

# Assisted Care Living Facility Rules

# Objectives

- Incorporate into the rules, the provisions found in the Long Term Care and Community Choices act.
- Revise existing language in order to make the rules more user-friendly!

# What is the LTCCCA

- A law that:
  - Restructures the Medicaid Long-Term Care service delivery system in Tennessee.
  - Allows people who need long-term care to age in place.
  - Promotes independence, choice and quality of life for those needing long-term care supports and services.
  - Recognizes the role of the family and other care givers in meeting the needs of the elderly and people with physical disabilities.

# Purpose of ACLF Services

- Promote the availability of residential alternatives to institutional care for persons who are elderly or who have disabilities in the least restrictive and most homelike environment appropriate.
- Emphasize personal dignity, respect, autonomy, independence, and privacy.
- Enhance the person's ability to age in place while ensuring that the person's medical and other needs are safely and effectively met.

# How does the LTCCCA affect Tennessee as a whole:

- Requires the Board for licensing Health Care Facilities to amend its rules to comport with the Statute.
- Authorizes Assisted Care Living Facilities to provide care to a larger section of the aging population.
- Gives our aging community additional options for long term care.

# How does the LTCCCA affect Medicaid Reimbursement in ACLFs?

- Medicaid reimbursement is covered under the Statewide Elderly and Disabled HCBS Waiver.
- In order to qualify for Medicaid reimbursement:
  - Person must qualify and be enrolled in the HCBS Waiver
  - ACLF must qualify and be enrolled as an HCBS Waiver provider.
  - ACLF services must be ordered by the physician and specified in an approved plan of care.
- Room and Board is excluded from Medicaid reimbursement (pursuant to federal law).

# ACLF Subcommittee

- Board Member Representation:
  - Sara Snodgrass – Chair
  - Elizabeth Chadwell
  - Luke Gregory
  - Dixie Taylor-Huff
  - Carlyle Walton

# ACLF Subcommittee

- Community Representatives
  - Brian Bartley, Chief Manager of Windsor Gardens Assisted Living
  - Carrie Ermshar, Executive Director of TNAHSA
  - Caroline Pointer, President and COE of Hillcrest Healthcare
  - Maureen Meyer, ALFA Representative
  - Pat Winger, Volunteer Ombudsman and Resident Advocate.



# Provisions of the LTCCCA

A.K.A

Stuff the Board had to put in the  
ACLF Rules!

# Definitions

- Assisted Care Living Facility: A facility, building, or establishment, complex or distinct part thereof which accepts primarily aged persons for domiciliary care and services as described by this section.
- See page 2

# Mandatory Services Provided by an ACLF

- Room and Board.
  - Furniture provided by the resident must meet NFPA standards.
- Non-medical living assistance services:
  - Bathing
  - Dressing
  - Grooming
  - Preparation of meals
  - Other activities of daily living
- See page 16

# Services that may be provided onsite by an ACLF

- Administration of medications that are typically self-administered.
  - This excludes intravenous injections except for:
    - Residents receiving hospice care.
    - Residents only receiving intravenous injection on an intermittent basis.
    - See page 15
  - Residents who are able to self-care/self administer IV injections without the assistance of facility personnel may do so and remain in the facility.
  - See page 19

# Services that may be provided onsite by an ACLF

- All other medical services prescribed by the resident's treating physician that could be provided to a citizen in his or her own home by an appropriately licensed or qualified health care professional.
  - Part-time or Intermittent Nursing Care
  - Physical Therapy
  - Occupational and Speech Therapy
  - Podiatry Care
  - Medical Social Services
  - Medical Supplies other than drugs and biologicals
  - Durable Medical Equipment
  - Hospice Services
- See Page 15

# Who can provide the additional services?

- If an ACLF chooses to provide these additional services, the services must be provided by:
  - Appropriately licensed or qualified staff of the ACLF.
  - Appropriate licensed or qualified contractors of the ACLF.
  - A licensed Home Care Organization.
  - Another appropriately licensed entity
    - This includes a licensed medical doctor.
  - Appropriately licensed staff of a nursing home, acting within the scope of their respective licenses.
- See Page 15

# Plan of Care

- The ACLF shall be responsible for the development of a plan of care that ensures the safety and well-being of the resident's health care needs.
- The Board determined that the plan of care must be developed within five (5) days of admission.
- The rules specify what should be included in the plan of care.
- See page 33

# Who may assist the ACLF in developing the Plan of Care?

- Any licensed health care professional or entity delivering services to the ACLF resident.
- See page 33



# Who is eligible for care at an ACLF?

- Assisted Care Living Facility Resident Definition:
- A primarily aged person who requires domiciliary care; and
- who upon admission to the facility, if not ambulatory, is capable of self-transfer from the bed to a wheelchair or similar device independently.
- Such a resident may require one or more of the following services:
  - room and board;
  - assistance with non-medical activities of daily living;
  - administration of typically self administered medications; and
  - medical services subject to the limitation of Tenn. Code Ann. 68-11-201(4)(c).
- See page 2

# How does the ACLF definition change the rules?

- Allows those current residents and potential residents requiring higher levels of care the option of living at an ACLF.
- Our old rules do not permit ACLFs to admit or even retain residents requiring nursing home level care:
  - Persons in the latter stages of Alzheimer's or related disorders;
  - Persons requiring nasopharyngeal and tracheotomy aspiration;
  - Persons requiring nasogastric tube
  - Persons requiring gastrostomy feedings;
  - Persons requiring intravenous or daily intramuscular injections or intravenous feedings;
  - Persons requiring sterile wound care; and
  - Persons requiring insertion, sterile irrigation and replacement of catheters.

# Now...

- Subject to certain limitations, an ACLF may admit and permit the continued stay of a person who meets the level of care for nursing services (i.e. that person is eligible for TennCare Home and Community Based Waiver) as long as:
  - the resident's treating physician can certify that the resident's needs can be safely and effectively met by care provided in the ACLF.
  - The ACLF can provide assurances of timely evacuation in the event of a fire or an emergency.

# Who can not be admitted or permitted to stay at an ACLF?

- An ACLF shall not admit nor permit the continued stay of a person who:
  - Requires treatment for stage III or IV decubitus ulcers or with exfoliative dermatitis;
  - Requires continuous nursing care (round the clock observation, assessment, monitoring, supervision, or provision of nursing services that can only be performed by a licensed nurse);
  - Has an active, infectious and reportable disease in a communicable state that requires contact isolation;
  - Requires physical or chemical constraints, not including psychotropic medications prescribed for a manageable mental disorder or condition;
- See page 18 and 19

# Cont.

- Whose verbal or physical aggressive behavior poses an imminent threat to himself/herself or others, based not on the person's diagnosis, but on the behavior of the person; and
- Whose needs cannot be safely and effectively met in the ACLF.
- Note:
  - Current residents who develop these conditions must be transferred to another level of care.
  - These residents cannot remain in the ACLF even if the resident's treating physician certifies that the resident's needs can be safely and effectively met by care provided in the ACLF.
- See page 18 and 19

# Intermittent Treatments

- An ACLF shall not admit, but **may permit** continued stay of residents that require the following treatments on an intermittent basis:
  - Nasopharyngeal or tracheotomy aspiration;
  - Nasopharyngeal feedings;
  - Gastrostomy feedings; or
  - Intravenous therapy or intravenous feedings.
- Note: Intermittent basis – three 21 day periods. A physician must certify the last two 21 day periods.
- If the resident requires the treatments on an ongoing basis, the resident may remain in the ACLF if the resident is:
  - Receiving hospice services;
  - Does not qualify for Nursing Facility level of care (and) the HCF Board grants a waiver; or
  - The Resident is able to self-care without the assistance of facility personnel or other appropriately licensed entity.
- See page 19

# Hospice

- Any ACLF resident who qualifies for hospice care shall be able to receive hospice care and continue as a resident of the ACLF if:
  - The resident's treating physician certifies that hospice care can be appropriately provided at the facility. (This certification must be present in the resident's record).
- Public Chapter 36:
  - Allows ACLFs to admit persons who have qualified for hospice services. So basically, an ACLF can both admit new residents who have qualified for hospice care and retain current residents who qualify for hospice care. See page 20

# Hospice – Plan of Care

- In the event an ACLF retains a hospice patient, the ACLF must develop a plan of care.
- The plan of care must be jointly developed by the ACLF and the hospice provider and must ensure the safety and well-being of the resident's living environment and for the provisions of the resident's health care needs.
- The Board determined that the plan of care must be prepared pursuant to current hospice guidelines promulgated by the CMS.
- The Hospice provider shall be available to assess, plan, monitor, direct and evaluate resident's palliative care in conjunction with the resident's physician and in cooperation with the ACLF.
- See page 20



# When can an ACLF resident be transferred to a hospital, nursing home, or other appropriate setting?

- When either:
  - The resident,
  - The appropriate person with legal authority to make such decisions on behalf of the resident, or
  - The resident's treating physician determines that the services available to the resident at the ACLF will not safely and effectively meet the resident's needs.
- The Board or the Department may require the transfer or discharge of individuals to different levels of care as required by statute when the resident's needs cannot be safely and effectively met by care provided in the ACLF.
- Page 18

# The HCF Board has been charged

to:

- Address the needs of the residents who may receive medical services.

# Response by the Board

- An ACLF shall ensure that its employees develop and maintain a medical record for each resident who requires healthcare services whether these services were rendered by ACLF staff or an outside entity.
- The record shall include at a minimum:
  - Medical history
  - Consultation by physicians or other authorized healthcare providers
  - Orders
  - Care/services provided
  - Medication administered
  - Notes (observations, progress, nursing)
  - Listing of current vaccinations
  - Etc.
- See page 32

# The HCF Board has been charged to:

- Regulate fire safety standards that afford reasonable protection to assisted care living facility residents without unduly disturbing the residential atmosphere.

# Response by the Board

- The rules provide that an ACLF shall have documented plans and procedures to show evacuation of all residents.
- The ACLF may not retain a resident who cannot evacuate within thirteen (13) minutes unless the ACLF complies with chapter 19 of the 2006 edition of the NFPA Life Safety Code, and the Institutional Unrestrained Occupancy of the 2006 edition of the International Building Code.
- See page 20

# The Board has been authorized to:

- Assess Civil Penalties to ACLFs that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety and welfare of residents.
- The old rules provided that an ACLF can be assessed civil penalties for:
  - Retaining residents not meeting the definition of an ACLF resident; and (0-\$3,000)
  - Operating an ACLF without a license. (0 – \$5,000)

# Now...

- The rules provide that an ACLF can be assessed a civil penalty ranging from \$0 - \$1,000.00 for violating provisions relating to Room and Board and Non-medical Living Assistance services.
- Examples: failing to provide non-medical living assistance such as bathing, grooming and dressing, failing to maintain the facility in a clean and sanitary manner.
  - Caveat: Pursuant to statute, the violation must be serious and result in the endangerment of the residents health, safety and welfare.
- See page 10

# and...

- The rules provide that an ACLF can be assessed a civil penalty ranging from \$0 - \$1,000.00 for violating provisions relating to medical and professional services, plan of care and assessment, personal records, medical records, and fire safety.
- Examples: allowing a nonqualified person to provide medical services, failing to create and maintain a record for each resident, failing to create a plan of care, failing to conduct fire drills.
  - Caveat: Pursuant to statute, the violation must be serious and result in the endangerment of the residents health, safety and welfare.
- See page 10



# What does “serious” mean?

- Good Question!
- The LTCCCA specifically chose the word “serious.”
- However, the LTCCCA does not define the word “serious.”
- This means the HCF Board has discretion to determine what violations are considered “serious.”
- It is impossible to delineate what is considered “serious” in every given situation, so instead of using the term serious ...

# Serious

- The rules provide that when determining the amount of the civil penalty to be assessed, the Board may consider the following:
  - The willfulness of the violation;
  - The repetitiveness of the violation; and
  - The magnitude of the risk of harm caused by the violation.
- For example, what might not be considered “serious” the first time a facility violates a rule, may become “serious” after repeated violation.
- This language also gives the Board discretion when assessing the amount of the civil penalty. For example, if it is a first time offense, the Board may assess a low civil penalty.
- See page 10

# Residential Homes for the Aged

- The new provisions to the ACLF rules do not apply to or affect Residential Homes for the Aged.
- According to the Tennessee General Assembly, the provisions found in Sections 21, 22, and 23 only apply to Assisted Care Living Facilities.

**This concludes the  
changes required to be  
made by the LTCCCA!**

# “House Cleaning” Matters

# Purpose of the Rules

- First and foremost, the rules are written to inform the licensee of the required performance standards.
- Second, to inform a resident of his or her rights.
- Third, to aid the Department in determining the compliance of the licensee.

# With that in mind...

- The rules were reorganized for the ease of the reader.
- When reorganizing the rules, the substance of the rules was not changed.

# Additions to the rules

- A purpose statement was added to set the tone of the rules. (page 1)
- Purged definitions defined in the Health Facilities and Resources Act. (pages 1-5)
- Purged definitions no longer applicable to ACLF rules. (pages 1-5)
- Require that an ACLF must demonstrate its ability to meet the financial obligations of the facility. (page 5)
- Specifies that application fees are nonrefundable. (page 5)



# Cont.

- Fee Rules: provides that if a licensee fails to renew a license, the licensee shall have a 60 day grace period and pay a late renewal fee of 100.00 per month. Public Chapter 846. (See page 5)
- Change of Ownership: Specifies what a prospective licensee must submit in order to get a CHOW. (See page 6)
- Requires than an administrator, who has allows a certification to lapse, to show proof of continuing education courses before the administrator can be recertified. (See page 8)
- Specifies that annual licensure inspections are to be “unannounced.” (See page 9)

# Cont.

- Specifies that an ACLF shall have an identified responsible attended who is “alert and awake at all times.” (See page 11)
- Specifies that the facility must develop a charity care policy statement and post the statement in an accessible area. (Tenn. Code Ann. 68-11-268) (See page 12).
- Specifies that if a hospice patient expires in an ACLF, a registered nurse may make the actual determination of place of death. (Tenn. Code Ann. 68-3-511(1)(A) and (6)(A). (See page 13)
- Specifies that an ACLF cannot designate a resident’s sleeping unit as a “designated smoking area.” (See page 28).

# Cont.

- Disposal of Medication: (See page 16)
  - Upon death or discharge of a resident, unused medications shall be released to the resident, family member or legal representative unless specifically prohibited by the attending physician or other authorized healthcare provider.
  - Scheduled drugs that are misbranded, expired, deteriorated, or not kept under proper conditions or in containers with illegible or missing labels must be returned the pharmacy within five (5) working days.
  - Non-scheduled drugs may be disposed of at the ACLF in the presence of another licensed or certified professional.
- These rules have been approved by the Board of Pharmacy.

# Unusual Event Reporting

- Unusual Event Reporting: The rules refer licensees to the Unusual Event Reporting Act (Tenn. Code Ann. 68-11-211). (See page 34)
- Public Chapter 318: All licensed health care facilities are no longer required to report unusual events as defined in the 2002 Act. However, each facility must still report the following within seven (7) business days:
  - Abuse;
  - Neglect; and
  - Misappropriation of Resident property.

# Cont.

- Facilities must also report within seven (7) business days:
  - Strike by staff at the facility;
  - External disasters impacting the facility;
  - Disruption of any service vital to the continued safe operation of the facility or the health and safety of its patients and personnel; and
  - Fires at the facility that disrupt the provisions of patient care services or cause harm to the patient or staff, or that are reported by the facility to any entity; including, but not limited to a fire department charged with preventing fires.

# Cont...

- Facilities no longer are required to submit a corrective action report.
- Incident reports are confidential and not subject to discovery, subpoena or legal compulsion.
- The department must reveal, upon request, its awareness that a specific incident has been reported.

# POST

- POST: The rules were amended to reflect the intent of the Board.
  - At the July 2008 Board meeting, the Board interpreted that the Physician's Scope of Treatment form (POST) was only mandated in cross transfer settings. (See page 42)

# Effective Date...





**EFFECTIVE!**

**The End!**