



MINUTES OF THE AGENCY LIAISON MEETING January 24, 2017

Committee members present: Jamie Shelton, Phyllis Chatelain, Marcus Naquin, Wayne Plaisance, David Stallard, Dave Rambo

LNHA Staff present: Mark Berger, Wes Hataway, Myron Chatelain, Nancy Russell, Rita Finn

State Representatives present: Cecile Castello and Margie Huguet (Louisiana Department of Health), Barrett Savoie, Traci Roberts and Becky Roberts (Office of Louisiana State Fire Marshal)

State Representatives attending by phone: Louisiana State Fire Marshal Butch Browning

The agency liaison meeting allows state officials to directly address and discuss regulatory issues affecting our profession. The following items were discussed at the most recent meeting.

I. **Generator Manual Stop Regulations**

Chief Browning and Mr. Savoie addressed a recent deficiency that was cited because a facility's generator did not have an appropriate remote manual stop station. Mr. Savoie noted that the regulation was long-standing but not strictly enforced. Nevertheless, CMS began recently citing state offices for failing to cite the deficiency. Accordingly, the Office of Louisiana State Fire Marshal will now begin citing the deficiency.

In an effort to educate facilities on regulation requirements, the state has released a memo which can be found [here](#). The memo states that any generator installed or modified after Aug. 1, 2003, must meet the following requirements:

- All installations shall have a remote manual stop station of a type to prevent inadvertent or unintentional operation located outside the room housing the prime mover (generator) were so installed, or elsewhere on the premises where the prime mover (generator) is located outside of the building.
- For systems located outdoors, the manual shutdown should be located external to the weatherproof enclosure and should be appropriately identified.
- One remote manual stop station is acceptable for facilities with two generators.
- A facility must keep generator records for five years.

II. **2012 Life Safety Code Requirements**

On May 4, 2016, CMS adopted the 2012 edition of the NFPA 101: Life Safety Code® which lists the requirements nursing facilities must meet for fire safety. The adoption of the rule requires facilities to migrate from using the 2000 edition to the 2012 edition. Mr. Savoie shared an overview of the changes. Also, the Office of Louisiana State Fire Marshal created a helpful [document](#) highlighting the changes as well as a [detailed comparison](#) of the 2000 and 2012 editions.



III. **Criminal Background Check/Multiple Misdemeanor Convictions**

State law (La. R.S. 40:1203.2) prohibits the hiring of any nonlicensed personnel when the results of a criminal history check reveal a conviction for multiple misdemeanor thefts. The law also provides that the prohibition does not apply to “a person who has received a pardon of the conviction or has had his conviction expunged.” The issue presented was “must all of the misdemeanor convictions be expunged?”

Following our meeting, Ms. Castello presented the question to her legal department and responded: “if the remaining misdemeanor conviction is one that is listed in the statute as prohibiting hire, then they cannot be hired.” Essentially, an applicant must have one or less misdemeanor theft convictions **after** expungement to be eligible for hire. For example, if an applicant has three misdemeanor theft convictions at least two must be expunged to become eligible for hire.

IV. **Criminal Background Check/Conviction for Attempted Felony Theft**

State law (La. R.S. 40:1203.2) prohibits the hiring of any nonlicensed personnel when the results of the criminal history check reveal a conviction for an attempt to commit the felony offense of theft. In Louisiana, a “felony” is considered “any crime for which an offender may be sentenced to death or imprisonment *at hard labor*.” A “misdemeanor” is “any crime other than a felony.” For an “attempted felony theft” conviction, the offender may be sentenced to “imprisonment for not more than one year.” In other words, the conviction is not subject to “*imprisonment at hard labor*” as is required for felony-grade offenses. In Louisiana, the crime is commonly referred to as a “Duncan misdemeanor” because it carries a sentence higher than typical misdemeanors (six months imprisonment), but it is not subject to hard labor. The issue presented was “does a conviction for attempted felony theft prohibit the hiring of an applicant?”

LDH’s legal department reviewed the matter and advises that a conviction for “attempted felony theft” prohibits employment in a nursing facility. Health Standards Section (“HHS”) looks at the actual crime for which the individual was convicted rather than how the resulting conviction is classified.

V. **LDH Training on Updated Licensing Standards**

Ms. Castello was asked if LDH would provide training to facilities on the updated Louisiana Minimum Licensing Standards which were published and adopted on November 20, 2016. Ms. Castello stated that no formal training had been considered because the updated standards contained very few substantive changes. Further, she said the new provisions simply consolidated existing provisions to provide greater clarity but the intent of the provisions had not changed. In light of the concern, Ms. Castello created a [crosswalk](#) which highlights the changes.



VI. Behavioral Health Needs of Nursing Facility Residents

The newly released Federal Requirements of Participation (ROP) place specific requirements on facilities regarding behavioral health services to residents who are unable to leave the facility. A facility must coordinate assessments with preadmission screening and resident review (PASARR) program under Medicaid in subpart C of this part to the maximum extent practicable to avoid duplicative testing and effort.

Under F285 §483.20(e) coordination includes (1) incorporating the recommendations from the PASARR level II determination and the PASARR evaluation report into a resident's assessment, care planning, and transitions of care; and (2) Referring all level II residents and all residents with newly evident or possible serious mental disorder, intellectual disability, or a related condition for level II resident review upon a significant change in status assessment.

The issue raised by the requirements is the lack of a suitable fee structure arrangement under Medicare/Medicaid to mental health professionals (psychologists, social workers, etc.) trained to provide services for residents with transient or time-limited health care make compliance difficult.

LDH acknowledged the lack of available services could make meeting the requirements difficult, but the facilities are still required to meet each resident's needs based on the individualized assessment of those needs.

Facilities should document all efforts to comply with the requirements, including the provision of behavioral services. These may include spiritual counseling by clergy or increased involvement with activities. According to F250 §483.40(d), the facility must provide medically-related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident. Be aware that under §483.20(k)(4) a nursing facility must notify the state mental health authority or state intellectual disability authority, as applicable, promptly after a significant change in the mental or physical condition of a resident who has mental illness or intellectual disability for resident review.

VII. Temporary Evacuation Host Sites

The Committee asked Ms. Castello to consider treating unlicensed host sites in the same manner as licensed host sites (sites with licensed nursing facility beds) in an emergency. LDH recently published a rule stating that an unlicensed host site may be used during an emergency for five days with, subject to LDH approval, a single 15-day extension¹.

As this has been an ongoing discussion between LNHA and LDH, Ms. Castello recently visited two unlicensed evacuation centers maintained by nursing facility operators. She stated that the structures would meet the needs of patients during an emergency provided that the structures continue to be maintained and other factors (adequate staffing, etc.) are met.

Ms. Castello listened to LNHA's concerns; however, at this time LDH is not willing to modify the rule. According to Ms. Castello, the secretary of LDH has the authority to waive certain regulatory requirements during an emergency. Rather than modifying the



rule, LDH prefers to utilize the secretary's authority to provide a temporary license for an unlicensed structure on a case-by-case basis. To facilitate this process, Ms. Castello recommends that any nursing facility operator that maintains a structure to serve as a temporary evacuation site contact her so that LDH can visit the structure before an emergency.

ⁱ LDH has the ability to grant additional extensions for host sites with licensed nursing facility beds.