



ILLINOIS DEPARTMENT OF PUBLIC HEALTH
OFFICE OF HEALTH CARE REGULATION
LONG TERM CARE FACILITY ADVISORY BOARD MEETING
May 17, 2018 • 10:00 AM – 12:00 PM

APPROVED MINUTES

I. CALL TO ORDER AND INTRODUCTIONS

Connie Jensen facilitated the meeting in the absence of Darlene Harney who has left the Department’s employ. The meeting was called to order at 10:00 a.m.

MEMBERS PRESENT: Patrick Baalke, Dr. Alma Labunski, Candice Moore, McCurdy, George Bengel, Mike Bibo, Dr. Albert Maurer, Jamie Freschi, Dale Simpson, and Julie Harcum-Brennan

MEMBERS NOT PRESENT: Martin Gorbien, Pamela Blatter, and Lydia Hemrich

IDPH REPRESENTATIVES: George Logan, Sean Dailey, Erin Conley, Pam Winsel, Connie Jensen, Tena Horton, Michelle Millard, and Daniel Levad

GUESTS: Kevin Taylor, Andrew Proctor, Bill Bell, Robert Roiland (proxy for Karen Christensen)

A quorum was established.

II. APPROVAL OF MEETING MINUTES

The unapproved meeting minutes from the February 15th Board meeting were distributed for review. Connie Jensen asked if there were any discussions to the minutes.

1. Dr. Maurer stated that on Page 3, Item 11, line 3 should read “These side effects pertain to that drug. IL should list common side effects and inform the patient.” Changes noted.
2. Dr. Labunski stated that on Page 2, Item 8, it states that she had a major concern regarding the verbiage of the IC. The verbiage has been inaccurately stated. Her concern is that it was listed as “intended to treat patients”. What she did say was to revise “provides therapeutic assistance”. Her initial concern was about the verbiage that stated “intended to treat”. No other corrections or additions. Meeting minutes were approved as amended.

III. MEMBERSHIP UPDATE

1. Connie Jensen was pleased to announce to the Board that all of the membership vacancies were now full. She also welcomed Julie Harcum-Brennan as a new member. However, Ms. Harcum-Brennan was unable to attend.

IV. UNFINISHED BUSINESS

A. ***Rulemaking – (Skilled Nursing and Intermediate Care Facilities (77 IAC 300) Sheltered Care Facilities (77 IAC 330) Illinois Veterans’ Homes Code (77 IAC 340):***

1. Sean Dailey stated that there are three (3) rule amendments. The first two (2) are the Part 300 and Part 330. Both amend the section on “Determination to Issue Notice of Violation or Administrative Warning.” These are largely technical amendments righting the fact that when the statutory provision deadline for determining violation switched from 60 to 75 days was overlooked. This has been corrected from 75 days to 60 days. The rest of the section was updated statutory language and basic cleaning. The Sheltered Care Part 330 rule was also updated.
2. There was a conference call interruption. Julie Harcum-Brennan was eventually able to connect via videoconference and Connie Jensen was formally able to welcome her to the Board. She was able to briefly bring Julie up-to-date regarding the current rule amendments previously discussed by Sean Dailey.
3. Connie Jensen asked if the Board would like to move on accepting the changes. Mike Bibb reviewed the Act and made a motion to approve Part 300/Part 330 regarding the time frame updates, as well as Part 330 for Shelter Care. Connie asked for a second; which was seconded by Bob Roiland. Voted unanimously. Motion was passed.

B. ***Rulemaking – Specialized Mental Health Rehabilitation Facilities Code (SMHRF) [77 IAC 380].***

1. Sean Dailey stated the next review is the SMHRF, Sections 700 and 710 to implement the statutory provisions for provisional licenses to expire three (3) years following the issuance and not three (3) years from when the emergency rules were first filed in 2014. Sean stated there were two (2) different versions of this rulemaking in the packet presented to the Board. The version the Board is voting on is on Page 6 which has a new Subsection B and a new Subsection C and is dated 04/25/2018.
2. Mike Bibb asked Sean to clarify the change on Subsection F. He wanted to know if the provisions establishing requirements for provisional licenses to be effective for no more than three (3) years, pursuant to the Act. Sean stated yes. And, noted that it originally stated “effective for three (3) years beginning May 22, 2014 and will be effective for a period of three (3) years not to extend beyond May 22, 2017. A Board member why it took a long time to begin issuing provisional licenses which did not get issued until last year. Having a license expire less than a year after the original was impractical and the Act was amended in order for the facilities to have their full three (3) years in order to come into compliance and be eligible for federal certification. The Act was cross-referenced in Subsection 3, 710(b) on Page 6 which is a statutory revision for provisional license lasting three (3) years from date of issuance and not from the date of May 2014.
3. Mike Bibb asked Sean to explain the difference between a provisional license and a probation license. On the long-term care side, there is a probationary license that is good for 120 days. If the facility is in compliance, they are issued a regular license, if not, the facility will receive one (1) additional 120 day probationary and that’s all. Connie Jensen advised Mike Bibb that it is the language of the SMHRF Act. It basically states that there was going to be a three (3)

year provisional license. Connie stated that the first license that is actually issued to the SMHRF is a provisional license and is good for three (3) years with subsequent annual or interval surveys. During the period of these three (3) years, the SMHRF will have time to come into compliance for Federal certifications. Mike Bibo informed the Board that the number of SMHRF's are limited to 24. The 24 that were designated as an IMD at that time the SMHRF went into effect. Connie emphasized that there is no option to open another SMHRF even if one is closes. Not all 24 facilities have transition to the provisional licenses and this is under review.

4. Connie Jensen inquired if there were any further discussion on the SMHRF amendments. She requested a motion from the Board; Mike Bibo made a motion to approve the Part 380 rule (version 04/25/2018); seconded by several Board members. Voted unanimously. Motion passed.

C. *Rulemaking – Nursing Staffing Waiver (PA 100-0217)*

1. Connie Jensen asked the Board if there was any discussion on rule updates. Mike Bibo has concerns that PA 100-0217 was passed last year and went into effect immediately. The law does not require rulemaking. The PA mimics Federal law which allow for a waiver of RN coverage for certain criteria. Waivers for nursing homes should be capable of applying for a waiver. Mike indicated that IDPH had not informed providers and they are waiting for rulemaking which would be impossible to be adopted by January 2019. IHCA wants to know the Department's position (i.e. write rules versus no rules). Can a nursing home request a waiver of the standard requirements of 300 Part 1230? Connie Jensen asked if any facility had requested a waiver and to her knowledge there has only been one (1) waiver requested. She also wanted to know if there are any providers who have requested a waiver, and if so, was not accepted. According to Mike Bibo, yes, there are individuals who are interested and want to know the status of the waiver. George Logan asked if the PA lays out any new criteria to Subsection (a). As laid out in Subsection (a), the language is thorough enough for the Department's comfort level to be able to bring it to waiver. George asked if Mike is saying that the Department cannot flush out the wording to make it clearer. Mike states the Public Act did not specify and is reflected in the Nursing Home Care Act, 210 ILC 3-303.1c which does not state that rulemaking has to occur. Mike differed that the State had the right to deny waiver requests when there isn't any rulemaking and it's been over nine (9) months.
2. Connie Jensen advised that she is unaware of the Department denying any waivers based upon this Public Act. (Letter was provided to Connie for review). She indicated that the rejection letter presented to her was for a different issue/situation, and that she was made aware of it. The letter does not clearly indicated that the waiver was denied based upon lack of rules; it was denied on the basis of not demonstrating the need. Mike Bibo stated it was not approved on the basis that it did not comply with 1230(k) which is the staffing regulations. Connie Jensen re-emphasized that there is an amount of information that needs to be provided in order to support why the waiver is needed. George Logan informed Mike Bibo that the Department would take it into consideration and understand his position.

D. *Informed Consent and Rulemaking*

1. Connie Jensen asked the Board if there was any continuation of the discussion on rule updates. The Department has come to an agreement with the Board regarding the informed consent form. Sean Dailey developed a draft and it had been reviewed by the Department. There were some suggestions for changes to be made to the protocol. The draft will be sent

over to Legal and hopefully be reviewed at the August meeting. If not, then it will be November.

2. Mike Bibo informed the Board that this was previously discussed at the Developmentally Disabled Facilities Advisory Board meeting last week. The input regarding the informed consent is being taken under consideration. Just wanted to reiterate that the Nursing Home Care Act requires a standardized form designed by the Department. Each form developed by the Department shall be in plain language and shall be able to be downloaded from the Department's official website, and shall include information specific to the Psychotropic Medication for which the consent is being sought (referenced to Wisconsin Informed Consent).
3. Dr. Maurer noted in Section (b) "Psychotropic Medication shall not be prescribed without the informed consent of the resident." This means that a physician cannot write an order unless he has a consent of the resident. If so, then how is it going to be an informed consent regarding a drug in which I haven't prescribed?" There is a difference between prescription and administration and it could be they meant administering versus prescribed.

Further down, Dr. Maurer reads "...Protocol shall require, at a minimum, a discussion between resident or the resident's authorized representative and the resident's physician, a registered pharmacist (who is not a dispensing pharmacist for the facility where the resident lives), or a licensed nurse. He is assumed that a resident now lives in a long-term care facility and most pharmacists work for dispensary from a distant pharmacist. However, there are emergency drugs that are received from the pharmacy close by. This does not define where pharmacies can be. Connie Jensen informed Dr. Maurer that these are things that can be defined in the rules and be flushed out.

Dr. Maurer addressed one more issue with 210 ILCS 45/2-106.1. In the paragraph starting with "In addition to any other penalty prescribed by law, a facility that is found to have violated this subsection, or the Federal certification requirement that informed consent be obtained before administering a psychotropic medication, shall thereafter be required to obtain the signatures of 2 licensed health care professionals on every form purporting to give informed consent for the administration of a psychotropic medication, certifying the personal knowledge of each health care professional that the consent was obtained in compliance with the requirements of this subsection." Dr. Maurer states that this paragraph does not define licensed health care professionals. But, if there is any medical decision, one should be careful whether that decision lies within the license of that particular licensed health care professional. Is this only a sign off by 2 health care professionals as it doesn't say where (i.e., could be in another facility), doesn't state a timing of it, doesn't state that it has to be before or after or for how long? Sean Dailey informed the Board that it can be flushed in the rule.

4. Mike Bibo questioned that not only are the Board members going to be reviewing the form and the content of the form, but, will the Department write regulations to clarify Dr. Maurer's questions. Connie Jensen confirmed yes.
5. Dr. Labunski advised that none of the Board members had a copy of the revised form as it would be helpful. Mike Bibo informed Dr. Labunski that the document presented was not reviewed by the Board as it was a document that he brought for discussion today. Connie

Jensen informed Dr. Labunski that the document was just an excerpt from the Nursing Home Care Act, 210 ILCS 45, Section 2.106-1.

6. Dr. Maurer asked an additional question regarding the “possible risks”. “I don’t know if anybody knows what the possible risks of any medication is.” One could possibly rephrase the verbiage to say “common risks”. Dr. Maurer indicated that he would prefer the verbiage “some risks” or “relevant risks”. Connie Jensen informed Dr. Maurer that the Department would take his comments into consideration. No further discussion on this topic.

V. OLD BUSINESS

A. *Distressed Facility Rules and Proposed Legislation Revision*

1. Mike Bibo informed the group that in January 2017 the Department proposed distressed facility regulations. There have been several discussions. The way it is currently being proposed is based on 2008 US General Accounting Office (GAO) Report 9-689 which is comprised of 2004 data. This would require Illinois to have 47 distressed facilities. Secondly, it requires that it be a distressed facility for three (3) years. However, there is a point system to get to that level. A facility could be deficiency free for two (2) ½ years. Then, the facility might receive a B level violation and this would throw a facility in an overage of the points.
2. IHCA wrote legislation this year. All associations involved were in agreement with intent of the specific language to make IL distressed facilities to be “what Feds call Special Focus”. The sponsor wanted the group to speak with Wendy Meitzler as she was the one who pushed this legislation eight (8) years ago, to no avail.

Now, it is too late to push anything as it is the end of the session. The group is trying to find another bill to attach the legislation to. Bill Bell stated that the group will definitely push for the veto session or the next legislative session. Sean Dailey asked if the group was going to obtain another sponsor. Mike Bibo indicated that the sponsor was not the problem, and stressed that the group would continue to work on this particular legislation. No further discussion.

VI. NEW BUSINESS

A. *Electronic Plan of Correction (EPOC) – Proposal of Rule Change to Section 300.120*

1. Bill Bell informed the group that there is an issue in regards to having an electronic plan of correction which a lot of States are moving towards and the Federal government is allowing it to happen. To make the electronic plan of correction work, one would have to have facility-specific email addresses. Currently, many facilities have the administrator as the email address for the facility. However, if the administrator leaves, the email could possibly not be addressed and the Department has no way of knowing if their email was received. Jamie Freschi is now working on a questionnaire. It was noted that the current SIREN system (emergency alert system) relies on email addresses as well, and the emails also bounce back.
2. Bill Bell is requesting that the Department write a rule under the “Licensure Requirements” which states that when one applies for a license they would designate a facility-specific email address that never changes. This email address would always be available to the Department, Ombudsman, etc.

3. Sean Dailey asked that the Board consider not changing this section. But, adding it to another section which was just amended regarding Social Security numbers which specifies that a license application has to have all this particular information. Bill Bell concurred.
4. Jamie Freschi asked Bill if he was referring to both the initial and renewal applications. Bill confirmed yes. Bob Roiland advised that one could say that the email address would never change. However, if one changed to a different internet provider, this could possibly cause a problem as well. Mike Bibo stated the rule could be written to state if the email address changes, the facility would have to notify the Department. This is similar to the current requirement “if the administrator changes, the facility has 10 days to notify the Department”.
5. There was a brief discussion on ways to implement the EPOC. Connie Jensen asked if the Board needed a motion on this topic. The Board confirmed no “just a discussion at this point”. Mark McCurdy wanted to make the Board aware that email is not a very secure environmental means of communication as there may be some HIPAA security issues.

B. New Dementia Requirement – PA 99-822

1. Bill Bell informed the Board that the legislation had been passed two (2) sessions ago. It had a requirement that there be some rulemaking by January 1, 2017. He is being asked by many members about the law is out there. It states that there is to be training programs developed by the Department. If there is no training available, are the associations going to be in violation? Apparently, there is some confusion on this topic and the actual rules are to spell this out. Bill would like to know the status of this rulemaking.
2. Sean Dailey informed the Board that there has been a lot of discussion and that there are drafted rules. The Alzheimer’s Association pushed the original bill and are in negotiation with them. However, there were some issues that need addressing in the original legislation. There is a trailer bill that passed the Senate SB2808. It passed with no “No” votes and is now in committee in the House and he is uncertain of the outcome.
3. Sean Dailey informed the Board that they did not want to change the deadline for proposing rules, as it was just a lot of discussion on this topic. Sean stated that when the rules are ready to go to proposal, they will fall under the jurisdiction of the State Board of Health. These rules cover long-term care and other programs and the statutes created by PA 99-822 does not specify an advisory board or a deadline for board review of the rules.
4. Bill Bell asked if Sean would bring the proposed rules to the Board for review. Sean confirmed, yes. Mike Bibo disagreed with Sean regarding the rules going to the State Board of Health. The rules will still have to come to the LTC Advisory Board as one of the duties by of the Nursing Home Care Act/LTC Advisory Board is to comment and provide input on all aspects and content of any rules promulgated by the Department. George Logan stated there may have to be a reference made to this rulemaking in the Nursing Home Care Act.
5. Andrew Proctor mentioned that Subsection (c) of the Public Act states that Subsections (a) and (b) shall not apply to certain staff to seek comparable training. Will the rule outline what the comparable training will be? This would help to have better understanding of which staff would not be applicable to this statute. George Logan indicated that training was addressed in the rulemaking. George informed Andrew that it has not gone through formal process. The Department would be available for input on any concerns he may have. Andrew stated he is

currently not sure of what the concerns would be at this time. Connie Jensen stressed the Department spent a lot of time on the training portion. George stated that the rules are not ready to be shared with the Board. However, there will still be time to make suggested changes or comments during the Public Comment and Legislative Comment periods.

C. Report of All Federal & State Funds:

1. Mike Bibo informed the Board that IHCA submitted two (2) other items to be added to the agenda that the Board is to review. One of which is Report on all Federal and State Funds. Under the Nursing Home Care Act, 210 ILCS 45/3-518 states “Fines. Beginning January 15, 2014, and each January 15 thereafter, the Department shall submit to the General Assembly, the Department’s Long-Term Care Facility Advisory Board, and the State Ombudsman an accounting of all Federal and State fines received by the Department in the preceding fiscal year by the fund in which they have been deposited. For each fund, the report shall show the source of all moneys that are deposited into each fund and the purpose and amount of all expenditures from each fund”. Mike reminded the Department that after filing in July 2018, the report should be reviewed with the LTC Advisory Board and the Ombudsman Program. Connie Jensen stated the Department will provide the report for the Board’s review.

D. Report of LTC Complaints:

1. Mike Bibo stated that this topic was discussed a couple of years ago with the Department regarding the Annual Report to the Legislature. Since it has to do with complaints, the Department is required under Section 3-702(g-5) to “..conduct an annual review and make a report concerning the complaint process that includes the number of complaints received, the breakdown of anonymous and non-anonymous complaints and whether the complaints were substantiated or not, the total number of substantiated complaints, and any other complaint information requested by the Long-Term Care Facility Advisory Board...”

A couple of years ago when this format was discussed, there was a format developed where the report would be broken down in regions. The Department made the recommended minor changes. Mike agreed it was a good format. However, since 2015, the Board has not seen this report. By reviewing the report, it will allow the Board to be able to make comments and provide input. After submission to the Legislation in July 2018, Mike requested that the report come back to the Board for review. Connie Jensen noted and it will be added to the agenda.

2. Jamie Freschi asked if the Department had considered changing the Notice of Involuntary Transfer Discharge Form to reflect the Federal regulation changes. Connie Jensen stated it had been discussed, and it is not under Long-Term Care. But, it will actually fall under Mitch Cohen’s group (Administrative Hearing). It was asked if the revised form would to come back to the LTC Advisory Board for review. Mike stated that the form is not applicable for ICF/MC/DD because it is not subject to the Federal part.

REMINDER: Tena Horton reminded the Board members that they are required to complete the 2018 Ethics Training by May 31, 2018 and the Sexual Harassment Training was due on May 1, 2018.

VII. NEXT MEETING

Next Board Meeting is August 16, 2018 at 10:00 am

Agenda items to Tena Horton at tena.horton@illinois.gov and Jason Grigsby at jason.grigsby@illinois.gov by July 30, 2018.

Connie Jensen asked for a motion to adjourn. The motion to adjourn was made by Bob Roiland; seconded. Voted unanimously. Meeting was adjourned at 11:15 a.m.