

North Dakota Department of Health
Division of Health Facilities

LONG TERM CARE ADVISORY
COMMITTEE MEETING MINUTES

March 8, 2006

Present at the meeting of this committee were:

Darleen Bartz, Health Resources Section, ND Department of Health
Bruce Pritschet, Division of Health Facilities, ND Department of Health
Arvy Smith, Deputy State Health Officer, ND Department of Health
Representative Gary Kreidt, ND House of Representatives (New Salem)
Shelly Peterson, Executive Director, North Dakota Long Term Care Association
Randal Albrecht, ND Board of Examiners for Nursing Home Administrators
Dave Remillard, North Dakota Health Care Review, Inc.
Helen Funk, State Ombudsman, Div. of Aging Services, ND Dept. of Human Services
Dr. Jonathan Berg, Nursing Home Medical Director's Association
Rosanne Schmidt, St. Alexius Medical Center, Bismarck
Barb Fischer, Medical Services, ND Department of Human Services (teleconference)
Carole Watrel, AARP
Terry Goehring, Administrator, Bottineau Good Samaritan Center
Monte Engel, Div. of Health Facilities, ND Department of Health
Bill Lardy, North Dakota Insurance Department
Kaye Hessinger, Div. of Health Facilities, ND Department of Health

Absent from the meeting were:

Maggie Anderson, Medical Services, ND Department of Human Services
Betty Keegan, Rolette County Social Service Board
Craig J. Lambrecht, MD, State Medical Officer, ND Department of Health
Kurt Stoner, Administrator, Bethel Lutheran Home, Williston

Welcome

A meeting of the Long Term Care Advisory Committee was called to order at 10:00 a.m. on March 8, 2006. Darleen Bartz said that Dr. Michael Goldstone had facilitated the past meeting of the LTC Advisory Committee. However, Dr. Goldstone has since indicated that it was not going to work out for him to continue as facilitator as he is planning to move out of state. Darleen expressed her appreciation to him for his willingness to serve us when he did. The facilitator should be someone who is in a neutral role. The person could be someone from this group, or someone from the outside. She asked that the group think about a possible facilitator for the future.

Approval of Minutes

Minutes of the November 30, 2005 meeting were approved as distributed. Dave Remillard made a motion to approve the minutes; seconded by Dr. Berg. Motion carried.

Standing Reports

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

Bruce Pritschet and Monte Engel presented information on a Citation Frequency Report. Monte said that the last two pages of the handout are in the same format except they deal with life safety code citations. L34 is the survey date. The average number of days from date of survey to the date of getting the facility certified is 37.7 days. Bruce stated that the Citation Frequency Report compares the Region to North Dakota. Once again, comparing Region and State, look at the first five in the list. You can see we are citing the same in the State as in the Region. Representative Kreidt said that it appeared compared to the Region, that North Dakota is consistently higher than the rest; and that in the bottom category, North Dakota is four to five percent higher than the other states. Darleen Bartz stated we have shared some of the results of our federal look behind for life safety code in previous meetings. We have looked at other surveys since then, and the Feds are 46% higher on citing of the deficiencies. Shelly Peterson said that at the meeting she attended this weekend with AHCA, a lot of it dealt with the life safety code inconsistencies and interpretations. On March 15 there should be more guidance to the Regional Office on these problems. They feel there is a lack of leadership from the Central Office in Baltimore. AHCA feels there is too much misinterpretation of the rules. Shelly said a lot of the time there are new interpretations that have not been shared with us so we feel like a moving target. Darleen Bartz said we are working very hard to strive for consistency with our life safety code survey staff.

Dave Remillard asked if there is an appeal process when someone is cited for a life safety code violation. Darleen Bartz said there is an IDR process that can be used as a mechanism for appeal. Each situation has to be looked at specifically, as there are no two buildings alike, etc. Shelly Peterson said she feels CMS's application of the FSES is inconsistent, and therefore, that is a very big frustration. Darleen Bartz said the life safety code professional in the Regional Office comes highly respected, and a lot of entities come to him for guidance.

Darleen Bartz talked about some organizational structure changes within the Division of Health Facilities. She said that Bruce Pritschet is now the sole Division Director. The Program Manager position was filled with Lucille Torpen who will report directly to Bruce. Lucille is an RN and has a bachelor's degree. She has been with the agency for six years. Lucille will be the lead in the long term care program; and Bruce will be involved with the enforcement portion of long term care.

Darleen Bartz said we are getting very close to reviewing the data for new and existing basic care beds. Facilities currently being considered are The View, Inc. in Bismarck,

Grand Forks, and Minot; Bethany Homes in Fargo; and Eventide Senior Living Communities in West Fargo. She said it is possible we will not be able to give beds to all of those requesting. Shelly Peterson asked when you look at the occupancy issue, at what point in time do you take this information? Darleen said when we send out the survey it covers the previous year. She said Bismarck has one facility who is down to one resident. This facility hopes to sell, but will retain their license. Therefore, the availability of beds may not be there, based on the guidance provided by the legislature.

Comments from the ND Long Term Care Association

Shelly Peterson talked about property limits in nursing facilities. The department has the authority to set limits, which were set in 1994. There are a number of facilities with life safety code violations and they need to do major renovations. The cost of construction has increased 26% in the last five years. Hillsboro had quality air problems and needed to fix them. We are looking at a total of six facilities; looking at how the buildings are structured; and privacy & dignity. As we look toward the future, property will be a key component. We are hoping for property limit adjustments. One area of concern is psych units and the fact that people are not being dealt with properly in the community. We maybe need to look at a specialized area in each region. Another area of concern is individuals who require ventilator care. At the moment this is an unmet need. We are hoping to come up with one facility in each region who would take someone on a ventilator. The Long Term Care Association is conducting extra research with families and asking them questions about appropriateness of placement; could some residents be moved back home, etc. The association is hopeful of getting a lot more information to share with different groups, including the legislature. Lower acuity residents seem to be the most in need (dementia).

The Long Term Care Association has concerns with the deficit reduction act from Congress as it relates to the timeframe for transfer of assets. The Department of Human Services is quickly trying to change the rules for eligibility. There will be training in May presented by the LTCA regarding uncompensated care, accumulated assets, and alternative means to pay for their care for whatever setting they need. Shelly Peterson said the first medical director's training session will be held in the near future, and that Dr. Berg has been very helpful.

Regarding occupancy issues, there is a great demand for beds, and Shelly questioned whether some of the providers in rural North Dakota would be willing to give up beds. Representative Kreidt asked about employment issues versus occupancy. Shelly said this is very geographic, depending on the location. In rural North Dakota, salaries are much lower. This creates great staff turnover. Some remote facilities in North Dakota will look at possibly closing unless we can revitalize the very small communities.

Comments from the Ombudsman Program, ND Department of Human Services

Helen Funk talked about the closure of the Sunrise basic care in Bismarck. She was very involved with them as far as placement of residents, and a lot of them screened at the

skilled level. She said there was a lot of cooperation with the local facilities. A total of 68 individuals needed to be moved.

Regarding the ventilator issue, Helen said people who are on a ventilator are experiencing problems locating a skilled nursing facility in North Dakota that can address this. Complaints have been received recently regarding the need to place patients in an out of state facility located in Red Wing, Minnesota, far removed from their families in North Dakota. Because of the attention to vent issues, some compromises have been made. She said North Dakota is trying to develop resources for ventilators.

Legislative Update on Interim Committees

Representative Gary Kreidt gave an update on the Budget Committee on Health Care. He said the Medicaid Management System is the hottest issue out there. It would cost about \$29 million to put this into place, which has increased to \$57 million. This has been discussed through the committee, and the budget section will take it up again, but this would possibly be a legislative decision. He said there are a lot of different ideas and directions to be looked at, and it is unsure if this will be held up until the next session. There are a lot of problems out there in regard to payment to nursing facilities.

Other activities of the committee included:

- Creation of a board of allied health, which would assume responsibility for small boards out there.
- Tours of several facilities, including the School for the Blind.
- Consolidation of the Board of Addiction Counseling Examiners, Board of Counselor Examiners, State Board of Psychologist Examiners, Board of Social Work Examiners, and the ND Marriage and Family Therapy Licensure Board into one single board.

Facility Survey Evaluation Update

Bruce Pritchet talked briefly about the survey evaluation process. Shelly Peterson asked if there was any specific feedback from the first group of evaluations. These evaluation responses go directly into Bruce's e-mail address. He said there have been a lot of positive comments. If there are areas of concern that score a 2 or 3, the department will follow up with the facility.

Medication Administration in Nursing Homes – Feedback on Guidance

Darleen Bartz asked if this guidance was helpful, and whether the group has heard any feedback. Shelly Peterson said she has heard nothing negative or positive.

My Inner View Facility Grants

Barb Fischer and Bruce Pritschet discussed the process. A handout included a memorandum sent from the Department of Human Services to ND Nursing Facilities Participating in Medicaid, with a form attached titled, "Nursing Facility Satisfaction Survey Grant Application. The LTC Advisory Committee requested the Department of Human Services use civil money penalty funds deposited to the Medicaid Health Trust Fund to assist nursing facilities with conducting satisfaction surveys through My Inner View, Inc. The Department has committed approximately \$50,000 to reimburse nursing facilities for conducting satisfaction surveys related to nursing facility residents and their families or nursing facility staff. Facilities choosing to conduct nursing facility satisfaction surveys during 2006 through My Inner View, Inc. may submit a grant application for reimbursement of the cost of the surveys at a rate of \$3.75 for each nursing facility resident or family survey, and \$2.95 for each employee survey sent out by My Inner View, Inc. As of last week there were three applications. One of the applications was from 2005, which was denied.

Shelly Peterson handed out a proposed letter to be distributed. She asked to refer to the first paragraph regarding partnering. This information shows them the process on how to sign up. Resident, family, and staff data is included in the survey. They asked that the family surveys be completed with a May 1 implementation date. The nursing facilities agree to make information available to the Department of Human Services upon request. Darleen Bartz suggested adding that the NDLTCA and the NDDOH Long Term Care Advisory Committee will partner in this process. The question was raised that if there was a negative outcome, can we get down to the details. Darleen Bartz stated to Dave Remillard that this is part of what we are looking at as far as the QIO initiatives. Dave Remillard does not have that amount of detail. We should take the statewide aggregate data and compare data from the ND Health Care Review and My Inner View. Darleen Bartz questioned whether there should be anything in the letter to tie into the relationship with the NDHCR Inc. Dave Remillard said that is not necessary.

Darleen Bartz said that other than the partnership question, she felt the letter was good. Shelly Peterson said they will e-mail the facilities regarding the advise of the committee is that aggregate data information only would be shared with this group.

Representative Kreidt made a motion that aggregate information be shared with this committee, with a breakdown between QIO and this group; seconded by Shelly Peterson. Motion carried.

Resident Tobacco Use In Nursing Homes

A group consisting of representation from the Attorney General's Office; Helen Funk (Ombudsman); and Darleen Bartz, Bruce Pritschet, and Kathy Mangskau from the Department of Health prepared guidance regarding resident tobacco use in nursing homes. The question posed by the NDLTCA was, "Can a facility discharge a resident who continually chooses to violate the policy of smoke free (under the provision of

unable to meet the needs (smoking) of the residents?” This question was raised on behalf of the members of the NDLTCA regarding implementation of the provisions found in SB 2300 related to long term care facilities. Shelly Peterson will disseminate the response/guidance to this question to the nursing facilities.

Board of Nursing Advisories

Shelly Peterson and Bruce Pritschet attended the Board of Nursing Advisory Committee established to guide the practice of nursing in the state. Both had reviewed the advisories and prepared comments. The group, which consisted mostly of RN's, looked at the draft advisories. There was uniform concern that the functions of the LPN would be very limited, which was presented to the nurse practice committee. The Board of Nursing feels they really need to look at the scope of practice of RN's and LPN's in the state. Shelly Peterson feels a lot of work needs to be done yet. Bruce Pritschet stated the board would agree on what they meant to say in the advisories, and the interpretations were not the same. The Board of Nursing has some obligations to move forward to start a process they agreed to some time ago with this compact with the surrounding states. Shelly Peterson said our first responsibility should be to the people of North Dakota, rather than surrounding states. We have the statute and we have administrative code. What is the purpose of the advisory – it is causing confusion. There was a question as to what legal authority the advisories have. A request should be made of the Board of Nursing that they involve the three representatives (NDDOH, NDHCA, NDLTCA) on the committee so we are able to craft the appropriate issues. Shelly Peterson and Darleen Bartz expressed interest in continued participation.

Discharge Issues

Melissa Hauer, Attorney with the Department of Human Services, gave a summary of the nursing facility transfer and discharge appeals received by the ND Department of Human Services. The Department is the single state Medicaid agency in North Dakota, and is required to accept and process appeals of nursing facility transfers and discharges. The parties to an appeal are the nursing facility and the resident that is being transferred or discharged. The Department is not a party, but serves merely to process the appeal by determining the timeliness of the appeal and the issue involved. The Department then sends the appeal to the Office of Administrative Hearings. The Office of Administrative Hearings assigns an administrative law judge to conduct the hearing and issue recommended findings of fact, and a recommended order. In 2005 the department received seven appeals. Of the seven appeals, four were withdrawn because the parties have worked out their disagreements. One resident died during the appeal so it was dismissed. One appeal was dismissed because the notice was deemed inadequate. Darleen Bartz asked how many actually went through the whole process? Melissa said there were none. For the one appeal that is still pending, the administrative law judge extended the timeframe because they are trying to work things out. Melissa stated that reasons cited for transfer and discharge included failure to pay charges; resident is a threat to self or others health or safety; and notice was inadequate to determine proper reasons. Shelly Peterson said we need to do more appropriate discharge planning,

especially to discharge home. Melissa said her role is to process the appeal, and that the discharge planning would be more the role of Helen Funk with the Department of Human Services. Helen said that a lot of times it is not very realistic to discharge home. She has advised facilities to check with their attorneys on a lot of discharge issues. She said that ombudsmen have no way of enforcing the regulations. Helen said a lot of it comes down to the doctor and the discharge plan. Many of the residents are responsive to what is authority. She said an assessment has to be done on each resident as to what is appropriate and safe for the individual.

Randal Albrecht asked for clarification for a situation where a family sits with a trust of a half million dollars, then there is a discharge for non-payment, and a lot of times there is not an appropriate place to discharge to. Should the nursing facility be stuck holding the bag for no cost, whether the discharge is appropriate or not? We will probably see more of this occurring in the future due to current legislation. Randal said he does not know if there has been a forced discharge in North Dakota. Helen Funk said there is a lot more financial exploitation with families. She said there is very little funding for guardianship in North Dakota. The Ombudsman Program tries to work with families regarding suggested solutions. It is not an easy problem and there are so many different kinds of situations. Randal Albrecht said the problem is that facilities are faced with using the court system, which is expensive and can take up to 18 months. If a family chooses not to pay because they have violated the Medicaid standards, does the facility have a right to discharge to the family? Melissa Hauer said if a resident is not paying their charges, the facility has the opportunity to discharge that resident based on an appropriate place to discharge. Shelly Peterson asked what you do if there is not an appropriate way or place to discharge? Melissa said that due to the new budget reduction act, facilities have to start determining up front how they are going to get paid. Discharge requirements are in the federal law. Shelly said an option for discharge is back home, but Melissa said this would have to still meet the federal requirements. Randal Albrecht said a general interpretation of the federal law is facilities are responsible for appropriate care planning, and this is passed on to the family. Representative Kreidt stated that if you are not a legal guardian, a family is not ultimately responsible to pay. Shelly Peterson said the guidance they are looking for is what does a facility do? Darleen Bartz said the facility may have to utilize the facilities attorney to sue the family to get the money that is owed.

Shelly Peterson asked about the hardship provision in the budget reduction act, and whether they will be changing this? Melissa Hauer said they may look at revising it. It is not designed for people who have given their assets away. Shelly said the LTCA has done some training with standards regarding payment issues.

Part D Proposed Implementation

Bill Lardy, Director, SHIC, with the North Dakota Insurance Department, gave a presentation on the Part D proposed implementation. He presented many handouts, including a Long Term Care Guidance dated March 16, 2006. This document comes from Medicare and pharmacies must meet these standards to become a network long term care pharmacy. The guidance is to assist Medicare Part D plans in formulating policies

for the implementation of CMS requirements regarding pharmacies providing products and services to long term care facilities. The enrollment deadline is May 15. Some long term care facilities have enrolled all of their residents in the same plan. He doesn't know if this was discussed with the residents. Changes to the plan can take place monthly in a nursing home, on the first or second day of the month. This option, for those in a nursing home, will be still available after the May 15 deadline. Individuals in the community who are Medicare only have an opportunity to make a change between November 15 & December 31 of each year. Mr. Lardy said a website to access for helpful information is www.cms.hhs.gov/center/snf.asp.

In a joint recommendation dated February 2, 2006 from CMS and Alliance concerning Medicare Part D it was stated that in order to simplify access to the Part D drug benefit in the long term care setting, they are recommending that certain steps be taken by providers to clearly differentiate those drugs that have specific definitions as Part D status in long term care. These drugs include:

- Drugs administered through a Slip Stream Nebulizer (SSN) as DME
- Drugs administered through a pump as DME
- Infusion Drugs
- Injectable Drugs
- TPN when given for temporary malabsorption problems.

For these classes of drugs, they recommend including in the written order both the diagnosis and indication for the drugs, as well as a statement of status such as "Nursing Home Part D."

In response to a question raised regarding Medicare Part D and inhalation medications, the reply from Blue Cross/Blue Shield (Noridian) is that all drugs that are given through a nebulizer are covered under Part B, except for long term care members. Therefore, the pharmacy will need to do two things:

1. Contract with Prime Therapeutics as a LTC pharmacy
2. Once contracted as a LTC pharmacy, processing requirements are to submit a patient location code of the following:
 - For a LTC resident use code 03 = Nursing Home
 - For an assisted living resident use code 05 = Rest Home

In a fact sheet released by the Centers for Medicare and Medicaid Services (CMS) on February 15, 2006, outpatient therapy caps were clarified. Section 4541 of the Balanced Budget Act of 1997 required CMS to impose financial limitations or caps on outpatient physical, speech-language, and occupational therapy services by all providers, other than hospital outpatient departments. The law required a combined cap for physical therapy and speech-language pathology, and a separate cap for occupational therapy. Due to a series of moratoria enacted subsequently to the Balanced Budget Act, the caps were only in effect in 1999 and for a few months in 2003. With the expiration of the most recent moratorium, the caps were reinstated on January 1, 2006 for \$1,740 for each cap.

CMS has established an exception process that is effective retroactively to January 1, 2006. Providers, whose claims have already been denied because of the caps, should

contact their carrier to request that the claim be reopened and reviewed to determine if the beneficiary would have qualified for the exception. In addition, providers who have not yet submitted claims for services on or after January 1, 2006 that qualify for the exception, should submit these claims for payment, and refund to the beneficiary any private payments collected because of the cap.

The committee thanked Mr. Lardy for clarification on many of the complex issues related to the Part D proposed implementation.

Next Meeting and Suggestions for Future Agenda Items

The next meeting of the Long Term Care Advisory Committee was set for Wednesday, June 14, 2006 from 10:00 a.m. to 3:00 p.m. in Room 212 of the Health Department. Suggested agenda items include:

- Update on Medical Directors Meeting – Dr. Jonathan Berg
- Unforeseen Expenses – Barb Fischer
- Phys. Ed. In LTC/Geriatric Issues – Dr. Guy Tangedahl
- Update on BON Advisories
- Update on My Inner View
- General discussion on discharge for non-payment
- Role of the State Agency in FSES
- Sex Offenders Rights
- Standing Reports:
 - Division of Health Facilities – Bruce Pritschet
 - ND Long Term Care Association – Shelly Peterson
 - Ombudsman – Helen Funk

The meeting adjourned at 3:10 p.m.