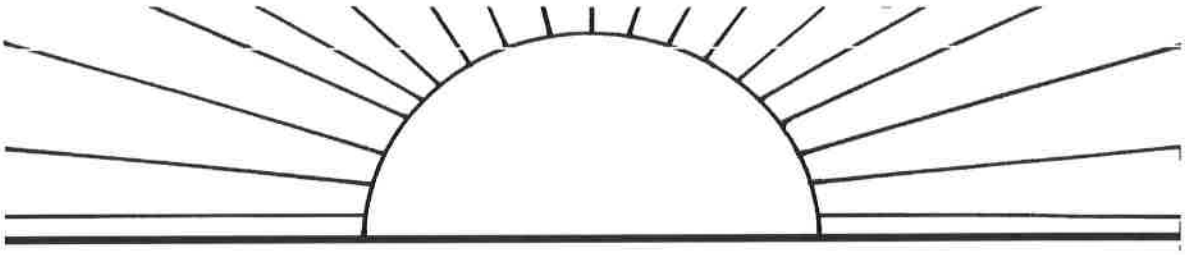

The Tennessee Open Meetings Act passed by the General Assembly in 1974 requires that meetings of state, city and county government bodies be open to the public and that any such governmental body give adequate public notice of such meeting.

TENNESSEE DEPARTMENT OF HEALTH
MEMORANDUM
AMENDED

Date: April 17, 2017

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- Performance Improvement Issue and Assisted Care Living Facilities Standing Committee Meeting
(Call-in Number: 1-888-757-2790 passcode: 152602#)

Date of Meeting: April 18, 2017

Time: 9:00 a.m. – 4:00 p.m.

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.

PH-1850 (Rev. 3/79) RDA N/A

TENNESSEE HEALTH

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 PERFORMANCE IMPROVEMENT ISSUE AND ASSISTED CARE LIVING FACILITIES STANDING COMMITTEE MEETING

APRIL 18, 2017
POPLAR CONFERENCE ROOM, FIRST FLOOR
9:00 a.m.

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

A. PERFORMANCE IMPROVEMENT ISSUE STANDING COMMITTEE

1. Call the Meeting to Order and Establish a Quorum.

2. Revision Suggestions for Ambulatory Surgical Treatment Centers Rules 1200-08-10-.06(13) Regarding Chronic Pain.

3. **HEALTHSOUTH CANE CREEK REHABILITATION HOSPITAL, MARTIN AND HEALTH SOUTH REHABILITATION HOSPITAL NORTH MEMPHIS, MEMPHIS**
   HealthSouth Corporation and its affiliated hospitals in Tennessee are requesting the Board to make a determination regarding compliance with Pediatric Emergency Care Facilities Rule 1200-08-30-.02 ("P" Tag 200) and the Board to take the necessary action to remove any obligation to maintain any PECF designation (including the provision of any pediatric emergency services) and to consider a waiver for the noted hospitals relieving the hospitals of any requirements to comply. Both hospitals HealthSouth Cane Creek Rehabilitation Hospital, Martin and Health South Rehabilitation Hospital North Memphis, Memphis were both cited with the same deficiency. Both hospitals are licensed as rehabilitation hospitals under Rule 1200-08-01-.01(37)(g).

   REPRESENTATIVE(S): Chris Puri, Attorney

4. Other Discussion(s).

5. Public Comments.

6. Adjourn.

B. ASSISTED CARE LIVING FACILITY STANDING COMMITTEE

1. Call the Meeting to Order and Establish a Quorum.

2. Residential Home for the Aged Rules Regarding Definition of the Term 'Ambulatory'.

3. Home and Community-Based Services (HCBS) Assisted Care Living Facility (ACLF) Administrative Rule Compliance.

4. Consideration of Assisted Care Living Facility Rules 1200-08-25-.02(12) Definition of Continuous Nursing Care, and 1200-08-25-.08(1)(b) Requires Continuous Nursing Care.

5. Other Discussion(s).

6. Public Comments.

6. Adjourn.

MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
ASSISTED CARE LIVING FACILITY (ACLF)
STANDING COMMITTEE MEETING

April 18, 2017

The Board for Licensing Health Care Facilities' Assisted Care Living Facility (ACLF) Standing Committee meeting began April 18, 2017. Joshua Crisp, Chairman, called the meeting to order.

A quorum roll call vote was taken:

Mr. Joshua Crisp – here
Dr. Sherry Robbins – here
Ms. Carissa Lynch – here
Ms. Annette Marlar – here
Mr. Roger Mynatt – here
Dr. René Saunders - here

A quorum was established.

The first item for discussion was the Home for the Aged rule definition for the term "ambulatory". Ann Reed, Director of the Board for Licensing Health Care Facilities (BLHCF), gave background to the agenda item. She stated this was an item on the February agenda of the BLHCF. The Board voted to move the item to the ACLF Standing Committee for further discussion and to consider the ambulatory definition plus review of the interdisciplinary team (IDT) assessment of a resident of Laurestine Care Home which presented to the Board at the February meeting. The facility did not provide a copy of the IDT which was requested by the Office of Health Care Facilities (OHCF) staff, but are apparently working on based upon information received from other staff agency representatives who were asked by the Board to be a part of the review. Joshua Crisp asked if a situation such as this had occurred in the past. Ms. Reed stated that it had in 2013 or 2014 with committee work convening giving rise to the current interpretative guideline (IG) for hospice services in RHAs. This information was provided in the Committee members' packet. Chris Puri addressed the Committee on behalf of the Tennessee Center for Assisted Living (TCAL). He directed the Committee to look at the state law for home for the aged (RHA) which does not indicate the RHA facility type to look like other facility types in the provision of care. Mr. Puri referenced the RHA requirement to transfer to a different level of care such as a hospital, nursing home, etc where the needed services can be provided by that facility licensure type. He further pointed out the assisted care living facility (ACLF) licensure type allows via its regulations provisions for the continual stay of residents under certain conditions. Mr. Puri expressed an issue with providing a definition for ambulatory that is not truly ambulatory. He feels this could lead to the statutory and regulatory intent being meaningless. It is clear what a home for the aged is and the requirements for service are different from health care facilities like ACLFs and nursing homes. Mr. Puri stated this was intended by the legislature when enacted to create different levels of care. He expressed concern that if this type of situation is addressed by a waiver then there would not be a definitive set of requirements to know where and when a facility can do what. Mr. Puri stated he has concern with ad hoc waivers being granted to RHAs and for the committee to carefully consider an action relative to this situation. Annette Marlar stated three sets of regulations need to be looked at, RHA, ACLF, and nursing home. She felt that if a change is made in one set of regulations this could impact another set of regulations. Mr.

Puri recognized this as a factor. He stated it is difficult to stretch the RHA regulations in light of the statute. Dr. Sherry Robbins stated hospice is a community service provided in these facility types. She further stated a physician cannot predict when a resident will die. Dr. Robbins further stated this is not conducive to the best care for residents and wanted Mr. Puri's feedback on that. Mr. Puri stated that TCA doesn't support medical care provision in RHAs. He also indicated the development of the IG regarding hospice services in RHAs which took a lot of work. Mr. Puri stated the rules and regulations act as the guardrails for what each facility type can do. Mr. Crisp asked legal counsel if the statute for aging in place applies to RHAs or has it been evaluated for such. Kyonzté Hughes-Toombs, Office of General Counsel (OGC), stated no, but discussion to determine the need for rules and regulations on aging in place is needed. She stated a RHA is someone's home; more cost friendly than ACLF or NH which can be expensive; also, expensive to stay at private residence; difficult on family and caregivers to care for individual at home; resident is focus of the waiver such as taking own medications, communication; and the facility conducts fire drills completed in 13 minutes are elements of the aging in place discussion that may need to be had with the standing committee. Craig Parisher, Director of Facilities Construction, stated life safety codes required two means of egress – a primary and secondary – with a window usually being the secondary egress. Facilities need to consider the type of resident with this egress requirement. Roger Mynatt stated he did not feel comfortable defining ambulatory more than what it is currently. It was further stated that when the Board grants waivers consider additional care to be provided by the facility. Dr. Robbins also stated she was not comfortable with changing the ambulatory definition. She asked how often hospice is in a facility? Dr. Robbins also stated a facility may require sitters which would be a stipulation of the non-ambulatory and more needful residents remaining in the facility. Dr. Saunders stated the ambulatory definition is clear and all request should be considered on a case by case basis. She directed to OGC the question is the standing committee to change the ambulatory definition. Ms. Hughes-Toombs stated the standing committee was to consider the issue of aging in place to include a change in the ambulatory definition. Carissa Lynch asked if a change could be made to the interpretative guideline. Mr. Crisp stated this was an option. He also summarized the general consensus of the standing committee to be a lack of comfort in changing the ambulatory definition and to also wait for the IDT information from the facility, Laurestine, before making a decision. Dr. Robbins stated an IG was needed for hospice patients to ensure residents are kept safe. Work on the development of hospice guidelines in RHAs was requested. Mr. Crisp directed OGC to work on these guidelines based upon statutory parameters/standpoint. It was also requested that life safety evaluate alternative means of escape from RHAs. The results of this work are to be brought back before the committee at the next meeting of the committee. **Dr. Saunders made a motion to not change the ambulatory definition, to perform due diligence of other services such as hospice care in RHAs and as it relates to the residential home for the aged; seconded by Dr. Robbins. The motion was approved.**

The second item for discussion was the home and community based services (HCBS) assisted care living facility (ACLF) administrative rule compliance. Ms. Reed gave background to this agenda item. She stated it was before the full Board in February of this year. The topic regards TennCare's program for HCBS and the meeting of the federal requirements of the program relative to the licensure of ACLFs. Will Hines, TennCare attorney, presented to the standing committee. He stated the 2014 rule requested by TennCARE was to add to the ACLF licensure rules language to make changes to the ACLF rule to comply with federal requirements. Mr. Hines stated the federal government is requiring compliance with program requirements by 2019. He further stated a failure to amend the ACLF rules will not mean the provider in the HCBS program will not get paid. Mr. Hines stated inconsistency with the federal rules creates confusion for providers in the program. He also stated there is no requirement to change the rules. Mr. Hines' suggestion for rule language was as follows – add rules that state apply only to

HCBS Medicaid recipient providers or the Tennessee Department of Health (TDH) could copy other state departments rule language. Dr. Saunders recommended a disclaimer to TDH's rules which would state in part that meeting state licensure rules does not mean that federal rules are being met. Mr. Hines wanted to disclaim the responsibility of surveying to the HCBS is not for TDH surveyors, but the managed care organizations (MCO). Stacia Vetter, NHC, stated she poled two of the MCOs of the number of facilities signed up as a provider in the HCBS program. She stated it was approximately 80 facilities. This did not include whether the facilities actually had patients in the program. Jesse Samples, THCA, stated the federal rules may change in the future. Vincent Davis, Director of Health Care Facilities, stated the federal government has not provided guidance to the state agencies on how to survey these state licensed facilities. He stated there will be no change to how surveyors currently survey. Dr. Robbins stated the suggested language/guidance form TennCare is how it should be. The rules and regulations should not be changed at every whim. She stated to make changes once the CMS rules are firmed in 2019. Ms. Marlar stated the facility's policy and procedure can address the items TennCare has identified. Mr. Hines stated that after July 1, 2015, ACLF must be in compliance to be a provider in the HCBS program. Mr. Crisp requested guidance from OGC on how to reach compliance. Ms. Hughes-Toombs stated this can't be done today. She suggested seeing the other state agency rules and for OGC to develop rule language to bring back to the ACLF committee at another meeting. Also, Mr. Hines should attend a future meeting as well.

The third item for discussion was the consideration of ACLF rule 1200-08-25-.02(12), definition of continuous nursing care and 1200-08-25-.08(1)(b), requires continuous nursing care. Ms. Reed provided to the standing committee the reason for this agenda item. She stated the administrative staff was seeking guidance on the intent of the term 'continuous nursing care'. Ms. Reed provided an example of what the administrative staff are questioned about relative to these rules. The example includes those residents seeking to admit or who currently reside in an ACLF who having an ostomy in place and subsequent dementia. Dr. Saunders stated the care of an ostomy does not require skilled nursing. She further stated someone may be trained to provide the care. OGC and the standing committee felt the key term was 'by a licensed nurse'. If someone in the facility is trained to do this care then it is okay to provide including certified nursing assistants (CNA). Ms. Reed stated CNAs are not trained in the provision of ostomy care. Mr. Puri pointed out to the standing committee page 19 of the ACLF rules at rule 1200-08-25-.08(3) – services and supports of the ACLF are capable to meet care needs of the resident even if intermittent nursing care is required. He further stated the plan of care will address. OGC confirmed no IG or formal written direction was needed. Ms. Reed stated the minutes of the meeting will capture the discussion and guidance. This would be available for all as issues occur.

There was no more business of the ACLF Standing Committee conducted. **A motion was made and approved to adjourn the meeting.**