meeting minutes.

4) Discussion of Comments to the Proposed Amendments to OAC 310:663, Continuum of Care and Assisted Living Rules

The Committee will review comments submitted by the Oklahoma Association of Homes and Services for the Aging and from the Oklahoma Assisted Living Association.

The Oklahoma Association of Homes and Services for the Aging (OKAHSAs) submitted a letter dated November 1, 2006, with comments on the proposed rules to Mr. James Joslin. These were submitted to the Long Term Care Facility Advisory Board at their November 8, 2006, regular meeting. The Oklahoma Assisted Living Association (OKALA) submitted a letter with comments on the proposed rules to the Long Term Care Facility Advisory Board at their November 8, 2006, regular meeting.

Mr. Joslin expressed that he wanted to ask questions about the letters to ensure he understood the issues and concerns of each association and their suggestions in the hopes that changes to the rules could be made to accommodate the comments. The discussion started with OKALA's letter.

Regarding the proposed rule at 310:663-3-5(d)(1), Ms. Ridenhour expressed that OKALA objects to notifying the Department of all involuntary terminations, except for inappropriate placement. Mr. Joslin believes the notification is needed for the hearing clerk but will verify. OKALA also objected to section (d)(5) regarding prohibited termination of residency agreements unless required by the Department. OKALA wants a facility to not be compelled to move a resident based on deficiency citations of the Department. OKALA's position is that residents should be allowed to remain in place, when a discharge hearing is requested, until a hearing takes place. Discussion included the resident's right to a 30-day notice and appeal.

In section (d)(6), OKALA continued to object to the requirement that a limited liability corporation had to be represented by an attorney. Mr. Joslin re-iterated that the Department's legal counsel held that Oklahoma case law was the basis for the requirement. OKAHSAs's comment was if the law did require this then they would support it, but they prefer not requiring facilities be represented by legal counsel.

Mr. Joslin indicated he would clean up the proposed rule regarding the inserted references to Continuum of Care. It had been determined some of these references were not required.

Discussion ensued on the proposed language at 310:663-3-8 regarding food storage, preparation and service. Ms. Hambric stated the proposed rule would hurt the resident, as additional training would

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result in cost increases to the resident. Other comments included there is still the need to know how to maintain food for the safety of the resident. Mr. Joslin suggested a middle ground such as a food-handling permit versus a training program. Suggestions included staff requirements or to possibly utilize in-services. Further, the rule would be amended to address food preparation staff only.

Mr. Joslin agreed with the suggestions to amend the tagline and rule at 310:663-9-6 to more clearly identify the rule is referring to units designed to limit resident access.

OKALA objected to the proposed language at 310:663-15-3(a) because they felt the rule was creating a facility requirement to ensure compliance versus the facility being in compliance with the rule. Mr. Joslin offered to wordsmith the language to address the concern.

OKALA re-stated their objection to the requirement for reporting of fires. Their position continues to be that the types of fires to be reported needs to be clarified. Mr. Joslin offered that he would continue to seek language that meets their concerns.

There was comment on the use of 'all services' in reference to the documentation standard in 310:663-19-3(a). Ms. Womack commented that while it may be onerous to the facility to document everything it would be in the best interest of the provider. Further discussion included whether the term 'clinical record' needed to be defined and that uniformity is needed in use of the terms 'record' versus 'resident record.' Mr. Joslin expressed he would seek an alternative term for clarification.

Going back to the earlier discussion on involuntary discharge hearings, Ms. Ridenour expressed that OKALA's objection to the requirement at 310:663-3-5(d)(1) is that the facility would be required by the Department to move a resident prior to the requested hearing.

The committee began reviewing the comments submitted by OKAHSA.

Ms. Brinkley stated OKAHSA would like to add language to the definition of assisted living in 310:663-1-2 that would clarify hospice services are allowed in assisted living centers. Ms. Huser stated the Department could not write a rule that exceeded the statute. The definition cited is from the statutory language. Ms. Womack concurred. Ms. Brinkley asked if hospice is currently allowed in assisted living centers. Ms. Hambric replied [the Statute] does not say that hospice is not allowed.

Direct care was discussed in the context of hospice services. Patty Scott stated any direct care provided must be by licensed or certified staff. Mary Fleming added that direct care staff must work for a licensed agency and must be certified if they are not licensed nurses. Companion sitters may not provide direct care services. Discussion included incorporating references to other regulations and the criteria for hospice.

Ms. Brinkley suggested adding a paragraph to 310:663-9-3 which would require an assisted living center designate an individual if the administrator is out of the building. This was based on earlier meetings of the Ad Hoc Committee in which some providers stated that during evening hours and on weekends there is no one in charge at the buildings to submit incident reports. Ms. Brinkley asked, in case of an emergency, in the absence of the administrator, who is supposed to act? Ms. Hambric

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stated this is covered in the facility's policies and procedures in the event it is necessary. Mr. Joslin suggested the possibility of adding the language to 310:663-9-6 or in subchapter 19 in the policies section.

OKAHSAs recommended changing 310:663-9-6(a) from "The right number of" to "Adequate" and change 9-6(c) to read, "There shall not be less than one direct care staff on duty and awake at all times within the unit or program designed to prevent or limit access to areas outside the designated unit or program." The Committee agreed that adequate was not a precise term but in the absence of staffing requirements it was preferred. Mr. Joslin will look at the wording in 9-6(c).

Ms. Brinkley addressed concerns with the rule at 310:663-19-1(c) in which an assisted living center must report violations by licensed providers to that providers' licensing entity. OKAHSAs and OKALA would like to see this requirement changed to assisted living centers reporting incidents involving other providers to the Oklahoma State Department of Health. Mr. Joslin reviewed the rule and stated this was not a new rule but was existing language. Ms. Fleming reviewed the origin of the rule and stated this was drafted to protect the residents that might be affected by some third party taking advantage of residents or failing to provide appropriate services. The Department's position is that it is incumbent on assisted living centers to report questionable practices by third party licensed entities to their licensing authority. If assisted living centers reported the actions to the Department for the Department to make the referral, the matter would still be between the licensing agency and the assisted living center as the originator of the complaint.

There was general discussion about the lack of hearing rights of residents in the event of inappropriate placement and why the rule was written this way. The rule, in its origin, was written to address when residents needed greater care than could be provided in an assisted living center. In such instances, hearings would not be desirable. It was asked when a facility changes its services what notice must a facility give to residents. Mr. Joslin stated the rule requires that if a facility makes a change in their contract, the revision must be submitted to the Department.

5) Development and Proposal of Language to Address Comments

Based on the discussion in agenda item four (4), the Committee and Department will attempt to develop language for the Department's inclusion in the proposed rules.

Ms. Houser provided an overview of the rule making process and asked how today's comments would be incorporated. Mr. Joslin said he would take today's comments along with others submitted during the comment period and draft language. He will need to see what he can submit to the Advisory Board. After the notice of rulemaking intent, there is a public comment period. This allows the public to have input on the proposed rules. The public comment period concludes with the Board of Health meeting on March 8, 2007.

Ms. Houser asked that this group receive any proposed rule changes and stated she would develop a report on the results of this meeting.

Ms. Houser hoped the information has been helpful to everyone. Ms. Parsons stated she felt the meeting had been very helpful.

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6) Adjournment

The meeting was adjourned at 4:07 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>.