

ASSISTED LIVING WORKGROUP MEETING
SEPTEMBER 23, 2011
University of South Florida
Gibbons Alumni Center
Tampa, Florida

DRAFT MINUTES

MEMBERS PRESENT

Larry Polivka, Chair
Larry Sherberg
Darlene R. Arbeit
Michael Bay
Luis E. Collazo
Jim Crochet
Martha Lenderman
Roxana Solano
Senator Ronda Storms

STATE AGENCY REPRESENTATIVES

Liz Dudek, Secretary, AHCA
Molly McKinstry, AHCA
David Sofferin, DCF
Polly Weaver, AHCA
Susan Rice, DOEA
Tom Rice, APD
Robert Anderson, DCF
Betty Zachem, Attorney General's Office

MEMBERS ABSENT

Representative Matt Hudson
Ken Plante
Brian Robare
Bob Sharpe
Marilyn Wood

STAFF

Beth Eastman
Cruz Conrad
Susan Kaempfer

EXECUTIVE OFFICE OF THE GOVERNOR

Jane Johnson

Call to Order, Welcome and Roll Call.

The meeting began at 9:05 a.m.

Approval of August 8, 2011 minutes.

Introductions were made and the August 8, 2011 minutes were approved with one change from Jim Crochet to increase the number of ombudsmen.

Action Items and Requested Information:

Ms. McKinstry reviewed the action items and referenced the material in members' packages:

- Administrative Penalties
- Deficiency Classification
- Limited Mental Health Licensing and Training Requirements

- Qualifications and Training Requirements of ALF Administrators, Management and Staff and ALF Core Trainers
- Community Mental Health Services Provided for ALF Residents
- Administrative Fines 7/1/2010 – 6/30/2011
- Facilities Referenced in the June 14 Press Release
- Facilities Referenced in the July 25 Press Release

Doug Adkins, Administrator, Dayspring Village provided a presentation on Frontline Forecaster, a joint venture project to bring intuitive technologies to the frontline of care and to use the data to help forecast future trends in assisted living facilities.

Members discussed issues relating to technology and some expressed concern that time should be spent with residents instead of entering data about residents.

Public Comment:

The following public testimony was presented:

Austin Curry, Resident. Mr. Curry testified that he places the highest value on human life and is repelled by the horrible conditions of some ALFs. He believes licenses should be revoked for a minimum of five years and that facilities and persons responsible for abuse and neglect should be incarcerated.

Susanne Matthiesen, Managing Director of Aging Services, CARF. Ms. Matthiesen provided a presentation on CARF, an international accreditation organization. She testified that providers that work toward accreditation implement standards within their organizations that address quality of care and good business practices with the goal of improving quality. Almost 800 providers are accredited in Florida in the areas of behavioral health, assisted living, continuing care retirement communities, home and community based services, rehabilitation and employment and community services. CARF is willing to work with the assisted living workgroup, AHCA and all stakeholders to develop approaches that strongly prompt providers in Florida to achieve CARF accreditation as a way to improve the field in the short term and elevate it through performance improvement over the long term.

Doug Adkins, Dayspring Village ALF. Mr. Adkins provided testimony about ALFs with limited mental health specialty licenses. He described the cooperative agreements; the relationship between residents and staff; the use of technology; systems of care; supervision of clinical needs; real time training; identification of best standards/practices; competent qualified administrators; and suggested the workgroup look at other states for a quality regulatory model.

Henry Parra, Owner, Genesis Care Centers and founder, Assisted Living Member Association (ALMA). Mr. Parra described AHCA as being in disarray and ALMA was founded to cover the gaps in AHCA. He provided testimony that Hispanic residents and providers of ALFs have needs that people don't understand. In his opinion there is a disconnect between providers; and further described difficulties he has as a provider working with hospitals that are discharging residents back to the ALF. Mr. Parra appreciates that the next AL Workgroup meeting will be in

Miami/Dade. He believes ALFs have been tarnished by the Miami Herald and all providers are not like what was described in the articles.

Lyn Dos Santos, previous volunteer, Long Term Care Ombudsman Council. Ms. Dos Santos testified that conditions in ALFs are deplorable and that the frequency of inspections should be increased. She urged the workgroup to read the Administration on Aging's compliance review of the State of Florida Long-Term Care Ombudsman Program. She believes the ombudsmen should be autonomous and that ombudsmen are afraid to do their jobs.

Mr. Sherberg asked about the Voice of Quality Care. Ms. Dos Santos responded that it is a national organization.

Brian Lee, former Ombudsman and current director of Families for Better Care. Mr. Lee testified that the Miami Herald did a comprehensive investigation of ALFs and that there are many good, decent facilities but regulators have looked the other way. He believes that bad providers have soiled the good providers and that there needs to be increased scrutiny of a broken industry. He rejects the notion of an abbreviated survey and questioned the criteria used for determining which facilities are eligible. Mr. Lee testified that sanctions need to be paid within 30 days. He encouraged DOEA to finalize the rule regarding the Ombudsman assessment and recommends there be an assisted living facility guide.

Gloria Smith, Florida Gulf Coast Chapter of the Alzheimer's Association. Ms. Smith provided testimony about Alzheimer's disease and the impact on residents in ALFs. She also provided testimony that one in ten people develop Alzheimer's Disease and that 50% of residents in ALFs have the disease. She provided examples of residents with Alzheimer's disease specifically with wandering, hiding and residents not answering to their names. She believes that training can prevent and solve many problems.

Roy Gifford, former ALF resident from Tampa, currently in supported living. Mr. Gifford testified that he has been in a number of ALFs through-out his life and he is currently 40 years old. There were a number of issues and some facilities were good and others were not. He has also been in adult foster care. He believes there need to be more structured activities and things to do in ALFs. He believes that AHCA should check out facilities more frequently. He lived in an ALF in Dunedin and had a positive experience and believes that there should be a council to look over facilities more often.

Damon Thomas, Senior Regional Director, Emeritus Senior Living and VP Florida Assisted Living Association. Mr. Thomas provided background on Emeritus Senior Living and his personal background with aging family members, specifically his grandfather. He testified that he believes taking care of the elderly is why all stakeholders are here today and he is disheartened to hear of the recent problems in ALFs. He believes better collaboration between all agencies is necessary as well as better enforcement of the regulations.

Charlie Paulk, Florida Life Care Residents Association (FLiCRA). Mr. Paulk testified that he is a resident of The Carpenters in Lakeland and he is president of FLiCRA, a continuing care advisory council. He informed the group that there is a need to protect seniors from providers

that do not provide good service and the average age of a resident is 85 at the facility where he resides. He urged the AL Workgroup not to make any recommendations that would duplicate Chapter 651, F.S. He also believes consumer choice is important in deciding where to live.

Krone Weidler, President, Florida Assisted Living Association (FALA) and owner, Royal Sun Park. Ms. Weidler testified that FALA is committed to cooperate. She provided testimony that ALFs are in higher demand than in the past which has resulted in greater scrutiny and that the Miami Herald focused on atrocities and cases of abuse and neglect are unacceptable. She referenced the 84, 000 residents in ALFs and the media focused on less than ½ of 1% of all facilities. Ms. Weidler testified that the media coverage is unjust and offensive and that FALA has aggressively sought mechanisms to advocate for residents. She believes FALA has been misrepresented and referenced the medical review team legislation. She testified that Ombudsman think they are surveyors and regulators and she supports ombudsman as resident advocates. FALA does not support facilities that don't offer high quality of care.

Senator Storms asked follow-up questions of Ms. Wielder and feedback on those questions were provided.

Judith Turnbaugh, advocate. Ms. Turnbaugh testified from three perspectives; as a family member, advocate and provider of services. She has a brother with schizophrenia and additional family members with mental illness. She is a two term president of NAMI Pinellas County and has a passion for people who cannot represent themselves. She described ALFs as homes for individuals with mental and physical disabilities and that these individuals need a safe, clean home whether they are small ALFs or very elegant senior living facilities. Some residents require more care than others and many ALFs provide excellent care. Threatening residents not to speak up victimizes residents. It is difficult for small ALFs to stay in business and constant education is needed. Staff turnover is high. She recommends that the Ombudsman and Local Advocacy Council be cross trained to do regular inspections. She informed the group that NAMI could provide training to staff members at the ALFs.

Rose Delaney, advocate. Ms. Delaney began her testimony by stating that she is passionate about advocating for individuals with mental illness and feels like pounding her fists. She has lived with her mental illness her adult life and believes she had it since early childhood. She has heard some hurtful remarks about individuals with mental illness and believes they are thought of as cast offs. Ms. Delaney believes there should be a consumer representative on the workgroup and she asked workgroup members if any of them had ever had a psychological breakdown, attempted suicide, been arrested, baker acted, homeless or have lost custody of their children because of a mental illness. She provided testimony that people with mental illness are human beings and need to be treated equally.

Alvin Dozier, former ALF resident. Mr. Dozier testified that he lived in ALFs all his life and in 2006 was in an ALF in Tampa. He got into an argument with one of the staff and was stabbed in the head with a pen and was Baker Acted. He testified that the facility believed the argument was his fault. He left the facility due to health reasons and is currently living independently and enjoys his freedom.

Jose Dunasso. Mr. Dunasso has lived in retirement homes and has found some conditions to be appalling. He testified that he could not place loved ones there and believes that AHCA fails to enforce regulations. He provided information about an administrator he believed ruled with an iron hand. He provided testimony that the well-being of residents is his priority and advocates for more funding for the nursing home diversion and frail elder programs. He believes that a limited mental health waiver should be created.

Richard Durestein, professional guardian. Mr. Durstein has 60 wards and he provides independent oversight. He expressed the need for the local advocacy council to coordinate with a statewide council. He believes that ALFs were shut down because of his work as a professional guardian. He described ALFs with roaches throughout and testified that ombudsmen are the answer. He recommends having an ombudsmen council specific to mental health.

Ben Caretenuto. Mr. Caretenuto represents 53 facilities in Florida. He recommends better training and specifically Alzheimer's disease training. He testified that monetary damage is not the answer and that there have been massive cuts to the nursing home industry. He informed the group that it is easy to point fingers unless someone has been where he has worked.

Anna Small, Assistant General Counsel, Regulatory Care, LaVie Care Center. Ms. Small commented on AHCA's administrative process and she believes the process is fair and that there is a check and balance in the system. She informed the group that all providers that are regulated have the right to challenge any action AHCA takes. She is concerned that we may see the Agency's discretion taken away.

Dr. Polivka asked how she saw the process going away. Ms. Small referenced the Senate Interim Report and is concerned that provider's right to challenge may go away. She believes the current system is fair and works.

William Teague, former Ombudsman. Mr. Teague believes the vast majority of facilities are helping residents and a minority of facilities has damaged the image of ALFs. He focused on the following issues: lack of training, ALFs having residents that should be in a nursing home, and problems with medication administration. He testified that limited mental health residents would historically be in a state hospital.

Sandra Hall. Ms. Hall testified that she owns two ALFs in the Florida Panhandle. She referenced current administrator requirements of being 21 years of age and believes that work experience should be able to substitute for education. She spoke of Ombudsmen needing to talk to residents instead of reviewing paperwork and believes the cost of care in an ALF should be higher. She testified that residents pay approximately \$9 a day and \$1000 per month is the poverty level.

She has had residents since 1999 and many have mental health problems. She currently has 75 residents and she cannot group everyone together as they are all different. She is currently awaiting approval from AHCA for additional beds.

Susan Lang, advocate. Ms. Lang is working on a system of care and has a mental illness. She has training and expertise in helping mental health residents and believes being a provider is more than being able to just pass a test and that life experience is needed.

Dr. Kathryn Hyer, Director of the Florida Policy Exchange Center on Aging, University of South Florida (USF). Dr. Hyer made a presentation on the University of South Florida's role in long term care and aging studies. She distributed a packet containing abstracts of different studies and policy briefs and provided testimony that USF has the oldest program in the state for long term care administration. The program has been training nursing home administrators since 1983.

Dr. Hyer recommended expanding the jurisdiction and membership of the Board of Nursing Home Administrators to include establishing and enforcing new standards for Assisted Living Facilities.

She described various studies and addressed the types of individuals in nursing homes, the mental health needs of residents, numbers and risk factors for unnecessary hospitalizations in ALFs and nursing homes as well as services needed,

She believes the needs of individuals in ALFs are greater than the number of staff hours required.

Dr. Hyer urged the committee to provide consumers with information about making informed choices and to develop a website similar to the federal nursing home compare website. She also recommended that during the inspections AHCA collect information that helps consumers such as: name, age, payment source and diagnosis or information on ADL needs. Further, Dr. Hyer provided testimony that Florida needs a minimum standard of ALF care and enough information routinely reported that consumers can use to make the market for assisted living work. She asked that the workgroup create better information, improve the inspections, consider increasing staffing levels, and improve staff training and make administrators more professional.

Dr. Polivka asked Dr. Hyer to write a paper and include data studies, minimum standards, staffing and, effect of licensure. There was discussion about an article written by Dr. Debra Street, et al, The Effect of Licensure Type on the Policies, Practices, and Resident Composition of Florida Assisted Living Facilities. Dr. Polivka asked that this article be included in the next meeting packet.

Senator Storms discussed administrator qualifications and referenced the lack of funding for appropriate training. She mentioned the Kahn Academy which provides on-line free education and encouraged members to research this resource. She also provided testimony that staff standards are high in nursing homes and there have been cutback's due to fiscal issues. Further, there is no understanding of who resides in ALFs and how many residents there are. The workgroup should explore if the facility should have a licensed nurse available at least 8 hrs a day.

Luis Collazo asked about DCF outcome data and the access to the data. He asked about what had or had not been collected.

Public Comment (continued)

Douglas Coffee, owner Dunedin ALF/LMH. This facility was previously Rosalie Manor, a limited mental health facility. He testified that providing services to elders and individuals with mental health problems is like comparing apples to oranges. He provided testimony that more focus needs to be on education and support for limited mental health. Mr. Coffee testified that he has received good support from AHCA.

Discussion began on extended congregate care (ECC) licenses. Dr. Polivka offered the reason behind the ECC license was to create a tier within the limited mental health license. Limited mental health specialty licenses do not have medical oversight and there are unnecessary hospitalizations in ALFs. He provided testimony that Florida should return to a patient centered model.

Mr. Valdez, State Fire Marshal's Office, Regional Supervisor, SW Region. The local fire marshal testified that the current standards follow the 1994 code and 69A-40, Florida Administrative Code.

Martha Lenderman provided testimony she is curious about the number of agencies inspecting and regulating ALFs. She asked if there is there any way to streamline and wondered which functions might need to be cross trained?

Dr. Polivka is concerned with the definition of locked door and asked that the state fire marshal give us an opinion. The fire marshall cautioned about locking residents in.

Brad Lamb, ALF resident. Mr. Lamb testified that he has been attending mental health programs for 16 years and he receives treatment for a bi-polar disorder. He currently resides at Castle Court ALF and has been "stuck" there for years. He would like to get involved with classes at USF and attend work programs.

Martha Lenderman inquired if he was getting help from anyone to get to school or a job and he responded that he has a case manager who arranges appointments and gets clothing for him. He wants to live independently and he has a sister in Florida and his father is in California.

Benjamin Voss, resident, Shady Oaks ALF. Mr. Voss has lived at Shady Oaks ALF for 3 years and he is satisfied, but he has had a hard time adjusting. He heard of a case in Plant City where a developmentally disabled person stepped in a pile of ants and they came down on him.

Mr. Sherberg asked Mr. Voss about the activities he does during the day. Mr. Voss responded that he plays bingo and dominos and watches movies on the weekend. He receives OSS and \$54 per month for personal spending but it does not go far enough.

Mr. Sherberg asked him if he smoked and he responded that he does so occasionally. Mr. Sherberg added that the personal needs allowance should be addressed.

Terrence Dixon, ALF resident. Mr. Dixon has resided at Castle Court ALF for 8 years and he is satisfied with it. He would like to receive all of his personal needs allowance at one time so that he can purchase items such as soap, towels and rags.

Rosie Adams, ALF resident. Ms. Adams lives at Shady Oaks ALF and has been out of the hospital for 10 years and is proud of it. Her husband died a few years ago and they provided her a place to stay. She spends a lot of time in her room alone. She would like to have more money to spend on

Deon Crouch, resident. Ms. Crouch lives at Jeannette Boston ALF in Tampa and testified that she had a horrible experience this morning. Ms. Crouch receives medications every four hours as needed. She took her 6:00 am medications and asked the med tech for them at 10:00 and the response was that she did not need it. The med tech looked in the med book and told Ms. Crouch to do it herself and threw the med card at her.

She testified that she called DCF and the woman that answered the phone did not take her seriously and did not take the report. She then called AHCA to file the report and to report that the facility does not have a resident phone, only a business phone. She told the staff she was talking with a state agency and the staff member unplugged the phone. Ms. Crouch came from an ALF in Plant City where she was given a 45 day discharge notice. She has been out of one of her medications for 5 days and staff at the ALF failed to notice. Her diagnosis is major depression.

Martha Lenderman explained that this is a classic example of where we need communications and Ms. Crouch provided testimony that she felt like what happened to her today was abuse. Ms. Lenderman suggested the state agency representatives at the meeting could speak with Ms. Crouch regarding the incident that happened this morning. David Sofferin, DCF, Polly Weaver, AHCA and Jim Crochet, Ombudsman, responded and spoke with Ms. Crouch personally.

Dr. Polivka thanked all the presenters and asked that written comments and testimony be submitted to the Agency.

Presentations: Agency for Health Care Administration.

Molly McKinstry, Deputy Secretary, Health Quality Assurance. Ms. McKinstry provided a presentation on AHCA's ALF regulatory and licensure process. She described the state and local government responsibilities and introduced other state agency representatives:

Susan Rice, DOEA, Robert Anderson, DCF, Betty Zahcam, AG's Office, Tom Rice, APD and, Polly Weaver, AHCA.

The presentation included information in the following areas:

Assisted Living Growth
AHCA Inspections
Regulatory Oversight Revisions
The revised Assisted Living Survey
The Abbreviated Survey
Regulatory Violations and Deficiencies
Regulatory Sanctions
Consumer Information and Outreach and
Outreach Activities.

Ms. McKinstry also made a Medicaid presentation on behalf of Darcy Abbott who was not in attendance. The presentation included information about Medicaid Reimbursements in Assisted Living Facilities and specifically touched on Assistive Care Services, the Assisted Living Waiver and the Nursing Home Diversion Waiver.

She also provided testimony that some of the information presented would be in the draft white paper which lays the groundwork of the ALF regulatory process.

Senator Storms asked about the growth in the small ALFs and Ms. McKinstry provided testimony that it may be due to the interest in providing residences in a more homelike setting.

The workgroup discussed issues and raised questions that emerged from the presentations such as:

- Families taking family members out of skilled nursing and bringing them home because they need their social security checks
- The majority of small settings being located in South Florida
- Dr. Polivka's paper, "Community residential care for the frail elderly: What do we know; What should we do?"
- Unlicensed facilities
- Keeping the door narrow and raising the bar for providers

Ms. McKinstry provided testimony that AHCA has made changes from the regulatory perspective to increase consistency and have an efficient use of resources and that the Agency is committed to addressing consistency issues. The new survey process is resident centered and will concentrate on interviews with residents. The abbreviated survey has a four year look-back for ownership, excellent ombudsman reports and complaint history. The new process begins October 1 and is based on Wisconsin's model.

Ms. McKinstry added that the new survey guidelines have changed and AHCA reviewed the volume of tags and collapsed many of them. Mr. Sherberg asked for an index of the tags. There was discussion about avenues to challenge a tag and some provider members express concern of retaliation if they did so.

Ms. McKinstry informed the group that there is a procedure for challenging tags that can go to Ms. Weaver, Bureau Chief, Field Operations. Further, all agency actions are subject to appeal and some challenges go the appellate level.

The Agency is working on ways to improve consumer information and outreach through communication. The Florida Health Finder website now posts inspection reports and the Agency has published a one page guide for any person going into an ALF to look at regarding what is ok and not ok in an ALF.

Department of Children and Families

Robert Anderson, Deputy Secretary, Department of Children and Families, Adult Protective Services. Mr. Anderson provided a high level presentation of the adult protective services law, Chapter 415, F.S. and the APS system and how it interfaces with AHCA and ALFs.

David Sofferin, Deputy Secretary, Department of Children and Families, Substance Abuse and Mental Health. Mr. Sofferin provided a high level overview of DCFs role in the ALF process. He spoke of the interagency agreement between DCF and AHCA. He provided testimony that housing for individuals with behavioral health issues is the next initiative for the Substance Abuse and Mental Health Program and the goal is community inclusion.

Mr. Sherberg expressed some concerns with his local community mental health center regarding the provision of case management services.

The workgroup discussed issues and raised questions that emerged from the above presentations such as:

- Managing entities and CBC models and,
- The lack of limited mental health ALFs in some areas of the state.

Discussion of Major Issues and Potential Recommendations

Dr. Polivka began the discussion by asking members for important issues and recommendations for solutions.

Jim Crochet provided testimony that the Ombudsman's mission is to protect the health and safety of residents. He further explained that there are approximately 300 Ombudsman volunteers and more advocates are needed.

Martha Lenderman raised the issue of deemed status for facilities undergoing some type of national certification or accreditation. She referenced the documented good and bad facilities and is concerned about how humane facilities are and if they represent the least restrictive and most homelike setting.

Further discussion included appropriate discharge planning from hospitals, the establishment of a consumer friendly website, avoiding duplication in the survey process and additional financial support and resources for more AHCA surveyors.

Senator Storms explained that the Ombudsman's Office should be independent and that we cannot ignore the federal Administration on Aging report. She further explained that the industry's complaint of people being overly zealous should be considered and that Ombudsmen should focus on the residents. She spoke of individuals with disabilities needing a searchable website that should contain ratings. Additionally, the standard for administrator qualifications should be raised and consideration should be given for grandfathering in current administrators. Facilities with Class I and II violations should be reviewed carefully before a license is issued. She believes staff needs to be trained in de-escalation techniques and that additional inspections should be made of bad actors. She offered that perhaps some government agency responsibilities could be collapsed to reduce the number of agencies on-site.

Luis Collazo informed the group that there are multiple people on-site inspecting his facility. Case managers visit his facility frequently to see their clients.

Jim Crochet suggested that the group focus on discharge protection and the possibility of a bed hold policy for residents who are baker acted. He would like residents to receive due process if they object to being discharged.

This suggestion generated much workgroup discussion such as choices for ALF residents, the landlord tenant act, administrators providing a public trust, the over-utilization of the Baker Act, and the current bed hold policy as outlined in the resident contract.

Mr. Sherberg researched OPPAGA reports and located a February 1997 report with recommendations that the group is currently discussing. He believes the recommendations should make the environment better for the residents.

Dr. Polivka asked the workgroup members about their experience and that of their colleagues with the assisted living waiver, nursing home diversion waiver and assisted care services.

Members discussed that in a facility accepting residents receiving OSS that the costs are lower due to the payment. Roxana Solano explained that the nursing home diversion waiver is not accepting anymore providers. Darlene Arbeit stated she accepts individuals on the nursing home diversion waiver and she performs fund raisers to off-set the cost. She also has residents who are paying privately.

Dr. Polivka offered there has to be a balancing of regulation with the realities of affordability.

There was discussion of food stamp eligibility for ALF residents and of food stamp eligibility reform. Some members requested a presentation from the DCF ACCESS program on the OSS and SNAP programs.

Dr. Polivka discussed carefully reviewing the Senate Interim report for the next meeting. There is useful information on surveys, inspections and regulations and he suggested the workgroup member review the recommendations.

The next meeting will be November 7th and 8th in Miami.

The meeting adjourned at 4:30 pm.