DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
ASSISTED LIVING ADVISORY COUNCIL MEETING
Summary Meeting Minutes
Date: October 18, 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

1.Roll call. *Co-chair*

Southern ALAC Members:
Julie Peterson, Vintage Park
Dora Valentin Tompkins, Angel Care Residential Home
Nicole Graham, Silver Sky at Deer Springs

Northern ALAC Members:
Wendy Knorr, Atria Senior Living
Margaret McConnell, BELTCA, Acting Chair
Vangie Molino, Vista Adult Care
Diane Roberts, Washoe County
Patrick Ward, Carson Valley Senior Living
Jeanne Bishop Parise, Park Place Assisted Living

Ex Officio Member:
Robert Kidd, CEO, Perry Foundation

Teleconference:
Phil Glessner
Shawn McGivney, Tender Loving Care Senior Residence
Patrick Ward
Paul Bailey, Baileys Group Home
Gina Stutchman

Excused:
Linn Thome, Merrill Gardens, Co-Chair – excused
Simona Cocea, Desert Springs Senior Living
Chris Mirando, RFA, Majestic Management of Pahrump, Inc

HCQC Staff:
Paul Shubert, Bureau Chief, HCQC
Leticia Metherell, RN, CPM, Health Program Manager III, HCQC

Nathan Orme, HCQC
Nenita Wasserman, HCQC

Attendees North:
Karrie Barrett
Wendy Knorr
Leo Molino
Molly Ratfield
Greg Rempp
Scott Reddy, Vista Adult Care
Minmin Sony
Jennifer Williams-Woods, State Long-Term Care Ombudsman, ADSD
Nucharee Yokdang

Attendees in South
Cindy Young, ADSD
Rebecca Testa, ADSD

Approval of minutes for the meeting of July 19, 2018. *Margaret McConnell, Acting Co-Chair*

Shawn McGivney commented that he would like to have more detailed minutes. He commented the minutes submitted are paraphrased and the discussions are important. He requested an alternate method for record taking and would like a draft within 30 days of the meeting.

Margaret McConnell commented that HCQC does the minute taking as a courtesy but the group could appoint someone else to take the minutes.

Jennifer Williams-Woods stated that her title is incorrect and also noted the time adjourned was approximately 11:45 a.m.

Gina Stutchman commented that she no longer works with Arbors Memory Care and requested that be removed from her name.

Margaret McConnell suggested for the January 17, 2019 meeting that there be an agenda item for approval of a member(s) to be assigned as official recorder to add detail to the meeting minutes of items that members are of the opinion are important to add to the minutes as requested by Shawn McGivney.

> THERE WAS A MOTION TO APPROVE THE MEETING MINUTES WITH CORRECTIONS. DORA VALENTIN TOMPKINS SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

Make recommendations for renewal of two-year terms as member of ALAC. Term(s) expires

- Linn Thomé, Merrill Gardens
- Diane Roberts

Gina Stutchman moved to table her motion to approve Linn Thome and Diane Roberts. She moved to withdraw her motion.

GINA STUTCHMAN RECOMMENDED THAT DIANE ROBERT'S TERM BE RENEWED ANOTHER TWO YEARS. PATRICK WARD SECONDED THE MOTION. MOTION PASSED UNANIMOUSLY.

The renewal for Linn Thome, Merrill Gardens was tabled until the January 17, 2019 meeting since no had spoken with her to confirm if she was willing to renew her term.

Health Care Quality and Compliance update: ***Steve Gerleman, Pat Elkins, Paul Shubert***
Proposed Regulation(s) Review – *Leticia Metherell*

Staff from HCQC introduced themselves.

Leticia Metherell said she would be reviewing only the relevant portions to the assisted living facilities. The new draft regulations were emailed to everyone. She noted that if you have further comments, the public hearing is scheduled for December 7, 2018.

Section 12 does not currently apply to this group.

Section 13 is regarding the glucose monitoring. There is one change that Leticia Metherell noted on Page 9, number 2. Do not want to impose any more stringent rules so if the person cannot perform the test themselves and one of staff has to do it, then a CLIA certificate is required.

This portion of the meeting was inaudible due to someone putting their cell phone on mute and or telephone on hold.

A request was made to allow pharmacists to provide the insulin auto-injection and glucometer training to care givers.

Leticia Metherell said that request would be included in the packet that goes before the Board of Health.

This portion of the meeting is inaudible due to someone putting their phone on hold.

Section 14, 15, 16 does not apply to assisted living.

Section 17 – The bureau based on feedback from facilities, the bureau did make a change. What it does mean is the facility may use all or a portion of the fine to correct the issues that were cited for a first-time violation. If the full amount of the sanction is not used the facility would be required to pay the difference. The bureau first needs the plan of correction and the facility would have to adhere to plan of correction.

Shawn McGivney said thank you Leticia and Paul of HCQC for bringing back some fairness to the nurses and facilities.

Continuing, Leticia Metherell stated that Section 22 allows nurses at residential care facilities to give medication.

Section 32 – It reduces the fines originally imposed. Unidentified person asked if this represents all facilities medical and nonmedical. Leticia Metherell said that was correct.

It was suggested ALAC go before the Board of Health and ask that a factor be provided with the rate of fee commensurate for that particular facility group.

Shawn McGivney said that was improvement but would like to keep it on the agenda. He expressed his concern that penalties are clearly not equitable to gross income and that it was his opinion that assisted living facilities are required to pay more fees than anyone else which is clearly an inequity.

Margaret McConnell noted that as a group or individual you can go before the Board of Health and make your recommendations. She added no action items can be made at this meeting if it is not on the agenda.

Leticia Metherell noted the next Board of Health meeting December 7, 2018.

Margaret McConnell said that Leticia Metherell noted she will put that in her prepared packet before the Board of Health. ALAC Members can also contribute their own comments as well.

Shawn McGivney asked if Leticia Metherell or Paul Shubert could join us to make that part of the motion so it is more balanced and fair based on gross revenue.

Margaret McConnell commented that no motions could be made on the agenda unless it was already on the agenda.

Shawn McGivney suggested that HCQC and ALAC could agree to work together and both entities submit their own comments based on Margaret McConnell's comments to work together. He asked if HCQC would make a joint comment with ALAC that assisted living facilities are paying a larger fee than anyone else.

Margaret McConnell commented according to Roberts Rules of Order, no action items can be made at this meeting unless it is already on the agenda.

Paul Shubert said that the bureau would be willing to discuss this further but to keep within the Nevada Open Meeting Law requirements, another meeting would have to be scheduled. At this point, HCQC would make comments that would go before the Board of Health; individuals and group members can make their own comments before the Board of Health as well. He noted he is not going to support to make a different value for each different facility types. There are 35 different types of facilities affected by this regulation. The statutory requirement has to be met as well. HCQC cannot modify what the Legislature has given the state and have to remain within that as well.

Margaret McConnell noted that if it does not happen this time, there is a possibility of working with the licensing agency in the future.

The Acting Chair asked for questions or comments.

Someone asked if an explanation of how to get a CLIA waiver would be explained.

Leticia Metherell said when regulations become effective, an email will be sent out with step-by-step instructions on how to get a CLIA license. She stated the regulations must be approved by the Board of Health and then go before the Legislative Commission. The regulations do not become effective until the Legislative Commission has the final approval. There is not a current schedule of

when they meet.

Jeanne Bishop Parise stated that it took her three to four weeks to receive the CLIA certificate.

Leticia Metherell said that the CLIA certificate is issued by the federal government. The CLIA costs $150 for two years.

Margaret McConnell commented everyone has the opportunity to attend the Board of Health meeting. She thanked everyone from the Bureau and the opportunity to collaborate.

Steve Gerleman said the exemption is only for four category types which does not include HIRCs.

Unidentified person asked in renewing an RFG license, are they required to put a CLIA number. She said she would say no because these regulations are not in effect yet. She asked for some examples of what is when a person poses harm to himself/herself or would be of harm to others. As she attends meetings with other individuals, they quote their surveyors saying things that are different. She wanted to know specific examples of what "risk to harm" is.

Steve Gerleman responded that anything that violates a resident's care such as infection at an injection site, anything that violates the quality of life, abuse, misappropriation of money which are the main categories that fall into that category. If you are doing your job and what you are supposed to, for the most part that is the major categories the facility should be okay. There are 20 to 30 items under each category.

Education and Informational updates related to Health Facilities- *Nathan Orme, HCQC*

Nathan Orme stated he sent out the Board of Health meeting announcement on the listserv which included the new proposed regulations. He has been working on the health facilities home page, updating all the fact sheets for all facility types, putting out more social media pages on Facebook and Twitter, what they are about and services that are provide. FindMyfacilitylicense.nv.gov

Shawn McGivney stated that in Nathan's efforts to educate the public, there are the completely unlicensed, the people that are just taking people in, the certificate only crowd and then there is the completely licensed who have an ombudsman. He suggested that for Nathan, it might be helpful if he go into more detail on a blog post.

Margaret McConnell said it is important to protect the public and the residents are getting the best quality service as possible.

Updates from Health Care Quality and Compliance

Steve Gerleman said he did not have any updates.

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

Robert Kidd stated that he had no updates. He did comment that they are moving to a new location in Henderson.

A member asked if the Perry Foundation would be providing medication technician training. He said once he receives an approval from HCQC, then he would be able to conduct med tech training which

may be in a couple of months.

Shawn McGivney asked if HCQC can they facilitate the Perry Foundation getting the letter needed to get the license for med tech training.

Robert Kidd explained to Shawn McGivney that the letter actually comes from the Commission on Post Secondary Education.

Margaret McConnell commented that once the Commission on Post Secondary Education provides the letter, it will be a nice resource for health facilities when that is approved.

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

Margaret McConnell asked if there was anything else that ALAC would like to address that would be brought to the State Board of Health.

Assisted Living Industry updates. *Lisa Campbell, NALA*

- Discussion on current trends.
- Regulatory Issues/Concerns from Provider Perspective read into the record the letter submitted to Paul Shubert from NALA, AHONN and ALAC Members regarding the Technical Bulletin and Blog Update of 10/8/2018 Alzheimers and Related Dementia requiring Endorsement and the CBLA Hospital Discharge Technical Bulletin.

Jeanne Bishop Parise read into the record a letter submitted from NALA which has been copied and pasted below:

To: Paul Shubert, Chief of the Bureau of Health Care Quality and Compliance

From: NALA, AHONN and ALAC members

Re: Technical Bulletin and Blog Update 10/8/2018 Alzheimer's and Related Dementia requiring Endorsement and the CBLA Hospital Discharge Technical Bulletin.

For many years, providers have been caring for Nevadans with Alzheimer's and Related Dementia throughout licensed facilities and group homes with all provider types such as PCA, adult day care, RFFG, *SNFs,* and Hospitals along the continuum of care safely and cost effectively. The non-medical care always has been under direction of a doctor who approved the level of care under the standard determination form. If a patient had complex behaviors or wandering and required an ALZ dementia endorsed secure unit they would recommend that. However, if the person had merely an early label of Dementia or Alzheimer's and did not exhibit those more worsening behaviors then they were comfortable allowing care in a licensed facility with 24 hour general protective supervision.

The Bureau has now implemented a new interpretation that has created a huge problem.

The Licensed Industry of RFFG asks "What changed?" in the practice for Residential Facilities For Groups to suddenly, without notice, require that all Alzheimer's and Related Dementia residents by diagnoses be cared for in an Alzheimer's Endorsed Facility or Unit that is

LOCKED?

In the past, operators were instructed by past bureau interpretations that the Alzheimer's endorsement was required for patients who exhibited wandering behavior or have other behaviors that required a locked unit with 1-6 staffing ratios. The majority of the some *6,000* plus Nevadans served by RFFG and indeed the hundreds of thousands of Nevadans in this diagnosis group DO NOT REQUIRE placement in a LOCKED UNIT. How can the Bureau in advocating for person-centered care and advocating for human rights require Nevadans to be locked up? Its recent actions are actually adverse to person-centered care.

Furthermore, the Bureau failed to use the appropriate forum. We could find nowhere in NRS/NAC that it is referencing that requires mandatory placement of anyone with a dementia label REGARDLESS OF THEIR FUNCTIONAL AND CARE NEEDS in a locked facility. Like-wise we believe such a change would violate ADA, Olmstead and other civil rights rulings

The facility is required to apply for the appropriate endorsement. When the Bureau changed (without clarifying notice) the past definition and standard of enforcement of who needed to be in a Alzheimer's Endorsed facility to include anyone with merely a label of Dementia and no functional behaviors of wandering or acting out to suddenly require ALZ requiring locked care for all without consulting advisory groups, Aging and Disability Social Workers, provider organizations, and senior advocate groups such as Alzheimer's Association or *AARP*, the following occurred:

Three or more facilities surveyed in the North alone since September 28th are awaiting Statement of Deficiencies with likely citation for following the previous practice standard for allowing patients with merely a label of dementia in their PMH who did not exhibit wandering or specific behaviors that required care in a locked unit. Providers caring for thousands with this diagnosis are potentially looking at transfers out to locked units or the hospital while waiting HCQC approved safe care which are already 80-90% full with past practice of only incarcerating those certified by physician as requiring such to keep them safe and then financially qualified for that unit. Resident/families impacted are up in arms and ready to go to the media. Multiply this by the thousands that would be up in arms when issued a 30-day notice that locked unit is required to meet the Bureau's attached Technical bulletins, where a facility does not have a locked unit. An abomination of human rights – residents have the right to self- neglect! (What country are we living in where the state can require a certain diagnosis group to be in a facility with a locked unit?)

What problem is the Bureau trying to solve so licensed industry representatives can help you solve it? The industry stands ready to come up with solutions to meet the intent of the law to provide appropriate, safe, person-centered care with the appropriate endorsement to the license of every RFFG throughout Nevada.

We are concerned for the sudden change in over regulation for licensed care when the HCQC has recently been charged with supervising Unlicensed, State certified, care as well and wonder if there might be a conflict of interest in enforcing two standards of care for similar care that requires combinations of protective supervision, medication management and caregiving. Clearly the sudden increase in enforcement in the standards for licensed care while continued laxities and negative outcomes occur in unlicensed care can't be a coincidence.

Further clarification is needed for CBLA in the Hospital Discharge Bulletin in defining

supervision, medication management where as needed meds are ordered, and individual services that occur without supervision. We believe that medication management and (individualized services) including individual caregiving services REQUIRE SUPERVISION and attempting to separate supervision and medication management or "individualized services" is misleading and potentially unsafe for the residents who need that supervision.

If NAC 449.2754 has suddenly become a new regulatory enforcement issue for HCQC we would ask again what changed to make it such. We would be willing to work with HCQC to resolve the problems for Nevadans that this has created We are the experts in delivering excellent, patient-centered care at the RFFG level with all different diagnoses and functional levels.

The Assisted Living Advisory Council meets tomorrow at 10 am. We look forward to all participants working with the Bureau staff to resolve this very important practice issue and subsequent problems created in blind rollout of a new interpretation as we continue to serve some of Nevada's most frail individuals.

Endorsement Requirement:
NAC 449.2754 Residential facility which provides care to persons with Alzheimer's disease:

Application for endorsement; general requirements. (NRS 449.0302)
1. *A* residential facility which offers or provides care for a resident with Alzheimer's disease or related dementia must obtain an endorsement on its license authorizing it to operate as a residential facility which provides care to persons with Alzheimer's disease. The Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in NAC 449.191or 449.1915.

2. If a residential facility is authorized to operate as a residential facility which provides care to persons with Alzheimer's disease and as another type of facility, the entire facility must comply with the requirements of this section or the residents who suffer from Alzheimer's disease or other related dementia must be located in a separate portion of the facility that complies with the provisions of this section.
3. *A* residential facility which provides care to persons with Alzheimer's disease may admit or retain a resident who requires confinement in locked quarters.
4. *A* residential facility which provides care to persons with Alzheimer's disease must be administered by a person who: (a) Has not less than 3 years of experience in caring for residents with Alzheimer's disease or related dementia in a licensed.

We look forward to tomorrow's meeting.

Sincerely,

Darryl Fisher and Jeanne Bishop-Parise

On behalf of NALA, AHONN leaders, ALAC members and RFFG providers

END OF LETTER

Jeanne Bishop Parise stated the change of interpretation has caused a problem to the assisted living facilities. Maybe there should be two levels of endorsements and others Alzheimer units that have a lock and are secured. She said that they look forward to working with HCQC on this.

Paul Shubert asked Leticia Metherell to give an explanation for the impetus of the Technical Bulletin.

Leticia Metherell commented that when residents go out to a facility like an Alzheimer's endorsed facility and might start out with a resident with an early Alzheimer's diagnosis but does not get better, during that transitional phase there are people who have escaped and have issues and that is something that is encountered frequently. This is not always reported to HCQC so HCQC is unaware of the scale. There is a person at one facility with Alzheimer's or dementia and shortly after escaped. These are the kinds of issues that HCQC is looking at.

Jennifer Williams-Woods said that she was actually aware of a situation where someone was placed and this could be the same instance. The person made three attempts to walk away from an Alzheimer's endorsed facility and was successful. She said she was concerned and she appreciated the letter and information that NALA has presented. This is the same concerns that her office has as advocates for people. She said she is just as frustrated as providers, this is locking up residents who do not want to be locked up. This totally goes against resident's rights without concrete information statistics to show how many individuals have escaped.

Leticia Metherell commented that if you read the regulations it talks about a locked unit or you can have the whole facility. It does not say patients have to be locked up in their room. It means that there is an alarm going off. The alarm on the exit doors, if they leave, the alarm can be heard.

Margaret McConnell said that 80 percent of residents have some type of cognitive issues. It seems like an invasion of people's rights. Doctors may give a certain instruction but are not aware of the result that it would put on the patient. If a word is attached to their diagnosis that they have to automatically be put in another level of care.

Shawn McGivney said he could shed some light on this topic since he is a doctor. He said that the doctor's interpretation is needed on the standard determination form. If the doctor, like himself, can indicate if a locked unit is necessary. A doctor's interpretation as opposed to an inspector of HCQC interpretation would seem to take precedence. If the doctor if of the opinion that the patient needs it, the doctor will indicate that. In a related issue, here is a question to HCQC – are these complaints about licensed care or certified care. Do hospital discharge planners have full insight and judgement between the differences of licensed and certified care. This brings us to the second part of the letter that Jeanne Bishop Parise read into the record clarification of the hospital discharge bulletin. Did they confuse medication management and individual care which may be a related issue of unlicensed care.

Leticia Metherell said going back to the original concern, she said that patients with dementia and Alzheimer's do not get better, they get worse. If a person is at a certain level and then it progresses to the level where harm can occur; then that is too late. At that point it is to late, this needs to be balanced. If there were alarms on the door, and a person can wander around, this group would consider this to be imprisonment.

Unidentified, she said she has five cottages since 1997 which has a lot of dementia residents. She has a resident that bike rides with his friends, has breakfast, then his friends take him out and they are all very athletic which gives him dignity. The capital expense of alarming one building is $40,000 to $50,000. She commented there is not a perfect system and there is always benefits and burdens. She

asked if there is some kind of waiver for them to sign and leave it to the administrator to decide.

Gina Stutchman commented an alarm on a door is not going to cut it. If you want to regulate Alzheimer's patients you will have to move to another planet. If you take people and put them into a locked environment you will have to medicate them and that is not okay.

Margaret McConnell said perhaps ALAC and NALA can meet with HCQC.

Shawn McGivney asked for the list of facilities who have these complaints.

Leticia Metherell explained she was just giving general comments and a general overview. This is also an opportunity for your input.

Paul Shubert said that internally HCQC has struggled with this. HCQC has an obligation as a regulatory agency to enforce regulations. All of these factors are coming into play. No better example of regulatory confusion than when you have different levels of cognizant loss of individuals. They are all human and behave differently one day to the next. We have an obligation to protect residents. The regulations were reviewed and if you have someone that has been diagnosed (with dementia) where the person left the facility and was in harm's way, HCQC recognized a need to at least to enforce the law. Not to create something new. What can we do to ensure that these individuals are safe. If the physician in the scenario said this is an appropriate placement, that is fine and also recognize, you have to move this person if it is not. There are options. You have the option to reassess a resident. It should not be the regulatory agency that says it is a safe environment or the facility that makes the decision, the physician can make the determination. If a facility doesn't want the Alzheimer's endorsement, maybe it is not cost effective for them. What is the safe environment for the resident? If that facility can put the notification systems on the doors and add staff, maybe that is the best way to go. He stated that hoped that everyone can have an open mind and try to work through this. There is no right answer for every situation. Each case must be looked at, the economics for the facility and, economics for the residents as well. The facilities with the Alzheimer's endorsement is going to charge more for it's services. He said the regulation did not change.

Shawn McGivney there is the NAC and interpretive guidelines. Standard determination by the doctor after the NRS then it is up to the doctor to say if is needed. The standard determination of the doctor says that it is not needed, I don't think that the surveyor can say it is needed.

Paul Shubert said the resident may have been in the facility for the past ten years and his condition has changed.

Gina Stutchman asked if everyone who has an Alzheimer's dementia diagnosis has to be in a locked facility.

Paul Shubert said absolutely not saying that everyone who has an Alzheimer's dementia diagnosis has to be in a locked facility. He is not only not saying that, he was not saying the regulations stated that. The Alzheimer's regulations says the person with the diagnosis is somebody that needs to be looked at and something that the physician needs to look at. They are diagnosed because there was some behavior associated with it. They need to be assessed if they are in an appropriate setting for their behaviors.

Margaret McConnell said let's be collegial and solve the problem. She asked if the facilities should discharge all their patients or move them somewhere.

Gina Stutchman asked Paul Shubert to look at the inspector's letter to Molly Ratfield.

Paul Shubert said he would be look at the letter. If the resident has the diagnosis, it would be looked at if this is a current diagnosis.

Margaret McConnell suggested that in good sense, there needs to be a small group together to pursue this. It looks like that there appears to be some confusion.

This portion of the meeting was in audible as someone did not mute their cell phone so their conversation overrode the rest of the people trying to talk.

Margaret McConnell said problem solving would be that a meeting with HCQC, clear communication, some suggested ideas on how to handle this and having physicians involved. She asked someone on behalf of HCQC put the meeting together.

Shawn McGivney said ALAC would also like a formal written response to the letter that was read into the record from HCQC.

Margaret McConnell said the operators of Nevada are lucky that there are members of the state that are willing to meet with us, take our input and work together to solve this.

A representative from AHON said that there should be something posted whether they can or cannot accept dementia patients.

Paul Shubert said there is not a singular way to address these issues in all the facilities. In some circumstances, if a facility has been cited, then the answer to that would be different to someone who has only been identified as having a diagnosis. The facility needs to respond with an acceptable plan on how they are going to protect those individuals in each case. For those who have not been cited but have patients who just have the diagnosis, they should figure out where they are at, are they safe in their environment or not. He cannot say HCQC is going to disregard the regulation, that is why the technical bulletin was generated. The regulation will be enforced.

There was much of this portion of the meeting that was inaudible due to unmuted cell phone conversations.

Future meeting dates for 2019 at 10 a.m.: January17; April18; July 18; October 17

Margaret McConnell recommends that no call ins are allowed at the next meeting because the quality of this meeting as so poor due to so many calls, calls put on hold and calls not muted.

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.)

Adjournment. The meeting was adjourned at approximately 12:15 p.m.