



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**

Date: January 4, 2016
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-Facilities Construction Standing Committee and the Assisted Care Living Facilities Standing Committee Meeting
(Call-in Number: 1-888-757-2790 passcode: 457462#)

Date of Meeting: January 7, 2016
Time: 9:00 a.m. – 12:00 noon, CST
Place: Poplar Conference Room
665 Mainstream Drive, First Floor
Nashville, TN 37243

Major Item(s) on Agenda: See attachment.

This memo shall be forwarded from individual programs to the Public Information Office on the 15th day of the preceding month. The Public Information Office will prepare the monthly list of meetings within the Department and have ready for distribution to state media by the 28th day of the preceding month.



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

**JANUARY 7, 2016
POPLAR CONFERENCE ROOM, FIRST FLOOR
9:00 a.m. to 12:00 noon**

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

**A. FACILITIES CONSTRUCTION AND ASSISTED CARE LIVING FACILITIES
STANDING COMMITTEE MEETING – 9:00 a.m. to 11:00 a.m.**

1. Call the Meeting to Order and Establish a Quorum.
2. Approval of Minutes: **June 23, 2015**
 - (1) Facilities Construction Standing Committee Meeting
 - (2) Performance Improvement Issue Standing and Facilities Construction Joint Standing Committee Meeting

September 17, 2015

 - (1) Assisted Care Living Facility/Facilities Construction Standing Committee Meeting
3. **Revisit-Governor's Bend Assisted Living Facility, Erwin - Nurse Call System; Standing Committee request information from the wireless call system manufacturer.**
4. Other Discussion(s).
5. Public Comments.
6. Adjourn.

B. ASSISTED CARE LIVING FACILITIES STANDING COMMITTEE – 11:00 a.m.

1. Call the Meeting to Order and Establish a Quorum.
2. Approval of Minutes: **September 17, 2015**
 - (1) Assisted Care Living Facility Standing Committee Meeting
3. Tennessee Board for Licensing Health Care Facilities 2015 Performance Audit Findings regarding Medications Administration in Assisted Care Living Facilities.
4. Other Discussion(s)
5. Public Comments.
6. Adjourn.

MINUTES

BOARD FOR LICENSING HEALTH CARE FACILITIES ASSISTED CARE LIVING FACILITY STANDING COMMITTEE MEETING

JANUARY 7, 2016

The Board for Licensing Health Care Facilities' Assisted Care Living Facility (ACLF) Standing Committee meeting began January 7, 2016. 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 - not here

A quorum was established.

The meeting began with a review the September 17, 2015 standing committee minutes for approval. **Mr. Mynatt made a motion to approve the minutes; seconded by Dr. Robbins. The motion was approved.**

The first agenda item for discussion was the presentation of the Tennessee Board for Licensing Health Care Facilities 2015 Performance Audit Findings regarding medication administration in assisted care living facilities (ACLF). Ms. Ann Reed briefly summarized the content of the audit findings which the standing committee members were provided a copy. The audit findings indicate the report is completed to aid the Joint Government Operations Committee in determining if the Board for Licensing Health Care Facilities should be continued, restructured, or terminated. Ms. Reed stated the full audit would also be provided to the full Board. An identified item of concern by the audit team was concerning medication administration. Ms. Reed wanted to provide this information to the standing committee today to either take away or ponder working on at another meeting of the standing committee or beginning to discuss and work on the item at today's meeting. Mr. Crisp felt discussion of the item should begin at this meeting. Ms. Reed stated the current audit findings state the Board allows unlicensed staff to administer medication in Assisted Care Living Facilities due to the ambiguity of the rules on medication administration and the penalties for such violations are insufficient. The audit further stated the statute is unclear as to who is qualified to administer medication in an ACLF. Mr. Crisp stated his initial comment is he does not agree with the assessment of the auditors. He feels the issue before the Board and this standing committee has not been who is qualified to administer medications, but what constitutes assistance versus administration. Ms. Marlar also took issue with the audit findings stating the Board allowed unlicensed persons to administer medication. She asked if the staff was allowed to see the audit results prior to being published. Ms. Reed indicated yes that it is reviewed by the Director of Health Care Facilities, Vincent Davis. The standing committee members pointed out in the management comments that there was a concurrence to the finding and questioned who concurred. Mr. Crisp wanted to know how the auditors arrived at their finding. It was pointed out the auditors interviewed Department of Health Office of Health Care Facilities staff, a Board member, and the Office

of General Counsel. Ms. Marlar asked how a rebuttal could be made. Ms. Kyonzté Hughes-Toombs stated a rebuttal cannot be made. She feels the wording is misrepresenting of what actually occurs. Ms. Hughes-Toombs also stated that new rule language was not in place at the time of the auditors' review which includes a definition of assisting with self-administration. She further stated it could have appeared to the auditors that facilities are allowed to use unlicensed staff because there is not a lot of enforcement or clarity in the regulations. Mr. Crisp wanted to know the standing committee's requirement as it relates to the audit; is the formulation of a response what is being sought? Ms. Hughes-Toombs indicated the auditors will look during their next audit to see if any improvements have been made on items they identified. The work to address the audit findings should start at the committee level maybe higher fines. Stacia Vetter of NHC spoke to the standing committee concerning the definitions of assisting and self-administration of medication. She stated these two definitions were correctly applied via rule change. Ms. Vetter believes the auditors may have reviewed regulations dated prior to June 2015. Mr. Crisp summarized the discussion by the standing committee – provide a response to the statement indicating the Board allows unlicensed staff to administer medication and review the auditors' recommendations. He also indicated the ACLF regulations do not address or define the term certified medication aide. Mr. Crisp further stated this may be a good opportunity to evaluate the definition in rule of who is allowed to administer medication. It was determined by legal counsel that it was highly probable the auditors did not have the most current set of ACLF regulations to review. Mr. Crisp stated this should be a part of the response provided to the full Board on the subject. He further stated the standing committee should work to develop points of response to recommend to the full Board for adoption. Ms. Reed indicated this is a desired action since there are other items in the audit findings that are more appropriate to the full Board. Mr. Mynatt asked if a member of the audit team has ever appeared before any of the boards they audit when the audit findings are presented. Ms. Reed indicated she has not experienced this. Mr. Mynatt feels this might be beneficial. The definition of licensed health care professional was reviewed by the standing committee. Mr. Crisp felt certified medication aide should be added to the definition section. He also stated it should be recommended that draft language be approved on who is legally allowed to administer medications based upon current laws. Mr. Mynatt asked about the nursing home regulations being updated to reflect the certified medication aides. Ms. Hughes-Toombs felt this was appropriate. Mr. Mynatt referred back to the audit recommendation that appears to indicate the ACLF rules need amending to clearly describe licensed medical practitioners to include registered nurse, licensed practical nurses, and certified medication aides. Mr. Crisp asked for direction from legal counsel. Ms. Hughes-Toombs stated the certified medication aide needs to be defined and can be pulled from statute. She also stated the body of the ACLF regulations where the rule stating, 'medication and biological have to be administered...', may need tweaking to include certified medication aide with the language being made more specific instead of so broad. She stated she could work on this and bring language back to the standing committee. Mr. Mynatt asked about the civil monetary penalty level being reviewed by legal counsel. Mr. Crisp indicated that is the pleasure of the standing committee. He stated research is needed and this research could include having a history of penalties related to medication administration provided, looking at trends and statistics on repeat civil monetary penalties from the same facility for the same issue, how much money has been accrued, and where the money goes. Mr. Mynatt agreed that more research and information is needed before a discussion is had. Mr. Crisp summarized the two current recommendations of the standing committee – 1) legal counsel to examine rule language that is currently in place relative to the recommendation of the auditors and determine if there are gaps and if some language can be drafted to meet the intention of the recommendation; 2) overview and statistical analysis of the civil monetary penalties for ACLFs since inception of the civil monetary penalty relating to medication administration and if possible to show trends that facilities as insinuated in the audit would rather pay the fines versus being in compliance with the regulations. Mr. Crisp added a third point

which was to go on record as stating disagreement with the audit finding stating the Board allows ACLFs to use unlicensed staff to administer medication. Mr. Mynatt added as a fourth point the auditors may not have had the most current ACLF regulations when reviewing the medication administration item.

Mr. Crisp asked for a motion to adjourn the ACLF Standing Committee meeting. **Dr. Robbins made a motion to adjourn; seconded by Ms. Lynch. The motion was approved.**