

North Dakota Department of Health
Division of Health Facilities

LONG TERM CARE ADVISORY
COMMITTEE MEETING MINUTES

May 22, 2007

Committee members present:

Darleen Bartz, Health Resources Section, ND Department of Health
Bruce Pritschet, Div. of Health Facilities, ND Department of Health
Shelly Peterson, Executive Director, North Dakota Long Term Care Association
Kurt Stoner, Bethel Lutheran Home, Williston
Helen Funk, State Ombudsman, Div. of Aging Services, ND Dept. of Human Services
Carole Watrel, AARP
Randal Albrecht, ND Board of Examiners for Nursing Home Administrators
Representative Gary Kreidt, ND House of Representatives (New Salem)
David Remillard, North Dakota Health Care Review, Inc.
Dr. Jonathan Berg, Nursing Home Medical Director's Association – Conference Call
Lucille Torpen, Manager, Division of Health Facilities, ND Department of Health
Monte Engel, Manager, Division of Health Facilities, ND Department of Health
David McCowan, Division of Health Facilities, ND Department of Health
Arvy Smith, Deputy State Health Officer, ND Department of Health
Barb Fischer, Medical Services, ND Department of Human Services
Kaye Hessinger, Div. of Health Facilities, ND Department of Health

Committee members absent from the meeting:

Maggie Anderson, Medical Services, ND Department of Human Services
Betty Keegan, Rolette County Social Service Board
Craig Lambrecht, MD, State Medical Officer, ND Department of Health

Welcome

A meeting of the Long Term Care Advisory Committee was called to order at 10:00 a.m. on May 22, 2007. Darleen Bartz welcomed everyone to the meeting, and stated that Dr. Berg would be participating in the meeting via conference call.

Approval of Minutes

Minutes of the February 7, 2007 minutes were approved as distributed. Lucille Torpen made a motion to approve the minutes; seconded by Randal Albrecht. Motion carried.

Standing Reports & Legislative Session Recaps

Representative Gary Kreidt gave an end of the session report to the committee.

- The property tax relief issue held the session up;
- There ended up to be a 20% increase on the Human Service side; 4 plus 5 for nursing home inflator; and dollars were put into property adjustments;
- There are two long term care interim studies - one relates to studying the need for skilled beds in geographic areas. The other study involves basic care and will look at developing a two tiered system for basic care surveys. Another issue is a construction demonstration project which would involve looking at a building project near completion.
- The Human Services Committee Interim Studies included the following bills:

Senate Bill 2012 – Infant development programs;

Senate Bill 2186 – Early childhood care facilities;

Senate Bill 2312 – Alternative to abortion services program;

Senate Bill 2379 – Nursing education consortium;

House Bill 1246 – Funding of children’s dental services;

House Bill 1435 – Immunization program/immunization task force.

Representative Kreidt said his personal feeling as far as the session is that the most difficult part was the number of dollars they had available. The legislators needed to determine the priorities and greatest need as to where the dollars should be spent. He said it was a very interesting session, and they were able to carry over a substantial amount of dollars into the next session.

Representative Kreidt also talked about Senate Bill 2418 related to the Veteran’s Home in Lisbon. The legislature approved building a new facility. There were problems with life safety code issues in the existing facility. He said one day they were studying it, and the next day they were building it. Approximately 65% will be federal funds, and this should be available some time in October. Ground breaking for the new building should start next spring.

Representative Kreidt said that 25 new beds for sex offenders will be added at the State Hospital in Jamestown. The GM building will be renovated to accommodate this. Darleen Bartz had recently attended a meeting in Jamestown regarding this. She said currently there are 130 sex offenders, and this would increase the capacity to 155.

There was discussion about an amendment to the Health Department appropriation bill regarding construction. Representative Kreidt said he is excited about the amendment, which addresses up-front technical assistance. Darleen Bartz stated a concern because the bill did not give the Health Department any additional appropriations for the additional workload. Mr. Kreidt stated that they want this to go forward, and that if it is successful, he will carry the ball the next session to get some funds. He feels it is always good to have some history to present when he goes back to the next session. He would support a new FTE to the legislature. Darleen Bartz said there are also liability issues we

need to consider. Shelly Peterson stated that Monte Engel screens the plans, but ultimately the facilities are responsible for their plans. She said that at the regional meetings, this is one of the biggest issues, and that people are frustrated. Arvy Smith said she has an issue with them putting Monte out there because budgetarily, there are several unfunded mandates and she currently doesn't have any roll-up dollars. Darleen Bartz stated that Sherwin Nelson had spent nearly 200 hours on-site at a Fargo facility, and that the Department does not have the manpower to do this at the current time.

Representative Kreidt commented that during a regular life safety code survey, after a project had been completed in 1989, they thought they had followed the blueprints. After the first life safety code survey following completion of the project, they still had to spend an additional \$12,000-\$15,000 because sprinklers were not properly located. Arvy Smith questioned if there was a way we can track this as we are going through the process – what problems were headed off to avoid an expense. Shelly Peterson said this service within the Health Department would be the best way to move forward. Arvy said we could inform other facilities what they could look for to avoid future problems in the construction process. Randal Albrecht stated that Monte Engel does reviews and makes recommendations based on his interpretation of the regulations. Randal said he feels the person going out to the facilities would have to have Monte's sense of expertise – that he is the go-to guy. He said the architects and contractors don't seem to have this level of expertise. Darleen Bartz questioned whether the architects have certain quality assurance requirements, and also if the facilities have started incorporating more into their agreements with the architects and construction people. Shelly Peterson asked if it was still the requirement that every change order should go to Monte. She feels that going on-site would be another check in a whole series of checks. Shelly said she agreed with Arvy that the more information gathered during this project, the better it would be.

Arvy Smith asked what the critical times are for the Department to be in there to look at construction. Shelly Peterson asked Monte where he sees the problems out there. Monte Engel said the most value would be before the final punch list, and then prior to closing up the walls. Representative Kreidt feels that we should look at going in two to three times.

Comments from the ND Long Term Care Association

Shelly Peterson said that the top priority was the 5 plus 5 funding annual inflators. The funding ended up at 4 plus 5, but originally she said it was in the Governor's budget as 3 plus 3. Also, she said she is really looking forward to the moratorium issue regarding re-distribution of beds, which was selected as an interim study. This study will identify areas of the state which are in need of additional skilled nursing facility beds. She said we are down to 65 beds per 1,000. The ND Long Term Care Association will be very involved in this study, as well as the Department of Human Services.

Regarding House Bill 1488, Shelly stated the Association is very excited about the announced surveys for basic care facilities, and that they want to see this continue indefinitely. There will be 100% announced surveys for life safety code, effective

August 1, 2007; and for the health portion of the survey, 50% will be announced. Also, a two tiered system of identifying deficiencies will be developed for the health portion of the survey. A committee will be organized to look at the two tiered system.

Shelly raised a question about special focus facilities, whether they can be identified, and the process of how they get off the list. Darleen Bartz said at the CMS Regional Meeting in St. George, Utah recently, they were once again informed that specific information about special focus facilities cannot be released.

Shelly Peterson said they were encouraging the facilities to do the second year funding for My InnerView. She said North Dakota had outstanding results the first year. She feels we should send out a news release from the Advisory Committee which includes the results from the first year.

Shelly said the Department of Human Services was rewarded 8.9 million dollars for purposes of looking to enhance the discharge process. The Department will be filling a position and then will put together their implementation plan. From the minimum data set (MDS) data, it could be determined who would be eligible to be discharged.

In regard to the QIS process, Shelly said discussion at the Regional meetings indicated that it is felt we would not want to implement this process until the new bugs are worked out of the survey process. Darleen Bartz said thirteen states had applied for the study, and Minnesota was selected to move forward.

Another issue discussed at the LTCA Regional meetings was minimum water temperatures, with a recommendation of 110 to 118 degrees. The facilities would like to see them increased to at least 118 degrees.

Comments from the Ombudsman Program, ND Department of Human Services

Helen Funk reported that the Ombudsman Program was involved in attending House and Senate Hearings as well as conference committee meetings. Changes have occurred in advanced directives, which means the booklet, "Making Medical Decisions in North Dakota" will have to be updated. Helen will let Shelly Peterson know when the changes in the advanced directives are placed on the ND Department of Human Services website .

Helen talked about Senate Bill 2212 which deals with health care directive paperwork that individuals complete when they are residents of long term care facilities. She said an individual who is a resident of a nursing facility is no longer required to have a witness attest that the resident understands the advanced directive when he or she completes the paperwork. Senate Bill 2308 allows an individual to authorize, in a health care advance directive, his or her agent to make health care decisions for the individual even though he or she is competent to make his or her own health care decisions. The principal's authorization may be revoked in the same manner as a health care directive may be revoked.

Helen said that two basic care facilities in the state have downsized to 16 residents to meet the requirement for the facilities to continue receiving medical assistance for their residents. Both facilities were almost exclusively caring for persons diagnosed with mental illness. The Ombudsman Program assisted with transfers and follow-up for these residents who were moved. She stated that cooperation among several agencies, including the ND Long Term Care Association, was excellent. The transition to new facilities went as smoothly as could be expected. Shelly Peterson asked if there is still follow-up being done with Wilton, and Helen responded that there is. As far as assisted living networking, Shelly asked Helen that if she sees any issues or if she has an article of concern, the Association would appreciate these to include in their monthly newsletter.

In reference to the Long Term Care Association Conference that was held this month, Helen felt it was an excellent conference and the training was appreciated. She said it is also a great opportunity to visit with staff and administration of many of the nursing facilities in the state.

Update on the Medical Director's Association

Dr. Jonathan Berg talked briefly about the activities of the Medical Director's Association. The next meeting of this association will be held at the Ramkota Inn in Bismarck on October 12. There will be a wide range of topics included on the agenda:

- Dr. David Brechtellbaur from Sioux Falls, South Dakota will talk about the American Medical Director's Association on a national level.
- Medical direction for the part time medical director.
- Dr. Brosseau will give a lecture regarding diabetes; and diabetics in nursing homes.
- Dr. Rolf Paulson will discuss wound care.
- Bruce Pritschet, ND Department of Health, will give a survey agency update.
- There will also be discussion/information on My InnerView; and the regular business meeting.

Shelly Peterson would like a draft agenda of the meeting sent to the long term care facilities, and ask them to share this information with the medical directors in an attempt to help increase participation.

Comments from the ND Department of Health, Division of Health Facilities

Bruce Pritschet and Monte Engel discussed the Survey Activity Reports for program, and life safety code surveys for fiscal year 2007 (60% of the fiscal year has passed). In North Dakota there have been 39 surveys, with 47% of the providers surveyed. There have been 5 complaint surveys, with 6% of providers surveyed. Bruce said that we are running about 5% behind. One factor that has put us behind is the complaints from accredited hospitals. There are 11 accredited hospitals. Darleen Bartz also mentioned that we are surveying with three to four vacant positions, which also impacts us.

Darleen Bartz stated that relating to the federal look-behind surveys, the national average was 18.3 citations per facility. In North Dakota, our average look behind citations are at 8 or 9. As far as the comparative surveys, North Dakota does not have as much discrepancy as other states. Bruce feels there must be a difference in interpretation between the Denver Region versus other regions. There was a total of one provider with one enforcement action within this period of reporting. The average number of deficiencies per survey by scope and severity were 4.3 deficiencies in a total of 44 surveys. The average in the Denver Region was 4.55 deficiencies per survey, and on the national level it was 1.96.

Monte Engel said there have been 39 life safety code surveys completed; the national average is 3.9; the Denver Region average is 5.76; and the North Dakota average is 4.4 (these statistics are reflected from October 2006 to present). North Dakota is right in the middle of the average for Denver Region (Region VIII). The vast majority of deficiencies appear as a D or F. Monte shared a Survey & Certification Memorandum (S&C-07-18) from Centers for Medicare and Medicaid Services dated April 20, 2007 regarding door gaps. This memorandum, which was sent to State Survey Agency Directors, and State Fire Authorities, is summarized as follows:

- In a smoke compartment that is **not fully sprinklered**, a gap between the face of a corridor door and the door stop should not exceed $\frac{1}{4}$ **inch**, provided that the door latch mechanism is functioning.
- In a smoke compartment that is **fully sprinklered**, a gap between the face of a corridor door and the door stop should not exceed $\frac{1}{2}$ **inch**, provided the door latch mechanism is functioning.

The purpose of this memorandum is to clarify requirements for door gaps in the 2000 edition of the Life Safety Code (LSC), National Fire Protection Association (NFPA) 101. This information applies to corridor doors other than those in required enclosures of vertical openings, exits, and hazardous areas. This information does not apply to doors in smoke barriers, which have other requirements.

Monte Engel said the flashlight test is not used anymore. He feels the number of citations for corridor doors should decrease with this memorandum (S&C-07-18). Shelly Peterson said people were excited about getting this citation/clarification from CMS. The previous interpretation was much more stringent. Shelly Peterson had a question regarding uneven surfaces when coming out a door in a facility. Monte Engel said you will need to have a hard surface leading from each exit door, and this surface must be asphalt or concrete. Monte said we are able to work with facilities up to six months to correct any of these issues, but this will be a deficiency if corrections are not made.

Criminal History Record Checks

Darleen Bartz referenced Senate Bill 2260 relating to criminal history record checks. The Department asked for some amendments in Section 12-60-24 of the North Dakota

Century Code, amended and reenacted as follows under 12-60-24. Criminal history record checks. 2.n.....The state department of health for a final applicant for or an employee in a specified occupation with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department.

My InnerView Update

Barb Fischer reported that 53 facilities took advantage of the survey in 2006. Shelly Peterson said their recommendation is that the facilities complete these this summer. Barb responded that most expect to complete them in May and June. Darleen Bartz talked about a news release which had been prepared that discussed the My InnerView process, and some statistics that highlighted the 24 satisfaction items polled in the survey. She said that the Department's public information officer felt it was a conflict of interest for the Department of Health to release this as a survey agency, and that the department should not send this information out. Darleen said she wanted to bring this back to the committee. She asked Dave Remillard if the news release could go out from the QIO. Another option would be to have the Department of Human Services send it out because of the civil money penalty funds involved. Barb Fischer said she would have to clear this with her supervisors and could get an answer in the next couple days. Dave Remillard said he thinks it would be a viable option to have it released from the QIO, even though he would have liked to see it come from the advisory committee. However, he said this is a piece that the ND Health Care Review can speak about, and he doesn't think the board would be opposed to getting this information out from his office. Darleen Bartz said we will get information as to who could be signatures for the information.

Barb Fischer distributed a memorandum that was sent from the Department of Human Services to the ND nursing facilities participating in Medicaid regarding the grant application for satisfaction surveys for 2007. In this memorandum she said that the ND Department of Health's Long Term Care Advisory Committee has requested the ND Department of Human Services continue use of the civil money penalty funds deposited to the Medicaid Health Trust Fund to assist nursing facilities with conducting resident, family, and employee satisfaction surveys through My InnerView, Inc. for a second year (2007).

Facilities choosing to conduct nursing facility satisfaction surveys during 2007 through My InnerView, Inc. may submit a grant application to the Department of Human Services for reimbursement of the cost of the satisfaction surveys. The rate allowed is \$3.75 for each nursing facility resident or family survey, and \$2.95 for each employee survey sent out by My InnerView, Inc.

Quality Indicator Survey Process

Lucille Torpen and David McCowan, ND Department of Health, recently attended initial training on the QIS process. Individuals who had been using the process already were coming back reporting good things, and felt the process was fair.

The QIS Process Overview falls into three categories:

1. Offsite/Onsite Preparation
 - Information gathering
 - Supplies
 - Import survey shell
 - Team assignments
 - Print forms
 - Entrance conference
 - Initial tour
2. Stage I Tasks
 - Reconcile census sample
 - Initial team meeting
 - Census sample review
 - Admission sample review
 - Mandatory facility-level tasks
 - Team meetings
3. State II Tasks
 - Care area investigations
 - Triggered facility-level tasks
 - Mandatory facility-level tasks
 - Stage II meetings
 - Analysis & decision-making
 - Exit conference

Lucille said the Ombudsman will still be contacted, and will also be invited to attend the survey exit conference. Curt Stoner asked if this process requires the same number of surveyors. Lucille stated there are four surveyors required on the survey, and there will be a sample size of 40, no matter what size the facility is. Bruce Pritschet said this is set up for 150 beds or more, and they are currently working on a process for smaller facilities. Lucille said we also look at the issue of complaints, and what is pending. Before going out on survey, we import the survey shell – MDS data. This randomly selects residents for the survey. Team assignments remain pretty much the same, and certain surveyors perform certain tasks. The entrance conference stays about the same, but may take a bit longer because it is a new process. Dave Remillard said it looks like this is a way to get away from reviewer bias and inconsistencies.

Lucille said the survey teams still need to score the deficiencies because this is not done automatically. There would be about six surveys that take place before the surveyor is really comfortable with the new process.

LANE (Local Area Network for Excellence) Initiative

Dave Remillard explained the LANE Initiative and provided handouts. In September 2006, the nursing home community launched a two-year collaborative campaign to transform the quality of care and quality of life for those living or recuperating in America's 16,000 nursing homes. The campaign focused on eight measurable goals. Nursing homes that agreed to commit to working on at least three goals were considered participating providers. Participating providers received technical assistance and guidance to help them work towards their goals. Consumers were also asked to sign on to the campaign. Participating consumers helped promote the campaign by creating awareness, and what constitutes good quality. Participating consumers can use this information to help direct loved ones to higher quality providers, and also help others raise their knowledge and expectations when seeking long term care.

The role of LANE leads is providing effective, timely support to campaign nursing homes on a large scale, which requires a robust national network to support implementation and communication. Field operations teams were identified to ensure this level of support.

Key responsibilities include: Raise Awareness; Drive Enrollment; Convene Meetings; Provide Technical Assistance; Deliver Key Messages; Respond to Critical Issues; and Provide Updates.

Dave said there is currently no LANE lead in North Dakota. The ND Health Care Review works with 33 nursing homes in the state now. Dave presented some statistics as far as pressure ulcers, restraints, pain management, and quality of care. He said that on national indicators, North Dakota is doing very well.

Dave talked about campaign goals and objectives for advancing excellence in America's nursing homes. These goals included:

- Nursing home residents receive appropriate care to prevent and minimize pressure ulcers;
- Nursing home residents are independent to the best of their ability and rarely experience daily physical restraints;
- Nursing home residents who live in a nursing home longer than 90 days infrequently experience moderate or severe pain;
- People who come to nursing homes after staying in the hospital only sometimes experience moderate to severe pain;
- Most nursing homes will set individualized targets for clinical quality improvement;
- Nearly all nursing homes assess resident and family experience of care and incorporate this information into their quality improvement activities;
- Most nursing homes measure staff turnover and develop action plans as appropriate to improve staff retention; and

- Being regularly cared for by the same caregiver is critical to quality of care and quality of life. To maximize quality as well as resident and staff relationships, the majority of nursing homes will employ “consistent assignment”.

In regards to staff turnover, Dave reported that the combined (weighted) C.N.A. turnover rate for the 31 nursing homes responding to their C.N.A. turnover survey was 47% for the 12 month period ending November 30, 2006. The unweighted average was 38%, suggesting that large nursing homes have more turnover.

CMS (Centers for Medicare & Medicaid Services) Update

Darleen Bartz and Bruce Pritschet attended the 2007 Survey and Certification Leadership Summit in Baltimore, Maryland on April 24-27, 2007. The purpose of this summit is to bring together leadership in the Centers for Medicare and Medicaid Services (CMS) and State Survey Agencies to explore challenges and possible solutions for the effective administration of the survey and certification program.

Goals for this meeting included:

- Exchange ideas and renew contacts to improve survey and certification outcomes in the states;
- Develop new perspectives on current challenges and emerging trends to help guide survey and certification policy;
- Provide tools to enhance day-to-day operations in survey and certification; and
- Join in collaborative problem solving and help to mold a joint future.

Discussions from the CMS update included budget, regulations, nursing homes, and emergency preparedness. Regarding the budget, the 2007 President’s Proposed Budget compared to the actual budget passed by Congress included:

- 0% increase v. 8.8% catch-up proposed
- No Survey and Certification national budget increase since 2003, except for a minimal increase in 2005
- 2/3 of the 2005 increase was eliminated
- CMS decision was to reduce central office functions in order to promote state performance. CMS central office budget was reduced by 17.2% in order to give the states an increase of 1.3%

The mission and priority document for 2008 includes:

- September – Budget for 3% + contingency plan
- Revisit fee – Part of the contingency plan
- If the President budget is not supported:
 - Suspend system improvement
 - Suspend further QIS implementation
 - Expand targeted surveys – excluding LTC
 - Adjust State Performance Standards (frequency, quality, enforcement)
 - Reevaluate policies
 - Seek further efficiencies

- Seek further partnerships

Some Challenges facing us are:

- State and federal personnel systems – Merit system for state and federal employees
- Knowledge of “What Works”
- Response of some providers to contest – less appeals are occurring
- Findings rather than address findings
- Resource limitations – need to actively recruit for survey agencies (staff and funding)
- Growth in number of providers

As far as regulations governing Medicare and Medicaid participation, the Clinical Standards Group is developing several regulations for publication in 2007 & 2008. Different work groups develop these regulations to go out for public comment. Some recent regulations that will impact long term care include:

- LSC (Alcohol-based hand rubs) – September 2006
- LTC Facilities (Sprinkler systems) – October 2006
- Long Term Care, Hospice Services - (following hospice final rule)
- LTC Facilities (Sprinkler systems) – Final rule target date of 4/25/08
- Emergency preparedness requirements for participating providers & suppliers – Target date of 3/23/08

Darleen Bartz said there are two new areas of Interpretive Guidance coming out which relate to Feeding Assistance Guidance; and Accidents & Supervision. She stated that our agency has expressed concern that CMS is putting out too many interpretive guidelines.

Next Meeting and Suggestions for Future Agenda Items

The next meeting of the Long Term Care Advisory Committee was set for Thursday, August 16, 2007 from 10:00 a.m. to 3:00 p.m. in Room 212 of the Health Department. Suggested agenda items include:

Standing Reports

- Division of Health Facilities
- ND Long Term Care Association
- Ombudsman, Department of Human Services
- Legislative Update – Interim Committees

LSC Business Process Reengineering Update – Bruce
Criminal Background Checks – Judy Volk
Rebalancing – Amy Clark

The meeting adjourned at 3:10 p.m.