

**MINUTES OF THE MEETING
HEALTH SERVICES COUNCIL**

DATE: 25 January 2005

TIME: 3:00 PM

LOCATION: Health Policy Forum

ATTENDANCE:

Council: Present: Victoria Almeida (Vice Chair), Edward F. Almon, Robert L. Bernstein, John W. Flynn, Maria R. Gil, Catherine E. Graziano, John Keimig, Robert S.L. Kinder, MD, Denise Panichas, Robert J. Quigley DC, (Chair), Robert Ricci, Larry Ross, Reverend David Shire, Robert Whiteside

Not Present: Joseph V. Centofanti, MD, Raymond Coia, James Daley, Rosemary Booth Gallogly, Wallace Gernt, Marvin Greenberg, John Young, William B. Zuccarelli

Staff: Valentina D. Adamova, Michael K. Dexter, Joseph G. Miller

Public: (see attached)

1. Call to Order, Approval of Minutes, Time Extension for the Minutes Availability, Conflict of Interest Forms, and Establishment of the Nominating Committee of the Health Services Council

The meeting was called to order at 3:05 PM. Staff noted that conflict of interest forms are available to any member who may have a conflict. The minutes of the 14 December 2004 meeting of the Health Services Council were approved as submitted. The Chairman stated that due to the Open Meetings Act the minutes of the meetings have to be available to the public by the next meeting date or within thirty-five days, whichever is sooner. The Chairman noted that the next meeting might not occur within thirty-five days or the minutes might not be available by the next meeting. He further noted that there is an allowable exception whereby the availability of the minutes may, by a majority vote, be extended. A motion was made, seconded and passed by a vote of fourteen in favor and none opposed (14-0) that the availability of the minutes for this meeting be extended beyond the time frame provided for under the Open Meetings Act. Those members voting in favor were: Almeida, Almon, Bernstein, Flynn, Gil, Graziano, Keimig, Kinder, Panichas, Quigley, Ricci, Ross, Shire, Whiteside.

The Chairman noted that he has established the Nominating Committee of the Health Services Council: Marvin Greenberg, Robert Ricci, and Larry Ross. Mr. Greenberg will serve as Chair of the

Nominating Committee. The Nominating Committee will present a slate of candidates for the Election of Officers at the next meeting of the Health Services Council.

2. General Order of Business

The first item on the agenda was the Report of the Committee of the Health Services Council on the Application of Specialty Personnel Services, Inc. for initial licensure of a Home Care Provider Agency in Providence. Staff summarized the committee discussions and deliberations on this matter.

A motion was made, seconded and passed by a vote of fourteen in favor, none opposed (14-0) to recommend that the application be approved. Those members voting in favor of the motion were: Almeida, Almon, Bernstein, Flynn, Gil, Graziano, Keimig, Kinder, Panichas, Quigley, Ricci, Ross, Shire, Whiteside.

The next item on the agenda was the Report of the Committee of the Health Services Council on the Application for a change in effective control of Home Care Services of Rhode Island, Inc. Staff summarized the committee discussions and deliberations on this matter. Staff stated that a notarized letter was received from the applicant, Mr. Ward, stating that he is unable to attend because of his daughter's

health, however in his absence he is providing authorization for Don Nagel, Director of Nurses, to speak on his behalf.

To a question regarding the issue of the administrator residing in Florida, Mr. Rusin, Chief of the Office of Facilities Regulation, stated that residing in another state is within Rules and Regulations, as long as someone on-site is permanently designated. The Chairman noted that Mr. Nagel is the person who has been officially designated.

A motion was made, seconded and passed by a vote of fourteen in favor, none opposed (14-0) to recommend that the application be approved. Those members voting in favor of the motion were: Almeida, Almon, Bernstein, Flynn, Gil, Graziano, Keimig, Kinder, Panichas, Quigley, Ricci, Ross, Shire, Whiteside.

The next item on the agenda was the Report of the Committee of the Health Services Council on the Application of Chelsea Enterprises, Inc. d/b/a Comfort Keepers for initial licensure of a Home Care Provider Agency in South Kingstown. Staff summarized the committee discussions and deliberations on this matter. Staff noted that mailing included additional information from the applicant that was requested by the Committee.

To a question of how the license would apply to both the proposed CNA and current homemaker services, Mr. Rusin stated that the

applicant would need to meet additional standards for all of its services in order to receive licensure.

A motion was made, seconded and passed by a vote of fourteen in favor, none opposed (14-0) to recommend that the application be approved. Those members voting in favor of the motion were: Almeida, Almon, Bernstein, Flynn, Gil, Graziano, Keimig, Kinder, Panichas, Quigley, Ricci, Ross, Shire, Whiteside.

Reverend David Shire stated for the record that he is recusing herself with respect to the application of Beacon Hospice Inc. d/b/a Beacon Hospice for a change in effective control of Allen of Michigan, Inc. d/b/a Beacon Hospice.

The next item on the agenda was the Report of the Committee of the Health Services Council on the Application of Beacon Hospice, Inc. d/b/a Beacon Hospice for a change in effective control of Allen of Michigan, Inc. d/b/a Beacon Hospice. Staff summarized the committee discussions and deliberations on this matter. Staff stated that comments in opposition to the proposal were sent in by Dr. Vohr and included in the mailing. Staff stated that the applicant provided written statements from individuals named in Dr. Vohr's comments, which were included in the mailing. Staff stated that a copy of the e-mail from Dr. Vohr has been handed out to the members.

Ms. Brennan, CEO of Allen of Michigan, Inc. and President of Beacon Hospice, Inc. addressed the Council regarding the comments received from Dr. Vohr. She stated that there have never been accusations related to recruitment of staff. She stated that in the organizational training, staff is instructed not to discuss employment opportunities with staff of other facilities. She noted that statements were provided from current staff regarding the circumstance of their employment. She stated that Dr. Vohr himself said that he did not have questions regarding the quality of care provided. She stated that the hospice program is Medicare and Medicaid certified and it's not possible to bill without necessary signatures. She stated that she looked at the records of patients admitted from Hattie Ide Chaffee Home and Dr. Vohr's signature was on all of the initial plans of care.

Mr. Bernstein requested that the applicant provide a copy of its codes of ethics and standards.

Regarding the question of recruitment, the applicant clarified that a person is not interviewed until they have officially resigned from their previous job if that person was employed by a facility the hospice program does business with. She stated that in some of the nursing home contracts there are clauses against recruitment.

Dr. MacDonald, Medical Director at Allen of Michigan, Inc.'s East Providence facility, introduced himself and described his background. He stated that he is available 24/7 and he never heard

any complaints from physicians regarding the quality of care.

Discussion ensued regarding how hospice care is provided and how patients are admitted.

Upon questioning by Mr. Miller, legal counsel to the Department, Dr. Vohr stated that the hospice program is in charge of the patient's care.

To the question of who has the legal responsibility for the patient, Mr. Rusin stated it is the nursing home because the contract agreement is between the nursing home and the hospice for providing the services agreed upon in the contract.

Ms. Brennan stated that the hospice program develops the plan of care for the patients and the nursing home adjusts their plan of care to that of the hospice program.

A motion was made, seconded and passed by a vote of nine in favor, four opposed and one recusal (9-4-1) to recommend that the application be approved. Those members voting in favor of the motion were: Almon, Bernstein, Flynn, Gil, Keimig, Kinder, Quigley, Ricci, Whiteside. Those voting in opposition were: Almeida, Graziano, Panichas, Ross. Rev. Shire recused.

John Keimig stated for the record that he is recusing himself with respect to the applications of Riverview Nursing Home, Inc. d/b/a Riverview Healthcare Community for a change in effective control and certificate of need.

Victoria Almeida stated for the record that she is recusing herself with respect to the applications of Riverview Nursing Home, Inc. d/b/a Riverview Healthcare Community for change in effective control and certificate of need.

The next items on the agenda were the reconsiderations of the Applications of Riverview Nursing Home, Inc. d/b/a Riverview Healthcare Community for a Change in Effective Control of Laurel Foster Home, Inc. d/b/a Laurel Health Care Center and Riverview Nursing Home, Inc. d/b/a Riverview Healthcare Community for a Certificate of Need to increase its licensed bed capacity through acquisition of Laurel Foster Home, Inc. d/b/a Laurel Health Care Center. Staff stated that an additional letter from the applicant has been distributed to the members of the Council. Staff stated that a 25 January 2005 report from the Office of Facilities Regulation (“OFR”) has been distributed. Staff requested that Mr. Rusin, Chief of OFR, summarize the findings in the report.

Mr. Rusin made his presentation to the Council as follows:

o OFR is hard pressed to reallocate resources away conducting comprehensive evaluation.

- o OFR is not in the practice of reviewing owners or the number of facilities that maybe under a specific owner or corporate office.**
- o OFR's mindset is that it does one facility at a time, one survey at a time, to determine whether the facility is in compliance or not.**
- o There is no criteria by which to look at an owner's group of facilities other than to look at the history for each individual facility. OFR does not perform such an analysis.**
- o The Federal Government has not come up with guidelines for looking at quality of care across the corporate ownership because of the difficulty of trying to find the final answer.**
- o The deficiencies identified in the report do not include low-level deficiencies which do not threaten a facility's compliance with state or federal regulations.**
- o The deficiencies that the Council should be concerned with are at the level of D or above; D being isolated with no actual harm but with the potential for harm.**
- o For the review of all 9 facilities, the current fiscal year and the last 2 federal fiscal years of survey data were used.**
- o Using an average number is not a benchmark for measuring quality rather it's just a gross number that can be used and looked at nationally.**
- o The best facilities can turn very bad quickly if there was significant change in management or if they have trouble with staff. Their ability to stay in compliance can be threatened immediately.**
- o Over the time frame, there were 31 survey events and only survey events where deficiencies were cited were included.**

- o There were other visits to these nursing homes for complaints or for interim visits where no deficiencies were cited.**
- o The average number of surveys per facility was 3, therefore in any given 12-month period on average there were about 3 survey visits.**
- o There were a total of 143 citations across the board, and the averages and types of deficiencies are included in the report.**
- o In most cases, the scope and severity for these facilities was D or lower, meaning no actual harm.**
- o There was only one incidence of actual harm in all 31-survey events, and 2 incidents of substandard quality of care, that is deficiencies that fall into a certain range where OFR would be concerned about the protocols and the criteria that was being used in the home.**
- o One of those was an issue with hot water, and the other one was with pressure ulcers with potential for widespread harm.**
- o In almost all of the cases, these facilities have come into compliance on a revisit, meaning that they received a survey report that identified the problems, they submitted a plan of correction and upon revisit OFR found them to be in compliance with the regulations.**
- o The most recent problem are with Village House and West Shore.**
- o In almost every facility there were citations in resident assessment which places the plan of care at risk in terms of what people are going to do to follow that plan of care.**
- o But except for one instance, none of these deficiencies were cited at actual harm.**

- o This is not a comprehensive analysis; it's just a review of the data.**
- o There are not a lot of repeat deficiencies except in the area of resident assessment, but for different reasons of resident assessment.**
- o Deficiencies are not consistent across the board.**
- o The number of deficiencies that are being cited, and the scope and severity are at least within if not below the national standards that exist right now, for average number of deficiencies.**
- o This is not the best benchmark to be looking at.**
- o The perspective should be to look at the facilities one survey at a time, and work on one survey at a time.**

Mr. Whiteside inquired if there has been any changes to the survey process because years ago there were more facilities with deficiency free surveys.

Mr. Rusin stated that the federal government is having trouble coming up with a standardized system for looking at yo-yoing, that is facilities found out of compliance on the next survey despite coming into compliance on the previous survey. He stated that these facilities might be now out of compliance in a different area but not in scope and severity where they would be considered for decertification. He noted that in cases of actual harm, more immediate enforcement actions is taken against the facility and in most cases the facilities turn around. He stated that the enforcement and survey process currently in place started only in 1995. He noted that in the first years,

as surveyors were learning that process, there may have been some facilities that caught a “bye”. He noted that in 1998 President Clinton increased the protocols on abuse, mistreatment and neglect review, hydration and medications, and through that period, since 1995, there was a decrease, almost across the board nationally, in the number of facilities that go multiple years with no deficiencies. He stated that the surveyor pool is fairly consistent in most states, and as those surveyors get more competent at their job, they see more and they cite more. He stated that last year in Rhode Island 11% of the facilities were deficiency free, while it was 37% in 1995.

The Chairman inquired how many of Mr. Ryan’s facilities are currently not in compliance.

Mr. Rusin stated that two facilities, Village House and West Shore, are not in substantial compliance and are on a decertification track. He stated that both facilities have provided allegations of compliance, and authorization from the federal government was provided to resurvey them.

The Chairman proposed an additional condition of approval that all of Mr. Ryan’s facilities be in substantial compliance before a license is issued. Mr. Ryan stated that he would accept that as a condition of approval.

To the question of whether Mr. Monticalvo was associated with

Rockport Mortgage, the applicant stated that they don't believe so.

Mr. Flynn inquired as to what would happen with Laurel. Mr. Gage stated that the town of Coventry is interested in using the building for Section 8 housing apartments but until the approval it continues to be utilized as a nursing home.

To the questions of how much will need to be done to convert Riverview's assisted living area up to nursing home standards, the applicant stated that a nursing station will need to be constructed at one of the floors and the facility will need to obtain beds and furniture.

Staff noted that the costs as outlined in the application for the conversion are approximately \$360,000 and that the total capital cost of \$5 million is primarily comprised of historical construction costs.

The Chairman stated that there was a concern that has been brought to his attention regarding Suburban Mortgage. The Chairman stated that he knows that the applicant has some mortgages with Suburban Mortgage at this time and asked if the applicant would accept a condition that the applicant no longer deal in any of these financial dealings with Suburban Mortgage. Mr. Ryan stated that it is a matter of company policy not to deal with Suburban Mortgage and would accept the condition of approval.

Mr. Bernstein requested that Mr. Ryan provide a notarized copy that it is a matter of company policy not to deal with Suburban Mortgage.

The Chairman inquired if the applicant intends to use Consultants, Inc. Mr. Ryan stated that it is a matter of company policy not to deal with Consultants, Inc.

Staff restated the first additional condition of approval as being that license shall not be issued to Riverview for these additional beds until all of Mr. Ryan's facilities are in substantial compliance. Mr. Ross inquired what would happen if after the 2 facilities came into compliance another facility was found to be out of compliance.

Staff stated that at the time the applicant requests licensure, according to the proposed condition of approval, all of the facilities have to be in substantial compliance. Staff stated that should something occur after that it would be beyond the Council's purview.

Mr. Gage stated that all the 9 facilities are on different survey schedules and there might not be a moment when all the facilities are in substantial compliance at the same time. He stated that staff from OFR was at one of the facilities today and there are minor deficiencies that do not deal with quality of care issues. He stated that because the facilities are surveyed at different time during the year, any could be out of compliance at any given time, and requested that the Council limit the condition of substantial

compliance to the 2 facilities that are currently not in compliance.

Mr. Ross stated that it would be hard for all facilities to be in compliance at the same time. To the recommendation that the condition of approval of substantial compliance be tied to the two facilities currently not in compliance, Mr. Ross agreed.

Mr. Ryan stated that to require all 9 facilities to be in compliance at the same time, to have 9 deficiency free surveys, would set the bar too high.

Mr. Ross stated that the applications before the Council deal primarily with Riverview and that any conditions of approval regarding substantial compliance should be tied to that facility. He made a motion to add as a condition of approval that prior to any license being issued for the additional beds that Riverview Health Facility be in substantial compliance.

The Chairman inquired as to what would happen with the Council's concerns regarding Village House and West Shore.

Mr. Ross stated that those facilities are not at issue before the Council. Mr. Flynn stated that he believes that the compliance of all the homes is the Council's issue and that the condition of approval should apply to all the homes but only at the highest level of deficiency.

Staff stated that the review criteria in the regulations explicitly states that it's the applicant's demonstration of all of the facilities that they own or operate and is not limited to Riverview.

To a question at what level is there actual harm, Mr. Rusin stated that level G is where there is an isolated deficiency where the resident has experienced actual harm.

Mr. Miller asked the applicant to comment. The applicant responded that an appropriate condition of approval should be that these 2 facilities currently out of compliance be in substantial compliance and no other facility have a deficiency at level G or above at the time of the licensure of the Riverview beds.

Mr. Ross agreed to this condition and made a motion accordingly.

Staff restated the motion as being that at the time the license for the additional beds is issued to Riverview that Village House and West Shore be in substantial compliance and that no other facility owned or operated by Mr. Ryan have an outstanding deficiency at the scope and severity of G or above.

A motion was made, seconded and passed by a vote of eleven in favor, none opposed and two recusals (11-0-2) to recommend that the applications be approved with additional two conditions of approval.

Those members voting in favor of the motion were: Almon, Bernstein, Flynn, Gil, Graziano, Panichas, Quigley, Ricci, Ross, Shire, Whiteside. Almeida and Keimig recused.

The Chairman stated that Mr. Rusin will make a presentation regarding licensure regulations at the next Health Services Council.

3. Adjournment

There being no further business the meeting was adjourned at 5:15 PM.

Respectfully submitted,

Valentina D. Adamova