

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

**DATE:** Saturday, February 17, 2007 7:30 a.m.

**PLACE:** Hilton, 8 Perimeter Park  
Birmingham, Alabama

**ATTENDEES:** Richard Esham, M.D., Medical Director, DHCF  
Louis Cottrell, Exec. Director, Alabama Nursing Home Association  
Steve Furr, M.D., Board Chairman  
Michael Hannah, M.D., Vice President, Program Chairman  
Jimmy Davis, M.D., Secretary/Treasurer  
Rick Harris, Director, Bureau of Health Provider Standards  
Harrison Wallace, Dep. Dir., Bureau of Health Provider Standards  
David McRae, M.D.  
Jim Yates, M.D.  
Malcolm Brown, M.D.  
Dick Owens, M.D.  
Tom Geary, M.D.  
Jerry Harrison, M.D.  
Dick Rutland, M.D.  
Michael Reeves, M.D.  
Thomas Stevens, M.D.  
Kevin Jackson, M.D.  
Billy August, M.D.  
Joe Downs, M.D.  
David Barthold, M.D.  
Mia Sadler, R.N., DHCF  
Lisa Pezent, R.N., DHCF

Dr. Richard Esham welcomed attendees to the advisory meeting and thanked them for attending. Dr. Webb, ALMDA President, was unable to attend due to a family emergency. The minutes of the last meeting were circulated. The minutes were accepted and approved with the following corrections: page 2, changed to the Medical Association of the State of Alabama and remove M.D. from participant Phil Sisk's name. Due the absence of Dr. Webb who was to discuss agenda item, "Unused Medications," Dr. Esham suggested that Dr. Reeves begin the discussion about "Recent Elopements." Dr. Reeves stated that he had no data to present; however, has discussed recent elopements with Dr. Esham. In one week, there have been three elopements in facilities that Dr. Reeves has either been in or has an association with. One of these facilities was Dadeville. While Dr. Reeves was there, he had a conversation with a surveyor who

received a call indicating there was an elopement at another facility. Dr. Reeves stated that he is not tracking the number of elopements; however, it appears that the number of elopements is high. Dr. Reeves discussed this situation with Dr. Esham reflecting is this a real situation and if it is a real situation, is there an explanation; and thirdly, what can medical directors do or contribute to lessen or alleviate the problem. Dr. Reeves stated that he was aware of factors in two of the elopements. One facility had not been monitoring their system, checking to assure it was functioning properly. It is true that the system was not functioning properly. The next situation is one in which we as medical directors may be of assistance. The facility has a locked unit. A resident in the locked unit who had been there for a long time was assessed to be stable. This resident had never wandered into anyone's room. The facility made a decision to transfer her into the unlocked unit. Indications were that the resident would do well on the regular floor. The resident eloped. The circumstances surrounding the elopement were as follows: someone had exited the cafeteria door and placed a book to keep the door from closing. There was an employee in the parking lot that probably was associated with going out the door. The resident went out onto the patio. It was determined that the resident eloped. Dr. Reeves asked the other participants about their thoughts that part of the medical director's role is to contribute to the improvement of other areas of long term care. Rick Harris responded that there has been an increase in the number of elopements. CMS has also noticed that Alabama has had a lot of elopements. CMS discusses performance and data with the State Agency and specifically the number of times F 324, the tag selected for elopements, had been cited at the jeopardy level. Stephanie Davis at the RO indicated to Rick Harris that South Carolina had also had an increase in the number of elopements. She stated that training had been provided to the industry which was beneficial in reducing the incidents of elopements. Rick Harris stated that the agency has not focused on elopements with facilities. In response to the questions about elopements, Rick Harris said that the problem of elopements is real and medical directors can assist facilities. He suggested an education program outlining the possible causes of elopements such as undue reliance on electronic means to prevent elopements to the exclusion of staff involvement. Rick Harris stated that he has a suspicion that businesses are marketing security systems to nursing homes with a guarantee that these systems will prevent elopements. Some of these systems may be very complicated and difficult to operate. Some of the nursing homes may be having difficulty in operating the systems correctly. There have been a couple of instances where facilities have a wanderguard system and a locked system. Family members are given the code to the locked doors for ease of visitation. When the code is accessed, the alarm feature is disabled and residents follow family members and visitors out the door. Visitors may not be sensitive that residents should not be exiting the building. There is a possibility that this is a design defect in the security system or the system is not programmed correctly. It is not reasonable for a facility to want the wanderguard alarm to be disabled when a visitor is leaving the building; however, some facilities are set up this way. There is a reliance on electronic systems that are not entirely safe, such as systems that malfunction or are not programmed properly. Staff members may not understand the features of the system and may not want to park in the back of the facility and enter the front door. Staff members have propped doors open and have disabled alarms on the back doors. It is important for nursing homes to have frequent inservices to ensure that staffs are knowledgeable about security system features and to

understand how dangerous the situation can be when the system is disabled or malfunctions. Rick Harris stated that he thinks an education program on preventing elopements would be helpful to providers. The consequences of elopements can be very serious, including facility liability. One incident involved a resident whose fall down outside stairs resulted in his death. Mia Sadler stated that wanderguard bracelets have batteries that need to be routinely checked. Another issue is the lack of assessment. Residents verbalize that they want to go home and will get their coats and purses. Facilities should not rely solely on electronic devices. Facilities should also be providing diversional activities to re-direct the resident from exit seeking. Some residents have gone out of windows which involved removing window screens. One participant stated that this is the case with some of the residents who have psychiatric diagnoses. There are more residents in nursing homes that have psychiatric diagnoses and are more at risk for elopement than frail elderly, demented residents. Dr. Harrison questioned if there was a trend of these being DHR residents that are placements or recent admissions. Mia Sadler responded that she does not know if the elopements involved DHR residents but some may have been recent admissions. Elopement cases have been across the board. She recalled that in the mid 1990's, there were a lot of elopements and training was provided to the industry which proved to be helpful. All agreed that an education program would be beneficial to the industry. Rick Harris and Mia Sadler discussed that there have been some cases involving staff not responding to alarms; other cases involving staff turning the alarm system off; and some cases where the alarm sounded, was re-set, however, the staff did not check to see if a resident exited. Dr. Reeves stated that as medical directors, in QA meetings, include a report on the security system and discuss it to ensure the importance is acknowledged. Mia Sadler responded that including this topic in QA meetings is an excellent idea. If there is an elopement, the facility should analyze why that elopement happened. Some facilities have not determined and evaluated the reasons why the elopement occurred. Rick Harris added that if residents have exit seeking behaviors what measures are put into place to prevent elopements. Dr. Reeves commented that the result of an elopement can be disastrous. Mr. Cottrell responded that the association is also looking at this problem and an educational program. The association has developed a comprehensive packet of current information about elopements that will be forwarded to all facilities. This packet is in the process of being approved by legal counsel. Medical Directors can assist by helping assure that facility staff study the informational packet which includes suggested policies and a study done in New York. The New York study includes protocols and is an excellent resource. The association would like to see facilities utilizing this information. The association had discussed having a statewide meeting; however, it is the individual nursing home that needs to focus on elopements. The association believes that the informational packet will be beneficial and will work rather than having a statewide meeting. However, if the agency and the Medical Directors believe that an educational program would be beneficial, the association will provide it. Rick Harris responded that based on the number of tags being cited involving elopements at the harm level is an indication for more interventions. Maybe the one facility who receives a citation at the J level will make appropriate changes to protect residents. Perhaps other facilities will learn from this facility. Dr. Harrison responded that most people are aware of the settlement or verdict of an elopement at Brookwood Hospital in Birmingham for about eleven or twelve million

dollars that the jury found for the plaintiff. This happened about two to three days ago. The patient died. Louis Cottrell voiced that many providers are feeling that their facilities are becoming prison-like. Facilities would like to figure out how to eliminate so many alarms. Families are concerned about having code numbers. The information that will be sent out explores some of these issues, such as how to adapt. The association is hoping that facilities will study the informational packet. Dr. Esham asked how many instances of elopement have occurred. Rick Harris responded that approximately 16 instances of elopement have occurred within the last six months. Dr. Esham commented that if there is not a statewide education program, perhaps the medical director, such as Dr. Reeves, could request training for the staff at the nursing home where the elopement occurred. Dr. Reeves suggested that informational/educational packets be sent to the medical directors because they are in the facilities discussing issues that affect residents. It would give medical directors the opportunity to be supportive of facility efforts. Dr. Joe Downs stated that the survey process is an educational process especially if the facility has had an elopement. He stated that when the nursing home received a jeopardy level F tag two weeks ago, the survey team was very thorough, and during the process, educated the staff. He further stated that any home that has had a recent elopement will definitely study the informational packet. He recommended that perhaps the informational packet could have a cover letter emphasizing the importance. Rick Harris elaborated that the agency could send out a mail out memorandum encouraging facilities, especially the administrator and director of nursing services to study the association's informational packet. Louis Cottrell asked if the informational packet was sent to the facility with the medical director's name on it, would the medical director receive it. The response was some medical directors would receive it; however, some would not. Dr. Esham brought the discussion about elopements to a close.

Dr. Esham announced that the next agenda item for discussion was "Unused Medications." Dr. Esham asked Dr. Geary to open this discussion in the absence of Dr. Webb since he had done a lot of work in this area. The medical directors were given an attachment of prior minutes outlining the discussion of unused medications in nursing homes. Dr. Geary stated that he had worked for several years with the Medical Association and Medicaid looking at ways to save money and ways to preserve Medicaid dollars before the preferred drug list and before Part D were introduced. At that time the Board of Pharmacy attended one of the board meetings and absolutely opposed every conceivable process to recycle and reuse all the millions of unused doses of medications in nursing homes because they could not be assured that the medications were safe, i.e., stored properly, handled properly, not tampered with. In addition, the Auburn University Pharmacy Department reviewed other states programs that recycle medicines. They reviewed the cost involved in transporting the cards of medicines back to the pharmacy and having them counted, opened, removed and re-packaged and re-sent. There was not a cost savings due to the time and number of personnel involved. The Board of Pharmacy went to the Legislature and came up with a law that allowed nursing homes to donate unused medications to certain specified public charity clinics throughout the state, Huntsville, Birmingham, Montgomery and Mobile. The actual mechanism for doing that was never widely disseminated. Dr. Geary stated that he did not know what happened to that initiative and has not been able to find out. He asked Unicare to advise him how to recycle doses; however, they did not know how to do this. Dr. Geary stated that you

cannot recycle medications for individual use such as ointments and eye drops. By Federal law, you cannot recycle any controlled substance. On the surface, it sounds like a great way to save money, help the system and stop wasting drugs; however, it is not. Dr. Furr stated that the legislative bill is on the web which Dr. Geary agreed; however, the health department was assigned the task of developing rules and regulations for implementation of the bill. Dr. Furr further stated that it is very cumbersome as the nursing home has to maintain an inventory of all medications, remove all residents' names and identifiers, and handle hospice recipients' medications in a special way. Louis Cottrell stated that this was discussed at the ANHA Board. There are a few facilities that recycle medications, but the clinics are very close to these facilities. There are only five clinics statewide. It is cumbersome; however, facilities would be interested in not destroying medications. There needs to be an easier way to accomplish it such as more clinics or someone available to take the medications. The Board of Pharmacy has this issue and their concerns are understood. It is administratively burdensome. Dr. Furr stated that there are charitable pharmacists in Mobile who possibly could assist facilities with inventory. Dr. Rutland stated that his nursing home has been participating for months and has a very helpful pharmacist from Unicare who is assisting. He is unaware of any problems. Dr. Geary stated that they are sending medications home with residents which most facilities do. A specific order has to be written to send home controlled substances. This could possibly eliminate some of the waste. Sometimes nurses forget to send home the medications that are refrigerated such as insulin. Dr. McRae said that the economics has changed drastically especially with Medicare Part D. It is cheaper for the charitable pharmacy in Mobile to purchase generic drugs in bulk. Rick Harris stated that the State Board of Health adopted a rule, "Procedures for Donation of Certain Prescription Drugs to Charitable Clinics." These were developed in the Professional Services Division by Charlie Thomas, R.Ph. Rick Harris will check to see if this information is available on the Department's web page. The medical directors will be provided this information. Dr. Esham suggested that this information be attached to the minutes that are posted on the web page. He also stated that it sounds as if the Board of Pharmacy is a possible barrier; however, Dr. Geary stated that the Board of Pharmacy took the position as being a champion for residents in assuring safe drugs. Rick Harris pointed out that one has to look at the risk versus benefit versus cost savings. Dr. Esham stated that a possibility is to remove the Board of Pharmacy as a barrier by invoking the medical director's prescriptive authority to dispense medications. Dr. Geary stated that the medications cannot be repackaged. A dispensing pharmacy that works for an assisted living facility cannot repackage medicines. Dr. Esham questioned that statement, adding that prescribing physicians for years have compounded medications. It may be beneficial to have a preliminary meeting with the Board of Medical Examiners Credentials Committee to discuss an avenue and approach. Rick Harris stated that the agency had a previous conflict with the Board of Pharmacy who insisted on a rule that medicines in regular assisted living facilities, not managed by the residents themselves, be in unit dose packaging. The assisted living industry, once they went through the process of implementing this rule, fully support this practice. They believe it drastically reduces medication errors. Some residents receive drugs from the VA or federal HMOs if they are federal retirees. Prescriptions are filled with a 90 day supply. At first, the Board said this was against federal law and it was determined that this is not true. There is no federal law

that prohibits a pharmacist taking properly labeled medications and putting them into a properly labeled unit dose packaging. Then the Board of Pharmacy sent out a memorandum to pharmacists stating that it was illegal under Alabama law to repackage medications. There is no Alabama law that prohibits the repackaging of medications and there is no Board of Pharmacy regulation that prohibits this practice. The Board of Pharmacy is very uncomfortable with this practice. There are a lot of pharmacists who will repackage medications. This discussion was brought to a close.

Dr. Harrison asked if universal DNR could be discussed. He had to go to the nursing home at two o'clock in the morning on this date to sign a DNR order because the patient left the hospital the day before. Even though the resolution went through last year, it has foundered at the Medical Association for a year. There has been no activity. Dr. Harrison explained that there was a resolution last year to have MASA work with the legislature and develop a universally accepted DNR that would be transportable. It passed through MASA last year and is being researched by legal staff at MASA. It has not been discussed since last year. The MASA meeting is in April and it will be on the agenda. The resolution was passed by MASA which charged MASA to go to the legislature to develop regulations to develop a portable DNR.

Dr. Esham brought up a concern of unlicensed homes, both nursing homes and assisted living facilities, which was not on the planned agenda. Rick Harris has a concern about this problem. These homes are in direct competition with licensed facilities and do not have to meet standards. Most unlicensed facilities charge similar rates. These operators are taking the money that they are saving by not meeting regulatory requirements. They are therefore more profitable than licensed facilities. Dr. McRae asked why these facilities are not closed. Rick Harris responded that some of these facilities have been closed. It is very labor intensive and difficult work that is done at the Division. Two law suits were filed in Lauderdale County in 2005 and received judgments in 2006. It took numerous visits to Lauderdale County by Division managers and surveyors. One facility shut down and the other place moved the residents to a new location operated by the daughter of one of the residents. Then a second law suit was filed in Lauderdale County to try to stop that operation. Rick Harris stated that he has personally signed criminal complaints against the operators of these facilities. As soon as the judgment was given in civil court, the district attorney dismissed the criminal charges. Chris Connolly, the district attorney in Lauderdale County, is probably the most cooperative district attorney that we have encountered. Most people do not see these unlicensed homes as being terrible and do believe criminal prosecution is necessary. The ANHA, Assisted Living Association, Department of Human Resources and the Public Health have in the past discussed legislation that would increase the penalties. Rick Harris stated that most likely increasing penalties will not make a difference. These homes are profitable and it is difficult to prosecute. One idea was for the department to hire special investigators with arrest powers. There does not seem to be much disincentive. When owners are asked why they choose to remain unlicensed, they don't want to meet the fire codes (sprinkler systems, smoke barriers) and LSC requirements such as Exit requirements because they select former single family dwellings as their homes. These facilities are not fire safe and there is high potential for one of these homes to burn. Alabama is one of the few states that require all nursing homes and assisted living facilities to be fully sprinklered, except for assisted living facilities with three or

fewer residents. Most of these unlicensed homes have up to thirteen residents. One of the participants asked if there was data about the number of wounds, falls, fractures, morbidity, or mortality in unlicensed homes so there could be a comparison with licensed homes. Rick Harris stated that there is data confirming there are fatal fires in assisted living facilities in America every week. So far, there have been no fatal fires in Alabama. Sprinkler systems prevent fire fatality. Most states do not require assisted living facilities to have sprinkler systems. Dr. Harrison asked about the homes with three or less residents. Rick Harris stated that homes with three or less residents have to be licensed but do not have to have a sprinkler system. They still have to have a licensed administrator and meet the requirements to provide care and services in a safe environment. Rick Harris stated that one of the strategies is to launch a public awareness campaign. There has been discussion about purchasing commercial time to discuss the dangers and risks of placing a loved one in an unlicensed facility. Some of the medical directors may be recruited to be spokesmen. For the public to hear from a physician can make a difference in terms of credibility. Another strategy is to send the physician community information outlining why these unlicensed homes are so very dangerous. Physicians can make family members aware of the dangers. Dr. Davis stated that some DHRs have placed clients in these unlicensed homes. There have been instances when DHR has not been supportive of the department taking action against unlicensed homes. Most of these facilities are actually unlicensed nursing homes and not assisted living facilities. There was a discussion about costs. Some of the medical directors thought that it was cheaper or that's what they had heard from families. Mia Sadler stated that the cost is high in these homes up to \$2,000 a month. Hospice agencies were told that they cannot provide care in unlicensed homes. Louis Cottrell stated that the association has tried to push the Department of Public Health to close these facilities and the association is also in the process of creating advertising, such as "Licensed Means Something." Rick Harris stated that another idea that he has discussed with the Assisted Living Association is to have a banner or sticker displayed in the entrance such as, "Proudly Licensed by the Alabama Department of Public Health." If family members are visiting facilities in an attempt to find a facility for a loved one, it would be readily seen. If family members don't see this banner, perhaps they would inquire about the license. Dr. Harrison said that this could be included in a commercial – banner proximately displayed.

Rick Harris also wanted the medical directors to be aware that there is a push in the legislature to create a new category of licensure called personal care homes. This is strongly supported by AARP, American Association of Retired Persons. Rick Harris stated that he has served on assisted living work groups in Washington D.C. which included AARP representatives and does not agree with them about regulatory issues involving assisted living facilities. AARP has taken the position that the health department in Alabama is too tough on these facilities. Rick Harris stated that he is proud of Alabama's regulatory system, adding that it is the best in the country. It has been proven that a successful business model under Alabama's regulatory system. There are people operating assisted living facilities throughout the state who are making a profit and who meet regulatory requirements. Louis Cottrell stated that there is a new association that is having meetings in conjunction with AARP. They are in favor of the personal care legislation. AARP believes that everyone should have a choice about placement. They believe in licensed homes and want the personal care homes to be

licensed. Regulations have not been developed for these homes. There is group of people who don't qualify for Medicaid and who don't have the income to afford private pay rates. This is definitely a problem; however, the answer should not be for these people to go to unlicensed facilities. Louis Cottrell stated that the latest figures from Medicaid reflect that Alabama will be short three hundred million state dollars because of the new federal regulation that changes information about transfers. This amount is \$800 million total dollars. Dr. Esham stated that he recalls the history of the assisted living industry and the public interest that was generated a few years ago when Dr. Williamson was persuaded to create work groups. Ultimately, the current regulatory environment was developed for assisted living facilities. There was a great deal of public interest which included meetings attended by the public and other interested parties with respect to the regulations. Not everyone sees the regulatory system as we do. A question was asked about DHR foster care homes for the elderly. Rick Harris responded that Public Health regulations specifically exclude any facility that is licensed by DHR of the Department of Mental Health and Mental Retardation. These facilities are under the supervision of those departments who take responsibility for them.

Dr. Esham began closing the discussion at this meeting. He reminded the group of the Pharmacy Regulatory Guidelines presentation in the afternoon.

Louis Cottrell made a closing comment about Medicaid not covering the charges for wound vacs. This was determined by the peer review information. He asked that the medical directors make known that wound vacs are effective and to submit any peer review information. Dr. Harrison stated that last year at this conference a speaker presented an article about wound vacs. Dr. Esham stated that it requires a physician order so the physician had made the determination of the need. Dr. Esham suggested that this be an agenda item in July. Dr. Esham asked for any agenda items for the July meeting. He thanked the participants and the meeting was adjourned.

The next meeting will be held on Saturday, July 28, 2007, Sandestin, Florida.