

**ADULT FOSTER CARE LICENSING ADVISORY COUNCIL
MEETING MINUTES**

June 17, 2009

MEMBERS PRESENT

Lacey Charboneau, Andrew Farmer, Cynthia Farrell, Linda Lawther, Paul McClain, Sandy Mabery, Kathleen Murphy, Brian Sabourin

MEMBERS ABSENT

Ellen Sugrue-Hyman
Phillip Lancaster

ABSENT MEMBERS REPRESENTED

Lauren Swanson (Proxy Paul McClain)

ADULT FOSTER CARE/HOME FOR THE AGED LICENSING STAFF

Deborah Wood, Division Director,
Tom McWhorter, Program Specialist
Marva Chambers, Secretary
Edna Albert, AFC Consultant
Leon Hale, AFC Consultant
Mary Holton, AFC Consultant
Diane Stier, AFC Consultant

VISITORS

Allen Adams, DHS - Office of Adult Services

Linda Lawther, Vice Chairperson called the meeting to order. Roll call showed a quorum was present.

Approval of Agenda

Andy Farmer made a motion to approve the agenda with the following additions. Cynthia Farrell seconded the motion. All were in favor.

Add: Discussion of Adult Foster Care Visits

Move: Item 6 (Division/Bureau Updates) and Item 7 (Legislative Issues) after Item 8 (Other)

Approval of Minutes – February 25, 2009 meeting

Paul McClain made a motion to approve the minutes as written. Lacey Charboneau seconded the motion. Minutes were approved as written.

Bureau of Fire Services AFC Rule Committee Update – Lacey Charboneau

Lacey reported that the Committee met in April and June and started a review of the Family Home technical assistance for an emergency evacuation plan. They also looked at E-score and assessment plans. Most facility assessment plans do not have a section that addresses the evacuation plan.

Lacey said the Committee is also looking at how this will look on the website and Andy has contributed good ideas for website links to do this.

The committee will meet July 22, 2009 at 9:00 a.m., 7109 W. Saginaw, Lansing, conference room 2-1.

Other

My Choice Wavier Update – Tom McWhorter

Tom has been participating in a workgroup on the MI Choice Waiver and gave the following summary:

Medicaid is typically used for skilled care and or other medical services, but a state can request a waiver from the Federal Centers for Medicaid/Medicare Services (CMS). DCH/Medicaid submitted an amendment to the current MI Choice Waiver to allow MI Choice waiver funds be used to provide supports and services in AFC/HFA's for the following groups:

- Individuals living in their own homes that are at risk of nursing home placement but would rather live in either an AFC or HFA. This would also include persons living in their own home currently receiving Mi Choice funds who now wants to move to an adult foster care or home for the aged.
- AFC/HFA residents that are at risk of nursing home placement.
- Nursing home residents that would like to live in either an AFC or HFA.

The Mi Choice waiver will provide increased choices for individuals and save the state money as a nursing home diversion program.

The waiver amendment was submitted to CMS in April. DCH has been notified informally that CMS will approve the waiver amendment request and DCH/Medicaid plans on beginning the implementation of the new waiver July 1, 2009.

The waiver agents work in either Area Agencies on Aging or equivalent advocacy agencies who will administer the waiver. Waiver agents will assess potential

recipients via a Level of Care Determination and if they are determined to meet the nursing home level of care and the financial requirements, the waiver agent will work with either an AFC or HFA for placement of the resident utilizing MI Choice funds. Though this is not an income supplement program and will not pay for room and board.

Currently the waiver agents are familiarizing themselves with the AFC/HFA's, as well as the nursing homes, in their area. Further training of waiver agents will take place in the near future.

Discussion of the waiver followed.

Cynthia said she views the MI Choice Waiver as good in theory but a more solid foundation is needed. The waiver needs to address placement and particular services that will be provided to clients.

Kathleen reported that her general observation regarding the July 1st start date of the MI Choice Waiver is that there will not be a major influx on agencies because providers may be hesitant to accept waiver clients and waiver agents will need to be trained.

Andy said the MI Choice Waiver started in 2005 with the Long Term Care Task Force. Andy would like the Council be kept informed concerning the use of the MI Choice Waiver.

After discussion, Andy made a motion that Kathleen contact Mike Daeschline, Manager, Department of Community Health, Home and Community Based Services who is in charge of this initiative, to attend the next Council meeting to address the Council's interest and concerns regarding the MI Choice Waiver. Lacy seconded the motion. All were in favor.

Kathleen will call Mr. Daeschline and invite him to attend the August 26th Council meeting.

The following subcommittee was formed to prepare a list of questions/concerns to provide to Mr. Daeschline before the August meeting: Kathleen, Linda, Brian, Cynthia and Tom. Kathleen volunteered to draft an email to the subcommittee for their feedback.

Deborah suggested that a MI Choice Waiver update be incorporated as a regular Council agenda item.

Staffing Ratio Discussion – Deborah Wood

Public testimony was received at the February 25, 2009 Council meeting conveying concern that the staffing rule (Rule 400.15206) was outdated. The

Council addressed this matter and discussed ways to identify staffing insufficiencies. The following immediate solutions were agreed on at the February 25th meeting and carried out as follows:

- The Division should re-emphasize to consultants to take a purposeful look during inspections to evaluate the adequacy of staffing levels.

Deborah asked AFC/HFA Area Managers to address the staffing ratio rules with their consultants at their staff meetings.

- Have consultant(s) attend the next Council Meeting to explain how they determine sufficient staffing ratios.

4 adult foster care consultants attended the June 17th Council meeting and gave examples of how they determine sufficient ratios:

- ✓ Looking at residents' assessment plans and health care appraisals to determine resident needs
- ✓ Looking at location of residents' rooms relative to evacuation and how many need assistance to evacuate
- ✓ Reviewing staff training
- ✓ Reviewing the staff work schedule for the last 90 days
- ✓ When rule violations are noted, consultants automatically look at staffing ratios

Kathleen commented that the rule not giving a specific ratio is better for the residents because it gives broader discretion. Kathleen said the consultants' comments and the Council's discussion of the ratio rule has addressed the concern expressed by the public testimony made at the February Council meeting.

Kathleen made a motion that the Council continue monitoring the ratio rule but not pursue changing the rule. Paul seconded the motion. All were in favor.

- Council members visited adult foster care large group homes to observe staff/resident ratio needs.

Linda and Kathleen contacted 3 adult foster care homes in the Lansing area who agreed to allow Council members to tour. Linda and Kathleen were joined by Andy, Jim Gale, Lacey, Lauren and Sandy.

Some of the comments from people on the visits were:

- ❖ Positive experience. One provider said television is not an activity – only when there is a specific program.

- ❖ One licensee commented that they appreciated the Council members visiting. He said he was proud of the service he provides and he wants people to see the obstacles he has to providing that service, from his point of view.
- ❖ The visits were at higher end of affordable homes. In order to get a better understanding of problems licensees face Council members should visit facilities that accept low-income residents.

Linda suggested that each Adult Foster Care Licensing Advisory Council member take responsibility to visit adult foster care homes in their area periodically rather than as a group visit that can be overwhelming; let the providers know that the purpose of the visit is not to inspect but to learn.

The Council was in agreement with Linda's suggestion. The Council discussed how these visits should be conducted. A subcommittee was formed to create a letter of introduction asking providers to volunteer to open their facility to the Council, clearly defining the Council's purpose and interest. The letter would target a specific county for mailing. Kathleen volunteered to put an article in MALA's newsletter asking providers to volunteer.

The subcommittee consisting of the following members will meet immediately following the Council meeting on August 26, 2009: Brian, Deborah, Kathleen, Lacy and Linda.

Resident Care Agreements

Deborah reported that the Division no longer reviews substitute form requests because of the time it takes to review them and staff's workload. It was brought to Deborah's attention that because substitute forms would no longer be reviewed, the Resident Care Agreement needed to be revised. Subsequently, Betsy Montgomery met with Kathleen, Linda and Mark Havens, Aging Services of Michigan to rewrite the Resident Care Agreement; follow up meetings will be scheduled.

Deborah provided a copy of R 400.14301 requiring resident care agreements. She said an area manager proposed rescinding that part of Rule 400.14301 requiring Resident Care Agreements because all sections in the rule governing the contents of Resident Care Agreements are duplicated elsewhere in the rules.

Deborah asked the Council to consider the potential revision of this rule and what impact eliminating the Resident Care Agreement requirement would have on the program.

Linda asked for a cross reference of the redundancy of R 400.14301 in other rules. Deborah said she would provide a cross reference to the Council.

Division Bureau Updates – Deborah Wood

Deborah directed the Council's attention to a copy of the letter provided from Ismael Ahmed, Director, Department of Human Services to Phillip Lancaster thanking him for expressing the AFC Licensing Advisory Council's concerns about staffing levels.

Staffing Issues –

Deborah reported that Carol Trombley, a consultant in Clinton Township BCAL Office, is retiring June 30th and a consultant from the Pontiac office is transferring to fill that vacancy. Ian Tschirhart has been hired to fill the resultant Pontiac vacancy and is to start July 13th.

Russ Misiak, a background check analyst, filled a vacant home for the aged staff position in Grand Rapids. This leaves one background check analyst to complete all background checks. The vacant background check analyst position will be filled with an adult foster care consultant who will work in the Lansing office. This consultant will also be a backup in the field where and when needed.

Deborah said that 6 adult foster care consultants from the Upper Peninsula and Traverse City offices are being cross trained to inspect homes for the aged and the home for the aged staff person currently located at the Gaylord office who covered those facilities, will be moving to the Lansing office.

FORI Update

The following reports are provided at each meeting as requested by the Council. Deborah gave a brief summary:

- Results of Focused Onsite renewal Inspection questionnaires completed since the last AFC Licensing Advisory Council meeting.

Responses from the licensees regarding the focused onsite renewal inspection continue to be positive. 1.2% of licensed facilities have completed a focused onsite renewal inspection since the process began 10/2007; more licensees have been eligible but declined to participate.

The Council requested the number of eligible licensees that did not participate be included in the next update.

Background Check Update

- Background Check statistics for the period ending 6/15/09

A letter was sent notifying AFC/HFA licensees to begin the fingerprinting of their exempt employees effective 4/1/2009. Home for the Aged licensees are not required to begin this process until 4/1/2011 but could begin as early as 4/1/2009.

Division Statistics

- Division Activity Report and Special Investigation Performance Activity Report for 10/1/07 – 5/31/09

Statistics reflect that there were 30 more facilities in May 2009 than in October 2007, but the total capacity is less because the majority of applications are for 6 or fewer beds.

- Notice of Intent Log for February 1, 2009 through May 31, 2009

Deborah explained that a NOI is a notice to the licensee that disciplinary action is intended. Typically these are for repeat, serious or numerous violations. They are on the website.

Notice of Finding Update

- Notice of Finding Rules Cited for 1/09 – 5/09

Notice of Finding is a different way of citing a rule that is not a substantial violation and would not place residents at risk. A corrective action plan is not required and the violations are not put on the website. A notice of finding is many times corrected during the inspection or a minor violation that is easily correctable.

LEGISLATIVE ISSUES

Tom McWhorter gave the following summary on legislation introduced since the last Council meeting that has relevance to adult foster care/home for the aged facilities:

HB 4013, (was 4157 last session), introduced by Rep. Liss, 1/22/09. Would amend the Public Health Code to require the reporting of all deaths of HFA residents to all relevant individuals and agencies including the county Medical Examiner. May conflict with administrative rules and increase the medical examiner workload. As of 1/27/09 – still in committee.

HB 4617-4627, amends statutes pertaining to probate, wills and estates. All designed to increase protections regarding the exploitation of vulnerable adults. Basically these Bills require that if a person is convicted of abuse, neglect or financial exploitation that causes the death of a vulnerable adult, the perpetrator will forfeit any claim to an inheritance of an estate or any insurance benefits from the deceased person. As of 3/19/09 – still in committee.

HB 4643, introduced by Rep. Johnson 3/19/09. In previous sessions was HB 5049 then before that, was HB 6274. Would amend the Adult Foster Care Licensing Act. Bill would limit the number of AFC's (concentration) in a region or municipality (i.e., 1:800 residents); economic implications plus potential for conflict with federal law (FFHAA); as of 3/24/09 still in committee.

HB 4909, Rep. Haines, introduced 5/12/09; would change the Administrative Procedures Act to make it much more cumbersome to promulgate new and maintain existing administrative rules; 5/13/09 still in committee; similar to SB's 434 and 435.

SB 282, Sen. Sanborn, introduced 3/3/09. Tax Code. Original Bill would have allowed residents of nursing homes and "assisted living facilities" to keep their principal residence exemption on their private home. There was a later substitute to this Bill that replaced "assisted living" with adult foster care and homes for the aged. This substitute Bill passed the Senate 5/13/09, and was sent to the House; a similar bill, SB 367, defines "assisted living facility" as either AFC or HFA. SB 367 is still in committee.

HB 4826, Rep. Tlaib, introduced 4/22/09; regarding use of electronic monitoring devices in AFC. There are privacy and resident rights concerns regarding this Bill; 4/23/09 still in committee. Deborah encouraged the Council to review this Bill.

ADJOURNMENT – Kathleen moved to adjourn the meeting, Paul seconded. The meeting was adjourned.

NEXT MEETING: Wednesday, August 26, 2009, 9:30 a.m, 7109 W. Saginaw, 2nd Floor Large Conference Room. If you are unable to attend, please call Marva Chambers at 517-373-8580.