



Janet Napolitano
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

NURSE PRACTICE ACT STEERING COMMITTEE

MINUTES

DECEMBER 13, 2007

MEMBERS PRESENT:

Joyce Benjamin, RN
Kathryn L. Busby, JD
Brandon Coakley, Williams & Associates
Theresa Crawley, RN CRNA
Mary Griffith, RN
Gregory Harris, JD
Rory Hays

BOARD STAFF ATTENDING:

Joey Ridenour, Executive Director
Pam Randolph, Associate Director, Education
Valerie Smith, Associate Director, Investigations (telephonic)
Kim Zack, Assistant Attorney General
Nina Zimmerman, Assistant Attorney General

MEMBERS ABSENT:

Anne McNamara, PhD RN
Kathy A. Scott, RN
Mardy Taylor, RN
Mary Wojnakowski, AzANA

GUESTS PRESENT:

Alan Schafer, AHCCCS
Theresa Gonzales, AHCCCS

I. CALL TO ORDER/INTRODUCTIONS/APPROVAL MINUTES

Ridenour called the meeting to order at 2:39 p.m. and welcomed members of the committee.

II. REVIEW/APPROVE MINUTES OF NOVEMBER 1, 2007

Crawley moved and Griffith seconded to approve the Nurse Practice Act Steering Committee meeting minutes for November 1, 2007 without correction. The motion carried unanimously.

III. PRESENTATION BY AHCCS REGARDING POTENTIAL LEGISLATIVE CHANGES REGARDING CONSUMER DIRECTED CARE

Ridenour introduced Alan Schafer of the Arizona Health Care Cost Containment System (AHCCCS). Mr. Schafer addressed the committee stating that legislation is being

considered in response to consumer and consumer advocate requests for Long-Term Care Systems (ALTCS) consumers to direct their caregivers to provide skilled care services. Schafer noted that while AHCCCS does not currently allow attendants to provide skilled care but that the program is common in most Medicare states.

The proposed concepts for “consumer directed care” include the following:

- Only an option for the ALTCS consumers who select Self-Directed Attendant Care (SDAC). (The ALTCS consumer is legally the employer of the caregiver).
- This is not an option for attendant care services via a caregiver agency.
- An ALTCS consumer selecting SDAC and directing their attendant to provide skilled care must be competent (e.g., no dementia diagnosis, moderate intellectual disability).
- An ALTCS consumer shall not direct their attendant to provide skilled care if the caregiver is a Certified Nurse Aide or LPN.
- Registered Nurse visit(s) shall be ordered so a nurse can work with the ALTCS consumer and caregiver to provide the education and training regarding the skilled task that the competent ALTCS consumer is directing their caregiver to provide. This would be similar to how Home Health Agencies and their nurses train consumers and their family.
- The caregiver shall not provide skilled care unless an RN determines the member and the caregiver understand what is needed to safely provide the care.
- The caregiver shall only provide the specified skilled care.
- The member shall be medically stable (e.g., the member’s skilled care must be routine and not something that might frequently change because of health issues).
- There is no intent to allow administration of intravenous medications, deep tracheal suctioning and similar complex skilled care.
- The approval process must be repeated if the caregiver happens to be hired by another consumer with similar care needs.

Schafer also offered: 1. ALTCS consumers typically have only one to two primary caregivers; 2. caregivers do not generally provide care to more than one consumer; 3. 50% of caregivers are related to or are close friends of the consumer; 4. the program will allow consumers to receive additional attendant services by replacing the more expensive nursing services; and 4. should expand opportunities and availability of RNs and LPNs to provide skilled care to those consumers deemed more vulnerable.

Schafer shared that in some states utilizing this practice, nurses are actually delegating skilled care procedures, or the practice is done through exemption with a small subset of consumers. Schafer assured the committee that AHCCCS will work closely with the Arizona State Board of Nursing to develop rules and policies.

Committee members requested information and clarity regarding the number of people that may potentially utilize the program; the financial advantage for the consumer to have a self-directed attendant care/self-directed skilled care program over the use of a home health agency; delegation; existing laws regarding gratuitous care by friends or members of the sick or infirmed person's family; payment policies; and the possibility of conducting a pilot study.

Members discussed legislation, and agreed that it would become problematic to attempt to put all criteria in statute. Members also agreed that rules need to be established, and that the Arizona State Board of Nursing would have to approve them. Members expressed concern regarding nurses being subject to liability. Hays offered that rules will protect the nurses delegating in the program. Committee members questioned whether there is legislation that allows self-directed attendant care/self-directing skilled care to exist. Randolph stated that enabling legislation could be done. Hays recommended a review of Title 32, Professions and Occupations Regulatory Provisions, and Title 36, Public Health and Safety, to determine the most appropriate place for statutes governing the ALTCS proposal.

Committee members discussed regulation. While Harris stated that the matter should be addressed in the Nurse Practice Act, Hays noted value in the matter being addressed in Title 36, offering that it would not change anything in nursing, and the Arizona State Board of Nursing would have control over any rules. Harris stated, with regard to oversight, that there should be session law that establishes a clear message for the future, and requires a report to be made to the nursing board. Griffith questioned whether or not the Board would be the responsible entity, and therefore establish the scope of duties. Members further discussed independent practice; party responsible for care being delivered; instruction out of the home health rubric; plan of care being in place; liability; protection for nurses; and the role of the Arizona State Board of Nursing.

Schafer stated that under the proposal, the core group of participants (up to 90%) will be quadriplegics. Registered nurses will only have to do basic training and will not have to be on site as much as with home health agency situations. The ALTCS model utilizes a case management/care management structure, requiring more frequent contact, clinical management, resolution for grievances, and periodic reports sent to AHCCCS. Caregivers must be registered with AHCCCS and associated with an agency. Under rights and responsibilities, poor quality of care will result in the termination of the contract, and caregivers are not required to perform duties they do not feel comfortable with. Attorneys for the Centers for Medicare and Medicaid have drafted documents regarding liability.

Benjamin offered that local agencies, such as Banner Health, are supportive of the ALTCS model.

Motion: Place the ALTCS Consumer Directed Care Proposal on the January Board Meeting Agenda for discussion & decision.

Moved: Ms. Kathryn Busby

Seconded: Ms. Theresa Crawley

Discussion: Alan Schaffer was asked to have a definition and potential language for the Board to consider at the meeting,

Vote: Motion carried

IV. UPDATE ON 2007 LEGISLATION REGARDING IMMIGRATION/PROOF OF CITIZENSHIP AS RELATES TO LICENSEES/CERTIFICATE HOLDER & DECEMBER 3 INTERPRETATION BY AG'S OFFICE

Ridenour addressed the committee stating that legislation now requires anyone holding a license or certification to show proof of/demonstrate citizenship or show that one is lawfully present in the United States upon renewal of said license or certification. This may require nurses and nursing assistants to provide a photocopy of, or show, in person, a passport or birth certificate. The new requirement will impact the online renewal process. Bontrager reported that seventy-five percent (75%) of all renewal applications are received by the Board during the last two months of the six month renewal period. Ridenour stated that if proof of citizenship/lawful presence proves to be an issue committee members will be asked to review the renewal cycle. While Arizona renews licenses every four years, many states renew licenses every two years. Board staff expect there to be an increase in denials as a result of proof of citizenship/lawful presence requirements not being satisfied. Ridenour will keep the committee informed.

V. UPDATE ON CHANGES TO NURSE PRACTICE ACT & POTENTIAL EVIDENCE TO SUPPORT REVISIONS; DISCUSS BOARD DECISION TO CHARGE COMMITTEE TO CONTINUE REVIEW INTO 2008 FOR LEGISLATIVE SESSION 2009

Ridenour addressed the committee stating that the Board has requested members continue working on proposed changes to the Nurse Practice Act for the 2009 legislative session. Ridenour provided members with a memorandum via electronic mail prior to the meeting outlining the rationale for submission in the 2009 legislative session.

Hays stated that the Arizona Nurses Association (AzNA) was concerned about personal medical records being subpoenaed and recommends that subpoenas not be delegated, but issued by the Board.

Valerie Smith, Associate Director of Complaints and Investigations, offered that subpoenas for medical records of the respondent are not typically issued upon opening an investigation. A request for medical records is typically a nexus to the complaint. If investigators are unable to obtain collateral information, the Board may be addressing a matter that is not the underlying issue driving the complaint. Smith noted that the time frame of the investigation would be extended if the Board has to approve issuing a subpoena.

Committee members requested the Board review current policies and adopt guidelines for the executive director. Busby expressed concern with the timing for the Board. Assistant Attorney General Zack expressed concern with the mechanism that would be used to issue subpoenas and orders. Members discussed HIPAA laws and statutory authority, and noted that the current use of subpoenas do not violate HIPAA laws. While in agreement, Hays noted the need for a reasonable nexus or standard, and requested that in the interim the Board work on a direction for the executive director, and review prior to putting it in statute.

It was the consensus of Committee to have a subcommittee work on the subpoena issue and review current policies and recommendations regarding an overall policy at a future Board meeting. The subcommittee will members will include Kathryn Busby, Gregory Harris, Pamela Randolph, Valerie Smith, Kim Zack and Nina Zimmerman.

VI. CALL TO THE PUBLIC

There was a call to the public but there was no one in the audience.

VII. FUTURE TOPICS – DEBRIEFING

Next meeting: February 7, 2008, 3:00 p.m.

VIII. ADJOURNMENT

There being no further business, Ridenour adjourned the meeting at 4:21 p.m.

Minutes Approved by: Joey Ridenour RN MN FAAN 12/13/07
Joey Ridenour, RN MN FAAN Date
Executive Director

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