

HEALTH FACILITY COMMITTEE

May 10, 2006, ROOM 125, 9:00 B 12:00
288 North 1460 West, SLC, Utah 84116

Members Present:

Denell Bredsguard, Paul Fairholm, Galen Ewer, Tracy Stocking, Mary Petersen, Jeanette Drews, Jill Andrews, Paul Clayton, Robert Reeder and Joyce Wanta

Members Excused:

Keith Tintle

Staff Present:

Allan Elkins, Laurie Miller and Joel Hoffman

Minutes:

Mr. Ewer, the vice chair, is filling in as acting chair for Keith Tintle, who must be absent due to a business schedule conflict. There are three sets of minutes to approve: January 12th, special informal meeting; February 8th - regular quarterly meeting; March 23rd special informal meeting.

For January 12th meeting: Ms. Wanta made a motion that we accept the minutes.

Ms. Andrews seconded the motion. Mr. Ewer called for a vote and MOTION PASSED. February 8th meeting: Mr. Clayton made a motion that we accept the minutes as corrected. Ms. Bredsguard seconded the motion. Mr. Ewer called for a vote and MOTION PASSED. March 23rd meeting: Mr. Reeder made a motion that we accept the minutes as corrected. Mr. Clayton seconded the motion. Mr. Ewer called for a vote and MOTION PASSED.

Mr. Ewer asked everyone to introduce themselves and to indicate what segment of the health care industry they represent.

From the audience, Kathleen Bailey also introduced herself: she is the new state Long Term Care Ombudsman.

Old Business:

1. Rule Updates - Joel Hoffman

- A. Mr. Hoffman reported that the P.O.L.S.T. rule was made effective on April 13, 2006.
- B. The other rule was Assisted Living Linen Rooms which was filed on April 27, 2006 and is in the 30 day comment period until June 14, 2006.
- C. Mr. Hoffman reported that the Hospital Swing Bed and Transitional Care Unit rule has lapsed as of April 14, 2006. Mr. Hoffman stated that this rule has been filed a couple of times. This rule would allow Transitional Care units to license as small health care facilities, but only if the federal Centers for Medicare/Medicaid Services (CMS) approved the change in the nursing home bed tax. Mr. Hoffman stated this rule can be refilled at any time.

Mr. Ewer stated that he thought this was a state issue so why is CMS making the decision on approving the bed tax. Mr. Elkins stated that the state law that passed included these facilities. When these facilities realized they were being taxed for beds they weren't being reimbursed for they asked if they could be removed. The department in January 2005 agreed that we would do that, and we filed a rule with the provision that it was dependent on what the federal Medicaid authorities said. There was a concern that making an exception for this group without CMS approval would affect other Medicaid issues that the department had pending with CMS.

Mr. Reeder asked if there are any public comments regarding the rules. There were no additional comments on the rules at this time from the committee or others. Mr. Reeder also asked does the committee see any comments made by the public. Mr. Hoffman stated yes, the comments are brought to the committee, if there are any.

2. Conflict of Interest - Lyle Odendahl

Mr. Odendahl is the Assistant Attorney General assigned to work with our Division. Mr. Elkins invited him to address the concerns about conflict of interest which were discussed at the committee's last regular meeting. Mr. Odendahl talked about conflicts of interest and how all the members of the committee have some conflict of interest because their part on this committee is representing a certain segment of the health care industry. Mr. Odendahl stated the question that the committee had was whether or not they can vote on something that deals with the industry segment that they represent. Mr. Odendahl stated that this is covered in the by-laws under article 4-E, number 1 and read them to the committee. Mr. Odendahl stated that the committee may want to rewrite the by-laws to make it clear that you cannot vote on your own industry. Mr. Ewer stated that one of our goals in the special meeting was to establish a goal to look at the by-laws and rewrite them.

3. Informal Discussion of Committee Goals

Mr. Ewer read the two major goals of the March 23rd special meeting; one was related to the five year reviews and the other was related to the by-laws. Mr. Ewer asked how we should move forward with addressing those goals, two opinions could be to continue to meet in special meetings as a committee or form a sub-committee. Mr. Fairholm stated that in the meeting we discussed the criteria we would use in evaluating the efficacy of those rules, we would review them two years prior to the rule action being up for review. Mr. Hoffman stated that the five year review was just to say we still need this rule and there doesn't need to be a sub-committee or anything special, but we have to make that statement, that we still want the rule and why. Mr. Elkins stated we bring any comments to the committee if we get any on the rules. Mr. Ewer read back in the minutes and stated that there was a recommendation that these two items be approved as goals. The second step is how we go about beginning to work on this. Mr. Ewer asked if there is a motion that we approve these two items as goals for this committee, the review of the by-laws and determining how to review the 5 year plans. Mr. Fairholm moved that we approve the two items and set the goals for the five year rule process. Mr. Reeder seconded the motion. Mr. Ewer called for a vote and MOTION PASSED. Mr. Reeder asked that we send the by-laws to legal counsel and ask him to take the first cut at it and, bring us a draft of the recommended changes to the by-laws. Mr. Elkins stated that he would volunteer him to do this to eliminate things that have changed in the law and bring it back to the committee for a more up-to-date starting point. Mr. Ewer asked that this be brought back to our regular meeting in September. Mr. Ewer asked about the five year rule review. Mr. Fairholm made a motion to have a special meeting chaired by Mr. Tintle some time between now and are next formal meeting. Mr. Tintle can work with Mr. Elkins on scheduling the date. Mr. Stocking seconded the motion. Mr. Ewer called for a vote and MOTION PASSED.

New Business

1. Request for Nursing Home License Requirement that new Facilities Seek Certification of both Medicaid and Medicare - Discussion

Dirk Anjewierden is the Executive Director of the Utah Health Care Association, the association that represents Nursing Homes. Faye Lincoln is the Vice President of Public Relations with Avalon Health Care. Mr. Ajewierden would like to make a request regarding a moratorium on new licensed nursing home. Mr. Ajewierden stated there is a statue limiting new licensed Medicaid facilities coming on line. Mr. Anjewierden stated what is starting to happen is Medicare-only facilities come on line. Nursing facilities run an occupancy rate of 70% in Utah. One of the problems it is creating by having the Medicare-only beds come on line is

one, the census is dropping lower in nursing homes, therefore we are concerned that when you hit a certain occupancy level that you start cutting corners on Quality of Care (QOC), so with the censuses dropping so does the (QOC). Number two we are creating the haves and have not=s, meaning if you have money you can go to this Medicare facility, if you don=t, you have to go to one of these other facilities. Mr. Ajewierden stated that Medicare pays a much higher rate than Medicaid. Medicaid has under-paid the cost of services. Medicare helps cover the cost of the burden. With the Medicare being pulled out and moved to other facilities only, that is leaving facilities in a situation, where they are being under-paid for their care. Mr. Ajewierden stated we have come up with an alternative way to figure out how to restrict the growth in total in the Medicare side which can be done through licensure. Mr. Ajewierden stated several other states have gone to licensure and said let=s put in a state licensure rule that says if you=re going to apply for nursing home licensure beds you also must be licensed for Medicaid beds. Mr. Ajewierden stated if we do that it refers back to the statute on the Moratorium which says you can=t get Medicaid Certification unless you can demonstrate a need in the community. Mr. Ajewierden stated we are here today to request that we adopt a rule in licensure that creates that.

Faye Lincoln, Vice President for Government Relations with Avalon Health Care also spoke in favor of a license moratorium. Ms. Lincoln stated we are in great support of taking a look at some sort of a subcommittee who might be able to evaluate a rule, evaluate a link with Licensure and Medicaid. Ms. Lincoln stated we want the sub-committee to evaluate this issue, potentially look at a rule and work hand in hand with legal counsel. Ms. Lincoln asked that the committee give the subcommittee the authority to evaluate and what the division could do to help monitor or delay this process until the final rule can be evaluated. Paul Fairholm and Galen Ewer stated they have a conflict of interest. Mr. Elkins said that while the Bureau is neutral at this time due to our role supporting the committee, our Division Director, Dr. Marc Babitz, supports the proposal. He sees it as a way to reduce @cherry-picking@ of high reimbursement Medicare patients.

Robert Reeder made a motion that we establish a sub-committee to assemble the facts and other data available to determine whether or not a rule in Licensure indigent care is appropriate, and further, whether or not some kind of temporary rule to prevent a land rush is also appropriate. Mary Petersen seconded the motion. Discussion: Paul Fairholm said let=s clarify, we are not saying that we will impose a temporary restriction, the sub-committee will address that. Mr. Reeder stated that his motion is to look at all of it. Mr. Ewer said the next step is to establish a sub-committee. Mr. Ewer is interested but has a conflict of interest. He asked for volunteers for such a committee, if it passes the vote. Volunteers

were, for Chair, Robert Reeder, Paul Fairholm, Tracy Stocking, Denell Bredsguard, Jeanette Drews, and Jill Andrews.

Mr. Elkins stated that we would get everyone's e-mail address and send out an e-mail. Mr. Ewer called for a vote and MOTION PASSED.

2. Request for Revision of Criminal Background Check Rule v Allan Elkins

Mr. Elkins stated that there had been some negative publicity in the past regarding criminal background checks for individuals who work in child care facilities. Only checks are required for direct care-givers, but not always for everyone in the home. The child care provider would pass the background check but sometimes someone else living in the home would not. This led the Department to review the three criminal background check programs that we have: child care licensing, health facilities, and Emergency Medical Services Technicians. The Department wants us to expand background checks to all employees of the facility, like food handlers, maintenance etc. not just care givers. We haven't been asked to set up a subcommittee, but may be asked to deal with this in our September meeting. Mr. Elkins stated we may circulate a request for a subcommittee between now and September. Mr. Elkins stated that we will focus just on the health facilities in our piece of the rule.

3. License rule to implement H.B. 125 v Allan Elkins

Mr. Elkins stated that the legislature House Bill 125 required the Department of Corrections to give certain notices ahead of time before they put an inmate on early release, pardon or parole into a health care facility defined as an Assisted Living or Nursing Home. Mr. Elkins stated that the Nursing Home or Assisted Living center should give notice to all individuals or their guardians in the facility and those interested in coming to the facility. Mr. Elkins stated this doesn't change the Health Facility Laws; this is one we expect the facilities to be in compliance with because, (A) it is the law and is directly related to them, (B) because our standard requirement is that all facilities licensed comply with all state, federal and local requirements. Mr. Elkins stated that our legal counsel said we do not necessarily need to make a rule for this, but you need to be aware of this.

Mr. Reeder asked is this a conflict with HIPPA? Mr. Elkins said according to the state law it is not. Regarding the current scope of the problem, Mr. Elkins stated there have been seven individuals who may have come from inmate status, who have been admitted over the last five years, not a very big number.

4. Consumer representatives on the Committee v Galen Ewer

Mr. Ewer stated that we need consumer representatives on the committee and if someone has a suggestion, someone they recommend may contact Mr. Elkins and get some details about how to apply. Mr. Ewer stated that

Ms. Wanta thinks her time on the committee ends this summer all though there is a provision to continue until replaced. Mr. Ewer thanked Ms. Wanta for chairing the committee and being a part of it over the years. The committee echoed his thanks and applauded Ms. Wanta for her service.

Mr. Ewer announced our next meeting is September 13th and adjourned the meeting.

Galen Ewer, Acting Chairperson

Allan D. Elkins, Executive Secretary