



The Tennessee Open Meetings Act 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:** September 11, 2015

**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 Board Meeting  
(Call-in Number: 1-888-757-2790 passcode: 457462#)

**Date of Meeting:** September 17-18, 2015

**Time:** 9:00 a.m.

**Place:** Iris Conference Room  
665 Mainstream Drive, First Floor  
Nashville, TN 37243

**Major Item(s) on Agenda:** See attachment.

**Link to Live Video Stream:**

**September 17, 2015**

<https://web.nowuseeit.tn.gov/Mediasite/Play/912515a98ff540f6bd734d864106b6b51d>

**September 18, 2015**

<https://web.nowuseeit.tn.gov/Mediasite/Play/ec428749338a47f5bb9991f4194be2441d>

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 N/A



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**JOHN J. DREYZEHNER, MD, MPH**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

*THE MISSION OF THE TENNESSEE DEPARTMENT OF HEALTH IS TO PROTECT, PROMOTE AND IMPROVE THE HEALTH AND PROSPERITY OF PEOPLE IN TENNESSEE*

**AGENDA**

**BOARD FOR LICENSING HEALTH CARE FACILITIES**

**September 17-18, 2015**  
**IRIS CONFERENCE ROOM, FIRST FLOOR**  
**9:00 a.m.**

**PLEASE REMEMBER TO SILENCE YOUR ELECTRONIC DEVICES WHEN  
THE BOARD IS IN SESSION**

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**A. SEPTEMBER 17, 2015 – BOARD MEETING.**

1. Welcome New Board Member(s):
2. Call the Meeting to Order.
3. Establish a Quorum.
4. Contested Case Hearings.
5. Orders.
  - A. Consent Orders
  - B. Orders.
6. Adjournment of Full Board. Immediately Following the Education Standing Committee Meeting; Performance Improvement Issue Standing Committee; Facilities Construction Standing Committee and the Assisted Care Living Facility Committee Meeting(s) will meet accordingly.

**B. EDUCATION STANDING COMMITTEE MEETING.**

1. Call the Meeting to Order and Establish a Quorum.
2. Approval of Minutes – July 8, 2015 Education Standing Committee
3. Language Approval for Interpretative Guidelines-Nursing Home Rule 1200-08-06-.15(2)(c)4 Nurse Aide Training Program Pass/Fail Rate Calculation

**C. PERFORMANCE IMPROVEMENT ISSUE STANDING COMMITTEE MEETING.**

1. Call the Meeting to Order and Establish a Quorum.
2. Language Approval for Interpretative Guidelines-Hospital Rule 1200-08-01-.07(4)(a)(b) – Outpatient Services & Dialysis.
3. Revisit-APN On-Call & Admission Orders Rule Language (Follow CMS Guidance) for Nursing Homes.
4. Proposed Hospital Rule Change Governing Patient Diets.  
– John P. Williams, Tune, Entrekin & White, PC
5. Interpretative Guidelines for Nursing Homes for Vent Units  
– Gene Gantt, RRT, President, CEO, Eventa Outcomes for Life
6. Clarification for Professional Support Services Rule 1200-08-34-.04(9) Administration; proof of adequate medical screenings to exclude communicable disease.  
– Donald W. Redden, Executive Director, Development Services of Dickson County
7. Other Discussion(s).
8. Adjourn.

**D. FACILITIES CONSTRUCTION STANDING COMMITTEE AND THE ASSISTED CARE LIVING FACILITIES STANDING COMMITTEE MEETING**

1. Call the Meeting to Order and Establish a Quorum.
2. Revisit-ACLF rules 1200-08-25-10(2)(i) – What is considered “cooking appliances?”

3. **GOVERNOR'S BEND ASSISTED LIVING FACILITY, ERWIN**

A one hundred twenty-four (124) bed facility is requested to waive 1200-08-25-.09(1) Building Standards regarding the HVAC issue and the Wireless Nurse Call Station. The statement references NFPA 90A, 5.3.3.1, 5.4.4 regarding HVAC and Fire Dampers. Their original architect's email reference for the exception to dampers was NFPA 32.3.3.7.10. The only reference to the Wireless Nurse Call Station System is UL 1069 edition 7 which is an AIA Guideline specifically references Hospitals and Nursing Homes. This ACLF facility would be covered under NFPA as a new residential board and care occupancy which these rooms would be considered our clients' homes.

Representative(s): Randy Trivette, Chief Financial Officer  
FreeWill Baptist Family Ministries

4. **MAYBELLE CARTER SENIOR ADULT HOME, NASHVILLE**

This seventy-four (74) ACLF facility is seeking to waive ACLF Regulation 1200-08-25-.09(16)(b) regarding the number of beds in each bedroom. Maybelle Carter is seeking to renovate the facility and is considering modification that would provide up to three (3) residents sharing certain common space within a shared space configuration of a half wall providing privacy in the sleeping area only.

Representative(s): Chris Puri, Attorney

5. Other Discussion(s).
6. Public Comments.
7. Adjourn.

**E. ASSISTED CARE LIVING FACILITIES STANDING COMMITTEE MEETING**

1. Call the Meeting to Order and Establish a Quorum.
2. Language Approval for Interpretative Guidelines- ACLF Rule 1200-08-25-.06(5)(a) – Infection Control.
3. Language Approval for Interpretative Guidelines- ACLF Rule 1200-08-25-.08(1)(c) – Reportable Patient Communicable Disease.
4. **Reconsideration**-ACLF Rule 1200-08-25-.10(2)(f) & RHA Rule 1200-08-11-.08 vs. NFPA 101 Life Safety Code 32.3.2.3.3 – Corridor requirements.



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**AGENDA**

**BOARD FOR LICENSING HEALTH CARE FACILITIES**

**September 18, 2015 – Second Day**  
**IRIS CONFERENCE ROOM, FIRST FLOOR**  
**9:00 a.m.**

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THE BOARD IS IN SESSION**

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- 1. CALL THE MEETING TO ORDER.**
- 2. ESTABLISH A QUORUM.**
- 3. APPROVAL OF MINUTES:** Emergency Called Board Meeting-August 7, 2015  
Education Standing Committee Meeting-July 8, 2015  
Facilities Construction Standing Committee Meeting-  
May 5, 2015  
Assisted Care Living Facility Standing Committee  
Meeting-March 24, 2015
- 4. REPORTS**
  - A. EMS REPORT - Robert Seesholtz**
  - B. NURSE AIDE REPORT – Wanda King**
  - C. OFFICE OF GENERAL COUNSEL REPORT – Devin Wells**
- 5. CONSIDERATION AND RATIFICATION OF LICENSURE APPLICATIONS  
(CHANGE OF OWNERSHIP (CHOWS) AND INITIALS).**
  - A. CONSIDERATION.**

**(INITIALS)**

**B. RATIFICATION.**

**1. QUALIFYING APPLICATIONS**

**(INITIALS)**

A1 Diabetes and Medical Supply, Inc., Memphis-Home Medical Equipment Facility  
Baby + Company Nashville1, LLC, Nashville-Birthing Center Facility  
Carthage Assisted Living, LLC, Carthage-Assisted Care Living Facility  
Dominion Senior Living of Johnson City, Johnson City-Assisted Care Living Facility  
First Community Care, LLC, Nashville-Home Medical Equipment Facility  
Fresenius Medical Care Knoxville Home Dialysis Therapies, Knoxville-End Stage Renal Disease Facility  
Green Crest Assisted Living Centers, Inc., Parsons-Assisted Care Living Facility  
Hemophilia Preferred Care of Memphis, Inc., Memphis-Home Health Agency  
Medical Health Specialist of TN, Inc., Trenton-Home Medical Equipment Facility  
Medical Supply Services, LLC, Cookeville-Home Medical Equipment Facility  
Prism Medical Products, LLC, Memphis-Home Medical Equipment Facility  
Sprocket Therapy Solutions, LLC, Nashville-Professional Support Services  
Sunrise Homecare, LLC, Nashville-Home for the Aged Facility  
Sycamore Springs Senior Living Community, Elizabethton-Assisted Care Living Facility  
The Imaging Center at Wolf River, Germantown-Outpatient Diagnostic Center Facility  
Therapy Success, LLC, Bartlett-Home Medical Equipment Facility  
Vantage Pointe Village at Ashland City, Ashland City-Assisted Care Living Facility

**2. (CHOWS)**

Graceland Rehabilitation and Nursing Center, Memphis-Nursing Home Facility  
Healthy Life Care, LLC, Portland-Residential Home for the Aged Facility  
Maybelle Carter Senior Adult Home, Madison-Assisted Care Living Facility  
Spring Creek Home Medical Supply, Clarksville-Home Medical Equipment Facility  
The Hearth at Franklin, Franklin-Assisted Care Living Facility

**6. DISCUSSION(S).**

- A. Summary of the Performance Improvement Issue Standing Committee Meeting that was held June 23, 2015 from 9:00 a.m. to 11:00 a.m. – Ann Rutherford Reed
- B. Summary of the Performance Improvement Issue Standing Committee and the Facilities Construction Standing Committee Meeting that was held June 23, 2015 from 11:00 a.m. to 2:00 pm. – Ann Rutherford Reed
- C. Summary of the Facilities Construction Standing Committee that was June 23, 2015 from 2:00 p.m. to 4:00 p.m. – Ann Rutherford Reed
- D. Summary of the Assisted Care Living Facility Standing Committee Meeting that was held on August 18, 2015. – Ann Rutherford Reed
- E. Tennessee Assisted Care Living Facility Trend Report from the Assisted Care Living Facility Standing Committee Meeting-August 18, 2015 request to share with Board.  
– Ann Rutherford Reed
- F. **Consider-Home Care Organization Providing Home Health Services 1200-08-26-.01(48) and 1200-08-26-.05(4) and (8) pertaining to physician who supervises patient care and writes orders.**  
– Sharon Parham, Director of Development with Home Health of East Tennessee
- G. **PROPOSED MEETING DATES FOR YEAR 2016.**
- H. **Board Approval for the Following Interpretative Guidelines**
  - (1) Approval of Interpretative Guideline-Assisted Care Living Facility (ACLF) and Home for the Aged (RHA) Disaster Plan, HVAC, and Emergency/Generator Regulation 1200-08-25-.16(4) and RHA 1200-08-11-.13(3).
  - (2) Approval of Interpretative Guideline-Nursing Home Rule 1200-08-06-.15(2)(c)4 Nurse Aide Training Program Pass/Fail Rate Calculation.
  - (3) Approval of Interpretative Guideline-Hospital Rule 1200-08-01-.07(4)(a)(b) – Outpatient Services & Dialysis.
  - (4) Approval of Interpretative Guideline-ACLF Rule ACLF Rule 1200-08-25-.08(1)(c) – Infection Control.

- (5) Approval of Interpretative Guidelines-ACLF Rule 1200-08-25-.08(1)(c) -- Reportable Patient Communicable Disease.
- (6) Approval of Interpretative Guidelines for Nursing Homes Vent Units Rules 1200-08-06-.06(12)(a)1; 1200-08-06-.06(a)4(d); 1200-08-06-.06(a)4(d); and 1200-08-06-.06(12)(a).

**I. Board Approval for the following applications:**

- (1) Ambulatory Surgical Treatment Center Initial Application
- (2) Home Medical Equipment Licensure Initial Application
- (3) Professional Support Services Licensure Initial Application
- (4) Professional Support Services Licensure CHOW Application
- (5) Professional Support Services Renewal Application

**J. Proposed Hospital Rule Change Governing Patient Diets.**  
 – John P. Williams, Attorney

**K. Consider Amended Hospital Language Rule 1200-08-01-.01 the definition of “rural” or “rural hospital” is clear. This rule is promulgated under the auspices of the HCF Board.** – Bruce Behringer and Angie Allen, Dept. of Health

**L. Clarification for Professional Support Services Rule 1200-08-34-.04(9) Administration; proof of adequate medical screenings to exclude communicable disease.**  
 – Donald W. Redden, Executive Director, Development Services of Dickson County

**M. Approval of the Joint Annual Report on the Status of Emergency Medical Services for Children 2015 and Report of the Five (5) Strategic Priorities.**  
 – Rhonda Phillippi, Executive Director, TN EMS for Children

**7. LICENSE STATUS UPDATES.**

**VOLUNTEER WOMEN’S MEDICAL CLINIC, KNOXVILLE**

Volunteer Women’s Medical Clinic was placed on inactive status on February 7, 2013 which expired on January 2014; an extension waiver for twelve months was granted on January 23, 2014 which will expire on January 23, 2015. Due to phone difficulties at the January 21, 2015 Board meeting the Board asked Ms. Walsh to come back in May to explain her waiver request. On May 5, 2015 Ms. Walsh has informed the Department that she will be seeking to close this facility after returning from vacation on May 15<sup>th</sup> because it had become costly in renewal fees to keep this facility. Volunteer Women’s Medical Clinic did not renew their ASTC license so the license was closed on June 30, 2015.



**8. LICENSE STATUS REQUESTS.**

**NASHVILLE SURGERY CENTER, NASHVILLE**

This ASTC facility is seeking to place their license on inactive status due to low volume and other business issues and has stopped seeing patients effective May 29, 2015. The company of Nashville Surgery Center is in negotiations with Nashville SurgiCenter, LLC, an HCA-affiliated which will result in a change of ownership.

**Representative(s):** Chelsey J. Hadfield, Attorney, Nashville Surgery Center and Jerry W. Taylor, Attorney, Nashville SurgiCenter, LLC

**DONELSON PLACE CARE AND REHABILITATION CENTER, NASHVILLE**

This one hundred twenty-four (124) bed facility is seeking to place their license on inactive status for a period of three (3) years. Due to the termination from participating in the CMS certification this facility has closed their operations and transferred all remaining residents to other Signature facilities on July 23, 2015. Signature Healthcare will be applying for a Certificate of Need (CON) to build a new replacement facility and for other possible opportunities.

**Representative(s):** Jeffrey D. Parrish, Attorney

**TRI-CITIES OUTPATIENT SURGERY, INC., JOHNSON CITY**

This ASTC facility is seeking to place their license on inactive status due to declining reimbursements and declining volume. This facility is not seeing patients and has closed their doors as of August 4, 2015. Their plans are to use the ASTC space as part of their clinic.

**Representative(s):** Brenda Stufflestreet, Administrator

**CENTER FOR SURGICAL SPECIALITIES, LLC, SHELBYVILLE**

This ASTC is seeking to place their license on inactive status for a period of six (6) months due to a change in ownership of the building where the surgery center has been operating. Patient care has been suspended as of July 15, 2015.

**Representative(s):** Domenic Canonico, M.D., Governing Body President

**SOUTHERN HILLS SURGERY CENTER, NASHVILLE**

This ASTC facility is seeking their eighth extension waiver for inactive status for an additional two (2) years that corresponds to the period of validity of the Certificate of Need (CON) that was granted to Southern Hills Surgery Center on May 27, 2015 to relocate and for a replacement facility. The CON has an expiration date of July 1, 2017. Southern Hills requests an extension at least through the fall, 2016 at which time Southern Hills representatives could appear and provide the Board with an update on the status of the appeal.

**Representative(s):** Jerry W. Taylor, Attorney

**BAPTIST REHABILITATION-GERMANTOWN, GERMANTOWN**

This facility is seeking to place their license on inactive status for a period of one (1) year. Baptist Rehabilitation-Germantown surrendered its license for 49 inpatient rehabilitation beds leaving only 11 general acute care beds. Baptist Rehabilitation-Germantown operates an MRI service at an off-campus location at 6286 Briarcrest Avenue, Suite 120, Memphis. The plan is for this MRI service to continue, and Baptist Memorial-Germantown will undertake to transfer operation of the MRI services to Baptist Memorial Hospital-Memphis. A Certificate of Need (CON) has not yet been determined if transfer of the MRI is required. The inpatient rehabilitation services having been relocated, the future of this facility is uncertain and Baptist Rehabilitation-Germantown need time to allow an opportunity for an orderly review of the options for future operations of this facility.

**Representative(s):** Dan H. Elrod, Attorney

**9. WAIVER REQUESTS.**

**A. THE FOLLOWING NURSING HOMES ARE REQUESTING TO WAIVE NURSING HOME REGULATIONS 1200-08-06-.04(1) FOR A TENNESSEE LICENSED NURSING HOME ADMINISTRATOR UNTIL A PERMANENT REPLACEMENT IS HIRED OR RECEIVES HIS/HER LICENSE IN TENNESSEE.**

- (1) NEWPORT HEALTH AND REHABILITATION CENTER, NEWPORT
- (2) THE WEXFORD HOUSE OF KINGSPORT, KINGSPORT
- (3) WHITEHAVEN COMMUNITY LIVING CENTER, MEMPHIS

**B. OTHER WAIVER REQUEST(S)**

**GOVERNOR'S BEND ASSISTED LIVING FACILITY, ERWIN**

This one hundred twenty-four (124) bed facility is requested to waive 1200-08-25-.09(1) Building Standards regarding the HVAC issue and the Wireless Nurse Call Station. The statement references NFPA 90A, 5.3.3.1, 5.4.4 regarding HVAC and Fire Dampers. Their original architect's email reference for the exception to dampers was NFPA 32.3.3.7.10. The only reference to the Wireless Nurse Call Station System is UL 1069 edition 7 which is an AIA Guideline specifically references Hospitals and Nursing Homes. This ACLF facility would be covered under NFPA as a new residential board and care occupancy which these rooms would be considered our clients' homes.

**Representative(s):** Randy Trivette, Chief Financial Officer  
FreeWill Baptist Family Ministries

**AVALON HOSPICE, NASHVILLE**

Avalon Hospice Agency is seeking a waiver to open two (2) new branch offices located in Sweetwater (approximately 184 miles from the Nashville parent office) and Kingport (approximately 277 miles from the Nashville parent office). Avalon has a geographic service area of all 95 counties in Tennessee. Avalon Hospice has twice requested and received similar waivers from the Board in early 2014 and in May 2009 and has locations in Dyersburg, Johnson City, Morristown, Bolivar, Memphis, Jackson and Knoxville.

**Representative(s):** Stephen Angelette, Associate and John Dyer, Vice President  
TNMO Healthcare

**PENTEC HEALTH, INC., NASHVILLE**

Pentec Health is a home health agency seeking license in Tennessee and is seeking to waive one provision of the Standards for Homecare Organizations Providing Home Health Services rule 1200-08-26-.04(10) relating to maintaining an office with a working telephone and be staffed during normal business hours. Pentec will maintain this office primarily for the purpose of survey conferences and other meetings and is staffed by a shared receptionist only. Pentec does not treat patients in the office and all patient records are electronic and are accessible from any location with internet service. Because care is delivered in their places of residence, patients whom are home-bound or suffer from limited mobility are spared for the need for travel to a physician's office for treatment.

**Representative(s):** Richard D. Leigh, Attorney, Saul Ewing, LLP

**MAYBELLE CARTER SENIOR ADULT HOME, NASHVILLE**

This seventy-four (74) ACLF facility is seeking to waive ACLF Regulation 1200-08-25-.09(16)(b) regarding the number of beds in each bedroom. Maybelle Carter is seeking to renovate the facility and is considering modification that would provide up to three (3) residents sharing certain common space within a shared space configuration of a half wall providing privacy in the sleeping area only.

**Representative(s):** Chris Puri, Attorney

**MCMINN MEMORIAL NURSING HOME, ETOWAH AND STARR REGIONAL MEDICAL CENTER, ATHENS**

McMinn Memorial Nursing Home, Etowah is requesting approval to be allowed to temporarily move patients and beds to a temporary location within the Starr Regional Medical Center-Etowah Campus while McMinn undergoes renovation and construction. McMinn Memorial Nursing Home is an eighty-eight (88) bed nursing home in Etowah on the campus of Starr Regional Medical Center. Starr Regional Medical Center is a 190-bed acute care facility. McMinn will undergo an extensive renovation and remodeling in four (4) phases. Each phase of construction will affect approximately 16-22 patient beds. Starr Regional would like to utilize unused and available within the licensed hospital. The proposed construction plan for McMinn will be approximately eight (8) months.

**Representative(s):** Chris Puri, Attorney

**10. BOARD POLICY CONSENTS.**

**A. THE FOLLOWING NURSING HOMES ARE REQUESTING A WAIVER TO PROVIDE OUTPATIENT THERAPY SERVICES AS PROVIDED FOR BY BOARD POLICY #32:**

Agape Nursing & Rehabilitation Center, Johnson City  
Boulevard Terrace Rehabilitation and Nursing Center, Murfreesboro  
Church Hill Health Care and Rehabilitation Center, Church Hill  
Crestview Health and Rehabilitation, Nashville  
Glen Oaks Health and Rehabilitation, Shelbyville  
Golden Livingcenter-Windwood, Clinton  
Lebanon Health & Rehabilitation Center, Lebanon  
Manchester Health Care Center, Manchester  
Poplar Point Health and Rehabilitation, Memphis  
Signature Healthcare of Erin, Erin

**B. THE FOLLOWING FACILITIES ARE REQUESTING APPROVAL TO PERMIT AN ADMINISTRATOR TO SERVE BOTH A NURSING HOME AND ASSISTED CARE LIVING FACILITY ACCORDANCE WITH BOARD POLICY #39:**

Life Care Center of Sparta, Sparta (Nursing Home) and The Bridge Assisted Living (ACLF)

**11. REGULATION(S).**

**A. BOARD APPROVAL FOR RULEMAKING HEARING.**

**B. PROPOSED RULE LANGUAGE**

Request to amend the rules for hospitals and ambulatory surgical treatment centers to promulgate rules regarding the reporting of abortions according to T.C.A. 68-3-505.

There is already a rule in place in the Office of Vital Records rules 1200-07-0-.07(1), (2), (3), (4) that would like to see mirrored into the rules for Hospitals rules 1200-08-01-.11 and Ambulatory Surgical Treatment Center rules 1200-08-10.11.

**MINUTES**  
**BOARD FOR LICENSING HEALTH CARE FACILITIES**  
**SEPTEMBER 18, 2015**

The Board for Licensing Health Care Facilities Board meeting began September 18, 2015.

Dr. René Saunders, Chairman, called the meeting to order and requested roll call of attendance.

Dr. René Saunders - here  
Mr. Robert Breeden – here  
Dr. Jennifer Gordon-Maloney – here  
Mr. Joshua Crisp – here  
Ms. Carissa Lynch – here  
Ms. Annette Marlar – here  
Mr. John Marshall – here  
Dr. Michael Miller – not here  
Mr. David Rhodes – here  
Mr. Jim Shulman – not here  
Mr. Bobby Wood – here  
Dr. Sherry Robbins – here  
Ms. Diana Miller – here  
Mr. Roger Mynatt – here  
Dr. Kenneth Robertson – here  
Mr. Bobby Wood - here

A quorum was established.

**ORDERS:**

**Consent Orders -**

Devin Wells, Office of General Counsel (OGC), introduced himself and indicated he would be serving the Board while Kyonzte Hughes-Toombs was out on maternity leave. He asked to move directly to the General Counsel's Report.

**REPORTS:**

**OGC –**

Mr. Wells stated to the Board there are 16 open cases in OGC. 12 of these cases are to be presented as consent orders today. Mr. Wells informed the Board there are five nursing home consent orders for delinquent quarterly payments of the nursing home assessment fee. The payment of such fees is to TennCare, but the authority to discipline is with this Board. OGC has developed consent orders that recommends a waiver of all penalties and interest and if future payments are not made further disciplinary action may occur. Mr. Wells gave an update on those rules moving through the rulemaking process – speech therapy rules were approved by the Attorney General's (AG's) Office and filed with the Secretary of State's (SOS') Office, traumatic brain injury rules have been submitted to the AG's Office with comments received from the AG's Office that the OGC is currently addressing, building code rules/surgical technician requirement rules/background check rules are currently under review by the

AG's Office. He stated there will be a rulemaking hearing at the January 2016 Board meeting for influenza vaccination rules. Mr. Wells stated the advance care directive form rules are being reviewed internally along with a combined packet of rules covering repackaging medications, secured unit, qualified social worker, orders for home medical equipment (HME) providers, ambulatory surgical treatment center (ASTC) rules, hospital admissions, discharges and transfers, storing medications, and fire safety.

## **ORDERS continued:**

### **Consent Orders continued -**

Mr. Wells gave the Board members information on what and how the consent orders were developed. Benchmark Healthcare of Puryear, Inc. (nursing home assessment fee) **David Rhodes motion to accept; seconded by Carissa Lynch. The motion was approved;** Cambridge Care Center, LLC (nursing home assessment fee) **Dr. Kenneth Robertson/Roger Mynatt motion to accept; seconded by Dr. Sherry Robbins. The motion was approved;** John M. Reed Health and Rehab (nursing home assessment fee) **Mr. Rhodes motion to approve; seconded by Dr. Robertson. The motion was approved;** Mabry Health Care and Rehab Center (nursing home assessment fee) **Mr. Mynatt motion to accept; seconded by John Marshall. The motion was approved;** Mount Pleasant Health and Rehabilitation (nursing home assessment fee) **Mr. Mynatt motion to accept; seconded by Dr. Robbins. The motion was approved;** Broadmore Assisted Living (CMP assessed) **Mr. Rhodes motion to approve; seconded by Dr. Robertson. The motion was approved;** Carriage Court of Memphis (CMP assessed) **Mr. Mynatt motion to accept; seconded by Bobby Wood.** Joshua Crisp questioned the difference in CMP assessed for the last two facilities as the same issue was identified at each one. Mr. Wells stated the CMP fee is based upon a CMP fee range and the facts possibly warranted a higher fee for the last facility. **The motion was approved;** Grace Manor (CMP assessed) **Mr. Rhodes motion to approve; seconded by Mr. Mynatt. The motion was approved;** Mighty Hearts Home Care, Inc (revocation of license) **Dr. Robbins motion to accept; seconded by Ms. Lynch. The motion was approved;** Northcliff, Inc. (CMP assessed) **Mr. Mynatt motion to accept; seconded by Mr. Rhodes. The motion was approved;** Olive Branch Assisted Living (CMP assessed) **Mr. Wood motion to accept; seconded by Dr. Robbins. The motion was approved;** Southern Manor Living Center (CMP assessed) **Dr. Robertson motion to accept; seconded by Dr. Robbins. The motion was approved.**

## **APPROVAL OF MINUTES:**

Ann Reed, Director of the Board for Licensing Health Care Facilities, presented to the Board for approval the minutes for the August 7, 2015 Emergency Called Board meeting; July 8, 2015 Education Standing Committee; May 5, 2015 Facilities Construction Standing Committee; March 24, 2015 Assisted Care Living Facility Standing Committee. **Robert Breeden made a motion to accept the minutes; seconded by Dr. Robbins. The motion was approved.**

## **REPORTS CONTINUED:**

### **EMS –**

Robert Seesholtz, EMS Trauma System Manager, presented the EMS report. He provided to the Board the minutes of the Trauma Care Advisory Council (TCAC) February 11, 2015 meeting for review. Mr. Seesholtz stated to the Board Vanderbilt University Medical Center was present to request a waiver of Trauma Center rule 1200-08-12-.04(4)(a) specific to trauma center verification. Dr. Jeff Miller presented to the Board on behalf of Vanderbilt. He stated to the Board that Vanderbilt a year ago underwent the American College of Surgeons (ACS) verification for trauma designation. Dr. Miller indicated the facility

had one deficiency which will be re-inspected by ACS in October of this year. He is making the request for the Board to accept the ACS verification of a Level I Trauma Center Designation in lieu of state verification of such. Dr. Miller further stated many other states have this practice. He stated that Mr. Seesholtz was present during the ACS inspection and if this is deemed acceptable that once the facility has the follow-up visit in October this be accepted as verification for state purposes. Dr. Saunders asked for explanation of the difference between the two verification processes. Dr. Miller stated the ACS verification is more stringent and the main difference between the two processes is trauma performance real time evaluation and continuous multi-disciplinary evaluation of patients outside ACS's criteria for acceptable management. Mr. Marshall supported this request as Board representative on the TCAC. Annette Marlar asked why the facility could not have both designations. Ms. Reed explained the ACS verification would suffice to meet the state verification for trauma level designation. Ms. Marlar gave a comparison to a nursing home having Joint Commission accreditation and wanting to use that in place of the state survey. Ms. Reed informed the Board that state law would allow the use of an accreditation by a federally recognized accrediting body as meeting the licensure requirements. Dr. Miller interjected that Mr. Seesholtz/state representative would be present each time the facility is evaluated. Dr. Robertson asked if this was to be a one-time waiver or would a policy change need to be made. Ms. Reed indicated this is a one-time request, but would have Mr. Seesholtz to address the remainder of the question. Mr. Seesholtz indicated rule revision is underway for the Trauma Center rules and that ACS verification is to be added to the rules as meeting the state verification visit, but with certain criteria being in place such as the Trauma System Program Manager being in attendance. **Mr. Marshall made a motion to approve the one-time waiver for Vanderbilt Medical Center to use ACS verification in lieu of state verification; seconded by Dr. Robertson. The motion was approved.** Mr. Seesholtz asked if he should come back to the Board in January 2016 to report the results of the follow-up ACS visit and request state designation. Ms. Reed stated yes. Mr. Seesholtz continued with his report. He stated Skyline Medical Center had their one year provision visit on April 30, 2015. A few deficiencies were noted and a corrective action plan was requested to be submitted to the state within 60 days with the facility remaining on provisional status for one more year to correct the deficiencies. The corrective action plan has been received in Mr. Seesholtz' Office and has undergone desk review of multiple site team members. The corrective action plan was deemed sufficient. Representatives of the facility were present to address any questions of the Board. Dr. Robbins made a motion to accept the corrective action plan; seconded by Mr. Breeden. The motion was approved. The final facility report Mr. Seesholtz had was for Erlanger Medical Center. The facility underwent its three year verification site visit. There were numerous improvements noted since the last visit. Also, noted were areas of improvements such as addressing current electronic emergency department flow sheet and remain behind in submission of trauma data to the trauma registry. The final result of the site team was continued recommendation for designation as a Level I Trauma Center. Dr. Robertson made a motion to approve the recommendation; seconded by Dr. Robbins. The motion was approved. Mr. Seesholtz provided some update information to the Board concerning Johnson City Medical Center and Holston Valley Medical Center. He updated the Board on these facilities submission of neurosurgical call schedules. Mr. Seesholtz indicated the call schedules are appropriate and show that both facilities are meeting their respective trauma center designation requirements.

#### **Nurse Aide –**

Wanda King, Nurse Aide Program Manager, reported to the Board that there was no official Nurse Aide Report. She did inform the Board that to date there are 40,000 active nurse aides in Tennessee and over 3,000 entries on the Abuse Registry. Ms. King also stated she has been working with the Education Standing Committee which is a later agenda item. Ms. Reed stated the report on the work with the



Education Standing Committee could be presented at this time. Ms. King provided the Board with a report from the owner of the current testing agency that contract with the state to test all nurse aides in Tennessee. This owner had recommendations the Board could evaluate regarding the process. This information was discussed with the Education Standing Committee. Ms. King stated the first step would be to address how the Board wants to determine success of a nurse aide program. Would this include setting a standard of the success of a program? Other recommendations included limit of 20 persons in a program, consider demographics when reviewing a training program, and consider remedial actions for a program. Ms. King stressed to the Board there are current regulations in place that programs and surveyors must follow. She also stated there is an interpretative guideline in place that was developed by the Education Standing Committee establishing a standard for reviewing the data which is to be looked at for two years to evaluate trends and whether additional action is needed.

### **CONSIDERATION AND RATIFICATION OF LICENSURE APPLICATIONS (CHANGE OF OWNERSHIP (CHOWS) AND INITIALS):**

Ms. Reed presented the CHOW and initial licensure applications received by the Office of Health Care Facilities (OHCF).

The following initial applications were processed by the Board's administrative staff without concern – A1 Diabetes and Medical Supply, Inc; Memphis – Home Medical Equipment (HME); Baby + Company Nashville1, LLC; Nashville – Birthing Center; Carthage Assisted Living, LLC ; Carthage – Assisted Care Living Facility (ACLF); Dominion Senior Living of Johnson City; Johnson City – ACLF; First Community Care, LLC; Nashville – HME; Fresenius Medical Care Knoxville Home Dialysis Therapies; Knoxville – End Stage Renal Dialysis Clinic (ESRD); Green Crest Assisted Living Centers, Inc; Parsons – ACLF; Hemophilia Preferred Care of Memphis, Inc; Memphis – Home Health Agency; Medical Health Specialist of TN, Inc; Trenton- HME; Medical Supply Services, LLC; Cookeville – HME; Prism Medical Products, LLC; Memphis – HME; Sprocket Therapy Solutions, LLC; Nashville – Professional Support Services; Sunrise Homecare, LLC; Nashville – Home for the Aged (RHA); Sycamore Springs Senior Living Community; Elizabethton – ACLF; The Imaging Center at Wolf River; Germantown – Outpatient Diagnostic Center (ODC); Therapy Success, LLC; Bartlett – HME; Vantage Pointe Village at Ashland City; Ashland City – ACLF. **Mr. Marshall made a motion to approve all initial applications presented excluding Dominion Senior Living of Johnson City; Johnson City – ACLF; seconded by Dr. Robbins. The motion was approved.** Joshua Crisp recused from the vote on Dominion Senior Living of Johnson City; Johnson City – ACLF. **Dr. Robbins made a motion to approve the initial licensure application for Dominion Senior Living of Johnson City; Johnson City – ACLF; seconded by Mr. Breeden. The motion was approved.** Mr. Crisp returned to the meeting.

The following CHOW applications were presented to the Board for approval without staff concern – Graceland Rehabilitation and Nursing Center; Memphis – Nursing Home; Healthy Life Care, LLC; Portland – RHA; Maybelle Carter Senior Adult Home; Madison – ACLF; Spring Creek Home Medical Supply; Clarksville – HME; The Hearth at Franklin; Franklin – ACLF. **Dr. Robbins made a motion to approve the CHOW applications excluding Graceland Rehabilitation and Nursing Center; Memphis; seconded by Ms. Lynch. The motion was approved.** Ms. Marlar recused from the vote on Graceland Rehabilitation and Nursing Center; Memphis. **Mr. Mynatt made a motion to approve the CHOW application for Graceland Rehabilitation and Nursing Center; Memphis; seconded by Dr. Robbins. The motion was approved.** Ms. Marlar returned to the meeting.

## **DISCUSSION(S):**

### **Summary of Performance Improvement Issue (PI) Standing Committee –**

Ms. Reed presented a summary of the June 23, 2015 PI Standing Committee. The Board members received a copy of this summary and were asked if there were questions regarding the items discussed at the June 23 meeting. Ms. Reed also summarized for the Board the activities of the PI Standing Committee at the September 17, 2015 meeting. She informed the Board that some interpretative guidelines (IG) were approved which will be presented for final approval by the Board. These included hospital rules concerning outpatient services and dialysis and licensed practitioners including advanced practice nurses performing on-call services and writing admission orders in hospitals. In the PI Standing Committee, hospital rule language changes to 1200-08-01-.06(9)(e)1 & 2 was approved and to move to the full Board for consideration. Hospital rule 1200-08-01-.01(23) regarding dietary and dietician work was recommended to OGC for further review. After review of this language by OGC, it will be brought back to the PI Standing Committee. Also brought before the PI Standing Committee was a licensed professional support services agency requesting clarification of professional support services agency rule 1200-08-34-.04(9) and the IG that addresses the portion of the rule that speaks to adequate medical screenings to exclude communicable disease. This PI agenda item was deferred to the Assisted Care Living Facility (ACLF) Standing Committee.

### **Summary of the PI Standing Committee and Facilities Construction Standing Committee –**

Ms. Reed presented a summary of the June 23, 2015 PI and Facilities Construction Standing Committee. The Board members received a copy of this summary and were asked if there were questions regarding the items discussed at the June 23 meeting.

### **Summary of the Facilities Construction Standing Committee –**

Ms. Reed presented a summary of the June 23, 2015 Facilities Construction Standing Committee. The Board members received a copy of this summary and were asked if there were questions regarding the items discussed at the June 23 meeting.

### **Summary of the ACLF Standing Committee –**

Ms. Reed presented a summary of the August 18, 2015 ACLF Standing Committee. The Board members received a copy of this summary and were asked if there were questions regarding items discussed at the August 18 meeting. Ms. Reed also summarized for the Board the activities of the ACLF Standing Committee at the September 17, 2015 meeting. This meeting of the ACLF Standing Committee reviewed an IG regarding infection control which was approved and to move to the full Board for consideration. This standing committee also looked at the IG regarding reportable patient communicable disease which was not approved by that committee. A representative from the Nursing Board presented to the ACLF Standing Committee on the medication aide certified program.

### **Summary of the Education Standing Committee –**

Ms. Reed presented a summary of the activities of the Education Standing Committee at the September 17, 2015 meeting. The committee did work on the IG for nurse aide training program pass/fail rate calculation and reviewed the report from the testing center that was presented to the full Board. The IG will be presented later for full Board approval.

**Summary of the ACLF and Facilities Construction Standing Committee –**

Ms. Reed presented a summary of the activities of the ACLF and Facilities Construction Standing Committee at the September 17, 2015 meeting. The committee considered cooking items as found in the ACLF regulations. The item was moved to OGC to develop rule language and the development of an IG to serve until the rule language is effective. All will be brought back to joint committee to review and approve before presentation to the full Board. The requirement resulted in the development of an IG which addressed the ACLF and Home for the Aged (RHA) regulations. This IG was approved and moved to the full Board for consideration. The final item discussed at the joint committee was Governor's Bend Assisted Care Living Facility. The facility brought information to the joint committee with the joint committee requesting additional work by OGC.

**Tennessee Assisted Care Living Facility Trend Report –**

Ms. Reed presented this item to the full Board. The Trend Report was first presented to the ACLF Standing Committee. OHCF's statistician developed and created this report based upon Joint Annual Report (JAR) data. The data is from the JAR is one and half to two year behind. This report gives a 'snapshot' of what assisted living facilities in Tennessee look like.

**Consider Home Care Organization Providing Home Health Services 1200-08-26-.01(48) and 1200-08-26-.05(4) & (8) –**

Ms. Reed indicated this item was up for discussion relating to the language addressing the physician who supervises patient care and writes orders. This item was on the Board's May agenda and the individual who brought the issue to the Board was unable to make that meeting so the Board deferred the item to this Board meeting. The representative for the item was Sharon Parham, Director of Development with Home Health of East Tennessee, and she was not present at the meeting. Dr. Robbins shared thoughts with the Board on this item. She stated within the VA system a physician with a license in any state in the United States can work within the VA facilities no matter where the facility is located. Dr. Robbins stated she felt this warranted the Board's discussion even without representation. Janet Williford asked if the doctors referring patients from out of state into Tennessee for home health services continue to follow the patient. Dr. Robbins stated her experience has been that outpatient and inpatient VA facilities have physicians from anywhere in the country to work within the facility. She feels the issue is physicians are practicing who have federal approval to provide orders within a VA facility and the issue becomes those Tennessee located VA facilities have out of state licensed physicians providing care to a patient that then requires home health services. Ms. Williford indicated it was difficult in getting the out of state physician to sign home health orders. Dr. Robbins further stated working as a physician near border states does often requires you to treat patients from those border states. Ms. Marlar questioned if the issue is more than just the writing of orders. Ms. Reed stated patients who see a physician that is licensed in another state at a VA clinic in Tennessee may refer that patient to home health, but cannot write orders for any care received through the home health. Mr. Breeden asked about verification of licensure by the home health agency of the physicians. Ms. Reed stated that is part of the survey process in that the surveyors review personnel records to see the licensed facility verified the professional licensure of the physician. Ms. Marlar felt this is the professional licensing board's issue. Ms. Reed indicated the licensed facility is having the issue. Dr. Saunders stated the Medical Board states the physician to practice in Tennessee must have a license in Tennessee to do so. She stated this is a federal exemption and the federal government allows at the VA facilities. Dr. Saunders stated it would be better if a representative was present to present on the issue. Ms. Reed emphasized before a decision was made by this Board that a conversation might be needed with the Medical Board. Dr. Robbins stated there are some federal exemptions that this Board is not

aware of and might need clarification. Mr. Breeden suggested this item being referred to the Education Standing Committee for review. Dr. Saunders asked if the Education Standing Committee was the best direction. She stated it would be helpful if the person bringing the issue to the Board would be present to discuss and provide solutions. Dr. Saunders stated that would then be the time to take to a committee or to OGC to determine the need for involvement from another Board. Dr. Robbins stated that because the individual is not present to discuss does not make this an invalid issue. She feels the Board has an obligation to address. Dr. Robbins stated the question is whether there is a federal waiver that would allow a physician licensed in another state to write orders. Ms. Marlar indicated other practitioners need to be considered as well. Mr. Wells indicated this item should come back to OGC for review. **Dr. Robbins made a motion to move the item back to OGC for review; seconded by Mr. Breeden. The motion was approved.**

#### **Proposed Meeting Dates For Year 2016 –**

The Board was presented with meeting dates for next year. **Mr. Breeden made a motion to accept the dates as presented; seconded by Mr. Rhodes. The motion was approved.**

#### **Board Approval Interpretative Guidelines (IG) –**

Ms. Reed presented the following IGs for approval by the Board.

- ACLF rule 1200-08-25-.16(4) and RHA rule 1200-08-11-.13(3) regarding disaster plan, HVAC, and emergency/generator – **Mr. Rhodes made a motion to approve; seconded by Mr. Marshall. The motion was approved.**
- Nursing Home rule 1200-08-06-.15(2)(c)4 regarding nurse aide training program pass/fail rate calculation – **Dr. Robbins made a motion to approve; seconded by Mr. Rhodes. The motion was approved.**
- Hospital rule 1200-08-01-.07(4)(a)(b) regarding outpatient services and dialysis – **Mr. Marshall made a motion to approve; seconded by Mr. Rhodes.** Dr. Robbins asked about the three listed situations and why these were specifically listed. Ms. Reed stated these were the examples brought to the administrative office's attention. Dr. Robbins stated so the allowance of outpatient dialysis in the hospital would not be limited to these categories. Ms. Reed stated no, that other issues may arise, and these issues would be brought back to the PI Standing Committee. **The motion was approved.**
- ACLF rule 1200-08-25-.08(1)(c) regarding infection control – **Mr. Crisp made a motion to approve; seconded by Mr. Rhodes. The motion was approved.**
- Hospital rule 1200-08-01-.05 regarding licensed practitioners admission privileges and provision of on-call services – **Mr. Marshall made a motion to approve; seconded by Mr. Rhodes. The motion was approved.**
- ACLF rule 1200-08-25-.010(2)(f) and RHA rule 1200-08-11-.08(8) regarding corridor width requirements – **Mr. Rhodes made a motion to approve; seconded by Mr. Crisp. The motion was approved.**

#### **Board Approval Applications –**

Ms. Reed presented the following facility applications for approval, Ambulatory Surgical Treatment Center (ASTC) Initial Application; Home Medical Equipment (HME) Initial Application; and Professional Support Services Initial, CHOW, and Renewal Applications. Dr. Saunders questioned the deemed reference on the ASTC application and what it means. Diane Carter, Supervisor West Tennessee Regional Office, addressed this question. She stated it was a CMS allowance for facilities such as ASTCs to have accreditation by Joint Commission which then gives the facility deemed status. Ms. Carter

stated this status requires permission from CMS to go into the facility to survey. **Dr. Robbins made a motion to approve the presented applications; seconded by Mr. Marshall. The motion was approved.**

**Proposed Hospital Rule Change Governing Patient Diets –**

Ms. Reed stated the next item for discussion was proposed rule change for hospital regulations governing patient diets. This item was also presented to the PI Standing Committee with the standing committee asking for one of the presented rule changes to be further reviewed by OGC. John Williams, attorney, presented this item to the Board. Mr. Williams stated that he represents the Tennessee Academy of Nutrition and Dietetics which is the state association of dietitians. He also introduced Janet Skates the past president of the organization and a dietitian practicing in Tennessee. Mr. Williams informed the Board that Medicare and Medicaid services has completed over the past several years a comprehensive review of their rules in order to make them more flexible and user friendly. This review resulted in a change to the section of the CMS rules dealing with who could order patient diets in hospitals. In the previous language, the practitioner was responsible for the patient's care. The new language broadened this care to allow qualified dietitians the hospital has designated to order a patient's diet. Mr. Williams stated this change in the federal requirements went into effect in 2014. He stated the request to the Board is to modify the state rules in order to be in sync with the federal allowances found in rule. The PI Standing Committee modified the presented language which was amenable to my client in order to make certain the change in the rule is aligned with Tennessee law relative to the practice of dietitians. The rule gives a hospital a choice to allow a qualified dietitian to order a patient's diet and is coordinated with the care of directed by the responsible practitioner for the patient. Dr. Robbins asked if the new rule in CMS includes TPN feedings and feedings via a GI route. Ms. Skates stated that CMS made it clear in the new language that all nutritional care for the patient is included. **Dr. Robertson made a motion to approve the presented rule language for rulemaking hearing; seconded by Mr. Marshall. The motion was approved to move the language to rulemaking hearing.**

**Consider Amended Language for Hospital Rule 1200-08-01-.01 Definition of "Rural" or "Rural Hospital"**

– Angie Allen, Director of the State Office of Rural Health with the Tennessee Department of Health (TDH), presented this item to the Board. Ms. Allen stated she had representatives from the Tennessee Hospital Association (THA) as well as TDH legal counsel and legislative liaison. She stated to the Board she was present to ask the Board to consider amending the hospital rule language to clarify the definition for rural as it relates to critical access designated hospitals. Ms. Allen stated the necessity presenting this to the Board is so the currently designated critical access hospitals may retain their current designation. Ms. Allen stated CMS designates critical access hospitals recognizing the Office of Management and Budget (OMB) delineations for rural and urban locations. OMB periodically reassesses their delineations for rural and urban. When this occurs it can put a critical access designated hospital outside a defined rural or urban area thereby causing that hospital to not meet the critical access designation based upon location. Ms. Allen stated this reassessment applies to six critical access hospitals in Tennessee. These six hospitals are now deemed to be in an urban Metropolitan Statistical Area (MSA). CMS recognizes this problem and is allowing these hospitals to reclassify if the state of location has a definition in law, rule, or regulation that defines rural location or rural hospital. Ms. Allen stated this is the purpose of coming before this Board today. She further stated that if a hospital does not reclassify it stands to lose its critical access designation. Ms. Allen stated Tennessee's critical access hospitals are located in some of the most remote areas of Tennessee and the loss of this designation could be devastating for the facility and the community. Dr. Robbins questioned if losing critical access designation would the facility be closed or is this a funding issue. Ms. Allen stated if a hospital lost the critical access designation the facility could then convert to what is called a PPS hospital which is a

hospital that receives reimbursement under the prospective payment system. She stated the difference is in the way reimbursement occurs for these two designations. Mr. Marshall voiced support for the proposed rule change. Dr. Saunders also indicated the need to address this definition in the rules. Ms. Allen's Office presented drafted language for the Board to consider. Melika Watson, attorney with TDH's OGC for the Office of Rural Health, presented the following definition for rural hospital to the Board – rural hospital means any general hospital in a county classified by the federal Office of Management and Budget as rural, any hospital located in a rural area defined by the state as a non-metropolitan area outside of the boundaries of Davidson, Hamilton, Knox and Shelby counties in Tennessee. Any hospital designated as a critical access hospital, any general hospital that is eligible to receive funds under the federal small rural hospital improvement grant program, or any general hospital that notifies the Commissioner of its desire to retain its rural status when the hospital is located in a county reclassified by the OMB at the metropolitan statistical area as of June 30, 2003. Ms. Watson indicated there is a citation that defines a rural area in Tennessee as any county outside of essentially the four main counties in the state which is why this is included, but it is also my understanding there are other provisions that a critical access hospital has to meet to receive the designation and I will defer to Ms. Allen to address. Dr. Saunders wanted to verify that the proposed language will not create confusion or allowance of other hospitals into the critical access program. Ms. Reed voiced concern over the term 'general hospital' being used in the proposed definition. Ms. Watson indicated the definition presented was modeled after language used in other states. Ms. Allen provided the Board with further eligibility requirements for critical access hospital designation and understands the concern voiced. She stated her office is open to feedback on how to further clarify the rule language for this definition. Dr. Saunders expressed concern the presented definition is not the definition to vote on, but should be a definition for rural area. She further asked if this creation of a definition should be moved to one of the Board's standing committees. Mr. Marshall asked about the timeframe to accomplish this. Ms. Allen stated this needs to be in place by the fall of 2016. It was discussed that it could take up to 18 months to effect a rule change. Mr. Rhodes asked if there has been any effort to negotiate this item with CMS. Ms. Allen stated these hospitals are not in a position to negotiate with CMS as CMS rulings are final. Ms. Watson offered an alternative definition to the Board. She read it as follows – A county classified by the federal Office of Management and Budget as rural an area defined by the department of the non-metropolitan area outside of the boundaries of Davidson, Hamilton, Knox, and Shelby counties in Tennessee or a county reclassified by OMB as a metropolitans statistical area as of June 6, 2003. Mr. Rhodes questioned where this definition would be place in the regulations. Ms. Reed stated this definition would go in the hospital definition section. Dr. Robbins sought clarification about the possibility being open for an urban facility to qualify under this definition of rural hospital or rural area. Ms. Allen stated if the last proposed definition is adopted then rural area is defined for a critical access hospital and the answer would be the definition is not allowing an urban facility to fit under this new definition. **Mr. Rhodes made a motion to accept the proposed rule language for rulemaking hearing; seconded by Dr. Robbins and Mr. Marshall. The motion was approved by the Board.**

**Approval of the Joint Annual Report on the Status of Emergency Medical Services for Children 2015 –** Ms. Rhonda Phillippi, Executive Director TN EMS for Children, presented this item to the Board. She indicated this report is also presented to the EMS Board as well. Ms. Phillippi gave an overview of the strategic plan for the provision of care to children in Tennessee. She also informed the Board of the recognition of Tennessee's pediatric readiness in hospitals being highlighted in a publication in JAMA for pediatrics. She also highlighted for the Board two CoPEC members that received accolades for their service to children – Dr. Barry Gilmore and Sue Cadwell. Ms. Phillippi also recapped the annual pediatric

conference and Star of Life Awards held during the past year. She provided the Board with the upcoming 2016 date and location of the Star of Life Awards and annual pediatric conference.

#### **LICENSE STATUS UPDATE(S):**

Ms. Reed provided an update on one (1) provider, Volunteer Women's Medical Clinic. This facility's license was placed on inactive status on February 7, 2013 which expired in January 2014. An extension of the waiver for 12 months was granted on January 23, 2014. Due to phone difficulties at the January 21, 2015 Board meeting the Board asked the facility representative to come back to the May 2015 Board meeting to explain her waiver request. On May 5, 2015, the facility representative informed the Department the facility would be closing due to the costliness of maintaining the renewal fees. Volunteer Women's Medical Clinic did not renew its ASTC license and was closed on June 30, 2015.

#### **LICENSE STATUS REQUEST(S):**

Ms. Reed presented five (5) licensure status requests.

##### **Nashville Surgery Center, Nashville –**

This ambulatory surgical treatment center (ASTC) sought to place its license on inactive status and ceased treating patients effective May 29, 2015. The company of Nashville Surgery Center is in negotiations with Nashville SurgiCenter LLC, which will result in a change of ownership. Representatives for the facility and proposed new operator were Chris Puri and Jerry Taylor, attorneys. Mr. Marshall recused from this agenda item. The representatives requested a two (2) year period for inactive status. **Mr. Wood made a motion to approve the two (2) year inactive status; seconded by Dr. Robbins. The motion was approved.**

##### **Southern Hills Surgery Center, Nashville –**

This ASTC sought an eighth extension for inactive status of the license. The request is an extension of two (2) years for the inactive status. This will correspond to the period of validity of the Certificate of Need (CON) granted on May 27, 2015 for relocation and replacement of the surgery center. The CON expiration date is July 1, 2017. Jerry Taylor, attorney, was the representative for the facility. Mr. Marshall continued to be recused from the discussion. Mr. Taylor informed the Board that the CON issued in May of this year was appealed by competing surgical centers. The expiration date of the CON will begin upon the exhaustion of the end of all appeals and go for two (2) years. Mr. Taylor stated allowing the inactive status request to run concurrently with the validity of the CON would prevent Southern Hills Surgery Center from coming back before this Board every two (2) years. Mr. Rhodes questioned if the allowance of this license to continue in an inactive status would prevent other facilities from getting a CON in that area. Ms. Reed explained that Health Services and Development Agency (HSDA) looks at all new applications in light of outstanding CONs and this one would be included in that review. **Mr. Mynatt made a motion to approve the inactive status to run concurrently to the validity of the CON; seconded by Dr. Robbins. The motion was approved.** Mr. Marshall returned to the meeting.

##### **Donelson Place Care and Rehabilitation Center, Nashville –**

This one hundred twenty-four (124) licensed bed nursing home facility sought to place its license on inactive status for three (3) years. The request is due in part to termination from participating in the CMS certification program. The facility has closed its operations and transferred all residents to other

Signature facilities as of July 23, 2015. Signature Healthcare will be applying for a CON to build a new replacement facility. Representative for the facility was Jeffrey Parrish, attorney, and Will Blank, Regional Vice President Signature Healthcare. Mr. Parrish made the Board aware the facility has a license in good standing with the state. He further stated the facility intends to continue operations with this license. Mr. Parrish stated the three (3) year timeframe was chosen due to the timeframe for the appeal of the CMS certification survey findings. Ms. Marlar required clarification of the CON reasoning and the number of beds to be considered. Mr. Parrish stated the licensed bed number would not change and the CON would be for the replacement of the current facility. Dr. Robbins questioned what the CMS findings were that resulted in closure. Mr. Parrish stated it was a mixed bag of paperwork and clinical care issues. **Mr. Rhodes made a motion to approve the request for inactive status for three (3) years; seconded by Mr. Marshall. The motion was approved.**

**Tri-Cities Outpatient Surgery, Inc.; Johnson City –**

This ASTC facility sought to place their license on inactive status due to declining reimbursements and declining volume. This facility is not current treating patients and closed its services effective August 4, 2015. The plans of the facility are to use the ASTC space as part of their clinic. Brenda Stufflestreet, Administrator, represented the facility. Ms. Stufflestreet was asked about a timeframe for the inactive status. She requested two years. **Dr. Robbins made a motion to approve the inactive status of the license for two years; seconded by Mr. Mynatt. The motion was approved.**

**Baptist Rehabilitation-Germantown, Germantown –**

This licensed hospital facility sought to place their license on inactive status for a period of one year. Baptist Rehabilitation-Germantown surrendered its license for 49 inpatient rehabilitation beds leaving only 11 general acute care beds at the facility. The facility operates a MRI service at an off-campus location, 6286 Briarcrest Avenue; Suite 120; Memphis, TN. The plan is for the MRI service to continue with Baptist Rehabilitation-Germantown undertaking a transfer operation of the MRI services to Baptist Memorial Hospital-Memphis. The requirement for a CON has not yet been determined. The inpatient rehabilitation services have been relocated, the future of this facility is uncertain and Baptist Rehabilitation-Germantown needs time to allow an opportunity for orderly review of options for future operations of the facility. Representative for the facility was Dan Elrod, attorney. Ms. Williford recused from the discussion. Mr. Elrod informed the Board a request for determination for a CON relative to the MRI service has been sent to the Health Services and Development Agency (HSDA) for review. He further stated the effective date of the inactive status be aligned with the date of the transfer of the MRI service to the other Baptist facility. Mr. Marshall inquired about the timing of the determination from HSDA. Mr. Elrod indicated a determination that no CON is required could be in the next couple of weeks, but if a CON is required it could be a few months. Mr. Marshall asked how the motion should be stated relative to the timeframe. Ms. Reed stated the timeframe stated in the motion could be such that the inactive status becomes effective based upon movement of the MRI services. **Mr. Marshall made a motion to approve the inactive status for one year effective upon the movement of the MRI services; seconded by Ms. Lynch.** Dr. Saunders questioned how the Department would be notified of the above MRI transfer. Ms. Reed stated either via a copy of the CON, copy of the determination letter, and subsequent notice by the facility. **The motion was approved.**

**WAIVER REQUEST(S):**

Ms. Reed presented the following waiver requests for consideration by the Board.

Newport Health and Rehabilitation Center, Newport -



This licensed nursing home is seeking to waive nursing home regulation 1200-08-06-.04(1) for a Tennessee licensed nursing home administrator until a permanent replacement can be hired or receives his/her license in Tennessee. Representative for the facility was Chris Puri, attorney. **Mr. Marshall made a motion to grant the waiver request until January 2016 Board meeting; seconded by Mr. Mynatt. The motion was approved.**

The Wexford House of Kingsport, Kingsport –

This licensed nursing home is seeking to waive nursing home regulation 1200-08-06-.04(1) for a Tennessee licensed nursing home administrator until a permanent replacement can be hired or receives his/her license in Tennessee. Representative for the facility was Amy Gregory, Director of Nursing. **Mr. Marshall made a motion to grant the waiver request until the May 2016 Board meeting; seconded by Mr. Mynatt. The motion was approved.**

Whitehaven Community Living Center, Memphis-

This licensed nursing home is seeking to waive nursing home regulation 1200-08-06-.04(1) for a Tennessee licensed nursing home administrator until a permanent replacement can be hired or receives his/her license in Tennessee. Representative for the facility was Donni Dubert, Regional Director of Operations. **Mr. Mynatt made a motion to grant the waiver request; seconded by Mr. Marshall. The motion was approved.**

Avalon Hospice, Nashville –

Avalon Hospice sought a waiver to open two new branch offices located in Sweetwater approximately 184 miles from the Nashville located parent office and Kingsport approximately 277 miles from the Nashville located parent office. Avalon has a geographic service area of all 95 counties in Tennessee. Avalon Hospice has twice requested and received similar waivers from the Board. These occurred in early 2014 and in May 2009. These locations are in Dyersburg, Johnson City, Morristown, Bolivar, Memphis, Jackson and Knoxville. Representatives for the facility were Stephen Angelette, Associate; John Dyer, Vice President TNMO Healthcare; and Gusti McGee, Director of Regulatory Services. Ms. Williford questioned the difficulty of an agency having only one parent office for multiple branch offices located throughout the state. She did not see how this could be done efficiently. Mr. Dyer stated oversight is provided in several different ways. The use of an electronic medical record (EMR) is just one way oversight is accomplished. Mr. Dyer stated the administrator performs an onsite visit in each branch office every quarter with the following address – clinical practice, managerial practice, human resources, external community relations, and regulatory compliance. He also stated the medical director for the parent office provides oversight to medical director associates in the branch offices. Ms. Williford then asked how the facility was able to conduct every two week IDG with a medical director at all facility locations. Mr. Dyer stated the IDGs are performed locally in each office and oversight is provided for each as part of the onsite visits. Dr. Robbins asked about the nursing staff requirements. Mr. Dyer stated the bulk of the facility's operations are in nursing homes or in a patient's home. He stated the office holds medical supplies, managerial staff, and allows space for meetings. Mr. Dyer further stated each branch office has a director level beneath the administrator which is a registered nurse and provides guidance. Ms. Williford questioned needed visits by surveyors to patient's homes or nursing homes where a patient may reside. Ms. Reed stated this is not a usual practice of the surveyors, but could occur if a situation presents itself requiring this be incorporated into the survey. She also stated the branch office locations are not surveyed unless a complaint is made against that site. Ms. Williford indicated this must be a certification requirement. Ms. Reed stated the request is solely from a licensure perspective and relative to a state law. She further indicated the surveyors present at this Board meeting could comment to the certification requirements for home health/hospice surveying.

Ms. Marlar asked the intent of the 100 mile radius requirement. Ms. Reed indicated she did not know. Ms. Marlar felt it had to do with accessibility. **Mr. Rhodes made a motion to approve the waiver request; seconded by Mr. Marshall. The motion was approved.**

Pentec Health, Inc.; Nashville –

Pentec Health is an agency seeking licensure as a home health agency in Tennessee. The agency in relation to the licensure application sought to waive one provision of the Standards for Home Care Organizations Providing Home Health Services, rule 1200-08-26-.04(10) relating to maintenance of an office with a working telephone and be staffed during normal business hours. Pentec will maintain an office primarily for the purpose of survey conferences and other meetings. It will be staffed by a shared receptionist only. Pentec does not treat patients in the office and all patient records are electronically maintained and accessible from any location with internet service. Representative for the facility was Kim Looney, attorney. Ms. Looney provided background to Pentec stating the agency has been in business for over 30 years, operates in 34 different locations, and is the largest provider of intrathecal pump and intravenous immunoglobulin-G replacement. Pentec does about 12,000 pump refills a year nationwide with the frequency of refills every 30 to 60 days. Ms. Looney stated to the Board this is a different kind of therapy from skilled nursing visits. She further stated to require the agency to have a staff office and open normal business hours would be an undue hardship. Ms. Looney stated if a patient has a medical issue medical staff is available immediately. Currently, Pentec has a shared office arrangement which has a receptionist there during normal office hours. A traditional office is not necessary for Pentec's provision of care. Ms. Looney stated this is how Pentec operates in at least 10 other states. She stated there is no detriment to the patient's health or care by not having an office. Dr. Saunders asked how the patient contacts the agency if something goes wrong with the pump. Ms. Looney stated there are 24 hour hotlines to Pentec's medical personnel. Dr. Saunders asked how a complaint would be taken. Ms. Looney stated the patient is provided a number for that purpose. Dr. Saunders stated she is trying to understand the function of the receptionist if this is not waived. Ms. Looney stated if this rule is not waived these calls would still not go to this receptionist. Dr. Robbins asked if the physician would also be able to access the current caregiver assigned to the patient. Ms. Looney stated each patient record is uploaded to the physician's office within 24 hours. Ms. Marlar wanted to know what home health service Pentec provides that is different from another home health service. Ms. Looney stated intrathecal pump management and I-GG. Ms. Reed asked how an unannounced survey could be able to be conducted if an office location with some type of hours was not identified. Ms. Looney stated there would be an office it just wouldn't be staffed, but could be accessed from there. Ms. Reed asked about retrieving patient records. Ms. Looney stated the staff at the office location would be able to, but may need to get permission to access. Dr. Saunders stated the waiver to be granted would indicate that an office would not be required. Ms. Looney stated Pentec would have an office, but it would not be fully staffed at all times. It would have a working telephone, but not a dedicated Pentec staff member. Dr. Saunders wanted to know what would be the minimum provided by Pentec at the office location. Ms. Looney stated that a typical home health agency would have a devoted receptionist, a director of nursing, and administrator at the office location. She further stated there may be other clinical designated staff such as QI or PI personnel. Dr. Saunders stated if the waiver is granted then Pentec would not be required to have this. Ms. Reed substantiated this statement. Ms. Marlar asked how a care conference would be accomplished out of the presence of the patient. Ms. Looney stated at the office location through scheduling of a visit. Ms. Marlar stated she would like to know how many states Pentec operates in. Ms. Looney provided current information on the different office locations for Pentec throughout the US. Ms. Marlar had questions about marketing materials. Ms. Looney indicated she did not have an answer for this, but assured the Board the physician ordered the service, is ultimately responsible for the patient's care, the agency communicates

with the ordering physician, and a central location of information for patients on how to handle various issues. Dr. Saunders equated the operation of Pentec to the presentation of a patient with a pacemaker to the emergency room (ER) and how the programming company's 1-800 number is called and a technician comes to the ER to address the device. Ms. Looney agreed. Ms. Reed asked about satisfying the requirement for an accessible administrator. Ms. Looney stated that she assumed an administrator would be as accessible as needed. She further stated the only item that is sought to be waived is having a dedicated Pentec person in the office. Dr. Saunders stated by granting the waiver the Board is waiving the requirement for an office with a working telephone number and staff. She stated it would be good if a waiver could be crafted to state someone does not have to be present during normal business hours. Ms. Lynch asked where it is stated that a Pentec staff member be present. Ms. Looney stated she thinks this has been the interpretation that dedicated staff must be in the office during normal working hours and not a shared staff arrangement. It was clarified the interpretation is an OHCF interpretation. Ms. Lynch stated she does not find a definition of staff which would preclude the receptionist. Ms. Looney stated the Board could say the agency is currently meeting the requirement based upon the agency's staff set-up. Ms. Marlar asked how this request differs from the home medical equipment providers that are located out of state. Ms. Reed stated there is essentially not a difference. Dr. Saunders identified the question now to be whether the agency is currently meeting the regulation. **Mr. Mynatt made a motion to not grant the waiver based upon the agency's proposed operation and staff meet the current regulatory requirement; seconded by Ms. Lynch. The motion was approved.**

Maybelle Carter Senior Adult Home, Nashville –

This request was deferred to the January 2016 Board meeting.

McMinn Memorial Nursing Home, Etowah and Starr Regional Medical Center, Athens –

McMinn Memorial Nursing Home, Etowah requested approval to be allowed to temporarily move patients and beds to a location within Starr Regional Medical Center – Etowah campus while McMinn undergoes renovation and construction. McMinn Memorial Nursing Home is an 88 bed nursing home in Etowah on the campus of Starr Regional Medical Center. Starr Regional is a 190 bed hospital. McMinn will undergo an extensive renovation and remodeling in four phases. Each phase of construction will affect approximately 16 to 22 beds. McMinn would like to utilize unused and available space within the licensed hospital. The proposed construction plan for McMinn is approximately eight months. Chris Puri, attorney, represented the facilities. He informed the Board these two facilities have a shared services arrangement that includes such services as food and linen in addition to the nursing home and hospital being physically attached. The reason for the request is due to the occupancy of the nursing home. Mr. Puri stated that during each of the four phases 16 to 22 beds would be relocated while that area of the nursing home is renovated. The use of the hospital space by the nursing home would not affect the services of the hospital. The plan is for those patients moved to the temporary to be of a higher functional level. Mr. Puri also stated additional staff will be made available in the temporary location as well as a construction safety plan being in place. He further indicated to the Board the evaluation by hospital and nursing home staff determined there were no significant differences in the life safety and fire protection of the two spaces. Mr. Puri pointed out to the Board these types of scenarios have been presented to the Board in the past and approved. He stated the waiver request is for one year. Mr. Marshall clarified that 16 to 22 patients are being moved at a time during the construction. He also asked if Mr. Harmon has reviewed the interim life safety plan relative to the construction. Logan Newton, HMK Architects, addressed the Board stating this had not been submitted as of this date and this is only a cosmetic upgrade. Mr. Marshall stated any time a contiguous area is going to be disrupted by construction a life safety plan needs to be in place. Mr. Puri addressed the issue by stating the drawings for the renovation are being completed with the intention to make the

department aware of safety measures put in place. Mr. Rhodes stated if the process is to take eight months then eight patients would be in the temporary space for two months. Alise Ionashku, administrator of McMinn Memorial, addressed the Board on this issue. She stated the patients moved would remain in the relocated space the entire time of renovation. Mr. Rhodes also asked about programmatic space such as dining and activities. Ms. Ionashku stated there is space available in the temporary area for dining and activities. **Mr. Rhodes made a motion to approve the waiver request; seconded by Mr. Marshall.** Ms. Marlar wanted the approval to be made pending the submission of an alternative life safety plan to the department for approval. Mr. Rhodes stated the facility does not have such as plan and don't need to submit it. Ms. Reed stated to the Board the facility would be required to submit documentation to Plans Review for approval or a 'we concur' before moving forward with any construction. Mr. Newton stated the facility would be happy if the waiver stipulated submission of assurances to Plans Review of a plan for safety. Ms. Marlar stated she did not want this. Dr. Robbins had a question about visiting hours being able to occur 24 hours per day. This was not noted to be an issue. **The motion was approved.** Vincent Davis, Director of Health Care Facilities, asked Mr. Puri if this had been vetted with CMS. Mr. Puri stated this is being reviewed. Dr. Saunders stated the facility may need longer than a year for this request. Mr. Puri stated the issue Mr. Davis has brought forth is not a licensure issue, but a reimbursement issue. Mr. Marshall stated there will be reimbursement issues. Ms. Marlar stated if the beds being moved are distinct part then that would have to be identified for CMS. Mr. Davis stated he just wanted the providers to be aware of another piece of this that may have impact. Ms. Reed clarified for the Board the current issue is a federal concern and that if the beds were used for the provision of skilled care under CMS they would be specifically identified and if moving these would have to be indicated to CMS, but I don't believe those are the beds to be moved to the temporary space. Mr. Puri acknowledged they were not.

### **BOARD POLICY CONSENTS:**

Ms. Reed presented the Board Policy Consent requests. The requests were for Board Policy #32, Nursing Homes and Residential Homes for the Aged to provide outpatient therapy services and Board Policy #39, permit a Nursing Home administrator to serve as administrator for both a Nursing Home and Residential Home for the Aged (RHA) and/or Assisted Care Living Facility (ACLF).

Board Policy #32 requests –

Agape Nursing & Rehabilitation Center, Johnson City  
Boulevard Terrace Rehabilitation & Nursing Center, Murfreesboro  
Church Hill Health Care & Rehabilitation Center, Church Hill  
Crestview Health & Rehabilitation, Nashville  
Glen Oaks Health & Rehabilitation, Shelbyville  
Golden Living Center-Windwood, Clinton  
Lebanon Health & Rehabilitation Center, Lebanon  
Manchester Health Care Center, Manchester  
Poplar Point Health & Rehabilitation, Memphis  
Signature Healthcare of Erin, Erin

**Mr. Breeden made a motion to approve the requests for Board Policy #32 waivers; seconded by Mr. Marshall. The motion was approved.**

Board Policy #39 request –  
Life Care Center of Sparta, Sparta (NH) and The Bridge Assisted Living, Sparta (ACLF)

Mr. Breeden recused from this vote.

**Mr. Rhodes made a motion to approve the request for a Board Policy #39 waiver; seconded by Ms. Lynch. The motion was approved.**

Mr. Breeden returned to the meeting.

### **REGULATIONS:**

Ms. Reed presented for consideration to the Board a revision to rule language for hospitals and ASTCs. The request is to amend the hospital and ASTC rule regarding the reporting of abortions according to T.C. A. 68-3-505. A rule is currently in place in the Office of Vital Records, 1200-07-0-.07(1),(2),(3), and (4) the requestor would like to see this language mirrored in the hospital and ASTC regulations. Jeremy Davis, Commissioner's Office representative, was present to address the Board. Mr. J. Davis addressed the Board concerning the recent revelation of Planned Parenthood and undercover videos exposing the activities of Planned Parenthood. He stated Commissioner Dreyzehner appeared before the Joint Government Operations Committee to address this issue, to make sure it was not occurring in Tennessee, and the safeguards in place to make sure it was not happening. Subsequent to that meeting Representative Susan Lynn wrote a letter to this Board asking for consideration of the adoption of rules that would mirror some other rules in other state law. Representative Lynn was invited to attend this meeting and present her request, but in her absence and to ensure the Board is fully aware the letter and request is being read into record. Mr. J. Davis then read the letter verbatim. Dr. Saunders asked if there was a need for action on behalf of the Board to amend the ASTC rules. Mr. Wells stated if it is the desire of the Board to amend the rules. Mr. Wood clarified that this was already captured in law. It was stated yes per Mr. J. Davis. **Mr. Wood made a motion to accept the letter and place it on record; seconded by Mr. Breeden. Dr. Saunders clarified by accepting the letter it is being put on record the Board acknowledges the submission of this notification and request, but at the present time the Board feels the statute is adequate for the purposes relative to Health Care Facilities rules. The motion was approved.**

Dr. Saunders adjourned the meeting.