

Assisted Living Workgroup Minutes
June 25, 2012
9:00 am - 4:30 pm
FDLE Training Center
921 North Davis Street, Building E
Jacksonville, FL 32209

MINUTES

MEMBERS PRESENT

Larry Polivka, Chair
Larry Sherberg
Michael Bay
Luis E. Collazo
Jack McRay
Jim Crochet
Martha Lenderman
Roxana Solano
Charles Paulk
Brian Robare
Steven Schruck
Scott Selis
Bob Sharpe
Senator Rene Garcia

STATE AGENCY REPRESENTATIVES

Liz Dudek, Secretary, AHCA
Molly McKinstry, AHCA
Anne Avery, AHCA
Robin Eychaner, DOH
Susan Rice, DOEA
Tom Rice, APD
Robert Anderson, DCF
Charles Corley, DOEA
Darcy Abbott, AHCA
Jackie Beck, DCF
David Oropallo, AHCA
Shaddrick Haston, AHCA
George Cooper, DFS
James Vernado, Office of the Attorney General

MEMBERS ABSENT

Darlene R. Arbeit

MEMBERS PRESENT BY
TELECONFERENCE

Representative Matt Hudson

STAFF

Christa Henley
Shirley Morgan
Patrice Spicer

EXECUTIVE OFFICE OF THE
GOVERNOR

Danielle Scoggins

Call to Order, Welcome and Roll Call

The meeting began at 9:00 a.m.

State Agency Presentations

Agency for Health Care Administration (AHCA)

Molly McKinstry, Deputy Secretary, Health Quality Assurance. Ms. McKinstry provided a presentation on Assisted Living Facilities (ALF) which included statistics for inspections, violations and agency actions, and agency developments and updates. She described ALF growth and provided percentages of ALF beds, the types of beds in Miami and specialty licenses. Agency developments and updates include monthly press releases, the enhanced Florida Health Finder website, the new ALF Enforcement Unit, inter-agency meetings and, the revised assisted living survey process.

David Oropallo, Chief of Health Facility Regulation. Mr. Oropallo provided information on the Nursing Home Diversion Waiver, the Medicaid long term managed care program currently being implemented in Florida. At Dr. Polivka's request, he described the differences between Statewide Medicaid Managed Care and the Nursing Home Diversion plans.

Darcy Abbott, Administrator for Medicaid Services for Long-term Care and Behavioral Health Care. Ms. Abbott's presentation included Florida Medicaid and the Statewide Medicaid Managed Care (SMMC) program created by the Florida Legislature in 2011. She provided an overview of the legislation, the Statewide Medicaid Managed Care program goals, the current status of implementation, information on the requirements for enrollment in the Long-Term Managed Care Program, how to contract with a managed care plan, information on plan responsibility and, service provision by group care facilities and home-like settings.

Dr. Polivka and Ms. Lenderman asked about application and eligibility. Some members expressed concern about the waiting list. Mr. Paulk expressed concern about eligibility, funding and the waiting list. Dr. Polivka commented that with the new criteria there should be a more flexible residential option. Mr. Sherberg asked about federal expectations regarding access to kitchenettes in ALFs to provide a more home-like environment. Secretary Dudek advised that the Agency expects facilities to be as home like as possible, however there is recognition that not everyone may be appropriate for access to all kitchen resources. Ms. Solano stated that there is a need to meet criteria for safety awareness and not everyone will need kitchen access. Ms. Abbott advised that kitchen access is for those who are able; safety is a factor.

Ms. Lenderman suggested that what a facility provides and what a person needs should be matched and that residents should have more choices. Members had further concerns about providing kitchenettes.

Dr. Polivka requested more information on home like settings and environments with kitchenettes.

Department of Elder Affairs (DOEA)

Susan Rice, Assistant General Counsel. Ms. Rice provided a presentation on the DOEA activities addressing Phase I recommendations which included resident advocacy, training and staffing and ALF administrator qualifications. The negotiated rulemaking process is being utilized to implement the recommendations accordingly.

Jim Crochet, Long Term Care Ombudsman. Mr. Crochet provided a presentation on recommendations for resident advocacy. The Long Term Care Ombudsman provides oversight by focusing on communication with residents, training ombudsman volunteers to recognize obvious deficiencies, recruitment of state and local advisory council members, increasing the professionalism of training, updating core test annually, and allowing flexible training schedules in native languages.

Dr. Polivka inquired about the rule finalization and sought more information about the website updates for members.

Department of Children and Families (DCF)

Jackie Beck, Chief of Adult Mental Health. Ms. Beck provided information on the workgroup's recommendations and DCF's response. There have been improvements in DCF Limited Mental Health training such as a new competency based curriculum in Spanish and English, increasing the number of training hours from 6 to 8 and including behavior management and de-escalation in the training.

Members discussed the additional training requirements. Dr. Polivka asked about training and continuing education hours and expressed concern about the limited training choices. Some members asked questions related to the languages the training will be available in and who will be required to take the exams. Ms. Beck replied that the Department is exploring options of expanding the training to provide it online in Spanish and English.

Ms. Beck advised that a portion of the limited mental health training is a pre-service requirement and there is a requirement of staff to pass the examination with a minimum score of 80 %. Mr. Bay stated that the test should be online before staff are required to pass. Dr. Polivka stated that providers need to specialize in their services such as limited mental health.

Mr. Sherberg expressed concern about the providers' obligation to protect other residents in the facility when the Baker Act is utilized. He is concerned about a mandate for residents to return to the facility after the Baker Act is imposed.

Ms. Lenderman testified that more training is needed and the Baker Act should be the last resort. She suggested that a Baker Act handbook be used in assisted living facilities.

Mr. Sherberg advised Medicaid will not qualify residents and that Long Term Medicaid Managed Care would need to provide case management.

Dr. Polivka stated there is not enough literature available on the Statewide Medicaid Managed Care program.

Robert Anderson, Department of Children and Families, Director of Adult Protective Services. Mr. Anderson provided a presentation on the recommendations to: (1) improve the ability to share information and data efficiently between the Long Term Care Ombudsman Program, DCF Adult Protective Services and AHCA by enabling integration between the Agency for Health Care Administration's licensure data and the provider data which is used as an identifier in abuse reports and the Ombudsman Program and (2) improve the ability to share information and data efficiently between APD and AHCA related to ALFs where APD clients reside.

He stated that the Department is working on implementation of those recommendations with an anticipated completion of Fall 2012. Specifically, the Florida Safe Families Network (FSFN) will be upgraded to capture the type of facility in an "institutional" report.

Dr. Polivka inquired about the upgrade and if it would identify all facilities with AHCA and The Agency for Persons with Disabilities (APD). Mr. Anderson replied this will allow the Department, AHCA and APD to communicate if a home closes or other problems emerge.

Office of Attorney General (AG)

James Varnado, Director of Medicaid Fraud Control Unit. Mr. Varnado provided a presentation about Medicaid Fraud investigations and procedures for facilities.

Members had questions related to investigations. Ms. Solano was curious about why inspectors question staff. Ms. Lenderman was concerned that no one is making complaints to the agency concerning patient brokering and what could be done. Mr. Varnado stated there must be a clear cut case and a complaint first before an investigation is initiated. Mr. Bay asked about what warrants an investigation by the Attorney General. Mr. Varnado responded that investigations are related to whether criminal action is involved. Mr. Bay expressed concern for subjectivity.

Ms. McKinstry indicated that there is more flexibility for marketing which is different from kickbacks and brokering, and referenced recent legislative changes. Further, if any complaints regarding patient brokering come to the Agency's attention they will be addressed. Dr. Polivka and Mr. Bay added comments about what would be considered patient brokering and if Medicaid eligibility was a factor.

Department of Health (DOH)

Robin Eychaner, Group Care Coordinator DOH inspections. Ms. Eychaner provided a presentation on behalf of Mary Beth Vickers, Acting Division Director for Children Medical Services. Ms. Eychaner described inspection activities related to ALFs. She provided

information about the new ALF well and pool inspections, septic tanks, food hygiene, physical site requirements, biomedical waste and enforcement actions.

Members inquired about the health inspection process. Ms. Lenderman inquired if ALF staff are trained to recognize complaint issues. Ms. Solano was curious about inspection fees. Ms. Eychaner stated that complaints are received from staff and there are fees from local health departments for inspections and re-inspections.

Public Comment

Elizabeth Scholar, Fleet Landing and LeadingAgeFlorida, Senior Director.

Ms. Scholar stated that she is employed by Fleet Landing Assisted Living in Atlantic Beach and provided information about the facility. She suggested that the workgroup focus on what needs to be addressed instead of increasing regulations. She discussed the flexibility opportunity for facilities with multiple licenses and suggested that DOEA put effort into having “floating licenses”. She supports aging in place which does not occur when residents must be moved from one place to another to have some nursing care that is not allowed in assisted living facilities. She further stated that data collection should be evaluated for effectiveness. She commented that facilities should have access to mandated reports which they provide.

Dr. Polivka commented that about 10-15% of residents have needs that change and they may remain in the licensed bed for facilities with a multiple license. Ms. Lenderman requested the floating/flexible beds issue be explored.

Dr. Polivka requested that the Assisted Living Workgroup address flexible beds for facilities with multiple licenses.

Doug Adkins, Dayspring Village Inc., ALF. Mr. Adkins provided information on Medicaid funding in assisted living facilities, assisted residential care, the expansion of regulatory authority for AHCA, case management issues, facilities being unfairly blamed for issues, administrator responsibility, supportive housing, the Baker Act as it relates to ALF residents, and the economy.

Ms. Lenderman asked for a copy of the presentation. Dr. Polivka stated that more of the frail elderly complain about how difficult is to get in a skilled facility. Mr. Adkins commented on the difficulty of caring for residents who have schizophrenia, dementia and other aging related mental illnesses.

Pat Lange, Florida Assisted Living Association (FALA). Ms. Lange stated that FALA provides training and support to assisted living facilities. She commented on the confusing, fragmented, regulatory system but added that communications have improved.

Ms. Lange commented on regulatory issues such as initial licensure surveys being conducted prior to the facilities having residents, inconsistency in citing deficiencies, and unprepared trainers not being held accountable by the Department of Elder Affairs. She addressed ALF Core Training and suggested that DOEA acquire a third party to oversee ALF Core Training,

more funding for surveyors and, third party credentialing or administrator certification that can be presented to legislators.

Finally, she stated the newspaper series reflected abuse and neglect over a 10 year period. She encouraged the Assisted Living Workgroup to determine where and when ALF oversight broke down.

The public testimony generated Assisted Living Workgroup discussion about funding, regulatory oversight and resident protection, mental health issues, ALF residents receiving OSS, managed care rates, and the concept of a floating or flexible license.

Dr. Polivka suggested that the third Assisted Living Workgroup meeting be dedicated to mental health issues and related costs such as OSS and managed care.

Discussion of Phase II Issues

Dr. Polivka began discussion of Phase II issues and asked the Assisted Living Workgroup to review, discuss and vote on the Phase II recommendations to move forward. Decisions were made on the following recommendations to pass, reject or table for legislative consideration:

Appendix A

Enforcement

A. Use of Current Law and Evaluate Current Process

1. Utilize existing regulations to evict unethical or incompetent providers from the system. Recognize that most ALF residents are currently being well taken care of under the current regulatory environment. Do not undermine a social model of care that works.

PASSED

Discussion. Dr. Polivka advised that rigorous regulatory enforcement is the way to proceed, but cautioned against being too forceful. He stated that the Assisted Living Workgroup does not have enough time and needs to look at modules in other states to create an alternative. He suggested reviewing the Wisconsin model as that state has reduced the number of deficiencies and has a better outcome.

2. Evaluate the ALF enforcement process beyond a punitive approach. Although the punitive approach is necessary for chronically poor performing facilities, it is not the best way to elevate quality across the ALF community. Examine the Wisconsin model for ALF regulation which is similar to the AHCA abbreviated survey with the addition of a consultative/collaborative regulatory model. **PASSED per discussion with the focus on a non punitive approach.**

Discussion. Mr. McRay suggested there may be opportunities to prevent problems and do a better job at enforcement. He further stated that facilities need to stay in business but the industry must be true to advertising and that a bad facility must have warning

signs. Mr. Bay stated that AHCA needs a mechanism for the provider to go for advice without fear of reprimand. Further, the Agency should give consultation and keep examples for operators, without fear of reprisal. Ms. McKinstry suggested that preventative training is worth considering as well as accreditation of core trainers and the provision of annual training. Dr. Polivka again mentioned the Wisconsin model and how their system changed. Ms. Lenderman asked for a copy of the model.

Mr. Robare is dissatisfied with the tone of the statement of deficiencies letter. Ms. Lenderman stated that Baker Act letters have been changed to reflect praise instead of finding no deficiencies.

Dr. Polivka advised that the Wisconsin model will accommodate technical help. Mr. Crochet suggested that we facilitate a teleconference meeting instead of funding the Wisconsin leaders to come to Florida.

3. Maintain current law that fines will only be imposed for low-level citations if uncorrected, to focus penalties on poor performers without adverse impact on competent providers. **PASSED**

B. Increased Sanctions & Use of Monetary Penalties

1. Give AHCA more power if necessary to place sanctions, fines, moratoriums, as well as deny, revoke or suspend licenses for poorly performing facilities. Fines for non-compliance should be increased and immediately paid. Such sanctions would be subject to due process through existing appeal processes. Agency discretion on sanctions should be discouraged or eliminated as such discretion creates the appearance or reality of unequal application of regulatory powers. **REJECTED**

Discussion. Ms. Lenderman asked about Class III deficiencies and if a Class III reflected a low level of performance with associated sanctions. Ms. McKinstry advised that Class I and Class II's have an automatic sanction. Mr. Sharpe suggested increasing sanctions and using monetary penalties.

Mr. McRay asked about AHCA's power to impose sanctions. Ms. McKinstry stated that in some cases if the risk doesn't decrease, the Agency has the ability to take enforcement action. There was further discussion about AHCA's authority to sanction and the discretion the Agency uses for sanctioning providers with deficiencies.

2. Evaluate discretion of sanctions and determine if some should be removed, but allow some AHCA discretion. Removing discretion more broadly may cause unintended consequences and needs to be discussed much further. **REJECTED**

Discussion. Members asked about the Agency's authority to sanction and whether it was sufficient.

3. Revocation or denial of renewal license should be mandatory for certain violations including resident death at a facility because of intentional or negligent conduct on the part of the facility. Consider the degree of culpability. **TABLED**

Discussion. Members discussed automatic denial for specific reasons, revocations, change of ownership, harm to residents and associated legal issues. Mr. Selis offered to review legal issues.

4. Allow the monies from administrative fines to be used in the facility to correct the deficiency allowing the facility to enhance the standard of resident care. **REJECTED**

Discussion. Members inquired about administrative fines and where they are deposited. Ms. McKinstry advised that fines are deposited into the Health Care Trust Fund to support licensing costs.

Appendix B

Multiple Regulators

A. AHCA as Lead & Evaluating Responsibilities

1. Form a workgroup of all agencies involved in ALF regulation and stakeholder groups to develop a new organizational structure streamlining the regulatory process. Designate AHCA as the lead agency for all regulatory activities in the interim. **PASSED**

2. Improve coordination between the various federal, state and local agencies with any role in long-term care facilities oversight; especially ALFs. This includes the Agency for Health Care Administration; the Long Term Care Ombudsman Program; local fire authorities; local health departments; the Department of Children and Families', Adult Protective Services and Substance Abuse and Mental Health Programs; the Department of Elder Affairs Area Agencies on Aging; local law enforcement; and the Attorney General's Office. **PASSED**

3. Agency responsibilities and lines of communication, coordination, and cooperation between agencies with oversight/regulatory responsibility for ALFs be clearly defined and formalized in written inter-agency agreements. **PASSED**

4. Retain multiple visitors in non-compliant facilities. Additional clarification is needed to specify the details of this recommendation. **CLARIFICATION NEEDED**

B. System Changes & Enhancements

1. Consider a document vault to allow off-site compliance review and share information between regulatory agencies. **TABLED**

2. Enhance DCF Adult Protective Services electronic case management system (Florida Safe Families' Network) to identify trends in abuse, neglect and exploitation by modifying the system to coding investigations by resident setting (facility type). Currently, all institutional reports are lumped under one category. The system could be modified to capture discrete types of facilities, which would enhance our ability to look for patterns and plot frequencies. **REJECTED**

C. AHCA Enforcement & the use of DCF Findings

1. Limit the role of AHCA to regulatory oversight – consultation needed by the industry and its members can be obtained from organizations of their choice and at their own expense. AHCA should promulgate rules establishing quality standards in collaboration with DOEA and DCF, and survey licensed facilities for full compliance with those laws and rules. **REJECTED**

Discussion. Members commented that the Agency needs to be cautious about giving advice and should use discretion. There was further discussion about DCF abuse reports and the role of DCF in protecting individuals from abuse and neglect. Members inquired about AHCA using DCF reports. Ms. Lenderman commented that, if permissive, DCF should be required to report. Mr. Sherberg asked about AHCA using reports from other agencies and Ms. McKinstry responded that the Agency may use independent findings. There was further discussion about sharing reports between the AHCA and DCF and some of the outcomes and legal implications.

2. Allow AHCA to use DCF Adult Protective Services findings and pursue sanctions for repeated verified abuse findings in a facility.

Discussion. Members agreed that it's a shared responsibility and Ms. McKinstry advised we would have a solid case before we would proceed. Mr. Bay asked to remove the word "repeated".

Allow AHCA discretion to use DCF Adult Protective Services findings and pursue sanctions for verified abuse and neglect findings in a facility. **PASSED with changes per discussion.**

3. Authorization for AHCA to deny, revoke or suspend a license if the licensee is a named perpetrator in a verified report of abuse, neglect, or exploitation, similar to APD licensure authority in s. 393.0673, F.S. **REJECTED**

4. Authorize use of DCF Adult Protective Services finding and investigations in employment matters. s. 415.107(8), F.S., states that "...information in the Central Abuse Hotline may not be used for employment screening." The current statutory construct allows for the verified perpetrators of abuse, neglect, or financial exploitation to continue working with vulnerable populations as long as none of those cases subsequently result in prosecution and conviction (under a disqualifying criminal offense). Allowing ALFs

(and other providers) to use the information from the abuse registry to screen out such employees during the hiring process would necessitate a change in this law. Such a legislative change would require that DCF offer due process hearings for perpetrators prior to the closure of all abuse investigations with verified indicators. **TABLED**

Discussion. Mr. Anderson stated this may create an issue for DCF and discussed the history of the abuse registry and the impact on perpetrators. Members asked about background checks and records that DCF keeps on individuals. There was further comment on individuals being convicted of crimes, protection of individuals and hiring practices.

5. Modification of existing administrative rules should also be considered so that any licensee, direct service provider, volunteer, or any other person working in a residential facility who is an alleged named perpetrator in an active protective investigation of abuse, neglect, or exploitation of a vulnerable adult under Chapter 415, F.S., or abuse, abandonment, or neglect of a child under part II of Chapter 39, F.S., are prohibited from working directly with residents or being alone with residents until the investigation is closed. The only exception to this prohibition would be if the alleged perpetrator is under the constant visual supervision of other persons working in the facility who are not also alleged named perpetrators in the same investigation. This provision would only be applicable in situations where the licensee has been made aware of the investigation. **TABLED**

Discussion. Members discussed DCF investigations, the possibilities of facilities going out of business, costs to facilities, hiring practices, the gravity of the offense, and offered to provide additional information regarding employment law.

Appendix C

ALF Information & Reporting

1. If ALFs are required to report to the Agency occupancy rates and resident acuity, they need to have an online reporting system that requires no more than 30 minutes per quarter for data entry. ALFs will also need to be able to pull up congregate occupancy rates and resident acuity compilation data for their area in order to compare their facility demographics to the average. **TABLED**
2. Require AHCA to investigate the types of technology currently available for cost effective methods of collecting, reporting, and analyzing client information and allow facilities to select the type of technology most appropriate to each individual facility. Easy to use swipe / scan handheld devices may be available. The fiscal impact of equipment, software, training, and staff time must be considered. **TABLED**
3. Require all ALF staff to collect and identify client information that would indicate a change of condition and notify the resident's case manager to enable early intervention and prevent escalation of symptoms that might result in a transfer, discharge, Baker Act, police involvement, injury to staff or resident, or other adverse event. Electronic

collection and sharing of this information will improve timely response. **TABLED**

4. Require AHCA to examine the “Dashboard” technology used by DCF in measuring the outcomes of Community Based Care agencies serving dependent children. Some aspects of this oversight should be applicable to long-term care settings. **TABLED**

5. Use a document vault where all critical documents can be stored related to an individual resident. This prevents the loss of such documents, increases access to them by authorized persons to prevent duplication of effort, and reduces costs. Protection of such documents and criminal sanctions for misuse needs to be considered to prevent fraud by unauthorized persons or for unauthorized purposes. **TABLED**

Discussion. Members requested these recommendations be consolidated and streamlined for the next meeting with consideration of cost and fiscal impact. Elements to be reported should be evaluated to determine the use, value, method and frequency of reporting.

Meeting Summary, Next Steps & Adjournment

Dr. Polivka suggested that the tabled recommendations be brought to the next meeting in Ft. Lauderdale.

Mr. Crochet asked that any rule recommendations be forwarded to Susan Rice at DOEA.

There was discussion about having enough time to address all the issues and Dr. Polivka stated that the intent is to complete the task as soon as possible in preparation for the 2013 Legislative session.

The meeting adjourned at 4:30 pm.