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**TENNESSEE DEPARTMENT OF HEALTH  
MEMORANDUM  
AMENDED**

**Date:** November 4, 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-Assisted Care Living Standing Committee and Facilities Construction Standing Committee Meeting  
**(Call-in Number: 1-888-757-2790 passcode: 457462#)**

**Date of Meeting:** November 16, 2015

**Time:** 9:00 a.m. – 12:00 noon, CST

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

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

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.



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

**NOVEMBER 16, 2015  
POPLAR CONFERENCE ROOM, FIRST FLOOR  
9:00 a.m. to 12:00 noon**

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

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1. Call the Meeting to Order and Establish a Quorum.
2. Governor's Bend Assisted Living Facility, Erwin - Nurse Call System; OGC review of TelTone UL 1069 listing results.
3. Office of General Counsel (OGC) present new rule language for Assisted Care Living Facility (ACLF) rule 1200-08-25-.10(2)(i) and Interpretative Guideline for ACLF/Facilities Construction for approval.
4. Other Discussion(s).
5. Public Comments.
6. Adjourn.

**MINUTES  
BOARD FOR LICENSING HEALTH CARE FACILITIES  
ASSISTED CARE LIVING FACILITY/FACILITIES CONSTRUCTION  
STANDING COMMITTEE MEETING**

**NOVEMBER 16, 2015**

The Board for Licensing Health Care Facilities' Assisted Care Living Facility (ACLF)/Facilities Construction Standing Committee meeting began on November 16, 2015. David Rhodes, Chairman of this co-committee, was not in attendance on this date. Mr. Joshua Crisp, Chairman of the ACLF Standing Committee, was by default made chairman of this co-committee and called the meeting to order.

A roll call vote was taken:

Mr. Joshua Crisp – here  
Dr. Sherry Robbins – here  
Ms. Carissa Lynch – here  
Ms. Annette Marlar – here  
Mr. Roger Mynatt – not here  
Dr. René Saunders – here  
Ms. Diana Miller – here  
Mr. Roger Mynatt – here  
Mr. David Rhodes – not here  
Dr. Kenneth Robertson - here

A quorum was established.

The meeting began with Ms. Ann Reed giving background to this co-committee meeting. The purpose of the meeting was to follow-up on the September 17, 2015 meeting of this co-committee and revisit the following items – Governor's Bend Assisted Living's waiver request and rule and interpretative guideline language for cooking appliances in the assisted care living facility regulations.

The first item for discussion was Governor's Bend Assisted Living's request for a waiver of regulations 1200-08-25-.09(1) regarding HVAC and wireless nurse call system and including NFPA 90A, 5.3.3.1, 5.4.4 and UL 1069 Edition 7 in the AIA Guidelines. The co-committee had asked the Office of General Counsel (OGC) at the last meeting of the two standing committees to do research on the issue of the wireless nurse call systems. Mr. Devin Wells, OGC, stated he reviewed a few different items when researching the wireless system. He looked at safety issues, approval of a plan, and the government being stopped from enforcement of requirements which are inconsistent with the approved plan. Mr. Wells indicated he did not find any immediate safety concerns. He did locate language which implied the hard wired system would be more reliable than the wireless system. Mr. Wells also stated the understanding is that when plans were submitted for this system the UL 1069 series 7<sup>th</sup> edition was required and the system does not satisfy that criteria today. Both parties, the state and Governor's Bend Assisted Living, were responsible for knowing what is required for licensure. Mr. Randy Trivette spoke via phone on behalf of the facility. He indicated the wireless call system has been in place and in use for three (3) years. He detailed how the call system was submitted to TDH for review prior to installation. Ms. Annette Marlar requested to hear the state's position on their review of the safety issues with the wireless system. Mr.

Bill Harmon, Facilities Construction Director for the TDH, stated according to current guidelines ACLFs are not required to have an emergency system which we are calling a nurse call system. Mr. Harmon indicated the plans received were perceived to be for a hard wired system. He further stated TDH legal counsel gave direction that a wireless call system if installed would be required to meet the 1069 7<sup>th</sup> edition or currently the 2560 UL design. Mr. Crisp asked Mr. Harmon if he was aware of any safety issues with the system in place at Governor's Bend. Mr. Harmon was not able to speak to that. Mr. Crisp asked for clarity of the requirement when the facility was built in 2012. Mr. Harmon indicated the 2006 AIA guidelines suggest a facility should install an emergency system with sixteen (16) or more beds and OGC has given the interpretation that if a facility chooses to install a call system it must meet the UL design system. Dr. Sherry Robbins sought clarification that the facility's call system initially had met the UL requirement then the manufacturer came out with an updated version and speculation was the manufacturer chose not to seek certification again. Mr. Harmon indicated Dr. Robbins was correct in her recall. Mr. Crisp asked Mr. Trivette if the current system is designed with a monitoring system alerting the provider to trouble with the system. Mr. Trivette indicated the system alerts when the battery supply becomes weak and the system provider does annual inspections of the system including any upgrades to the software for the system. The facility has had no safety issues with the system thus far. Mr. Trivette wishes to have the current system in place in his facility to be grandfathered or an approval to this effect so the facility may continue to use the system. As the system ages and replacement becomes eminent Governor's Bend would upgrade to a standard system which would meet the requirements and would submit the proper paperwork to the Department of Health. Mr. Crisp requested clarification on the approval status of the current system. Mr. Devin Wells, OGC, stated to the co-committee the change to 1069 UL edition 7 was in 2007 and when the facility submitted application the standard system was edition 7. Mr. Crisp further clarified the plans for the wireless system were approved even though the standard was not met. Dr. Kenneth Robertson questioned whether the system being discussed was ever UL and/or edition 7 approved. It appears this could have been an oversight when the plans for the system were approved by the Department. The manufacturer either did not maintain or lost the edition 7 rating. Ms. Marlar asked the provider if they were notified by the manufacturer of the wireless call system of such removal of the UL approval. Mr. Trivette stated the first notification that the system did not meet the UL approval was upon survey in 2014. Dr. René Saunders asked Mr. Trivette if the current system could be upgraded. Mr. Trivette stated the manufacturer stated it could not be and the only way to reach compliance would be to tear the entire system out and put in a wired system found in hospitals and nursing homes. He indicated to update the system would be at a cost of \$110,000. Dr. Robertson asked if other manufacturers have been checked. Mr. Trivette indicated they have not. He feels the issue will be the same with a high cost, submission of plans to the state for review, and removal of the current system. He is hoping for an upgrade to the current system. Mr. Crisp asked of administrative staff what is expected of the co-committees. Ms. Reed indicated the co-committees could recommend action to the full Board. Other co-committee members asked if this issue would have effect on other licensed facilities. Ms. Reed indicated that Mr. Harmon might better be able to address the question. Dr. Saunders asked Mr. Wells of OGC if he had a recommendation for the co-committee on this matter. Mr. Wells indicated there are several factors to consider with one being safety. He further stated there does not appear to be a history of safety problems with the current system, but it did not meet the standards at the time of installation and if removed the facility would maintain compliance. Dr. Saunders stated that it appeared the Department made a mistake when plans were submitted and the system was approved. Mr. Wells indicated the change of the 1069 UL 7<sup>th</sup> edition approval was occurring around the same time as the submission of the plans for this facility. Dr. Saunders questioned the change order for the system going through with Mr. Wells indicating these probably don't receive the scrutiny that original plans receive when submitted. He also stated the oversight was not to a degree that would be egregious. Mr. Crisp inquired about the

record of this system in a facility this same entity operates in Virginia. Mr. Trivette indicated there have been no compliance issues and that Virginia surveys on an annual basis as Tennessee does.

Mr. Crisp summarized the discussion to address two (2) areas, safety and authority to waive rules. Legal counsel through their research did not find any safety issues. The facility has not had complaints or issues with the operation of the system for the last three (3) years. Mr. Crisp voiced that requiring the facility to remove the wireless call system would be a disservice to the residents. Dr. Robbins agreed with this statement by Mr. Crisp. Dr. Saunders questioned could the allowance of the facility to continue to use the current wireless system cause greater harm to the residents and if a waiver is granted will there be other facilities affected. Mr. Crisp stated the assumption is UL is testing for effective signaling for the system. He also stated he does not have familiarity with the UL process, but ultimately the effect to this provider will be financial and could be detrimental to the facility's operation. Dr. Robbins stated the current system has had a three (3) year real life testing in the facility and has been found to work. Dr. Robertson indicated a previous question was regarding the history of the manufacturer and this system and why it is not edition 7 compliant. OGC indicated nothing was researched or found on this. Mr. Crisp indicated the assisted living industry is moving to the use of wireless systems in facilities and the providers he is familiar with are awaiting the UL 2560 system to install. Ms. Marlar asked Mr. Harmon what the opinion of NFPA on UL requirements. Mr. Harmon stated NFPA utilizes UL testing laboratory as the gold standard for most everything used in our homes and offices such as lamps or toasters. Ms. Marlar voiced concern over granting an approval for an isolated situation when a group of individuals may ultimately be affected. Dr. Robertson asked Mr. Trivette if he intends to ask the manufacturer of the facility's current wireless system if the manufacturer is going to seek UL 2560 certification. Mr. Trivette indicated he would do this. Ms. Reed indicated to the co-committee that another meeting could be held in order for this information to be gathered and then vetted by the members to reach a decision. Dr. Robertson stated he wants this information so it can be provided to the full Board and can give a history of the manufacturer. He also asked Mr. Trivette to inquire about an expected timeframe for this to occur. The final question to ask the manufacturer is the current life expectancy of a wireless system. Mr. Wells made a suggestion to put a time limit on the waiver once it is considered for approval. Dr. Saunders made a recommendation to have Mr. Trivette find out from the manufacturer if there are plans to bring his system to UL 2560 compliance and what the life expectancy is for wireless systems. This information needs to come back to the co-committees prior to presentation before the full Board.

The second item for discussion was the assisted care living facility regulation regarding cooking appliances. At the last meeting of this co-committee, it was requested to consider rule language change and to provide the co-committee with language to review for approval and to also consider the development of an interpretative guideline if rule language is approved. Mr. Wells presented recommended rule language for the co-committees to review. He stated he incorporated the comments of the co-committee from the last meeting and also utilized language from other states. The recommended language would defer to facility policy and determined safety standards, be disconnected and removed for resident safety of if chosen by resident, and the appliance shall have an automatic timer. Dr. Saunders asked if inserting language capturing the cognitive level of the resident was appropriate. OGC felt it would be. Dr. Saunders also stated the rule language appears to indicate the facility will be solely responsible for providing whatever cooking appliance is desired by a resident. Mr. Wells stated the language was not intended to imply that. He stated his read of the proposed language is that a family may provide the cooking appliance, but it must be in compliance with the standards set forth by the facility. Mr. Crisp also indicated he read the rule language as Dr. Saunders did. Mr. Crisp sought clarification that a facility with this rule could have a policy and procedure not allowing cooking

appliances. Mr. Wells indicated this was so. Dr. Robertson stated the proposed language is unclear. The suggestion was to change the term shall in the proposed language to may. Dr. Robbins wanted to be clear that the language would not preclude a resident from having a cooking appliance later in their stay at the facility. Mr. Wells stated the recommended language does not do this. Discussion centered on the removal of the automatic timer language to gain clarification if an automatic timer and automatic shut off are the same. Further conversation indicated the removal of the automatic language could create more safety issues. Ms. Marlar indicated everything cannot be covered in regulation and that is why facilities have to have policies. The inclusion of language relating the allowance of cooking appliances to an individual's level of cognition was discussed and felt appropriate. Further discussion ensued regarding the verbiage of 'upon entering'. Some committee members felt this limited a facility to determining the residents' level of cognition only upon admission, but not throughout their time in the facility. Other committee members felt the rule covers the continued and ongoing assessment of the residents' level of cognition. OGC offered to include language regarding the level of cognition being assessed throughout the residents' stay in the facility or removal of the language 'upon entering'. Ms. Marlar questioned the language 'responsible party'. Who is this? Ms. Reed stated to the co-committee that the term responsible party is not defined in the assisted care living facility regulations definition section. Mr. Chris Puri, attorney for Tennessee Center for Assisted Living (TNCAL), indicated that the rules set forth under the health care decision's act and the post form that is defined as health care agent which appears to be the person being discussed as the responsible party. He also had additional comments to the discussion that had occurred. Mr. Puri indicated the change in the rule language was done in order to broaden the current rule defining cooking appliance and tying to microwave ovens. He stated the new rule language needs to ensure and reinforce the facilities' policies on the use of cooking appliances as these facilities are moving to a more home like environment with an increasing acuity of the residents relative to maintaining safety and protection of the residents in the facility. Mr. Puri also stated the regulation needs to ensure the applicable codes and standards are incorporated. He further stated the cognition piece is important and touchy, but the facility must still have the ability to enforce its policies if a resident is non-compliant with the use of cooking appliances. Mr. Puri did offer some recommended language to the co-committee for consideration. Dr. Saunders questioned what was meant by applicable codes and standards. Mr. Wells stated this would be the life safety building code standards. The committee members asked Mr. Harmon if the current discussion on the new rule language appeared to be helpful. Mr. Harmon did not indicate the discussion was creating an obstacle for plans review or life safety surveyors. Mr. Wells stated the language of applicable codes and standards ties back to the Board's currently adopted codes for building and life safety. He also stated the recommended rule language being discussed by the committee members appears to be more constrictive instead of permissive which is how it began. Dr. Saunders voiced concern over Mr. Wells' statement of the language becoming more constrictive and could the language go back to what was first recommended by OGC to include wording to include applicable codes and standards. Ms. Marlar stated she has better understanding of the second draft of the proposed rule language and feels this would aide a provider in better understanding their responsibility. Dr. Saunders stated as a consumer the first draft of recommended rule language is better understood. The committee members discussed the merits of each version of the recommended rule language. Mr. Harmon indicated the regulation language that creates responsibility of facility in determining the cognitive level of a resident is preferred. The committee members chose to strike the language relating to cognition in the recommended language. **Dr. Saunders made a motion to accept the recommended rule language as written via a second version with suggested changes by the committee for presentation to the full Board; seconded by Carissa Lynch.** More discussion ensued concerning the reference to applicable codes and standards in the recommended language. Mr. Puri indicated the federal regulations for community based services are moving toward the liberalization of items that can be allowed in this type

of population of residents. **The motion was approved.** The co-committee also considered an interpretative guideline (IG) for the current rule. The presented IG was in line with the originally recommended rule language by OGC. The approval of the IG by the full Board will give direction to providers and surveyors until the rule language if approved by the Board goes into effect. **Dr. Robertson made a motion to accept the IG with recommended language changes which coincide with the approved recommended rule language for presentation to the full Board; seconded by Dr. Saunders. The motion was approved.**

Dr. Saunders made a motion to adjourn the meeting; seconded by Mr. Crisp. The motion was approved.