OHIO HEALTH CARE ASSOCIATION
ASSISTED LIVING BOARD

October 21, 2024, 3:00 p.m.
Zoom Meeting

M I N U T E S

Vice-Chair Danielle Russo called the meeting to order. The table at the end of these minutes shows attendance.

The Vice-Chair pointed out the OHCA Antitrust Compliance, Conflict of Interest, and Confidentiality Policies in the online meeting folder.

Motion: To approve the minutes of the previous meeting.
Seconded; motion carried.

Pete Van Runkle discussed preparations for the 2025 budget relative to assisted living. We worked with other assisted living organizations to develop a budget proposal relating to Assisted Living Waiver rates. It called for ongoing increases so rates would not stagnate again, as they had until the large increases in the previous budget. Our proposal was to create a mechanism for ODA to gather high-level cost data from a sample of ALW providers, compare the cost data to the previous year, determine the percentage increase, and apply it to the existing waiver rates. The tool for gathering cost data would be designed to minimize administrative burden and to be aligned with any reporting required under the CMS access rule. Because it would take time to develop these processes, we proposed percentage increases for 2026 and 2027 based on CPI. Erin Hart added that we also proposed retention payments for up to 30 days when residents were on leave at 100% of the waiver rate.

We met with Director McElroy and her team, along with the other stakeholders, and presented the proposal. She was fairly receptive but did not make any commitments. She expressed interest during the meeting at a broader vision for the future of affordable assisted living in Ohio. Subsequently, we discussed this point with her and suggested adding to our proposal a task force on affordable assisted living.

Ms. Hart discussed another budget initiative that we shared with ODA separately, the SilverSkills program. It would apply to the aging sector as a whole and provide funding for direct care worker credentials. Reimbursement would be capped at $2,500 per credential and $45,000 per funding period. The program would mirror the existing TechCred program. Our total ask for it was $8.7 million. The proposal meshed with the state plan on aging, which called for expanding the direct care workforce.

Ms. Hart discussed our draft legislation on the planned transition of MyCare Ohio to a FIDE-SNP program. A document explaining our legislation was in the meeting folder. We made changes in the latest draft based on discussions with stakeholders. Most prominent were removing a prohibition on outside utilization management and revising the language on the AAAs' role. The legislation still contained Medicaid rate floors for all LTSS, various other provider protections, and full beneficiary choice regarding opting out of the program.

Existing MyCare was ending at the close of 2025. The FIDE-SNP would be one managed care plan for Medicare and Medicaid. We were getting the changes to our legislation drafted and intended to pursue it in the lame-duck session. ODM was supposed to announce the plans selected for the FIDE-SNP program in early October. Debbie Jenkins added that ODM delayed the announcement and was in a quiet period at the time of the board meeting.

Ms. Hart said CareSource was sending out contracts for the new program and asking providers to sign them before they were even selected. Providers did not have to execute these contracts.

Mandy Smith asked if board members had recent survey experiences or concerns to report. Vice-Chair Russo said her building was well beyond its window. Ms. Smith said we would get a report on survey timeliness from ODH later in the week.

Ms. Smith discussed RCF real and present danger citations during the first quarter of 2024. They were concerning because there were so many. It was difficult to group the RPDs because the tags were not very precise. There were 14 RPD cites in just one quarter, which was more than any year previously, with 6 associated deaths. The most frequently-cited issues were elopement, abuse, and neglect. We were starting to see citations for financial neglect in ALs. Other RPDs stemmed from choking, CPR, and changes in condition.

Some ALs had policies to call 911 instead of doing CPR, which had become a problem. According to ODH, the Nurse Practice Act required a nurse who was present in the building to perform CPR on a full-code resident. ODH legal and OBN and confirmed the interpretation. If a nurse was not present, there was no requirement to train direct care staff on CPR. An exception was a nurse, such as a hospice employee, who was only in the building to care for a specific resident other than the one who coded. We pushed back on this issue, which was not addressed in the recent 5-year rule review. ODH contended it was always the requirement, but it was coming up more because there were more nurses in ALs. Also, RCFs could not require DNR. ODH could cite facilities just for having a policy of not providing CPR.

Julie Simpkins asked if this interpretation applied to agency nurses. She added that they were cited for RPD because of wound care provided by a third party whom the resident engaged directly. Charlotte Kister commented that they were cited for a hospital bed brought in by the family. They needed to have a policy for it even though they didn't own it. The resident was on hospice, but the hospice didn't bring in a replacement bed.

Ms. Hart discussed the draft medication aide rules from OBN. The statute would take effect on October 24, but OBN had not filed final rules by the time of the board meeting. OBN clarified to us that for a new medication aide program before the rules were finalized, they would apply the statute, not the old rules. CTECHs and community colleges expressed a lot of interest in adding medication aide programs.

The three items added to medication aide scope of practice would take effect on October 24. The provider needed to train their medication aides on the new tasks and document their competency.

OBN's draft rules contained almost all the provisions in SB 144. We provided comments on a proposed prohibition on training in facilities with medication error cites and the proposed disciplinary provisions. We would do a free member webinar after the rules were finalized, as well as a program for educational institutions. Ms. Kister asked about using the expanded scope when the rules were not finished. She also asked about the GED requirement for medication aides.

Mr. Van Runkle said ODA continued to work on the next version of the Quality Navigator, which was supposed to include AL. A meeting of the Governor's Task Force was scheduled for the day after the board meeting, where we expected the Navigator would be a topic of discussion. Although it had been two months since Aging ended their survey of providers, they asked us to solicit additional responses. The response rate was not great before, especially among assisted living providers, many of whom felt items on the survey were not well-suited to assisted living.

Ms. Hart reported on the MyCare plans' implementation of the AL critical access rate. Aetna's project to reprocess claims was occurring at the time of the board meeting. She asked board members to let her know if any of their claims were missed. Buckeye still had done nothing. They reportedly were waiting on Aging to confirm who the critical access providers were. We would continue to press Buckeye and wanted to know of any issues with other plans. Ms. Kister said she was not getting remits, but liked receiving payment by EFT.

Ms. Hart reported on a meeting with OHFA the week before the board meeting relating to their 4% LIHTC program. We advocated against restrictions on programmatic space and institutional requirements that conflicted with the settings rule. OHFA surprised us at the end of the meeting by announcing they intended process only one affordable AL application at a time. That restriction normally applied only to the first LIHTC application submitted by a developer. Interested parties were holding a strategy meeting later in the week of the board meeting. The OHFA board would take up the guidelines on November 20. Comments on the latest draft were due the Friday of the OHCA AL Board meeting. Ms. Hart did not think the guidelines actually said only one application could be considered at a time. Ms. Simpkins said she would send someone to participate in the strategy meeting.

Ms. Hart pointed out that ODA produced an online training program on the settings rule.

She announced that Ms. Simpkins was re-elected to the NCAL Board. Mr. Van Runkle said there was controversy within the Quality in Assisted Living Collaborative over their infection control guidelines. QALC required 4 of the 5 participating organizations to support a given set of guidelines before they could be endorsed by QALC. The infection control guidelines had not met that standard yet. NCAL had a policy of not endorsing if any state affiliates opposed. QALC made some changes in the guidelines to try to get the necessary votes. Ms. Simpkins said LeadingAge had not yet signed off. NCAL would not because two states objected to the word "recommend" in the guidance. Mr. Van Runkle suggested that once QALC endorsed the guidelines, Ohio AL providers should consider them. RCFs were required to have an infection control program, and the QALC guidance was the closest thing to a national consensus available for AL. It was highly unlikely ODH would adopt the QALC guidelines because they had just completed 5-year rule review of the RCF rules and had many other rule sets to address.

Debbie Jenkins discussed the CMS Medicaid access rule. CMS had not clarified whether the payment adequacy requirement (80/20 rule) would apply to AL. We believed it should not apply. Guidance was not expected until mid-2025. We would continue to advocate. CMS was holding a series of webinars on other parts of the rule, such as critical incidents and quality measures. None of these requirements were being implemented at the time of the board meeting, although Ohio would have to comply with the quality measures earlier because we were a MFP state. CMS formed a workgroup on the quality measures.

Ms. Jenkins reported that following the court decision invalidating the FTC non-compete rule, the Biden Administration doubled down on their concerns with non-competes via a memo from the NLRB general counsel. Her rationale was non-competes chilled bargaining because they limited employment options. We had not seen any enforcement cases yet. Ms. Jenkins asked board members to let us know if they were contacted by NLRB. The results of the election would have an impact.

We also were following the litigation on DOL's overtime rule. The briefing schedule ended September 19. We expected a decision before January 1, 2025.

Ms. Hart asked if board members had any feedback on the AL Summit, either what they thought of it or why they didn't go. No one shared anything.

We were in the process of scheduling excellence award presentations at the facilities where the winners worked. We also were running our photo contest with a deadline of November 19.

Vice-Chair Russo said the next board meeting would be December 16.

The meeting was adjourned.

Attendance:

First Name	Last Name	8/19/24	10/21/24
Brent	Classen	P	P
Amy	Francis	P	
Charlotte	Kister	P	P
Jody	Linton		
Matt	Pool	P	P
Danielle	Russo	P	P
Gwynn	Ryder	P	P
Julie	Simpkins	P	P
Erin	Hart	P	P
Debbie	Jenkins		P
Mandy	Smith	P	P
Pete	Van Runkle	P	P