ALMDA/ADPH MEDICAL DIRECTORS
ADVISORY COMMITTEE MEETING
JULY 22, 2011 7:30 A.M.
Amended

Sandestin Beach and Golf Resort
Terrace Rooms I and II

Board of Directors: Michael Reeves, MD, CMD, Board Chairman
Dick Owens, MD, President
James Yates, MD, CMD, Secretary/Treasurer

Attendees: Donald E. Williamson, MD, ADPH State Health Officer
W. T. Geary, MD, Interim Director, Health Provider Standards, ADPH
Diane Mann, Training Director, ADPH
David MacRae, MD
John MacLennan, MD
Robert Webb, MD, CMD
John Matson, ANHA
Katrina Magdon, ANHA
Steve Furr, MD, CMD
Joe Downs, MD
Jerry Harrison, MD, CMD
James Yates, MD, CMD
Louis Cottrell, Jr., Executive Director, ANHA
Regina Harrell, MD, CMD
Kendra Sheppard, MD
Dick Owens, MD
Malcolm Brown, MD
David Barthold, MD
Michael Reeves, MD, CMD

Dr. Geary welcomed everyone to the meeting and asked if there were any corrections to be made to the minutes of the last meeting, February 19, 2011. Dr. Webb stated that on page three, third paragraph, second sentence, it should read, "physician" instead of "patient's physician." (After returning to the office, Dr. Geary said that the sentence should state, "face-to-face meeting with patient," not "physician.") There were no other comments or corrections, and the minutes were approved.

DNR Orders

Dr. Geary stated that it had been discussed in the past about pursuing legislative assistance in getting a portable DNR order that would transfer with a resident/patient from the hospital to a nursing home, an ALF, home, etc., to clarify and prevent various issues that occur without an order. He said that he and Dr. Williamson had met with Richard Brockman, the Medical Association, and Dr. Jerry Harrison had joined the meeting by phone. A lot of territory was

covered, but not many substantive changes came from the meeting. It was discussed that Mr. Brockman would be working on a bill to present to the legislature. Dr. Geary stated that he had no knowledge that a bill had been presented to the legislature; that there may be one to present for the next session.

Dr. MacRae brought up the issue of a form he has to complete and sign, that until he signs the form, the patient is considered a "no code." Dr. MacRae wanted to know if other physicians had to do this, or perceived it as a problem. Dr. Geary stated that everyone has the same problem. The form was developed by Richard Brockman and partners to develop a step-by-step procedure that follows the Alabama Natural Death Act. Dr. MacRae pointed out there was not even a place for the patient's signature. Dr. Geary added that there should be a place for a competent patient's signature. Dr. MacRae asked if their policies superseded our policies. The committee was in agreement that the answer is, yes. Dr. Reeves questioned how a particular setting could control the DNR agreement between physician and patient. Dr. Harrison said there is no legislation for it. Dr. Geary added that federal law requires that an individual has to re-declare whether they want DNR or not each time they enter a health facility. Dr. Williamson added that Richard Brockman was concerned that the physician's orders signed in a patient's chart did not meet the essential requirements of the National Death Act. He was trying to assure there was coverage to protect the doctor and the facility. The form was an attempt to fix the problem. The way to get to a solution to the problem will not be regulatory, but statutory. A bill will need to be presented to the legislature. Dr. Geary encouraged the committee to petition their representatives.

Dr. Reeves brought up a side issue regarding Governor Bentley and a State Health Plan. Dr. Williamson stated that there is always a State Health Plan, but how Governor Bentley will make it different is not clear. Dr. Reeves proposed that representation be made from the committee at the State Health Planning meetings so that their perspective will be represented. Katrina Magdon pointed out that all the meetings are open to the public. She suggested getting on the mailing list of the sub-committee meetings or LTC sub-committee meetings. Dr. Williamson agreed that would be the easiest way to obtain information and be able to attend.

<u>IV Therapy in Assisted Living Facilities (ALFs)</u>

Dr. Geary stated there had been a second meeting held to discuss issues in ALFs regarding IV therapy, antibiotics and other therapies. These meetings help get the board involved in decision-making. There was a lively discussion at the last meeting. The result was no real change at the present time in the ALF regulations. The Department is not supporting the use of intravenous therapy in assisted living facilities. Dr. Geary stated that a home is different from a licensed health care facility. The liability is different.

Dr. Reeves asked if the family could assist patients in an ALF. Dr. Geary stated that family cannot provide care in an ALF. It doesn't apply to CCRC, independent living. Dr. Williamson added that the ALF rules will eventually have to be modified. Dr. Geary added that what is in place now is acceptable to the Board of Nursing. As the demographics of the population change, another level of assisted living will need to be added. This would involve cognitively intact individuals who need the therapy in a non-skilled setting. The problem is that we don't want to disrupt what is working now. We also don't want to disrupt the skilled nursing beds that are in

place now. Dr. Reeves asked if the committee has representation at these meetings and was informed that Dr. Clare Hays and Dr. Regina Harrell were in attendance and participated. Dr. Williamson added that the Board of Nursing is against IV therapy in assisted living facilities. Dr. Geary also said the ALF staff was also against it because of the egregious problems that are seen. Dr. Harrell added that there are facilities that do not have trained staff around the clock. Dr. Geary said it is logical to set up different rules for different levels of ALFs so it would be safe. Dr. Williamson said that the key is working out the dementia scale to know where the cuts are for residents. More discussion followed on safety, LPNs, staffing, and levels of care. Dr. Williamson recapped the discussion by saying the group is supportive of the idea of creating another level of care in the assisted living to allow care for those residents that are less severely demented, need help with meds and episodic medical attention. Mr. Cottrell asked that the Nursing Home Association be involved. Dr. Williamson stated that he understood and that he could not personally make rule changes, that there is a process. The process involves going through the licensure advisory board, then if approved goes to state committee, then the legislature.

Delay in 911 Activation

Something we have seen over and over, people in ALFs have an acute event, falling, hitting their head, pulmonary edema, and instead of staff calling 911, the staff make decisions that these residents don't need to go to the hospital, do not need to be resuscitated, which in turn makes the doctor make a rush decision that this person is a DNR after the fact. There is one case where the patient died and the DNR was signed and dated three days later. This is not acceptable. If there is no decision made in advance, 911 has to be activated. The only form required in ALF to be completed is the EMS form. Much discussion followed on how individuals and families do not want to make decisions regarding end of stage care.

Nursing Home Discharge Regulations

Dr. Reeves asked that the next topic be discussed. There have recently been some interesting discharges from nursing homes. One gentleman was put in a cab and sent to an apartment with no money. Another patient rode around in an ambulance for about seven hours, at times parked under a tree while trying to decide what to do with the patient. Dr. Geary researched to see what the regulations say about discharges. A handout was distributed titled, "Transfer and Discharge Provisions." This handout discusses reasons for discharge, who needs to sign off, and types of notifications that are required. Certain F tags are included. The process is a bit complicated. Dr. Reeves wanted to know if he could write an order for discharge because of non-payment. Dr. Geary said that the nursing home is responsible for doing a thorough and good faith effort for funding for a patient's stay. You have to have documentation to show that you have tried to work with the patient.

Dr. Geary asked that for the next meeting the attendees be thinking about problems with the survey process such as interviewing individuals more than once. Dr. Geary stated he had a conversation with a lawyer who works for a company that is in 11 states. The lawyer interviews anywhere from two to five times. It takes multiple interviews to get the truth from the individual being interviewed without interference from other individuals. Dr. Williamson added that 95%

of the time most nursing homes are not a problem. Our concern is 1 – 5% of the time, when another person is in on the interview, you have 1) retribution or 2) the story changes. The goal is not to pin someone down on the second or third interview. The Department is just trying to get to the truth. Dr. Geary added that residents and family members always have the right to have someone with them during an interview. He reiterated that the position of the Department is just to get to the truth of the matter.

Dr. MacRae took a moment to express his appreciation for the good relationship between the Department and this committee. He feels the relationship is very productive. Dr. Geary and Dr. Williamson agreed. Dr. Geary adjourned the meeting.

The next meeting will be in Birmingham in February; time and place will be announced by Lee Ann Cole later.