

**ALABAMA DEPARTMENT OF PUBLIC HEALTH
DIVISION OF HEALTH CARE FACILITIES
MEDICAL DIRECTORS' ADVISORY COMMITTEE**

DATE: May 20, 2004 2:00 P.M.

PLACE: Division of Health Care Facilities
RSA Tower, Suite 600
201 Monroe Street
Montgomery, AL

ATTENDEES: Richard Esham, M.D., Medical Director, DHCF
James Yates, M.D., President, ALMDA
Jimmy Davis, M.D.
Malcolm Brown, M.D.
Billy August, M.D.
Tom Geary, M.D.
Lee Ann Cole, Executive Secretary, ALMDA
Rick Harris, Director, Bureau of Health Provider Standards
Mia Sadler, R.N., DHCF
Diane Mann, Administrative Coordinator, DHCF
Melody Tompkins, R.N., DHCF

Dr. Richard Esham welcomed everyone and called the meeting to order. The committee accepted and approved the minutes from the last meeting, February 14, 2004.

The first item discussed from the agenda was **Review of Content for Collaborative Educational Effort**. Dr. Esham stated this topic had been discussed in previous committee meetings and asked Ms. Mia Sadler and Dr. James Yates to update the committee on their progress. Ms. Sadler suggested that the Department present the regulatory perspective and have an attorney present the legal perspective. Dr. Yates inquired if Alabama's percentage rate is high for feeding tubes. Ms. Sadler commented that the percentage rate is down, but there is still work that needs to be done. Ms. Sadler stated that Mr. Rick Harris had suggestions on tube feedings and advance directives.

Mr. Harris stated the typical argument for long term care facilities is that they would like to be provided with a decision making process that could assist facilities when having to make decisions regarding feeding tubes. The fear of liability drives the decision. Mr. Harris further **indicated** that the insertion of a feeding tube is an invasive procedure. Dr. Davis stated that part of the problem lies with who completes the advance directive. Dr. Davis gave an example of a patient with metastatic lung cancer with a sponsor who did not have durable medical power of attorney. Therefore, what basis does the sponsor legally have to agree or disagree on the insertion of a feeding tube for patients who are not competent to make these decisions. Mr. Harris interjected that no one has the authority to make these decisions. Dr. Billy August

inquired about the Natural Death Act that was established for health care providers when a resident is incompetent to make these decisions. He stated that there is no easy answer to this issue. Mr. Harris gave an example of a case in Florida where the Governor and Legislature is involved in making a decision for a young woman. This should be a family decision on whether or not she should be taken off a respirator.

Dr. Malcolm Brown commented that many times families take a patient to several specialized physicians. Each physician **may have** a different diagnosis. Families listen to all outcomes and agree with the physicians, then the patient is sent to the emergency room late at night and a physician has to intubate them. Dr. Brown stressed the point of how physicians make reasonable logical decisions and no one comments on these decisions, but physicians cannot say they are not going to authorize a patient to have a feeding tube. Dr. Davis responded that he had inherited the patient with metastatic lung cancer. If the family had disagreed with Dr. Davis about the patient's care, he would have recommended they find another physician. However, that would not have been feasible since there was not another physician to choose from at the facility where Dr. Davis practices. Dr. Esham stated that the opposing view **is** for patients whose quality of life would not be improved by the insertion of a feeding tube. Dr. Brown indicated that the Department did not need to encourage feeding tubes. Ms. Sadler agreed.

Dr. Esham interjected that is why the committee wanted to have this discussion, to flush out exactly what the content for the educational collaborative would be. Dr. Esham asked if the content needed to cover clinical indications for use or does it need to be a presentation regarding the pros and cons of a feeding tube? **Someone will** need to present the clinical, regulatory, and legal perspective on feeding tubes. Ms. Sadler proposed that this presentation be heard by the Nursing Home Association, Alabama Medical **Directors** Association Convention, and the Department's surveyors so all parties could receive the same information. Ms. Sadler added that the State's Ombudsmen should be extended an invitation. Dr. Esham asked the proposed date for the presentation. Ms. Sadler suggested September at the ANHA Convention and February, 2005, at the Alabama Medical **Director's** Association **Winter** Convention in Birmingham. Ms. Lee Ann Cole indicated she would need all materials by mid December, 2004. Dr. Esham suggested that all three speakers **also** be available for a question and answer segment following the presentation. Dr. Yates stated that there would be a need for a moderator and would like to have a plaintiffs' attorney present. Mr. Harris conveyed there is not a need for trial lawyers, but realizes the legal aspect of feeding tubes is a huge concern with the nursing home industry. Dr. Esham suggested that the presentation be completed in time for the Alabama Nursing Home Association's **September** Convention since it appears to be the greatest attendance of providers.

Dr. Esham asked Ms. Cole who could give the accreditation for continuing education. Ms. Cole replied that Ms. Diane **Oetting** is responsible for **physician** accreditation **thru the state medical association**. Ms. Cole also explained that she has had difficulty in communicating with Ms. **Oetting**. Dr. Esham volunteered to contact Ms. **Oetting's** employer and ask him to have Ms. **Oetting** contact Ms. Cole to cover any questions regarding educational offerings. Dr. Esham **also** recommended that Ms. **Oetting be asked to** get the Educational Collaborative accredited. Ms. Sadler pointed out if the Medical Association **of the State of Alabama provided** continuing education credits, then the Nursing Home Association **should** also. Their material will need to be ready by mid July. Ms. Sadler indicated the Department would prepare the regulatory presentation. The committee agreed that there needs to be an attorney. Mr. Harris suggested Mr.

Mark Givhan. Dr. Geary recommended that Dr. Carol Griffin at the University of Alabama in Birmingham be contacted to present the medical aspect. Dr. Geary explained that Dr. Griffin has a presentation that is well laid out and addresses palliative care.

Dr. Esham **asked Mr. Harris to present** the next agenda item, **Reorganization of the Division of Health Care Facilities and Provider Services**. Mr. Harris explained that Dr. Williamson had asked Jack Duncan and Pete Gienter from the University of Alabama in Birmingham to assess the Division's management and the attrition rate. One recommendation was to merge Provider Services with the Division of Health Care Facilities. The firm also recommended changes on how the Division manages surveys and surveyors. They suggested having regional offices **with** permanent teams, and allowing surveyors to become self-managing. Another recommendation was for the Division to go from prospective quality assurance to retrospective quality assurance review of deficiencies. The idea is to achieve more responsibility and accountability. Mr. Harris further conveyed that training for the surveyors would be structured differently. The Division wants to teach surveyors how to investigate facts, how to work as a team and utilize their professional judgments to make a determination. Dr. Brown asked what changes could nursing homes expect to see with the organizational changes. Mr. Harris stated nursing homes could expect to see shorter surveys, more supervisors in the field, and more professionalism. Mr. Harris also announced that Ms. Elva Goldman is no longer the Director for the Division. She has moved to the seventh floor to assist Mr. Harris with the transition. Mr. Harris will be functioning as the acting Director.

Dr. Esham stated that **Mr. Jerry Moore, Executive Director, State Board of Pharmacy**, was on the agenda for today's committee meeting **however** Mr. Moore had a Board Meeting and would not be able to attend. Dr. Esham had also asked Mr. Moore to differentiate between emergency kits and stat cabinets. The State Board of Pharmacy **rules seem to** interpret them as one of the same. A discussion began regarding the rule change of the three doses limit. Mr. Harris interjected that the three-dose limit for controlled substances had been changed to a three day supply. Ms. Sadler stated representatives from the Nursing Home Association said this is an issue on nights and weekends. Ms. Sadler shared a conversation she had had with providers at the Nursing Home Convention where she had asked providers if an increase of supplies in the emergency kit would resolve the issue. The answer was yes. Dr. Esham asked if the State Board of Pharmacy would have a problem with the rule change. Ms. Sadler conveyed it was her understanding from the State Board of Pharmacy that they would not have a problem with the rule change. Dr. Esham commented that the Department had made significant progress in handling this concern since the last committee meeting in February. Although, some of the issues surrounding this topic has been resolved, Dr. Esham recommended that Mr. Moore be invited to the February, 2005 committee meeting. The committee had proposed to schedule a meeting with the Nursing Home Association and all interested parties, but with the Department proposing the rule change it will not be necessary at this time. Dr. Esham requested a copy of the pharmaceutical proposed rule be distributed to committee members.

The next agenda item discussed was the **Reporting Trends of Facilities**. Dr. Yates inquired about the progress of the new reporting policy required from the Department. Ms. Sadler responded that since the Department has changed the reporting requirements the number of reports being submitted by facilities has decreased. Prior to changing the reporting rule the

Department was being inundated with facility reports that did not need to be reported. The Department reworded the policy so that facilities now only report **suspicious injuries** of unknown injuries. The adding of “suspicious injuries” appears to have assisted facilities on what needs to be reported to the Department. The reports addressing minor bruises have decreased tremendously. However, facilities are still required to investigate and plan interventions to prevent these injuries and release the investigations to a surveyor if requested.

The last agenda item discussed was the **proposed New Medical Director Regulations**. Dr. Geary was asked to speak on the Center for Medicare/Medicaid Services (CMS) F- 501 Regulation that was distributed in February, 2004, for public comment. Dr. Geary explained that the regulation states that the Medical Director will effectively implement resident’s care policies and coordinate all medical care. The Medical Director should also provide oversight for the quality of care, resident rights and quality of life and overall implementation of the resident care policies and exercise the responsibility for the coordination of medical care. The facility should be able to demonstrate how they are updating and maintaining current policies and procedures to reflect accepted standards of practice. Dr. Geary commented that this information is an overwhelming responsibility for the Medical Director. If this is the case, Medical Directors will not have time to have a private practice. This will not be viewed well in small towns where there is only one physician who cares for patients and **serves** as Medical Director. Dr. Yates conveyed that there is a lot of confusion on how a Medical Director’s responsibilities are interpreted. Dr. Geary added if a temporary nurse has not been oriented, and a lawsuit is filed, **does** the responsibility lie with the Medical Director?

Dr. Esham **noted** he has seen the membership expert panel list for F-510 and it consisted of academic people from the northeast who decided what constitutes a full and part time Medical Director. It is **apparent** that the panel did not consider the impact the liability will have or the number of hours in the day that will have to be added to accomplish all the requirements set forth in regulation F-150. The expert panel does not address who will pay physicians to do all that is required of them.

Ms. Sadler interpreted the surveyor’s guidance investigative protocol to mean in order for the Department to cite the Medical Director Regulation there would have to be information in the quality of life, quality of care, and resident’s rights tags that could be linked back to the Medical Directors’ responsibility. It will not be easy for a surveyor to link a deficient practice back to the Medical Directors’ Regulation. If a Medical Director has had input into the policies and procedures involved in the quality assurance and assessment committee and made recommendations for improvements, there is not likely to be a problem.

Dr. Geary created a scenario concerning an opened cabinet with splintered wood and a curtain that is torn that separates one cabinet from another. As a Medical Director, Dr. Geary would not have any input nor supervise the performance of individuals who maintain these closets. This regulation indicates that Medical Directors will have to be involved in situations that are outside their realm. Mr. Harris interjected that Medical Directors will need to be more involved with the facilities plan of correction. Dr. Geary agreed.

Mr. Harris conveyed the concern he has for Medical Directors is if they have a nursing assistant that is abusive on their staff. The family of a nursing home resident sues the nursing home. There is a complaint made that is probably valid. The Department comes to investigate and finds nothing deficient at all about the nursing home's training or supervision. Meaning this was unavoidable by any reasonable management standard. However, a lawyer can take this and say the Medical Director was supposed to sign off and now the Medical Director is a defendant in that case. The Federal Regulations do not say Medical Directors have to sign off. What you have read is not a regulation but interpretative guidance to guide surveyors in the survey process. Technically this is an addendum to the contract between every State agency and CMS. Our agency receives addendum's every week for our State Operation Manual. Based on this interpretive guidance Medical Directors have the responsibility to make sure individuals who go to work in nursing homes are not abusive to the residents.

Ms. Sadler pointed out that page eleven of the proposed guidance states the Medical Director has to have had knowledge of an issue with care, or physician's services, or lack of resident care policies that meet clinical standards of practice and failed to intervene with the attending physician or provide guidance and/or approval for relevant resident care policies. After observing all the severity levels, the same language is utilized.

Dr. Geary **stated** that the comment period is passed. Dr. Esham inquired whether or not this would be an appropriate issue that would require an Executive Board conference call. A conference call would allow Medical Directors to respond and let the National Organization know of their concerns. Dr. Geary stated that CMS provided only a few days to respond. We have discussed at previous meetings about giving Medical Directors more authority and therefore, making them more accountable. The question is how far do we go and put a halt to temporary staff that come in at night along with supervising their qualifications. Dr. Esham stated that policies and procedures need to be in place to address this issue. Dr. Yates added that facilities need to keep Medical Directors well informed.

Dr. Esham asked if there were any other issues that needed to be discussed. There were none and Dr. Esham thanked everyone for attending and adjourned the meeting. The next meeting will be Saturday, July 24, 2004, in Sandestin, Florida, at the Sandestin Golf and Beach Resort at 7:30 a.m.