

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

Date: January 25, 2018 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

NOTE: SOME BOARD MEMBERS MAY ATTEND IN LAS VEGAS AGENDA ITEMS MAY BE
TAKEN OUT OF ORDER, COMBINED FOR CONSIDERATION, AND/OR REMOVED FROM
THE AGENDA AT THE CHAIRPERSON'S DISCRETION

Roll call. *Co-chair*

Las Vegas ALAC Members:

Linn Thomé, Merrill Gardens, Co-Chair
Simona Cocea, Desert Springs Senior Living /Jeanne Bishop Parise proxy
Wendy Knorr, Atria Senior Living
Julie Liebo, Pure Care Living
Julie Peterson, Vintage Park
Shawn McGivney, Tender Loving Care Senior Residence
Dora Valentin Tompkins, Angel Care Residential Home

Carson City ALAC Members:

Paul Bailey, Bailey's Group Home
Chris Mirando, RFA, Majestic Management of Pahrump, Inc.
Vangie Molino, Vista Adult Care
Diana Roberts, Washoe County
Patrick Ward, Carson Valley Senior Living

Excused ALAC Members:

Simona Cocea, Desert Springs Senior Living
Jeremy J. Thompson, Morris Polich and Purdy, LLP
Margaret McConnell, BELTCA
Gina Stutchman, Arbors Memory Care

Ex Officio Member:

Robert Kidd, CEO, Perry Foundation

HCQC Staff:

Leah Arvison, HCQC (Las Vegas)
Ellen Clark, HCQC (Las Vegas)
Pat Elkins, HCQC (Las Vegas)
Leticia Metherell, HCQC (Carson City)
Don Sampson, HCQC (Las Vegas)
Paul Shubert, Bureau Chief, HCQC (Carson City)
Linda Anderson, Chief Deputy Attorney General (teleconference)

Others in attendance:

Robert Corbin, Nevada Hand
Lisa Marie Campbell, Nevada Assisted Living
Kirsten Coulombe, Social Services Chief, DHCFP
Connie Johnson, Nevada Department of Veterans Services (teleconference)
Anna Olsen-Figueroa, ADSD, Community Based Care

Daisy Lopez, Eagle Valley Care Center
Linda Simon, Vintage Park
Sandi TenBoer, Nevada Department of Veterans Services

Approval of minutes for the meeting of October 17, 2017. *Lynn Thome, Co-Chair*

THERE WAS A MOTION AND A SECOND FOR THE APPROVAL OF THE MEETING MINUTES OCTOBER 17, 2017 WITH THE CORRECTION OF WHERE IT WAS NOTED THERE WAS A DISCUSSION, REPLACED WITH THE PRESENTER WAS ABSENT.

Nomination and possible election of new co-chair for the Assisted Living Advisory Council.

THERE WAS A MOTION TO NOMINATE GINA STUTCHMAN AS NORTHERN CO-CHAIR. THERE WAS A SECOND TO THE MOTION. THE MOTION PASSED UNANIMOUSLY TO ELECT GINA STUTCHMAN AS CO-CHAIR.

Review of proposed regulations to NAC 449 –

Leticia Metherell, HCQC explained that the bureau is still taking input regarding the proposed regulations and there is a public workshop scheduled. She hoped to clarify concerns that individuals have. She then read the language from SB 71, SB324, SB388, and SB482 that the Bureau directly must address.

Leticia Metherell said that if a facility is performing the WAV test on its residents, regardless if the device has been approved, a CLIA certification is required. If a patient can't perform the test themselves, then it is defined as the caregiver doing it so a CLIA certification is required.

Dr. McGivney asked if this requires medical license. Leticia Metherell explained if the person cannot perform the test themselves, that goes beyond assisting a patient, then CLIA certification is required. Continuing, she commented that you do not have to become a state licensed laboratory to do these tests. The only thing required now is to get a CLIA certification which is \$150 every two years which is paid to the Federal government. The director has no requirements; there are no educational requirements. The application comes to HCQC, then CMS receives it and they will bill you and issue your CLIA certificate.

Dr. McGivney requested a copy of the letter from CMS explaining the new rules be distributed to the ALAC members.

Linda Anderson, Chief Deputy Attorney General said they won't resolve what CLIA's opinion is versus HCQC's opinion is. The waiver is not a waiver of state licensure; it is a waiver of CLIA requirements. Those issues Dr. McGivney is concerned about should be directed to CLIA. CMS says if the person is unable to perform the test, you need to go through the CLIA process.

A member commented that she has two diabetic patients who are doing their own glucose tests. She commented one patient is having vision challenges and will one day soon have to have someone do the test for her. Leticia Metherell said if you have to do it for her, then you would need the CLIA license.

Leticia Metherell said that regarding SB324, Section 10 addresses the training requirements for the vital signs. Section 11 talks about allowing the caregiver to do the glucose in accordance to CLIA. Section 5 makes it clear that assistance is okay. Section 12 talks about the auto injection device.

Leticia Metherell said the regulation and the law does not dictate who the trainer has to be. She commented that the trainer should be competent.

Senate Bill 482 – As enrolled, AN ACT relating to health care; requiring certain medical facilities and facilities for the dependent to post certain information near each public entrance to the facility and on any Internet website maintained by the facility; requiring the State Board of Health to establish a system for rating certain health care facilities based on compliance with requirements concerning staffing; revising requirements concerning money received by the Division of Public and Behavioral Health of the Department of Health and Human Services from licensing certain health care facilities; establishing requirements concerning the membership of the staffing committee of certain hospitals; requiring that written policies concerning refusal of or objection to work assignments and documented staffing plans established by the staffing committee of certain hospitals be signed by each member of the staffing committee; and providing other matters properly relating thereto.

Leticia Metherell said the bill talks about star rating which is provided by the CMS, in this case this would not apply to assisted living facilities. When looking at the bill, the star rating referred to from NRS 449.241 and 449.2428, a health care facility for that section is not for assisted living facilities.

Senate Bill 71 – As enrolled, AN ACT relating to health care; making certain provisions relating to the licensing and regulation of a medical facility applicable to a program of hospice care; revising the definition of the term “psychiatric hospital”; requiring persons who operate or work for psychiatric residential treatment facilities and certain psychiatric hospitals to undergo a criminal background check; revising certain administrative penalties; authorizing the Division of Public and Behavioral Health of the Department of Health and Human Services to take certain actions concerning a facility required by regulation of the State Board of Health to be licensed; amending the procedure by which the Division may impose a penalty or seek an injunction against certain persons; and providing other matters properly relating thereto.

Section 14.3 of this bill requires the Board to adopt regulations establishing an administrative penalty to be imposed when a facility commits a violation that causes harm or a risk of harm to more than one person. Existing law prescribes the procedure by which the Division may impose a civil penalty or seek an injunction against a person operating a medical facility or a facility for the dependent without a license and the amount of a civil penalty that may be imposed against such a person. (NRS 449.210, 449.220) Existing law also prescribes a different procedure by which the Division may impose a civil penalty or seek an injunction against a person operating a facility for refractive surgery without a license and the amount of a civil penalty that may be imposed against such a person. (NRS 449.24897)

Paul Shubert said that although the amount for a single penalty is raised from \$1,000 to \$5,000, the Bureau normally does not apply daily fines. When a daily fine is applied, it is generally because the deficiency is so egregious that harm will continue. He noted that less than one percent of the facilities receive this type of a fine. He stated that after review of the law, this must be outlined in the regulations.

Continuing, Paul Shubert said that Page 20, Senate Bill 71, Section 14.3, item 5, states the Board shall adopt regulations to establish an administrative penalty to be imposed if there is a violation by a medical facility, facility for the dependent, or of a facility which is required by the regulations adopted by the Board pursuant to NRS 449.030 to be licensed causes harm or the risk of harm to more than one person.

Paul Shubert said that HCQC does not have the authority to stratify the fines. Based on reimbursement on residential facilities for groups there are all levels of facilities, there are eight-bed hospitals versus 600-bed hospitals. Fines are applied based on the situation and violation and how it affected the clients and patients of the facility.

Vangie Molina said the assisted living facilities are dealing with the issue of side rails. They have the doctor's order and permission from the family to use them. She asked if they have those in place, are they allowed to use the half rail. She noted that Medicaid said they cannot use them.

Steve Gerleman said that in the skilled nursing facility, it should be documented and measures to compensate when the rails should not be used.

Shawn McGivney said that an appeals process or a review board that would consider certain circumstances is being worked on with HCQC. According to the state-by-state survey, Nevada's regulations have made our facilities the best in the nation.

Anna Olsen-Figueroa, Social Services stated in regards to bed rails, there are many bed rails can be placed. They are looking at it is if they are doing that for safety or restraint. It has been clarified that if the recipient is not able to manage the bed rails, it is considered a restraint. Something to be considered, are people being assigned to group homes appropriately.

Report on assisted living related programs at Perry Foundation. *Robert Kidd, President and CEO, Perry Foundation*

Robert Kidd noted that the next events have been scheduled at April 11 at Napa Sonoma and April 18 in Las Vegas. It will be CEU event and Paul Shubert has agreed to have someone from HCQC for this ethics presentation.

Continuing his presentation, Robert Kidd said that if you go on the Perry Foundation The training platform partnership access that is on the Perry Foundation website. He said if you click on the online training on the web site, you will see that they have broken out specific training which is basically a screen shot of what the training available. In addition, the annual summit will be held the beginning of August 2018. The Postsecondary Education Program would not allow us to offer any other medication management education until a year waiting period had passed which comes up in May 2018. The medication management program will then be offered in June 2018.

Home Based and Community Waiver Information.

Anna Olsen-Figueroa, Social Services Manager, Home and Community Based Waiver Program continue to process applications for individuals for frail and elderly. They have over 1500 individuals on this waiver. There is a wait list for that program, for individuals who are ages 64 and up who need in home services. It is not a quick process for an assessment has to be completed. The applicant must be able to qualify for Medicaid benefits and it may take up to 90 days. There are more inquiries in the south than the north and which may take up to six months. She explained that many times the delay is caused because there is not enough spots open to accept a new client.

Ana Olsen-Figueroa explained a person has to be in a contracted Medicaid provider. To get the final approval you need to be admitted to the group home then the document has to be submitted to Medicaid which will take 45 days to process.

Jeanne Bishop Parise said she is past president of Nevada Health Care Committee and noted that this delay has been an issue since the 1980s. Other states approve quicker and it seems that this needs to be resolved. She suggested that may be there could be a payment system where you would be paid 90 percent so it was not a cash flow issue.

Emergency Preparedness and how it applies to assisted living facilities - *Andrea Esp, MPH, CPH, CHES, KG7VXU, Div. of Epidemiology & Public Health Preparedness, Washoe Co. Health Dist.*

There was no one present to make this presentation, therefore there was no discussion under this item.

Update from the Nevada Department of Veterans Services

Sandi Ten Boer said that the Nevada Department of Veterans Services:

- Recently had ceremonies for VIC where veterans are recognized, Bravo Zulu
- Provides outreach to homebound through Meals on Wheels program to find veterans w/benefits.
- The new Northern Nevada Veterans Home is under the Nevada Department of Veterans Services.

New patients will be taken beginning January 2019. Handouts were provided and are exhibits to these minutes.

Nevada Assisted Living Association (NALA) items of interest and updates.

Jeanne Bishop Parise said that they represent all group providers and are involved in public workshops. They represent over 7000 beds and represent small and large group providers. The mission statement is at their website at www.assistedlivingnv.org.

Shawn McGivney suggested that the by-laws be enforced that if an advisory council member had two or more unexcused absences, they would forfeit their place on the advisory council.

Discussion regarding appeal process for surveys

Jeanne Bishop Parise asked what would be the best way to appeal a finding for a citation. She had one tag that was removed after it was disputed and resolved through the IDR process which Paul Shubert conducted at that time. It was her opinion there should be some kind of appeal process for citations.

Leticia Metherell responded that there is an appeal process for the monetary penalties. The outline for the appeal process is detailed in the sanction letter you receive. Every sanction can be appealed and there is also a prehearing process to meet with HCQC and many times it is resolved.

Paul Shubert said the independent dispute resolution for residential facilities for groups which equates to 350 facilities would be a substantial cost to that process. The reason why the Bureau went away from it relates to the level of funding. In the administrative review process, you can write a letter to the Bureau Chief for the review of that citation. That policy can be provided to everyone in writing. If you still vote to have an IDR process, then a cost analysis would have to be done to provide that service.

Paul Shubert explained that the Bureau is not a general fund agency. As a fee based agency, the fees are generated that sustain the workloads that they are accomplishing.

Assisted Living Issues

Co-Chair Linn Thomé stated issues coming to her attention included:

- Outside home health agencies coming in. The home health aids are coming in without proper identification.
- There are so few Medication Management providers in Southern Nevada that the fees are rising dramatically.

Shawn McGivney said the educational division has blocked the Perry Foundation to provide those services. Paul Shubert has been copied on the letter that was drafted requesting a waiver to the one year waiting period before they can offer the class. They are continuing to build the relationship with HCQC.

Public Comment There was no public comment under this item.

Adjournment

The meeting was adjourned at approximately 11:45 a.m.