

Assisted Living Workgroup Meeting
Agency for Health Care Administration (AHCA)
2727 Mahan Drive
Tallahassee, Florida 32308
Conference Room A
August 8, 2011
1:00 – 4:00 PM

MEMBERS PRESENT

Larry Polivka, Chair
Roxana Salano
Jim Crochet
Brian Robare
Ken Plante
Michael Bay
Martha Lenderman
Marilyn Wood
Bob Sharpe
Luis Colazzo
Senator Ronda Storms
Larry Sherberg

MEMBERS ABSENT

Representative Matt Hudson
Darlene Arbeit

EXECUTIVE OFFICE OF THE GOVERNOR

Jane Johnson

AHCA STAFF

Liz Dudek, Secretary
Molly McKinstry, Deputy Secretary
Bernard Hudson
Beth Eastman
Conrad Cruz
Faye Miller
Susan Kaempfer

STATE AGENCY
REPRESENTATIVES

David Sofferin
Robert Anderson
Captain William Avery
Susan Rice
Tom Rice
Darcy Abbott
Shaddrick Haston
Polly Weaver
Stephanie Colston
George Cooper, absent

The meeting was called to order at 1:00 p.m. by Dr. Larry Polivka, Chair. Dr. Polivka welcomed all members and the public.

The Chair recognized interested parties and presenters participating by conference call. James Mullen, Representative Hudson's delegate, participated by conference call for a portion of the meeting. All members, state agency representatives and staff introduced themselves.

Dr. Polivka introduced Jane Johnson, Health and Human Services Policy Coordinator, Governor's Office of Policy and Budget. Ms. Johnson stated that the Governor vetoed language regarding assisted living facilities because he thought it was not the right time to relax the reporting requirements for assisted living facilities but he created the Assisted Living Workgroup in lieu of the legislation. The Assisted Living Workgroup has been directed to examine assisted living regulations and develop recommendations about the regulatory structure and oversight of assisted living facilities. Ms. Johnson noted that there is no national definition of assisted living, and each state has its own definition of assisted living. Assisted Living Facilities were created as a more homelike setting, and they are meant to be a housing alternative not an underfunded nursing home. Public input is encouraged and comments may be provided in person and in writing.

The Chair thanked Ms. Johnson and introduced Secretary Dudek. Secretary Dudek stated the Agency appreciates all input from stakeholders. She further stated this is not an easy task, as regulators and providers alike agree that residents must have the best place to live. Out of 40,000 licensed health care facilities in Florida, assisted living facilities are the fastest growing entity.

The next meeting will be in Tampa, and the third meeting will be in South Florida in mid-to-late October. The report from the Assisted Living Workgroup is to be submitted to the Governor and Florida Legislature. The Assisted Living Workgroup will end late October or early November.

The Sunshine Law, Richard Shoop, AHCA Agency Clerk, gave a presentation of the Sunshine Law. He stated the Assisted Living Workgroup is subject to the Sunshine Law and explained the definition and history of what the Sunshine Law means. Mr. Shoop discussed basic requirements, how meetings are conducted and noticed, meeting minutes, public records and confidential information. He stated that meetings are open to the public, and reasonable notice must be given. Any gathering of two or more Assisted Living Workgroup members to discuss business of the workgroup constitutes a public meeting that must be properly noticed.

Review of Assisted Living Workgroup charter, Ms. McKinstry provided a review of the charter and the Assisted Living Workgroup priorities. State agency representatives are resources to the Assisted Living Workgroup, the term of the Assisted Living Workgroup is one year and a quorum is eight members. The duties of the Assisted Living Workgroup are to research and evaluate and make recommendations. There is no compensation for travel. The Assisted Living Workgroup will operate under Roberts Rules of Order.

The Chair introduced presentations from stakeholders:

American Association of Retired Persons (AARP). Mr. Jack McRay, Advocacy Manager, presented by telephone. Ms. Laura Cantwell represented AARP at the Assisted Living

Workgroup. AARP is interested in a viable Assisted Living Facility community and the best place for consumers. These same problems existed 30 years ago and statutes are adequate but reality is different. AARP believes we need stronger credentials for owners, managers and controlling interests, and those consumers must have reliable and transparent information for good decision-making. Florida consumers also need more ombudsmen and better training for the volunteers. Disturbing trends, AARP noted, are tort reform that threatens consumer protections, and remedies and inappropriate assessments and placements. AARP supports greater use of Home and Community Based Services, but only if consumers are getting the care they need in those facilities.

AARP suggests the following solutions:

- Ombudsmen should be independent—and not regulators
- Focus on “early intervention” for problem Assisted Living Facilities
The Legislature should consider establishing local or regionally-based rapid-response teams (something akin to the basis for SWAT teams—when there is risk of serious and imminent harm to persons)
- Aging Resource Centers (ARC) play a role in coordinating/recruiting/training participants for these teams
- Strong punitive actions for egregious and preventable harm to Assisted Living Facility residents
- Recommend that Section 429.11(2) and 429.275(3), F. S., be amended to establish a minimum amount of liability insurance
- State attorneys need to be aware of elder abuse

Mr. McRay agreed to provide a written copy of his presentation.

Disability Rights Florida, Dana Farmer, Director of Public Policy for Disability Rights. Ms. Farmer made a presentation on Residential Options for People with Disabilities, and stated that her organization’s work is focused on Assisted Living Facilities with a limited mental health license. She discussed integrated and segregated settings, and provided information on interviews with Assisted Living Facility/Limited Mental Health residents, residential options and informed choice and discharges from state mental health facilities.

Disability Rights suggests the following recommendations:

- Develop an accurate count of people with mental illnesses with SSI/Medicaid/OSS (Optional State Supplementation) who reside in Assisted Living Facilities with Limited Mental Health
- Move money from the Florida Department of Children and Families (DCF) institutional budgets to follow the people being discharged into integrated residential options
- Allow OSS money now used in facility settings to follow the person into integrated settings
- Permit AHCA to use the Money Follows the Person grant it was awarded
- Hedge the depletion of the Affordable Housing Trust Fund

Senator Storms asked the rationale for Florida not accepting the Money Follows the Person grant. Secretary Dudek answered the Legislative Budget Commission did not approve the budget authority for AHCA to draw down the Money Follows the Person grant funds.

Ms. Linderman commented on the high discharge rate in South Florida. She asked what other states were doing regarding implementing the ‘Olmstead’ decision, and stated that people need to live in integrated settings.

Senator Storms asked about the licensing standards for limited mental health Assisted Living Facilities and about including the developmentally-disabled population in limited mental health assisted living facilities. Ms. Farmer responded that the developmentally-disabled population would be included if they were dually diagnosed (both developmentally-disabled and experiencing mental illness). Senator Storms stated that she was aware of facilities where sexual abuse was occurring for a number of years.

Larry Sherberg asked Ms. Farmer if the high discharge rate was due to privatization and she replied that, in her opinion, it was due to the predominance of limited mental health Assisted Living Facilities in south Florida.

Florida Assisted Living Association (FALA). Alberta Granger, Assisted Living Specialist, presented information on fragmented regulations, flaws in the initial survey process, survey inconsistencies and problems with core training and trainers. Ms. Granger emphasized that licensure requirements are disseminated amongst various departments and agencies, such as, AHCA, DOH (Department of Health), DOEA, the local fire marshal and local zoning, and that providers are confused.

FALA offered the following recommendations for solutions:

- Appropriately place the Assisted Living Facility licensure and regulatory provisions back in its own statutes, Part I, Chapter 429, F.S.
- Make the Assisted Living Facility website more provider-friendly
- Develop a financial statement that is appropriate for a residential program,
- Utilize the provisional license criteria in Part I, Chapter 429, F.S.
- Assisted Living Facility surveyors should be core trained and required to take 12 hours of continuing education biennially
- Re-evaluate the Assisted Living Facility training requirements for administrators and caregivers
- Properly vet on-line training with DOEA, trainers and other stakeholders
- Develop language in rule which will give enforcement authority to deal with non-compliant trainers
- Require trainers to meet a minimum number of trainings per year, as required by rule, and include in rule provisions that non-compliant trainers will be decertified.

Mr. Sharpe asked if licensing an Assisted Living Facility is any different from any other health care facility. Ms. Granger responded that regulations should be sufficient and flexible, and that Assisted Living Facilities are a homelike environment. Further, ombudsmen do the same thing as AHCA, DOEA and DOH.

Senator Storms asked how the recommendations will change the atrocities in some facilities. Ms. Granger reported that enforcement is key so there are no communication gaps, and that a collaborative effort would be helpful.

Senator Storms referenced Senator Chris Smith providing information of syringes on the floor of assisted living facilities and asked what happened on the Assisted Living Facility operator's part that allowed this to happen? Ms. Granger replied that these are heartless, ruthless and inhumane staff and that criminal charges should be filed. She further stated that we should start with quality training. Senator Storms asked why FALA has not supported protections in the past. Ms. Granger responded that FALA does not support bad players.

Florida Association of Homes and Services for the Aging (FAHSA). Carol Berkowitz, Esq., Sr. Director of Compliance and Legal Affairs, presented recommendations in the following areas for improvement:

Survey Process: Improve survey consistency; implement joint training for providers and surveyors, focus on Assisted Living Facilities with serious regulatory problems and implement an abbreviated survey process for better than average Assisted Living Facilities

Consumer information: Strengthen information available to the public to allow informed decision making when selecting an Assisted Living Facility.

Regulations while providing Quality of Care: Retain provider flexibility to offer diverse service packages and set residency criteria within parameters established by law, recognize that Assisted Living Facilities are not homogeneous, avoid increased regulations, focus on early detection of serious regulatory problems, evaluate current public policy to determine if Assisted Living Facilities should be given authority to provide services, eliminate LNS and allow Assisted Living Facilities with a nurse on staff to provide the same services, encourage coordinated communications among state agencies regarding resident care, increase communication between case managers to coordinate care and require Medicaid case managers to immediately report Assisted Living Facility quality of care problems to AHCA.

Dr. Polivka asked how additional services could be provided. Ms. Berkowitz responded that it was a multi-dimensional issue and should be approached very carefully.

Senator Storms stated that she would like to see the "bad actors" scrutinized more through more surveys.

Secretary Dudek referenced a statewide meeting with providers and discussed focusing on poor performers.

Florida Council for Community Mental Health. Dr. Jay Reeve, CEO, Apalachee Center, and Chair, Florida Council for Community Mental Health, presented. Dr. Reeve stated that he is concerned about individuals with severe mental illnesses warehoused in inadequate Assisted Living Facilities with limited mental health licenses that provide limited care, and their lack of purposeful, daily activities.

Florida Council for Community Mental Health suggests the following recommendations:

- Regulation of the Assisted Living Facility industry must be aggressive and by-the-book, and failure should result in fines and moratoriums. Repeated evidence of facility deficiencies should result in the loss of its license.
- Explore alternative mixed-housing models that take advantage of economies of scale, while diminishing the segregation and isolation of older adults and disabled individuals in separate housing.
- Study those facilities that provide excellent care with no more per-resident-revenues than those that provide substandard care.
- Identify and visit successful housing models in Florida and other areas of the country.
- Broaden the housing choices for people with mental illnesses, letting them choose how to use their housing and economic assistance supports.
- Challenge communities and the private housing sector to develop attractive and affordable housing alternatives (e.g., New Orleans new low-income and mixed housing communities).
- Revisit the level of OSS or other forms of subsidy needed for decent housing.

The Chair asked about other housing models and the cost associated. Dr. Reeve deferred to Bob Sharpe to provide the information.

There was discussion about what community mental health centers can offer assisted living facilities. Dr. Reeve stated that staff can be sent on a daily basis for services, such as group programming and psycho-social rehabilitation to bring psychiatric time to the residents.

Michael Bay asked about centers of excellence and Dr. Reeve responded that Mr. Sharpe can provide a list of centers of excellence.

Florida Health Care Association (FHCA). Marilyn Wood, President and CEO, Opis Management Resources, Multi-Facility Vice President, FHCA Board of Directors, presented. Ms. Wood stated that the complicated trade-offs of regulatory compliance and oversight, data collection, lines of service demarcation and managed long term care are all national, as well as, state concerns.

Ms. Wood presented various factors to consider, such as concerns over quality, regulatory requirements and public expectations of long term care, increasing complexities of residential long term care, consideration of boomers' needs versus available resources, access to services, differences in assisted living services throughout the state, concern that Assisted Living Facilities do not become poorly-resourced nursing homes, Medicaid waivers, Florida's managed long term care system, Optional State Supplementation, and Medicaid funding for limited mental health assisted living facilities.

FHCA suggests the following recommendations:

- Consider the possible elimination of multiple licenses, except limited mental health
- Work together to develop an improved oversight system that focuses the state surveyors' work on the more troubled facilities rather than those Assisted Living Facilities with a history of providing good care and with satisfied residents and staff

- The Assisted Living Facility “Residents’ Bill of Rights” and the decision-making of “appropriate placement” are the hallmarks of the discussion of good care
- There is an important need for more data on resident characteristics, services provided, quality of care and costs.

Dr. Polivka asked how the Florida Health Care Association membership would feel about the collection of more data. Ms. Woods responded that the membership would be supportive.

Florida Long Term Care Ombudsman. Colonel Don Herring presented and thanked Senator Storms for her participation and support. Colonel Herring offered that problems identified could have been avoided if providers were properly trained, specifically regarding medication administration and the Baker Act. He further stated that many residents are borderline nursing home residents.

Solutions:

- Design a program of instruction using the mental health field as a model
- Raise the minimum passing score for core training to 80
- Provide more mental health training
- Administrators should be responsible for all situations in an Assisted Living Facility
- Residents should be given appeal rights for terminations
- All new Assisted Living Facility providers should be required to receive 40 hours of training including a component on culture change
- License Assisted Living Facility administrators like nursing home administrators
- Provide more staff to AHCA to increase the number of surveyors
- Increase the number of Ombudsmen

The workgroup discussed issues of Assisted Living Facilities compared to nursing homes, the responsibility of Assisted Living Facility administrators in current statute and discharge procedures in place.

Senator Storms stated that residents need to be protected in the home and that residents are afraid to speak out for fear of being discharged.

Florida Peer Network, Lin Rayner, Policy Director for Florida Peer Network, presented Rose Delaney’s paper, as Ms. Delaney was unable to attend. Ms. Delaney is a consumer advocate, a peer specialist and has personal experience with the issues.

Ms. Delaney suggests the following recommendations:

- Add consumers and family members to the workgroup. Specifically, four (4) members representing Assisted Living Facilities need to step down.
- Florida has over 1,000 peer specialists and they should monitor facilities on a monthly basis. Peer specialists indicate that peers are afraid to speak up for fear of retaliation.

Joan Andrade, mental health professional and consumer advocate presented on behalf of residents of Assisted Living Facilities. Ms. Andrade’s presentation focused on advocacy, safety

and well-being of residents, coordination with state advisory council members and ombudsmen, increased training requirements for Assisted Living Facility staff and administrators, specifically relating to limited mental health facilities, residents receiving OSS, Assisted Living Facility administrators as representative payees, residents' fear of speaking out, residents being hungry and dietary issues in Assisted Living Facilities, resident rights and strengthening and enforcing regulations. (Full text of presentation attached)

National Association of Mental Illness, Florida (NAMI, Florida) Judi Evans, Executive Director, presented. Ms. Evans' encouraged the workgroup to speak to Assisted Living Facility residents and look at their quality of life. She provided information on a NAMI pilot program, Personal Outcome Measures, funded by the Department of Children and Families. The findings of the pilot were that ALF staff who had direct contact with persons who had a mental illness were not educated on the illness. They lacked empathy, communication skills, and ~~an~~ understanding of the biology of the illness. There was a lack of understanding that persons with a diagnosis were not in control of their behavior. This often resulted in frustration and anger.

NAMI Florida would like to see better mental health education for Assisted Living Facilities.

Larry Sherberg asked about training offered by NAMI. Ms. Evans responded that NAMI Florida has 36 affiliates throughout Florida available to train in every county at no charge.

Sean Cononie, Director, COSAC Homeless Shelter, presented. Mr. Cononie's presentation focused on homelessness and the needs of homeless people. Some of the issues in homeless shelters include: medication administration, the roles of the Attorney General's Office and of Adult Protective Services investigators, fees paid by residents, health care surrogates and power of attorney.

Mr. Cononie suggests the following recommendations:

- License homeless shelters as Assisted Living Facilities
- Develop a task force on homeless shelters
- Provide training on services provided in homeless shelters

Florida Life Care Resident's Association (FLiCRA), Charles Polk, President, Florida Life Care Residents Association, presented. FLiCRA has over 13,000 members, living in 53 community care retirement centers throughout the state.

FLiCRA suggests the following recommendations:

- Providing adequate floor plans that will allow an independent living spouse to reside in a living unit with their Assisted Living Facility qualified spouse
- Consider adding a provision to the Assisted Living Facility statute that establishes a family/resident council similar to what is found in Chapter 651, F.S.
- Transparency of state monitoring reports

- Transparency of financial reports of provider organizations that own or operate the Assisted Living Facility.

Issues and Priorities, Dr. Polivka and the workgroup discussed issues and priorities, and indicated that the next meeting would focus on presentations from consumers and the community.

There is the possibility of a two (2) phase approach to the Workgroup because some issues are top priority and need to be addressed now to assist the Governor and Legislature. Two major tasks are fact finding and policy or legislative recommendations. Fact finding has been covered today and the next step is policy recommendations.

The following were suggested by workgroup members in moving forward:

- Examine facilities with deficient practices, why they occurred and how to prevent recurrences. Specifically, what can the workgroup do to stop the recurrence of bad care in facilities? How many are there and what can be done?
- Define “good and bad” facility.
- Develop Best Management Practices.
- Look at “logs of complaints” from the Ombudsman, Adult Protective Services and AHCA.
- Examine licensing requirements for Assisted Living Facilities with limited mental health specialty licenses.
- Find out which 300 facilities in the annual report referenced in the press release are penalized for serious or uncorrected violations.
- Find out what 23 facilities referenced in the press release had licenses revoked or denied or emergency action between July 1, 2010 and June 30, 2011
- Obtain a list of centers of excellence regarding community mental health centers
- Determine what community mental health centers can offer assisted living facilities

Bob Sharpe asked about resident involvement in the process, and Jim Crochet offered that he would ensure that residents attend the next meeting.

Ken Plante raised the issue that many times the punishment does not fit the crime, and asked if there are problems with enforcement, because the crime does not fit the penalty. Dr. Polivka suggested we ask the Attorney General’s Office for an informed assessment of issues regarding whether prosecutors will accept referrals and cases.

Senator Storms thanked Dr. Polivka, and stated that she agreed with the analysis on the regulatory framework. The workgroup should know what constitutes good and bad actors.

Roxana Solano suggested that the workgroup should address Medicaid reimbursement and access.

The Chair referenced the list of priorities and due to time constraints stated the workgroup should consider focusing on the following objectives for the first phase (August –November) of workgroup activities:

Regulation

- Enhanced regulatory oversight of troubled facilities, and a streamlined regulatory process for facilities with a favorable regulatory history
- Enforcement action, including mandatory sanctions, revocation or denial and related due process
- Qualifications and training of Assisted Living administrators, management, staff, and assisted living core trainers
- Special attention on ALFs with limited mental health licenses

He asked the Assisted Living Workgroup members to provide information that they consider important for all members to have before the next meeting, and stated the Assisted Living Workgroup issue paper would be available in 2 to 3 weeks for response.

Dr. Polivka summarized the meeting by stating that the workgroup has a difficult task to accomplish under pressure and issues need to be addressed as fully and responsively as possible. He stated that safety of assisted living residents is the workgroups paramount concern.

The next meeting is scheduled for September 23, 2011 in Tampa. Location details will be published in the next few weeks.

Meeting adjourned at 4:00 PM.