

**DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
ASSISTED LIVING ADVISORY COUNCIL MEETING
SUMMARY MEETING MINUTES**

Date: July 18, 2017 Time: 10 AM

Meeting locations Videoconference to:

Division of Public and Behavioral Health Bureau of
Health Care Quality & Compliance
727 Fairview Drive, Suite E
Carson City, Nevada 89701

Division of Public and Behavioral Health
Bureau of Health Care Quality & Compliance
4220 South Maryland Parkway, Building D, Suite 810
Las Vegas, Nevada 89119

Las Vegas ALAC Members:

Linn Thomé, Merrill Gardens, Co-Chair
Simona Cocea, Desert Springs Senior Living
Wendy Knorr, Atria Senior Living (teleconference)
Julie Liebo, Pure Care Living (teleconference)
Shawn McGivney, Tender Loving Care Senior Residence
Jeremy Thomson, Morris Polich and Purdy, LLP (teleconference)
Dora Valentin Tompkins, Angel Care Residential Home

Carson City ALAC Members:

Dan Allmett, Mason Valley Residence, Co-chair
Paul Bailey, Bailey's Group Home
Margaret McConnell, BELTCA
Chris Mirando, RFA, Majestic Management of Pahrump, Inc. (teleconference)
Vangie Molino, Vista Adult Care
Diana Roberts, Washoe County
Gina Stutchman, Arbors Memory Care
Wendy Knorr, Atria Senior Living (teleconference)

Ex Officio Member:

Robert Kidd, CEO, Perry Foundation

Excused:

Julie Peterson, Vintage Park
Patrick Ward, Carson Valley Senior Living

Las Vegas Attendees:

Cynthia Bailey, Beehive
Michael Fox
Steve Gerleman, HCQC
M. Jeanne Hesterlee, HCQC
Barbara K. Gottlieb, Prestige Care
Sandy Lampert, BELTCA
Tina Leopard, HCQC
Maria Lingat Collier, HCQC
Callie Turpin
Magali Lopez, The Homestead, Boulder City
Nancy Overson

Carson City Other Attendees

Jeanne Bishop-Parise, Park Place Assisted Living
Vanessa Dixon
Darryl Fisher, Nevada Assisted Living Association
Susan Phillips, Five Star Premier
Nenita Wasserman, HCQC

Teleconference

Stephanie Alamen for Anna Olsen Figueroa
Wendy Simons, State Department of Veterans Affairs
Crystal Wren, DHCFP

Co-Chair Linn Thome called the meeting to order at 10 a.m. Roll call was taken and there was a quorum of members in attendance.

Approval of minutes for the meeting of April 18, 2017. *Dan Allmett, Co-chair*

MEETING MINUTES WERE APPROVED WITH CORRECTION OF JEANNE BISHOP PARISE NAME. THERE WAS A SECOND TO THE MOTION. MOTION PASSED UNANIMOUSLY.

Health Care Quality and Compliance updates. *Steve Gerleman/Pat Elkins*

Pat Elkins stated that technical bulletin for medication management has been published and is available on the DBPH website.

Update on Centers for Medicare and Medicaid Services (CMS) settings and changes related to assisted living.

Crystal Wren, Division of Health Care Financing and Policy (DHCFP) said the transition plan was submitted in June 2017 to CMS and they are waiting for feedback. Nevada has until 2021 to become into compliance which gives them two additional years to come into compliance.

Legislative updates related to assisted living.

Vicki Estes, HCQC explained recent legislation that passed allows for residential care, adult day care and personal care agencies glucose testing to be performed without a state license. for Clinical Laboratory Improvement Amendment (CLIA) purposes, the director is a person who is willing to oversee the laboratory testing program but does not have to be a physician. The CLIA certificate is required by the Federal government. The CLIA 116 is the application form for certificate of waiver. She noted to mark the box for waiver and whoever the person is responsible for overseeing the program must sign it. The ownership and disclosure form can be obtained at the website www.dbph.nv.gov. The fee is \$150 annually and it can be faxed, emailed, or sent by US Mail to attention to Christy Casey.

For clarification, Dan Allmett asked if the administrator, or whoever is responsible for the program, can teach people how to use the glucose stick. Vicki Estes said that is correct and is limited to glucose sticks. You need to obtain a CLIA Certificate of Waiver, pay the \$150 fee which will be renewed every year and follow the manufacture instructions. The new certificates are mailed 30 days prior to the expiration of the certificate. She anticipates some provider workshops in October.

In response to Shawn McGivney who asked if this is regards to SB 324 that just passed, Vicki Estes said that this is in response to the recent legislative action in 2017. The state actions that went to the Board of Health and the Legislative Commission are also in effect but her update is regarding the legislative action.

Daryll Fisher said when the state comes in for a survey, the inspectors will be look for the CLIA certificate and the manufacturer recommendations. He asked if there would be a technical bulletin or regulation regarding this. Vicki Estes said that she anticipates some provider workshops in October.

The Technical Bulletin 7-2017 has been published and available regarding Medication Management.

Maria Lingat-Collier asked the ALAC to please let explain what the crisis is regarding the medication management program so they can respond accordingly. She explained the impetus for this exercise goes back to 2011 when they started approving programs for medication management and HCQC reviewed the curriculum. Over the years, HCQC has been getting reports from caregivers that many instructors are not providing the 16 hours of training. There have been numerous reports received that students are not receiving “hands on training.” The reports have gone as far as saying that people can drive through and receive a certificate. She stated that medication management is always on the top ten deficiencies on annual surveys for residential facilities. As a result of this feedback, HCQC was of the opinion there is a need to step in and monitor the training.

Paul Ward stated that assisted living facilities are rapidly approaching a crisis with respect to having enough training for their med techs and there are several stumbling blocks. Continuing, he said the instructor must sign for liability for the performance of a med tech who is under the direction of a different administrator. He stated that the issue is what that med tech does is not under the control of the instructor. He said his son is going to medical school and is unaware of any medical school instructors that take liability of a student. He noted there should be some transparency on how to get around this and it was his opinion this is an unfair business practice. This creates a crisis and shortage of med techs. He would like some dialogue to address this.

Dr. McGivney said that this is an unfair business practice and noted there is nowhere in the world that this precedent is established.

There was a roundtable discussion by ALAC members, who are of the opinion that it is wrong to put the liability onto the trainer. Assisted living is taking care of a more acute population and understand inspector concerns. It was pointed out that medical schools and pharmacy schools are not held liable for what their students do.

Gina Stutchman said that if the state wants that much control, the state should provide the training. It was surprising to hear that certain instructors are suddenly out of business because of the liability requirement and they did not receive the Commission on Post Secondary Education approval. She said she is an operations person and wants to do the best thing for her residents. She said there was no transition to this current requirement and no education provided to make sure there was an adequate number of trainers. Continuing, she received a list of trainers from HCQC which she contacted everyone on the list but none were available to teach this class because of the liability the instructor takes on by teaching the class. She asked if the language in the check box could be changed so there is not a shortage of trainers. Her corporate legal attorneys are advising the trainers that the language is not acceptable and very litigious. Medical, nursing and pharmacy schools are not held liable for the training they receive. Everyone at the meeting is here to protect the residents. Assisted living is taking care of a more acute population. She said if you want to go after the people that are poor trainers, investigate the report and cancel that trainer. To make it the trainers program and they are going to be liable is going to cause a shortage of trainers. She recommended that language be changed so accountability is maintained and the liability not be put on the trainers. Her organization says if she signs this, which opens up the company to the liability and the trainer is open to lawsuits if they check the box and sign it.

Maria Lingat-Collier said she appreciated the comparison of medication management with the various schools for medicine, nursing and pharmaceutical boards. She explained that HCQC is not that big and that they have a way of going back to locate where the problem began. There are several levels of accountability. She commented that the first level accountability is the caregiver. When the investigation is being done, they will have a face-to-face interview with the caregiver. The administrator is the second level of accountability. The third level is the course coordinator because they want to make sure what they have in their curriculum is being shared with the caregivers. The last level of accountability is the instructor. After the investigation/interview with the caregiver and the administrator(s), if they determine the problem lies in the lack of adequate the training, HCQC will notify the trainer.

A member said he sent this to his corporate attorneys and they recommended that he absolutely not sign it. The attorneys said it not only made him liable, but it made his company liable. This opens them up to law suits from the families as well. His organization says that if he signs this, he cannot work for his current employer. Where HCQC says it is just a way for them to monitor medication management licenses, it is much more than that. He said he was on the phone for four hours debating this with the corporate attorneys. It is a document that makes the company liable, and anyone else that is involved with the care of the client subject to massive lawsuits. He said until HCQC addresses this issue of how to monitoring medication management and protect, he is unsure what was going to happen.

Gina Stutchman recommended that may be the language in that check box be changed. With this current requirement, the state will be left with a major shortage of trainers. If HCQC has to fine everyone in the state for not having adequate training or verification, HCQC should be assigned the task of being medication management trainers. She asked would HCQC's legal counsel recommend that their state employee(s) check that box that they are liable for the people they train and sign it.

Maria Lingat Collier provided the updated curriculum trainer list.

Diana Roberts, who is a trainer, said that there are many trainers who are refusing to sign this. She said that she is of the opinion that she is a good trainer. Once she has trained someone and they go back to their facility, she feels that her responsibility ends there. Ultimately, the responsible person is the administrator. She recommended that the administrators should take the class as well.

Jeanne Bishop-Parise said because of the language in that box where the instructor takes on the liability for the instruction is where the problem lies. She proposed to accomplish what the HCQC would like, that the language in the check box be softened and written differently and maintains the accountability.

Paul Ward suggested that the Nevada Assisted Living Association would be happy to work with someone from HCQC to allow them to raise the standards but have the language written so it is not so litigious. The secondary problem is with the Commission on Postsecondary Education.

Gina Stutchman said she appreciated the updated list of medication management teachers. She reviewed it and she said she had already called most of them. She explained the problem is she only has two people that want to take the class and then the teachers do not want to teach it unless there are more students.

Shawn McGivney said the list doesn't note what teachers are CPE certified. The list is misleading to as some of these instructors only teach at their own facilities.

Robert Kidd said the Perry Foundation had a previous approval from HCQC because to teach medication management but because of the CNA program was not cost effective they stopped teaching the class. The Perry Foundation went through the application process and his frustration was that his application got kicked back as he needed to submit a new application since his previous application had lapsed. The Commission on Postsecondary Education issued a provisional license and cannot give any programs for 12 months. When he first applied for this, HCQC had told him that they would be fine because they had a previous approval. Their plan was to provide an option to all areas of the state so it would help with the shortage. They could provide an ongoing schedule so everyone. He said that it would be beneficial if this issue could be addressed quickly. He recommended that the language could be more specific and the ethical statement could be updated to match the technical bulletin.

MARGARET MCCONNELL MOVED THAT REPRESENTATIVES FROM ALAC PARTNER WITH DESIGNATED STAFF FROM HCQC TO BRING RECOMMENDATIONS BACK TO THE GROUP WITH POSSIBLE SOLUTIONS AS SOON AS POSSIBLE. SECONDED BY A MEMBER. MOTION PASSED UNANIMOUSLY.

Shawn McGivney commented that if they wait three months that would be too long and some facilities may be in jeopardy. He stated some sort of agreement from HCQC to address this issue is needed within a couple weeks.

Margaret McConnell stated that her recommendation did not say to wait three months and that a resolution was needed as soon as possible.

Home Based and Community Waiver Information.

Stephanie Allman of the Reno office said she was filling in for Anna Olsen-Figueroa and noted there were no updates to give today.

Items for discussion and possible recommendations as suggested by Nevada Assisted Living Association (NALA)-Diane Roberts, Gina Stutchman

- A. Review the requirement for Medication Tech trainers to sign that they are personally liable for the actions of their past students.
- B. Review of the list of approved training programs and a discussion regarding whether or not there is a sufficient number of approved training programs and a sufficient number of classes available in the north and south as well as the rural areas.
- C. The implementation and roll out of SB 324 (*Authorizes employees of certain facilities and organizations to check vital signs and provide related service*)
- D. A discussion regarding Health Care Quality and Compliance vision for the Assisted Living/Residential Facilities for Groups industry moving forward. Areas of concern for HCQC and possible regulatory solutions for those concerns.
- E. Discuss the balance between safety considerations versus choice and person centered care regarding Over the Counter (OTC) medications in Assisted Living and Residential Facilities for Groups and dangerous items in memory care.

Assisted Living Industry updates. Dan Allmet, Co-chair

- Successes deserving recognition.
- Public Comment

There were items to discuss under this item.

Discuss and make recommendations of topics for Administrator to take the State Board of Health

There was no discussion under this item.

Report on assisted living related programs at Perry Foundation.

Robert Kidd, President and CEO, Perry Foundation third collaboration called Bravo Zulu with the Nevada Department of Veteran Services. They have 25 people registered which is worth four CEUs. If you attend all ten modules, it fulfills the requirement for dementia.

Thank you to all those who came out for the Endeavor Awards, Congratulations to Vangie Molina for receiving the Administrator of the Year award.

Mr. Kidd stated that they have a conference at Lake Tahoe next month for assisted living which is scheduled for August 13-15, 2017. He commented that this is a great opportunity for everyone to sign up. The deadline is tomorrow July 19, 2017. The cost of the program is \$300 includes all food and beverage, satisfies two CEUs.

State of Nevada Veterans Services update:

Wendy Simons, State of Nevada Veterans Services, Wellness Division Deputy Director commented that there were 27 bills of legislation that were veteran centric that were brought before the legislature and 25 bills were approved. It is now a requirement to have two hours of CEUs for suicide prevention for doctors, nurses and other healthcare professionals in the community. In conjunction with the Bravo Zulus that they are doing with the Perry Foundation, an additional geriatric training with 129 participants was added which was broadcast by zoom technology.

Continuing, Wendy Simons, said that they had about 490 people participating the groundbreaking ceremony for the new veterans skilled nursing home. Veterans in Care update has gone to 68 facilities and honored 1100 veterans. There over 400 WWII veterans that the VA did not even know were still alive. The next outreach will be with the Meals on Wheels program to ensure that veterans get the benefits they are entitled to.

Public Comment (No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.)

Steve Gerleman that HCQC noted several pieces of legislation that passed the 2017 Legislature that the group may be interested in. He stated that regulations will be developed which are related to background checks, BELTCA licensing, inspections at ambulatory surgical centers trying to augment the shortage of nurses, certification for domestic violence, administrative sanctions, employment agencies, sprinkler requirements, rating systems for other facility types.

Shawn McGivney commented that SB 468 – Makes changes relating to overtime and the calculation of hours worked for certain domestic service employees (BDR 53-149) passed. This is an act relating to wages; authorizing a domestic service employee who resides in the household where he or she works and his or her employer to enter into a written agreement to exclude from the wages of the domestic service employee certain specified periods for meals, sleep and other free time; authorizing such an agreement to be used to establish the number of hours worked by the domestic service employee during a pay period; revising provisions relating to the payment of certain compensation for overtime to a domestic service employee who resides in the household where he or she works; and providing other matters properly relating thereto.

Margaret McConnell commented that AB 165-Provides for the licensure of health services executives (BDR 54-566) passed. Nevada is one of the first states that added a new license category. This is an act relating to long-term care; providing for the licensure of certain persons as health services executives; authorizing the holder of such a license to perform the functions of an administrator of a residential facility for groups and a nursing facility administrator; and providing other matters properly relating thereto. The health services executive relates to current nursing homes administrators, hold a current in good standing to also become licensed. This would allow license portability for people to move to Nevada without additional requirements. It is the highest license anyone can have in our country and not be required to have a dual license. Nevada is working on this with the national organizational. She hoped people that are dual eligible will apply.

Linn Thome noted members who volunteered to work with NALA and HCQC staff on the medication management issue include:

Diane Roberts
Shawn McGivney
Jeanne Bishop Parise
Darryl Fisher

Gina Stutchman, NALA, noted several bills that NALA worked on during the 2017 Legislative Session:

- AB46 - Revised provisions governing services provided to persons with mental illness and other disabilities passed.
- AB249 – Requires the State Plan for Medicaid and all health insurance plans to provide certain benefits relating to contraception. passed
- SB27-Revises the definition of the term “mental illness” for purposes of provisions relating to criminal procedure, mental health and intellectual disabilities. passed
- SB71 Revises provisions relating to medical facilities, facilities for the dependent and certain other facilities. (BDR 40-183) passed
- SB 97 Expands the authority of the Office of the State Long-Term Care Ombudsman. (BDR 38-371) did not pass
- SB324 Authorizes employees of certain facilities and organizations to check vital signs and provide related services. (BDR 40-372) passed
- SB468 Makes changes relating to overtime and the calculation of hours worked for certain domestic service employees. (BDR 53-149) passed
- SB477 - Enacts provisions relating to residential establishments for persons with disabilities. (BDR 22-146) passed. May do home level sprinkler systems and still be in support.

Darryl Fisher thanked Codey Phinney and Paul Shubert and their teams for help during the 2017 Legislature to clarify legislation which resulted in some meaningful passage of legislation that will help provide better care to the residents.

Adjournment.

There being no further business before the ALAC, the meeting was adjourned at approximately 11:50 a.m.