



The Tennessee Sunshine Law Passed by the General Assembly in 1974 requires that meetings of state, city and county government bodies be open to the public and that any such governmental body give adequate public notice of such meeting.

TENNESSEE DEPARTMENT OF HEALTH

MEMORANDUM

Date: July 12, 2013

To: Woody McMillin, Director of Communication and Media Relations

From: Wanda E. Hines, Board Administrator

Name of Board or Committee: Board for Licensing Health Care Facilities-Assisted Care Living Subcommittee Meeting

Date of Meeting: August 30, 2013

Time: 9:00 a.m. – 4:00 p.m., CDT

Place: Poplar Conference Room
227 French Landing
Heritage Place Metrocenter
Nashville, TN 37243

Major Item(s) on Agenda: Continuation of Reviewing the Assisted Care Living Facilities Rules and Regulations 1200-08-25.

This memo shall be forwarded from individual programs to the Public Information Office on the 15th day of the preceding month. The Public Information Office will prepare the monthly list of meetings within the Department and have ready for distribution to state media by the 28th day of the preceding month.

PH-1850 (Rev. 3/79)

RDA SW06

AGENDA

**BOARD FOR LICENSING HEALTH CARE FACILITIES
ASSISTED CARE LIVING FACILITIES
SUBCOMMITTEE MEETING**

**227 French Landing
Heritage Place Metrocenter
Poplar Conference Room
Nashville, TN 37243
9:00 a.m. – 4:00 p.m.**

August 30, 2013

- 1. Call the Meeting to Order.**
- 2. Discussion.**
- 3. Public Comments.**
- 4. Adjourn.**

**MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
ASSISTED CARE LIVING FACILITY (ACLF)
SUBCOMMITTEE MEETING**

AUGUST 30, 2013

The Board for Licensing Health Care Facilities Board Assisted Care Living Facility Subcommittee meeting began on August 30, 2013.

Mr. Luke Gregory, previously appointed chairman, called the meeting to order. A roll call vote was taken -

Ms. Sylvia Burton – here
Mr. Luke Gregory – here
Ms. Carissa Lynch – here
Ms. Annette Marlar - here

A quorum was established.

Mr. Gregory made the subcommittee and the department aware of a letter he received from Leading Age a Tennessee trade association requesting to have a third party to facilitate discussion for the subcommittee. He directed Leading Age to use the forum of the Board for Licensing Health Care Facilities' subcommittee for assisted care living facilities. Mr. Gregory turned the meeting over to Diona Layden, legal counsel for the Board. She indicated the discussion for today's meeting would be medication administration, evacuation, and infectious and communicable disease. Ms. Layden further indicated Rosalind Kurita, Health Policy Advisor for the Department of Health, was in attendance. Ms. Linda Jennings with the Tennessee Health Care Association (THCA) presented a work document compiled by Tennessee Assisted Living Federation Association (Tn ALFA), Leading Age, National Healthcare Corporation (NHC), and THCA. She indicated research was conducted on the validity of the 13 minute evacuation rule. It was found this is still the current expectation. Ms. Jennings further stated the ACLF rules allow if a building is constructed to a certain standard evacuation of the building is not required, but evacuation to a place of refuge within the building is permissible. The next item reviewed was the communicable and infectious disease requirement. The suggestion of the representative group was to add language to the ACLF rules directing providers to the Tennessee Department of Health's website listing of diseases that are contagious and reportable. The third item was self-administration of medication. Ms. Jennings stated the suggestion of the group was to revise the assistance with self-administration of medication. The workgroup felt the current language implies an individual can do more than licensed personnel. The two definitions to be revised are self-administration of medication and assistance with self-administration. The final item would be to clarify the intravenous medication administration language. Martha Gentry presented to the subcommittee the availability of an expert on the life safety and evacuation items. She further stated in regards to medication administration the plan of care language in the rules and regulations is essential to the process of medication administration.

Mr. Gregory began the discussion of the identified items with the evacuation rule language. He indicated it had been presented that no changes should be made to the evacuation rule language. He

sought input from those in attendance. Mr. Steve Baker with Plans Review of the Tennessee Department of Health addressed the subcommittee. He stated that assisted living facilities have fewer requirements for construction due to the type of occupancy they are identified as. He further indicated more residents of the ACLFs are in need of greater levels of care such as nursing home residents, but the ACLF is not required to be built according to the institutional occupancy standard that nursing homes are. Mr. Baker expressed that the Department would like to see the evacuation timeframe reduced. Mr. Baker further clarified the construction of ACLFs is of wood which is not allowed in nursing home construction. Much discussion ensued between Ms. Annette Marlar and Mr. Baker concerning patient to staff ratios, evacuation from the facility or to places of refuge within 13 minutes, and the location of hospice patients within a licensed assisted care living facility. Ms. Jennings was asked to speak to the expert testimony the associations sought. She indicated the expert, Eric Rosenbaum, looked at the current evacuation timeframe and whether this was an adequate requirement timeframe for evacuation. Ms. Jennings indicated the 2004, 2006, 2012, and 2013 NFPA 101 Life Safety Code does not give a basis for reducing the current evacuation timeframe. The code supports the 13 minute evacuation requirement. Mr. Gregory reiterated that the standard put forth by NFPA 101 Life Safety Code is that 13 minute evacuation is the standard. Ms. Marlar felt the regulations are appropriate, but it's the residents that do not fit the regulations. She further asked are Tennessee facilities in compliance with the current regulations regarding the resident admitted and kept in assisted care living facilities. Mr. Gregory felt that was more of a departmental and/or surveyor issue. Ms. Ann Rutherford Reed stated the surveyors follow the regulations and write citations based upon the residents inability to evacuate within 13 minutes. It was voiced by a subcommittee attendee that the issue of appropriate placement of residents does not need to be confused with evacuation timeframes. It was suggested that the Board update the fire safety codes currently found in the Building Standards section of the ACLF rules. Ms. Stacia Vetter with NHC asked what the surveyors are seeing in facility's as it pertains to the 13 minute evacuation requirement. She feels the surveyors use this to determine whether appropriate placement of residents has occurred in a facility, but also identifies the 13 minute evacuation timeframe and appropriate placement are two different items in the regulations. Ms. Layden indicated the plans of correction for evacuation citations should indicate when a drill was performed i.e. evening shift, night shift, etc. Ms. Sylvia Burton stated the plan of care should also contain the evacuation status of a resident. After all discussion on the evacuation issue, Mr. Gregory recapped the options. The industry would like to leave the standard as is, the state concerning building and life safety would like to reduce the number of minutes required to evacuate, and Ms. Marlar's concern of proper placement of residents in an assisted care living facility as well as appropriate staffing ratios. Mr. Baker indicated the reduction of minutes for evacuation is only a part of the concern of the state. The construction type of the licensed assisted living building and the defend in place concept are a concern. Ms. Reed asked Mr. Baker to further explain defend in place. He indicated construction of a building to certain standards allows for residents to be moved from one area of the facility to another if separate fire compartments are in place and a fire occurs in one of these areas. He indicated the NFPA Life Safety codes give context to which residents would be required to evacuate the facility completely in a required timeframe versus evacuation to a place of refuge. Mr. Gregory indicated the subcommittee has asked for information to be provided by the department representing what the surveyors have found upon survey and then table the issue for further discussion at the next subcommittee meeting. He also asked of Mr. Baker a recommendation for this matter as well as from the coalition of the industry representatives.

Mr. Gregory moved to the next topic for discussion, communicable and infectious disease. Ms. Jennings provided background to the topic. She stated an assisted living facility presented at a previous meeting of the subcommittee the issue of residents being discharged back to assisted living facilities with infectious diseases. The facility was unclear on the direction to follow when presented with these cases

– admit or move resident to another setting. Ms. Jennings stated the Tennessee Department of Health website contains a listing of reportable infectious diseases. The suggestion of the providers is to develop a policy memo or a rule change to reference information provided on this website. Ms. Layden indicated the policy would be effective, but the language would also need to be placed in rule. Ms. Jennings quoted the rule from the assisted care living facility regulations that speaks to infectious and reportable disease. She further stated facilities did not know which diseases this would apply to and that the listing on the Department of Health’s website provides the needed direction. Ms. Layden asked of the subcommittee and providers if there was a situation where a disease did not meet the contact isolation piece and a resident could remain in the facility. Ms. Jennings could see the point made as the rule currently specifies contact isolation. Ms. Layden was concerned with this in trying to craft rule language. It was questioned where these reportable infectious diseases are reported to. It was indicated the Department of Health and Ms. Layden indicated the referenced listing identifies what should be reported. Ms. Jennings referenced her hard copy listing from the Department of Health’s reportable disease list and identified some diseases which do not require contact isolation. Ms. Jennings voiced concern over the training of staff in assisted care living facilities to care for those residents who may have a communicable/infectious disease. Ms. Layden stated the subcommittee does not indicate the rule needs to be changed, but if a policy or other rule language is crafted to allow a resident even with an active infectious reportable disease to remain in the facility there must be some perimeters. She further stated staffing is the suggestion of the subcommittee. This would include training of the staff whether licensed staff or non-licensed staff. Ms. Marlar stated the order of the physician is a key element in this situation. Mr. Gregory indicated this is a public health issue and is a policy memo or change to the rule more appropriate. Ms. Layden stated a reference to the website could be reflected in a policy statement or interpretative guideline. The rule language could contain a reference to the website. Ms. Reed supported the recommendation for an interpretative guideline to identify what the Board is wishing relative to the rule. She also posed to the Board a conflict between the rule being discussed and a rule concerning communicable disease on page 13 of the regulations. Ms. Layden stated she thought some reportable diseases are not in a communicable state requiring isolation. Mr. Gregory indicated this supports Ms. Marlar’s statement and gives the Board flexibility in reviewing individual cases which may fall under the interpretative guideline. Ms. Reed stated she was trying to prevent confusion for providers when they review these regulations. Ms. Layden did not think the regulation on page 13 negates the regulation concerning reportable communicable disease. Ms. Burton indicated a facility should have a policy and procedure in place for addressing communicable disease in patients and staff. Ms. Layden put forth rule language to include the facility’s development of a policy and procedure. Ms. Stacia Vetter and Ms. Jennings gave a summary of how the two regulations would work together such that an individual with the MRSA or AIDs neither in a communicable state nor requiring contact isolation would be admitted to a facility with a plan in place. If these same two diseases were present, but in a communicable state and requiring contact isolation the individuals could not be admitted to the facility. Mr. Gregory summarized the discussion by stating the regulation would stand as is, but an interpretative guideline should be developed referring to the website for a listing of the communicable diseases. **Mr. Gregory made a motion for Board staff to develop an interpretative guideline for 1200-08-25-.08(1)(c) to address the website link for the Department of Health’s listing of reportable communicable diseases. Ms. Carissa Lynch seconded the motion. The motion was approved.**

The next topic for discussion was intravenous medication. Ms. Jennings started the discussion by identifying the regulation causing confusion. She offered a rule language change for consideration. **Ms. Sylvia Burton made a motion to approve the recommendation for rule language to read, “Intravenous**

medication may only be administered to..." Ms. Lynch seconded the motion. The motion was approved.

Mr. Gregory asked Ms. Layden to indicate if all had been addressed as it pertained to medication administration by the last presented item. Ms. Layden indicated disposal of medication rule language had been approved and that an interpretative guideline was developed which provided comfort on what self-administration is and what level of assistance can be given. Ms. Jennings indicated the issue remains on what level of assistance unlicensed aid/personnel can provide with medication administration. Ms. Reed further indicated this item of discussion included exploring the cognitive and physical ability in the process of medication administration. This would be a helpful discussion for providers and survey staff. Mr. Gregory stated the focus would be on the definition of administration and self-administration. He further stated the focus will be on those caregivers that are engaged with the resident or family members engaged with the resident in medication administration. Ms. Vetter stated the definition for self-administration is actually a definition for assistance. She stated the provider group worked together to split the two definitions apart. Ms. Rosalind Kurita had comments to add to this portion of the discussion. Ms. Kurita indicated she was providing information on behalf of the Commissioner as it relates to population health. She stated the definition of self-administration was reviewed and it was determined that including the ability to have physical assistance with opening of the medication packaging. Mr. Gregory indicated the subcommittee was agreeable to the suggestion by the Commissioner of adding to the definition of self-administration the phrase "...physically opening package for the resident." Ms. Marlar indicated that deficiencies arise from the definition of assistance and cannot be limited to just oral medications. Mr. Gregory further indicated the definition(s) can impact the charge for services by a facility. Ms. Kurita also presented on behalf of the Commissioner language for the definition of assistance with self-administration. The subcommittee further discussed the presented language. Ms. Vetter restated the three apparent levels of self-administration to include a resident is capable of opening and taking medications, resident requires assistance with opening a medication package, and a resident must be administer their medications. Citations are occurring regarding who administers the medication. Ms. Reed stated the surveyors are finding facilities to have non-licensed personnel administering medications and going beyond the assistance with medication as currently defined. Mr. Gregory stated rules are in place which need to be followed and doesn't understand why further rule language is needed. Clarity of the current rules was voiced as what was needed to make the definition clearer. Ms. Reed also stated facilities do not read the regulations on assistance the same as surveyors and feel citations are not warranted. Ms. Marlar voiced that she understood assistance to include non-licensed staff putting fingers and/or hands on the fingers and/or hands of the resident to remove medication from a bubble pack. She equates this with a resident having a cup with the medication and putting to their mouth. Ms. Jennings indicated the issue with the bottles is the number of pills removed, the correct dosage given, etc. This is a determination by the staff member giving the medication. Ms. Jennings went on to state the surveyor will cite the facility if the medication is placed in to a cup, the resident's hand, or resident's mouth by an unlicensed staff member. Ms. Marlar stated this activity is not related to knowing what the medication is. Mr. Gregory questioned Ms. Jennings if proposed language would help the industry. Ms. Jennings indicated it would. She wishes for the rule to indicate a stopping point in the medication administration process for the unlicensed personnel. Ms. Reed asked the subcommittee to focus on the administering medication definition and the direct application of a single dose. She further pointed out the language, "...by any other means" is not specific in meaning. Ms. Lynch indicated the direct application of medication to the body would include the hands vs the mouth. Ms. Jennings stated facilities are being found during survey pouring medication from a bottle into cups for residents. Ms. Vetter and Ms. Jennings voiced concern of implementing language that crosses into the Board of Nursing's rules and regulations. Ms. Reed

indicated she has reached out to the Board of Nursing regarding language around administration of medication. Ms. Vetter suggested inserting the term cup into the definition which clarifies a non-licensed staff member can't put the medication into a cup or the hand of a resident. Ms. Layden wanted it to go on record that the Board of Nursing has not been formally asked a question about medication administration. Mr. Gregory voiced concern that approaching the Board of Nursing may get the work of the subcommittee distracted. He also wanted the issue before the subcommittee clarified. Ms. Jennings indicated it is the portion of the administering medication definition that would address what happens after reminding someone to take the medication or opening the medication packaging. Ms. Reed suggested to the subcommittee to amend the administering medication definition with an interpretative guideline developed to utilize until the amended rule is effective. Ms. Reed again asked if the portion of the language, "...by any other means" includes placing medication in a soufflé cup. Mr. Gregory feels the language is addressing the process of delivery for the medication and that placing the medication into a soufflé cup is repackaging the medication. The providers and subcommittee members determined placement of the medication to another container should be included in the definition of administering medication. Ms. Reed asked at this point if an interpretative guideline would be appropriate to carry the recommendation of the subcommittee until the rules once approved by the full Board make their way through the rulemaking process. **Mr. Gregory made a motion to adopt the two new definitions including self-administration of medication and assistance with self-administration of medication and to have the industry, Commissioner's Office, and legal counsel to draft this language. Ms. Layden stated the language is already developed which includes a new #33, self-administration of medication and is the Commissioner's version, a new #6, and an amendment to 1200-08-25-.02(2) administering medication to include the phrase 'into a container'. Ms. Lynch seconded the motion. The motion was approved by the subcommittee.**

Ms. Kurita then directed the subcommittee to the rule language on infection control and the offering of the influenza vaccinations. She indicated the Commissioner wishes to see this language expanded to include all staff and have the language to say encourage versus offer. Ms. Marlar questioned the presented new language being included all facility types for consistency. Mr. Gregory asked if the Commissioner would have issue with the inclusion to all facility rule language. Ms. Kurita did not indicate this would be a problem. **A motion was made to accept the language presented by the Commissioner's Office; seconded by Ms. Burton. The motion was approved.**

Ms. Kurita had one additional item to bring to the subcommittee's attention. The Commissioner is questioning the rule concerning 14 hours between evening meal and the morning meal. He desires to know the science behind the timing. Ms. Marlar stated snacks are available for residents in between the evening and morning meals at nursing homes. Ms. Kurita stated she realized snacks would be available for residents. Ms. Reed informed the subcommittee this language is found in other licensed facility types' regulations. It was voiced that the federal requirements may drive the 14 hour regulation language in the nursing home licensure regulations. Mr. Gregory stated this would be considered at the next meeting of the subcommittee and hopefully the CMS recommendation will be available.

Ms. Marlar stated there are items to address at the next subcommittee meeting. It shall include in-service issues; staff to resident ratio; assisted care living facility administrator requirements; pharmacy services; admissions, discharges, and transfers section as a whole; and secure unit standards. Ms. Layden indicated she will have rule language to present to the Board in September and recommended the subcommittee reconvene after the January 2014 Board meeting.

Mr. Gregory adjourned the meeting.