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**TENNESSEE DEPARTMENT OF HEALTH
MEMORANDUM
SECOND AMENDED**

Date: December 2, 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-Education and Performance Improvement Issue Standing Committee Meeting
(Call-in Number: 1-888-757-2790 passcode: 457462#)

Date of Meeting: December 12, 2016
Time: 9:00 a.m. – 2:00 p.m., 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
EDUCATION AND PERFORMANCE IMPROVEMENT ISSUE STANDING
COMMITTEE**

**DECEMBER 12, 2016
POPLAR CONFERENCE ROOM, FIRST FLOOR
9:00 a.m. – 2:00 p.m.**

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

**A. EDUCATION AND PERFORMANCE IMPROVEMENT ISSUE STANDING
COMMITTEE**

1. Call the Meeting to Order and Establish a Quorum.
2. Development more Nurse Aide Rule Language.
3. Other Discussion(s).
4. Public Comments.
5. Adjourn.

B. PERFORMANCE IMPROVEMENT ISSUE STANDING COMMITTEE

1. Call the Meeting to Order and Establish a Quorum.
2. AARP/THA Proposed Caregiver Rule Language for Hospital Rules.
3. Development of Sentinel Event Quality Measures Improvement Guidelines Regarding Public Chapter 1003.
4. HME Regulation Discussion(s):
 - (a) All American Medical Supplies, LLC, Memphis
-Steven King, Chief Compliance Officer, Executive Vice President

(b) Prism Medical Products, Elkin, NC
-Ken Reel, Executive Vice President

(c) A1 Diabetes & Medical Supply, Inc., Memphis
-Lucas Matheny, Chief Compliance Officer, Mark Cullen, Attorney,
Cullen Law Firm and Julie Elkin, Elkin Law Office

5. Revision for the Trauma Brain Injury Residential Homes Rules 1200-08-37 Related to Public Chapter 984.
6. Legislative Intent/Reasoning for General Hospital Discontinuation of OB Services Requirement for a Certificate of Need (CON).
7. Other Discussion(s).
8. Public Comments.
9. Adjourn.

MINUTES
BOARD FOR LICENSING HEALTH CARE FACILITIES
PERFORMANCE IMPROVEMENT ISSUE AND EDUCATION STANDING COMMITTEE MEETING
December 12, 2016

The Board for Licensing Health Care Facilities' Performance Improvement Issue (PI) and Education Standing Committee meeting began on December 12, 2016. Jim Shulman served as chair for this meeting.

A quorum roll call vote was taken:

Mr. Jim Shulman – here
Mr. John Marshall – here
Ms. Janet Williford – here
Dr. René Saunders – here
Paul Boyd – here
Robert Breeden – here
Dr. Jennifer Gordon-Maloney – not here
Mr. Bobby Wood – not here

A quorum was established.

The only item for discussion was development of additional Nurse Aide rule language. Ann Reed gave an overview of the agenda item to the standing committee. She stated the item was presented to the full Board at the September 2016 meeting indicating there were needed changes to the rules and regulations regarding nurse aides. Wanda King presented on this item. She provided multiple handouts to the standing committee which included background information, Office of Health Care Facility (OHCF) communication with nursing home providers, excerpt from the nursing home licensure regulations, and the federal regulations on nurse aide training programs in long-term care facilities. Ms. King stated to the standing committee that nurse aides are tied to nursing home facilities and are referenced in the nursing home regulations. She further stated that by policy of OHCF a certified nurse aide's (CNA) employment in other licensed health care institutions whether health, mental health, etc would suffice for the renewal of a CNA certification. Ms. King stated there are 45,000 active CNAs in Tennessee. The funding for the CNA program is federal. She stated the nurse aide program staff at the state level and associated funding for this staff has not seen an increase. Ms. King also informed the standing committee the nurse aide abuse registry has had a 55% increase. She stated the needed rule and regulation development should cover reporting requirements, employment issues, training and testing requirements, and solutions for funding and staffing needs. Ms. King indicated the rules for some of these items are outdated. The following language was submitted to the standing committee for consideration for rule language –

*Focus on nursing home rule regarding location test site. The current mileage requirements should be removed and changed to one hour. Mr. Shulman asked why in this was in the rules. Ms. King stated the language has been present in these rules for a long time. She further stated the CMS language states 'within a reasonable distance'. John Marshall recommended following CMS guidelines. Mr. Shulman supported this. Caroline Tippens, Office of General Counsel (OGC), stated it may be best to take on a case by case basis as the above may create more work for the Board. Mr. Marshall asked if this has

been cited during survey. Ms. King stated no. Robert Breeden asked about the number of testing sites – have these increased or decreased. Ms. King stated she would have to collect this data. The standing committee moved the change of the location test site language to be 60 minutes.

*Focus on nursing home rule regarding administration of scheduled tests and number of those testing. Dr. René Saunders stated testing should be provided no matter the number of persons testing. Mr. Marshall agreed. Ms. King acknowledged the nods of other member heads that also was in agreement with Dr. Saunders.

*Focus on nursing home rule regarding pass rates of 75% on both tests. Ms. King stated this has been addressed previously by this Board. The standing committee stated to remove language found at (b) under 1200-08-06-.15(1)(b). Ms. King stated the majority of this requirement is done online.

*Nursing home rule, 1200-08-06-.15(1)(c), concerned the provision of quarterly reports being provided to the Board on the pass/fail rates. This rule was directed by the standing committee to be stricken. Mr. Shulman requested that some type of report be made available. Ms. King stated the testing agency informs her the first pass rate is the best indicator of a program's performance. She indicated an annual report and first pass rate percentage would be provided to the Board.

*Nursing home rule, 1200-08-06-.15(1)(d), concerns the Nurse Aide Advisory Committee and the make-up of that committee. Ms. King recommended the committee language in the rules reflect all members currently on the committee. The standing committee granted movement with this change.

*Focus on nursing home rule regarding required training hours. Ms. King presented a change in training hours to 120 hours with 80 hours in the classroom and 20 hours in the clinical setting. Mr. Breeden felt this might place a greater burden on those nursing home providers with training courses and would defeat the purpose of the requested change. He felt further study of this with associations and other providers was needed before moving with the change. Dr. Saunders stated the purpose is to increase the safety for patients in Tennessee. Linda Estes, THCA, addressed the standing committee. She stated all want the CNAs well trained. She further stated there are many successful programs with 100 hours courses, but a further increase to 120 hours would penalize everyone. Dr. Saunders stated this language is a suggestion to start with and will be worked into rule language then put out of comments from others using the rulemaking hearing as a platform to state why there is not a need to change to the 120 hours for training. Stacia Vetter with NHC voiced a concern with the proposed increase in training hours. Gayla Sasser, Home Care Association, stated licensed home health agencies use CNAs that are trained through this program. She further stated the CNA position is an important position in the homecare setting. Ms. Sasser stated the association and industry wants well trained staff and further more CNA staff is needed. She stated a balance must be found with individuals having time to complete training and to get to work. Ms. Sasser recommended using good programs as a model for other training programs. Dr. Saunders stated information from stakeholders is needed to see what is needed and what is not working. Ms. Tippens stated Ms. King can get a list of stakeholders together and pose these questions to them regarding the training hours.

*Nursing home rule, 1200-08-06-.15(2)(c), concerns how pass rates are determined. Ms. King indicated to the standing committee that an interpretative guideline (IG) has been developed for this rule, but would ask that this rule be reconsidered. Dr. Saunders voiced that three years of poor performance is too long. Ms. King stated she wants clarity and direction in the rule. Mr. Breeden asked if any data was available on testing percentages since the change in the IG. He requested that data be collected and develop final percentage based upon the three testing attempts. Ms. King stated the testing agency states this is irrelevant information and cannot determine any data for this.

*Nursing home rule, 1200-08-06-.15(2), addresses requirements for program coordinator and instructors of the course. Ms. King stated she would like for this regulation to reflect what the CMS regulations require. Mr. Shulman asked are the standards the same at all training courses. Ms. King stated no that this is the attempt to change that requirement. Mr. Shulman then asked if he could train

in different places and test three times without retraining. Ms. King stated after three test attempts an individual retrains and usually taking the same course. Mr. Breeden cautioned that a change in the 70% pass rate could occur given request to change training hours. He wants an increase in the standard and would ask that these items be looked at simultaneously. Mr. Marshall asked if the pass rate better at a technology center vs nursing home programs. Ms. King stated she would provide these numbers based upon the first pass rate. Mr. Marshall stated the difference between the technology center and nursing home programs is educators vs recruiters. Ms. Sasser asked if test centers are evaluated. Mr. Shulman stated that evaluation of what is being done right or wrong occurs, but not an evaluation of the center.

*Nursing home rule, 1200-08-06-.15(2)(d)3 & 1200-08-06-.15(3), contains language stating training CNA works under the instructor and not independently. Ms. King stated this has been addressed in the past via a notice to nursing home providers from Vincent Davis, Director of Health Care Facilities. Mr. Marshall asked if nursing home regulations require CNAs to provide care. Ms. King stated yes and that they must be certified. Mr. Marshall questioned how a facility can do this subsidizing the CNA student that is working independently.

*Nursing home rule, 1200-08-06-.15(2)(d)6, addresses record retention of CNA program participation and performance. Ms. King is requesting a specific record retention timeframe of 2 years.

*Nursing home rule, 1200-08-06-.15(3)(a), speaks to the information contained on the nurse aide registry related to address. Ms. King asked that changes in a CNA's address be required to be reported. The standing committee had no issue with this item. It was verified that personal addresses are not public record. Ms. King stated she receives calls on this item. She further stated the nursing home regulations contain language that has a requirement of an address for inclusion to the Nurse Aide Registry. Ms. King stated this information became available to the public as of September 2016 per the Tennessee Department of Health (TDH) no longer provide this information because Nurse Aides do not provide practice addresses anymore. Ms. King stated she does not have the access to this information. Ms. Sasser asked who gave the direction to make the September 2016 change.

*Nursing home rule, 1200-08-06-.15(3)(b), addresses removal of individuals from the CNA registry. Ms. King asked that this be reworded to be more accurate. The removal wording is good. The rule needs to reflect any person who has been a CNA.

Ms. King also identified other items which need to be implemented via the nursing home regulations. The first item would be precluding a facility for charging an individual for testing and training. This is captured in the federal regulations. She would also like to see a charge implemented for replacement of CNA cards as Health Related Boards does for licensed professionals. Ms. King stated a specific charge amount will be brought back to the standing committee. The next item would be to allow those CNAs working in other healthcare environments to use that employment to renew and charge a renewal fee. Ms. King stated the federal regulations require proof of employment upon renewal of certification. She would like to have nursing home regulations on the renewal process like the federal regulations. Mr. Marshall asked if TNCare pays for CNA training. Ms. King elaborated by stating she would like relief for her staff relative to the volume of work. The standing committee was good with this idea indicating that staff would provide better service. Ms. King will review and work on numbers to bring back to the standing committee. Mr. Breeden questioned how working for a staffing agency factors in for CNAs. Ms. King stated a notarized statement from the nursing home using the staffing agency suffices to renew. She further stated the regulations need to dictate CNAs must renew every two years even outside of nursing home employment. Mr. Shulman asked further about this requirement. Ms. King stated CMS regulations mandate every two year renewal for those CNAs working in nursing homes. Ms. Tippens asked if CNA renewal requires reporting of criminal convictions and stated this should be included in the new regulations. She stated the language should indicate discipline only if criminal intent such as abuse against vulnerable adults. Ms. Tippens stated this would be language for

consideration by the standing committee. It was also expressed that the intent is to have CNA renewal requirements including recertification that would apply to all facility types. Ms. Tippens stated the focus at this time is on training program requirements and renewal. The current statute indicates only nursing homes as it relates to CNAs, but further changes may be needed in this regard. Mr. Shulman asked do CNAs or like employees have recertification/competencies in other facility types. Mr. Marshall stated annual competencies are performed for all staff even CNAs. Ms. King stated she would take the standing committee's ideas and comments and develop more specific language for consideration at the next scheduled joint standing committee.

Mr. Breeden made a motion to adjourn the meeting; seconded by Dr. Saunders.

First item for discussion was to revisit the interpretative guideline for 'adequate medical screenings to exclude communicable disease' language. Jim Shulman requested background information for this item. Ann Reed recapped for the PI Standing Committee the previous committee meeting discussions on this item which included provider association input and representatives of the Communicable Disease section of the Tennessee Department of Health presentation of relevant information. Stacia Vetter with NHC presented additional background to the standing committee on this item. She spoke of an ACLF coming before this committee as the genesis of this discussion item. Ms. Vetter stated the facility was cited during survey and presented to the Board via this standing committee in order to address the citation. She reported as a result of that meeting an interpretative guideline was developed. Ms. Vetter stated a concern the discussion has gone away from the true intent of the topic item. Ms. Reed indicated a different interpretative guideline is up for discussion under this agenda item. The origination being from a licensed professional support services agency which was cited for not having adequate medical screening information in personnel files. This presentation led to the topic being brought before the PI Standing Committee. Linda Jennings with THCA provided information on how nursing homes in their membership do 'adequate medical screening'. For TB, the two-step TB test is done as required by the CDC. Mr. Shulman stated he wishes for an IG/rule to be developed or in place which would work across any changes in diseases and outbreaks that may occur. He also wanted CDC reference. The public in attendance stated the current IG in question contains this information which includes a two-step TB skin test requirement. Members of the public indicated it is difficult to apply this general rule to all facility types. Each set of facility rules needs a different rule and IG. Melanie Keller, home care organization representative, stated the assisted care living facility (ACLF) IG read by Ms. Vetter would work for other facility types and the 'adequate medical screening' rule. The policies of the licensed facility should address how the adequate medical screening is accomplished. Mr. Shulman asked what if a facility doesn't have a policy. It was stated the facility must have a policy. Ms. Reed indicated if this requirement is a part of the ACLF communicable disease IG then surveyors look for this upon survey. Dr. René Saunders stated the committee members and the public attendees consistently discuss only TB, but there are other communicable diseases. She asked what communicable diseases are included. Ms. Keller stated she provided this information at the last standing committee meeting which included a list of communicable diseases and the actions associated with each one. Ms. Vetter stated to the committee the current IG gives guidance to follow the CDC guidance and does not state a MD signature is required to sign off on the 'free from communicable disease'. John Marshall asked if the CDD requires an MD signature. The public in attendance stated no. Ms. Keller stated as this was discussed in previous standing committees other questions arose such as does a MD have to sign off on an assessment of an individual's communicable disease status. Karen Wills with the Department of Intellectual and Developmental Disabilities (DIDD) spoke to the standing committee indicating agreement with Ms. Keller. She wants to make sure the allowance for low risk/high risk environments

recognized by the CDC guidelines in considered. Also, Ms. Wills proposed to include in the current IG the requirement of a policy and procedure of a facility to follow the CDC guidance. She felt this would be helpful for the surveyors as the CDC guidelines are voluminous. Mr. Shulman stated nothing should be changed with the IG and that a MD signature is not required to show an individual is free of communicable disease as this is not a requirement of the CDC. **Mr. Marshall made a motion not to change the current 'adequate medical screenings to exclude communicable disease' IG; seconded by Janet Williford. The motion was approved.**

The second item for discussion was an interpretative guideline for surgical services to be optional under hospital rule 1200-08-01-.07(1) and the development of language for a rulemaking hearing. Ms. Reed gave background to the discussion item. She spoke to the facility which came before the Board requesting an IG of the surgical services requirement or a waiver of the rule. Ms. Reed refreshed the standing committee members' memory that a waiver was granted for this item and that the full Board requested the PI Standing Committee to develop an IG and rule language for rulemaking hearing for this item. Kyonzté Hughes-Toombs stated surgical services needs to be removed from one section of the hospital rules either the Definition or Optional Service section. Ms. Marshall voiced a concern over EMTALA violations stating if a patient presents at the ER with a surgical issue it must be addressed. Ms. Reed and Ms. Hughes-Toombs read from the hospital regulations the definition of a general hospital designation and the contents of the basic services/optional services section. Mr. Shulman stated an IG should be developed to stating the general hospital surgical care requirement must be waived by the Board if a facility wishes to discontinue this service. Dr. Saunders wanted to address other optional services in the IG. Mr. Shulman felt addressing other optional services at this time would be getting too deep into the hospital regulations. The current focus was on the general hospital designation. Mr. Shulman indicated Tennessee Hospital Association (THA) may want to look at the rules for other changes needed in the optional services section of the hospital rules. THA may wish to include the Department of Health in that review as well. **Mr. Shulman made a motion to develop an IG which directs a hospital designated as a general hospital to request a waiver of the Board if electing to discontinue surgical services; seconded by Mr. Marshall. The motion was approved.**

The third item for discussion was consideration of Board Policy #57 – hospital rule 1200-08-01-.02(1)(a) allowing a general hospital to discontinue obstetrical services when granted a certificate of need (CON) to discontinue this service. Ms. Reed presented this item to the standing committee focusing on the change in the HSDA laws removing the CON requirement for discontinuation of obstetrical services. The standing committee members stated Board Policy #57 would be obsolete and should be indicated as such. The standing committee members also stated with the change in the HSDA laws the responsibility is not on the Board to determine need for this service. Mr. Shulman wants inclusion of this to the above created IG in the second item brought before the standing committee, but also wants this reviewed further for legislative intent. **Mr. Marshall made a motion to move this item for discussion with the full Board at the September 7 & 8, 2016 meeting; seconded by Ms. Williford. The motion was passed.** Further comment by Mr. Shulman indicated a desire to discuss with Senator Sexton the sponsor of the new HSDA law and possibly Senator Crowe on the reasoning for the legislation. Ms. Vetter provided information to the standing committee on the new legislative changes to the CON laws indicating this appears to be a step to remove the CON requirement in the state of Tennessee.

The fourth item for discussion was an update/revision suggestion to IG for nursing home rules, 1200-08-06-.06(12)(a)1 and 1200-08-06-.06(12)(d). Ms. Reed gave background to this agenda item stating that after approval in January of this year the association found discrepancies in the two IGs and requested clarity. John Williams the attorney representing the Respiratory Therapist Organization presented on

this item. He gave the reasoning behind why these IGs were being presented for revision. Mr. Williams stated that at a meeting of respiratory therapists these two presented IGs were found to have ambiguity so the new language was crafted and is being presented to you to add clarity to the IGs. It was stated that BiPap/CPap was not considered a ventilator under the interpretative guideline and rule 1200-08-06-.06(12)(a)1. **Mr. Marshall made a motion to approve both IG revisions; seconded by Dr. Saunders. The motion was approved.**

The standing committee meeting was adjourned.