Ad Hoc Rule Review Committee

Appointed by the Long Term Care Facility Advisory Board, January 11, 2012

Oklahoma State Department of Health

1000 NE 10th Street – Room 1102

MINUTES

## February 17, 2012

1. **Call to Order**

Esther Houser, Committee Chair, called the meeting to order at 1:35 p.m.

Identified attendees: Esther Houser, Chair & DHS Aging Services/State Ombudsman; Renee Hoback, Co-Chair & Assisted Living Owner-Operator; Wendell Short, Member & RC Home Operator-Administrator; Linda Brannon, Vice Chair & NH Operator-Administrator; Mary Brinkley, Leading Age OK; Carrie Burnsed, OKALA; Penny Ridenour, OKALA; William Whited, State Ombudsman; Courtney McLaughlin, Legend Senior Living; Laura Turner, Legend Senior Living; Scott Slemp, Legend Senior Living; Alan Skitt, Quail Ridge Assisted Living; DeAndra Downer, Arbor House; Sherri S. Hudlow, Watermark Communities; Samantha Blue, Emeritus Senior Living; Vicki Burrow, Emeritus Senior Living; Tammy Jackson, Emeritus Senior Living; Bryan Culliton, Emeritus Senior Living; Reta Brian, Emeritus Senior Living; Brynda Wheeler, Meridian Senior Living; Melissa Holland, Meridian Senior Living; Diane Hambric, Gold Medallion Senior Housing & Health Care; Jessica Garvin, Pharmcare USA; Kim Cryer, Focus on Function; Kendra Orr, Focus on Function; Amy Shaw, FOF/FR; Marilyn Kipps, General Counsel; Dorya Huser, Chief, LTC; Jim Buck, Asst. Chief, LTC; Patty Scott, LTC Director of Enforcement, Intake, & Incidents; Jerry Taylor, Enforcement Coordinator; Terri Cook, LTC Health Facilities Consultant; Mike Cook, Strategic Planning and Compliance Officer, LTC; Sue Davis, LTC Administrative Assistant; Doris Carder, LTC Committee Secretary; and Mary Womack, OSDH Asst. General Counsel

1. **Introductions**

Esther Houser requested everyone in attendance to introduce themselves by name and professional affiliation pertaining to attendance at the meeting and thanked everyone for taking the time to attend. All attendees were asked to sign in if they wanted to be identified as attending.

1. **Overview**

Esther Houser provided a recap of the meeting on the 6th by explaining the purpose of the committee as an open forum for proposed rule changes. This is a forum for information exchange and gathering civil discourse in conversation for questions, clarification, etc. She requested those in attendance to please feel free to agree with other’s comments but suggested it would be best not to bring up the same subject again and again once it has been discussed.

Jim Buck made sure everyone had the following rule review changes for discussion: Chapter 663, Continuum of Care and Assisted Living; Chapter 675, Nursing and Specialized Facilities; and Chapter 680, Residential Care Homes.

1. **Enforcement Process**

Jerry Taylor re-capped on the history of the enforcement and penalty process and how these relate to current rules. He requested those in attendance to ask questions at any time and made sure everyone had the handouts explaining how penalties are calculated pertaining to the Scope and Severity grid, which included short definitions. The handouts were for assisted living and residential care homes, both having a commonality between the two in procedures but not penalty amounts. The way penalties have been handled over the past several years has been put into regulatory language so everyone could understand what is being done - in a uniform, fair, and equitable manner. He reviewed the handouts on penalties in detail while explaining that civil monetary penalties can go to court but at a lower level. Abuse, neglect, and/or actual harm start the penalty process. If a penalty is applied it is not per deficiency but for the highest severity level for the deficiency identified. If there is no actual harm then the facility has an opportunity to correct without penalties. If the deficiency is or deficiencies are not corrected when the revisit is done then penalties may apply. The difference with a residential care facility is that the penalties are for lesser amounts and they are legislated by law. By looking at the Scope and Severity grid you should be able to answer the question, “How bad is it?”, with the immediate jeopardy (IJ) really being life threatening. The basic purpose of the rules and regulations is to make the entire process seemingly transparent enough to see why we get to do what we do as far as penalties which are applied.

Diane Hambric expressed great concern over the rules and stated that no other state had these rules.

Dorya Huser explained that the system of enforcement is different in other states, but that they all have enforcement for assisted living facilities. What we have done in Long Term Care is help define what we do so everyone can understand it. There is nothing directing us to do any of this. We put forth the Scope and Severity grid as an addition in the rules to make it even more understandable.

Alan Skitt asked if there is an IJ deficiency, who does the surveyor contact to see if it is an actual IJ?

Dorya said the process in place ensures no individual decides that on his or her own, but contacts management to work through the protocols to identify the scope and severity of the deficiency and verify Immediate Jeopardy situations. Each manager works through the process with the surveyors to make these determinations. The Scope and Severity grid is the best reference point. Alan requested a better description of what the opportunity to correct entails be included in the regulations.

Penny Ridenour said the determination of an IJ deficiency should be an identifiably objective decision but it doesn’t seem that way from the regulations. When Jerry Taylor explains it, it seems easy to understand, but when you read it there is some ambiguity.

William Whited said the staff at facilities should use these regulations as guidance on what to do if an IJ deficiency is identified by the surveyors. They should have written guidance to follow for themselves.

Wendell Short agreed that the Scope and Severity grid should pretty much explain it all as a quick reference.

Alan Skitt was also concerned that there seemed to be some inconsistency with how penalties were applied between facilities which seemingly had the same deficiencies. Some of the rules need to be better defined in terms of tying them into the Scope and Severity grid.

Dorya again explained these regulations were provided as a courtesy and, although this committee has shed some light on areas of interest, further suggestions can be submitted in writing to the Health Department and a review will be done to determine if recommendations need to move forward for rule development. If you have something you want to change, please submit what you have in mind to OSDH. At this time, the rules will be pulled and not taken forward. They were intended to be helpful, but seem to be producing fear, which was not the goal. They may be revisited once constructive feedback has been received. In the meantime, everything can continue as before with the enforcement process.

Mary Brinkley suggested everyone review the changes they would like to see and research how other states are doing it. Those processes can then be submitted for review and the LTC Facility Advisory Board will review it as well.

Sherri Hudlow said to look at what the exact problem really is because there seems to be a disconnect between what the surveyor identifies and the homes not knowing what they mean up front.

Esther Houser pointed out that the similarity between the Scope and Severity grids should be advantageous to understand the basic process for all types of facilities.

Patty Scott agreed that the consistency shows a logical thought process applied fairly to all, although the actual scope and severity of deficiencies can be very different for different types of homes.

1. **General Discussion**

Wendell Short said the regulations determine the outcome, not the Scope and Severity grid. The grid is just a guide. The surveyors do, however, make a huge difference with the survey experience. The individual surveyor really does make a difference.

Esther Houser re-emphasized this type of forum isn’t offered in many other states, so we are lucky to have this opportunity.

Dorya Huser thanked everyone for taking the time to attend the meeting and requested they submit any other suggestions in detail to the Health Department for formal review.

Esther Houser offered to pool peoples’ suggestions for one submission.

Dorya Huser said the Health Department could possibly take regulations forward in the 2013 legislature.

Esther Houser again thanked everyone for attending.

1. **Schedule Next Meeting**

The committee has served its purpose with the final decision that it would be more productive to have suggestions formally submitted to the State Health Department for review.

1. **Adjournment**

The meeting adjourned at 3:20 p.m.