FLORIDA HEALTH CARE ASSOCIATION

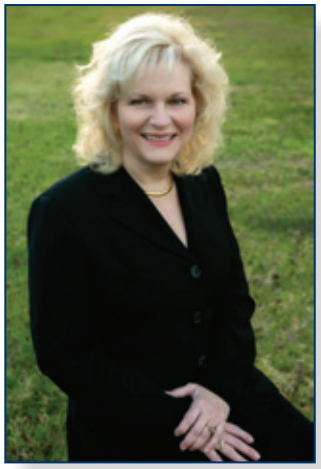
PULSE

JANUARY 2017

A PUBLICATION FOR FLORIDA'S LONG TERM CARE COMMUNITY

Deborah Franklin Tapped to Head FHCA Quality Department

A well-respected long term care leader, Franklin will serve as FHCA's Senior Director of Quality Affairs



Florida Health Care Association is pleased to announce that past FHCA president and well-respected long term care professional Deborah Franklin has joined the team as FHCA's Senior Director of Quality Affairs.

In this key position, Deborah will be responsible for leading the Association's internal quality department while pioneering initiatives on quality improvement in long term care. Deborah will work in conjunction with the Association's Board of Directors, Quality Cabinet and associated committees to develop, plan and implement long term care quality and educational programs to support members with their pursuit of providing high-quality, person-centered care.

Additionally, Deborah will be the key liaison with the executive and legislative branches, as well as state and federal health care agencies, on long term care survey and regulatory issues.

Deborah most recently served as Director of Operations for the not-for-profit Florida Living Options, which operates the Hawthorne Villages in Florida. She has successful experience with organizational leadership and health care management, opening and managing new facilities and turning around troubled facilities. Deborah is a past president of FHCA, a Walter M. Johnson, Jr. Circle of Excellence

continued on page 11

FHCA's Long Term Care Photo Contest now underway

Florida Health Care Association's Long Term Care Photo Contest is an annual program designed to capture the special moments of long term caregiving through photography. Amateur photographers who live, work or volunteer in an FHCA member skilled nursing center or assisted living facility are invited to submit photographs capturing the daily life, activities and loving care between residents, families and staff.

continued on page 2

IN THIS ISSUE

5 The Grievance Officer — A New Opportunity

6 CMS Offers Phase I Initial Training For Providers

8 Updated ADRD Curriculum Now Available

9 Court Enjoins DOL Final Rule Regarding Overtime

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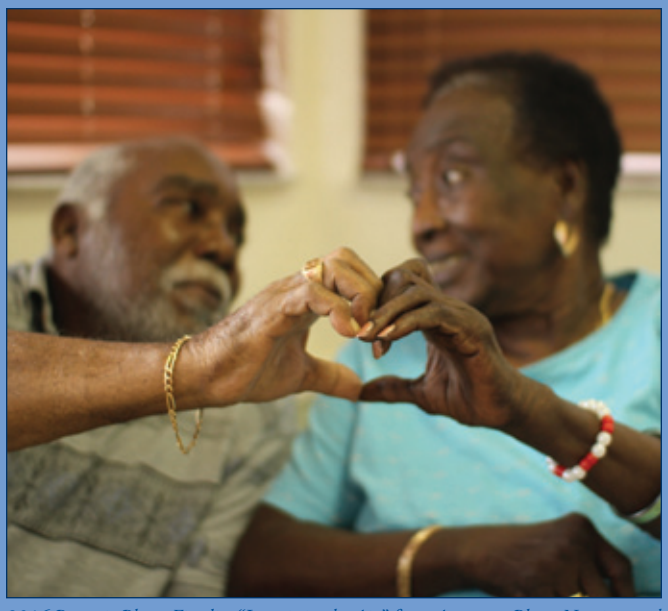
Celebrate the special moments in long term care
FHCA's Long Term Care Photo Contest now underway

Pictured on the cover, Kidz Korner's "Anything's Possible" photo, taken by Paula Berlinsky, took home First Place overall in the 2016 Long Term Care Photo Contest.



2016 Portrait Photo Finalist "Love is in the Air" from Aventura Plaza Nursing and Rehabilitation Center.

continued from page 1

Entries should represent some aspect of daily life in long term care, such as residents/staff interactions, activities/events and therapy. Submissions are due to FHCA by Saturday, February 25, 2017.

Photos will be judged within the following categories: Health Related Services, Activities/Events and Portraits. A selection committee will narrow down the top 20 finalists, after which the public will have an opportunity to vote for the top, overall winner via the FHCA Facebook page.

The center's photo earning the most Facebook votes will be selected as the Overall Winner and receive a cash prize of $500. Overall second and third place winners will also be chosen based on the Facebook vote, with each winner having an opportunity to use the cash prizes toward a center-wide pizza party, ice cream social or other social event for residents and staff. In addition, the winning photos and narratives will be featured during the FHCA 2017 Annual Conference & Trade Show, which takes place July 31-August 4 at the Rosen Shingle Creek in Orlando.

Learn more about the LTC Photo Contest and submit your entries at www.fhca.org/media_center/photocontest.◆

Starting the New Year off right

By John Simmons, MSW, NHA
FHCA President

Last month, we hosted the first meeting of the FHCA Task Force on Long Term Care Survey Practices, which brought FHCA leaders together with Agency for Health Care Administration (AHCA) Bureau Chief of Field Operations Kim Smoak. Members of the Task Force include our Region Vice Presidents, as well as several members actively involved in the Association's regulatory and quality initiatives. The idea behind this Task Force and these quarterly meetings is to help foster open lines of communication and increased learning across provider and regulator perspectives.

All of us around the table are committed to the same goal — the people served in our long term care centers. Through ongoing discussion, we'll have opportunities to better understand each of our unique, and sometimes, common challenges and identify how we can resolve those challenges. At the same time, by keeping those lines of communication open, providers will be better informed and educated, which ultimately helps us improve our processes and the care we're delivering to residents.

Our first meeting was extremely productive. Both Kim and I shared more about recent transitions at AHCA and FHCA, including the role of Deborah Franklin as our new Senior Director of Quality Affairs. We discussed the annual survey process, understanding substantial compliance and the importance of reviewing those communications from AHCA with stated deadlines (all of which are also pushed out via FHCA's communication tools).

The conversation was lively and it was exciting to see our members so actively engaged. At one point during the meeting, a question arose over the use of arbitration agreements in nursing centers. You may recall that the Centers for Medicare and Medicaid Services Reform of Requirements for Long-Term Care Facilities banned the use of arbitration agreements; however, on November 3, a judge

continued on page 11

FHCA Task Force on Long Term Care Survey Practice Members

John Simmons, FHCA President
Gary Krulewitz, Region I Vice President
Eric Mock, Region II Vice President
Vern Zeger, Region III Vice President
Thomas McDaniel, Region IV Vice President
Scott Allen, FHCA Quality Cabinet Chair
Matthew Thompson, FHCA Rules & Regulations Committee Chair
Eric Weisz, former FHCA District IX President/Florida Leader alum
Karen Goldsmith, FHCA Regulatory Counsel
Robin Bleier, FHCA Quality Affairs Consultant

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EDITORIAL: To submit information, guest articles, press releases, etc., contact Kristen Knapp, APR, Director of Communications, at (850) 224-3907 or via e-mail kknapp@fhca.org. Fax information to (850) 681-2075 and include your name, telephone number and e-mail address.

ADVERTISING: For information on Pulse advertising rates and availabilities, contact Jenny Early at FHCA at (850) 701-3553 or via e-mail at jearly@fhca.org.

All articles and advertising are subject to editorial review.

by J. Emmett Reed, CAE

FHCA/Our Florida Promise Executive Director

FHCA's membership renewal campaign is currently underway. Nursing Home members which pay in full by January 31, 2017 will receive a discount of more than $3 per bed, while Associate Members who pay in full by the same date save $25 off their membership dues. For more information about FHCA membership, visit the Membership section of FHCA's website at www.fhca.org or contact Dawn Segler at dsegler@fhca.org.

More than bricks…

Our foundation for the future is underway

Last year, Florida Health Care Association members voted to build a state-of-the-art education and training center which would be added on to the existing FHCA headquarters in Tallahassee. Among the many uses for the Florida Health Care Education and Training Center will be educational opportunities for long term care professionals and a home to host the hundreds of members who travel to Tallahassee each session to advocate our issues before the Legislature during Lobby Wednesdays.

Building plans for the addition are underway, with a groundbreaking ceremony expected for February. The Training Center will feature 5,000 square feet of accessible indoor/outdoor meeting space and high-tech audiovisual equipment to advance how our content is delivered. The center will have the capacity to serve nearly 200 attendees, yet with options to hold smaller events for groups requiring a more intimate setting.

It seems as though I've been talking about this project forever, and I'm excited to begin seeing the vision of so many Past Presidents and other members start to come to fruition. Even more exciting is the member enthusiasm to be part of the project — from the ground up. Discussions among Immediate Past President Joe Mitchell's Building Task Force included a fundraising campaign that would allow us to offset costs for the addition. That Foundation for the Future Campaign is also underway, housed under Florida Health Care's 501c3 Education and Development Foundation. This tax-deductible opportunity allows members to show their support of FHCA and the long term care community by choosing to give at a level that best suits their needs, with each level offering an exciting opportunity for recognition.

Leading the way in our Foundation for the Future Campaign is Moore Stephens Lovelace, PA, (MSL) who have pledged an incredible $100,000 to the FHC Education and Development Foundation to help underwrite the new Training Center. MSL will join us as a Legacy Donor, and we are so grateful to the partners for their continued support of the Association. They've been at our side for more than 40 years and we look forward to their lasting legacy as we carry the FHCA mission forward.

Also leading the way as a $5,000 Roof Raiser contributor is Robin Bleier of RB Health Partners, Inc. Robin, too, is a vested long term care advocate and a tremendous supporter of FHCA. This was made evident during last year's Annual Conference, when she was awarded the Association's highest honor, the Walter M. Johnson, Jr. Circle of Excellence Award.

Robin has never shied away from giving opportunities, and as chair of the FHC Political Action Committee she is known for her tremendous enthusiasm to give and raise critical dollars that support the Association's advocacy efforts.

These are just a few of the many ways to support this incredible project. Legacy Donors, like our friends at Moore Stephens Lovelace, have exclusive room naming rights in the Training Center, while $25,000 Expansion Circle donors will be given premium recognition in designated spaces. Roof Raisers like Robin Bleier will be commemorated (or can honor someone special) on one of our brick pavers that will be permanently showcased in the upstairs indoor/outdoor space. And Friends of FHCA can support the Association with a $500 donation and be listed together on a special wall of recognition in the center's entryway.

FHCA's success over the years has always been a result of being a member-driven organization. Our opportunity to serve you through this expansion is just another way for us to keep pace with the growing needs of our membership.We've launched a website — edcenter.fhca.org — with more information about the campaign and to help members track the progress of the building, as well as our fundraising efforts. I hope you are as excited as I am about the year ahead and will join us in our Foundation for the Future Campaign. Here's to an incredible 2017!◆

The Grievance Officer

A new opportunity

By Karen Goldsmith

Among the federal regulations that went into effect on November 28 is the requirement for a new grievance process. Included in that process is the appointment of an official Grievance Officer.

The Agency for Health Care Administration (AHCA) recently shared with us a startling fact. A significant number of the surveys they conduct are the result of complaints by residents, family members, interested parties and ex-employees. We cannot do much about the ex-employees, but we can, with a little work, slow down the number of complaints directly related to residents.

AHCA must investigate any allegation that, on its face, could be a violation of a regulation. This interpretation is broad. The investigation typically involves a site visit. This takes time and costs the state money — resources that could be better spent on mandatory surveys and quicker resurveys. Look to Chapter 5 of the State Operations Manual for more information on complaint surveys.

Centers don't typically want a complaint survey, and with careful planning, both parties can benefit in this situation.

By appointing the right Grievance Officer, centers can use the new requirement to their advantage. While the inclination may be to assign that task to your social worker, this is an important step that should be considered thoroughly. This individual may or may not be the best person to serve in that capacity.

A better fit is assigning someone who knows the residents, can relate to them and their families and who has the time to give to this very meaningful task. If no such person exists, invent one — that is, find a person with compassion, understanding and who is willing to spend the time to get to know the residents.

Once you have chosen your Grievance Officer, give that person the time and resources to get the job done.

Publish his/her name and contact information, as required in the rule, and then some. Send letters to family members and resident representatives. Even if this individual is well known around the center, have him/her make rounds and speak to every resident capable of communicating and introduce himself/herself to the friends and family of the residents.

Don't do this just once, but rather on a regular basis. Residents and visitors should get to know the person and feel comfortable that this individual has the residents' best interest at heart.

When a situation arises, give the information to the Grievance Officer. For example, in one center I represent, a resident's "ugly" Christmas sweater went missing. A thorough search of the center was conducted, and the sweater was located on the back of a chair in another resident's room. Share this type of information with the Grievance Officer.

Why? Because two days later, another resident's not-so-ugly sweater was missing. Guess what? It was found in the same resident's room on the back of the same chair. Two issues were resolved. First, the sweaters were returned to their rightful owners with no fanfare and no complaint to AHCA. Second, a resident with a penchant for a certain type of "kleptomania" was revealed, and the center had an opportunity to assess this problem and care plan to prevent it in the future.

The Grievance Officer can make these investigations time efficient, and time is money. This only works, however, if that person knows how to conduct a thorough investigation in the nursing center. Nursing centers are unique places, and the investigative skills developed in any other setting need to be tweaked to fit the center's profile. This could mean that you will need to offer training to your Grievance Officer on investigating and the techniques that are most effective.

Develop the protocols following the steps set out in the regulation and add any steps that are necessary because of the characteristics of your center. Create forms to assist the Grievance Officer. Develop a list of individuals that the Grievance Officer can turn to for information. For example, be sure the Grievance Officer is familiar with the MDS coordinator and his/her potential role in an investigation. Give the Grievance Officer free reign to interview and review appropriate documentation. Be sure that person is aware of your HIPAA policies so as to protect residents' personal health information.

Make that person a frequent contributor to your Quality Assurance (QA) process. This will be another win for you, as it will enable your QA Committee to identify trends and issues that need special attention.

Most importantly, the line of communication should always be open among the Grievance Officer, management and supervisory staff.

continued on page 7

Karen Goldsmith of Goldsmith & Grout, PA serves as FHCA's Regulatory Counsel. Her office is located at PO Box 875, Cape Canaveral, FL 32920. She is available to members by phone at (321) 613-2979 or e-mail at klgoldsmith@ggfllawfirm.com.

CMS offers Phase I initial training for providers

by Lee Ann Griffin

The Centers for Medicare and Medicaid Services (CMS) initial training containing information regarding Phase 1 of the New Nursing Home Regulations (effective starting November 28, 2016) was made available on November 18 to both providers and surveyors.

The training is a PowerPoint presentation with embedded video slides/audio, along with transcripts. It addresses the new language included in the New Nursing Home Regulations and how Phase 1 will be implemented via the State Operations Manual, F-Tags, and survey process. Surveyors may not conduct Phase I surveys without first being trained.

In the training, CMS advises surveyors to cite Phase I deficiencies using the current F-Tags. CMS released a revised version of Appendix PP, which retains existing tags and guidance, but incorporates the newly-effective regulatory language. CMS has also released a job aid that identifies the F-Tags that have new regulatory language added. The job aid and the revised Appendix PP is available on www.fhca.org; see CMS Releases Requirements of Participation Rule.

Regulatory Groupings become Regulatory Sections and have expanded from 15 to 21. In Phase I, there will be full implementation of five regulatory sections:

1. Resident Assessment §483.20
2. Quality of Life §483.24
3. Physician Services §483.30
4. Laboratory, Radiology, and other Diagnostic Services §483.50
5. Specialized Rehabilitation §483.65

There are modifications to 15 other Regulatory Sections in Phase I. Twenty (20) of the 21 Regulatory Sections have all or some regulations implemented in Phase I. Compliance and Ethics (§483.85) will not be implemented until Phase III.

There are three new tags

F525: Binding arbitration agreements (Note: CMS has issued an S&C Memo to states that surveyors will not be investigating for compliance with the binding arbitration agreements, given the current legal challenge).

F526: Hospice services.

F527: Mandatory submission of staffing information based on payroll data in a uniform format (Note: Electronic Staffing Reporting — Payroll Based Journal).

The provider training notes that §483.10 Resident Rights requires that a Grievance Official be identified as part of a specified grievance policy; that reasonable steps are taken to notify residents and family of upcoming resident or family group meetings; and that the facility be able to demonstrate their response and rationale for their responses to grievances and recommendations that arise from such a group.

It's important to note that Resident Rights also includes new specific posting requirements related to survey results. F167 will now state that the facility must post a notice in a prominent, public location that surveys, certifications and complaint investigations during the three preceding years are available upon request.

Also, F461 now includes the new § 483.90(c)(3) to specifically require regular inspections of all bed frames, mattresses and bed rails and to ensure that bed rails are compatible with the bed frame and mattress.

New Phase I training requirements relate to providing training not only to staff, but also to volunteers and contracted personnel related to abuse, neglect, exploitation and misappropriation of property; procedures for reporting; and dementia management; and resident abuse prevention. Florida nursing center providers have long since been providing certain training around abuse prohibition practices, Alzheimer's disease and related disorders, and assisting and responding to persons with cognitive impairment. Education development staff will want to compare what they are already offering to which category of caregiver with the Phase I training requirements. Not all of the training requirements given in the new CMS regulations are required as part of Phase I; see the revised Appendix PP at F226.

CMS' provider training echoes what Florida's nursing center providers have understood as they've watched this comprehensive rule development; that is, the new regulations reflect other current Health and Human Services initiatives related to reducing unnecessary hospital readmissions, reducing the incidence of health care-acquired infections, improving behavioral health care and safeguarding nursing center residents from the use of unnecessary psychotropic (antipsychotic) medications.

The provider version of CMS' Surveyor Training includes an integrated, if somewhat basic, knowledge check and is available at http://surveyortraining.cms.hhs.gov/pubs/ProviderTraining.aspx until July, 2017.◆

Lee Ann Griffin is FHCA's Director of Regulatory & Education Development. She can be reached at lgriffin@fhca.org.

FHCA Resource Site
www.fhca.org/facility_operations/reform_requirements_for_LTCfacilities

Surveyor Training
surveyortraining.cms.hhs.gov/pubs/ProviderTraining.aspx

Start the year off on the right foot

Healthy feet an important issue for residents

By Sidney Weiser, DPM, and Robin A. Bleier, RN, LHRM, CLC

Did you know that feet are the foundation of our body? The reason is that feet are directly affected by other systemic diseases. A leading systemic disease with such impact includes Peripheral Vascular Disease (PVD), which entails poor blood circulation to the body. PVD can be caused or exacerbated by diabetes, smoking and obesity. Unhealthy feet may also be noted as a contributory factor in the evaluation of resident safety deficits, as they can cause or worsen balance disturbances resulting in gait instability and/or pain with or without falls and/or fractures.

Based on the medical systemic diseases, the role of the podiatrist is key. The podiatrist's job is to assess resident risks requiring early prevention. This enables him/her to perform treatments of various podiatric issues and complications that become some of the possible contributory factors, such as ingrown toe nails, infections, fungus, warts, diabetic ulcers, etc. Like other medical services, Medicare has a fee schedule and, in the case of routine podiatric services, the resident may be seen every 61 or more days. Also, like with other medical services, regular visits and, in the case of podiatric maintenance visits, support the residents overall well-being.

In planning resident care, just like the eyes and teeth, it is equally important to carefully monitor our residents' feet and the necessary foot care to support their overall health and well-being. This is especially important given that many residents are unable to care for their feet themselves and must rely upon center staff and the podiatrist in order to maintain the "healthiest feet" possible based on their conditions. Thus, your center's podiatrist should work together with your interdisciplinary team, including the certified nursing assistants, nurses and, at times, your therapists. Your center's podiatrist can therefore be helpful with your center's education program, providing requested in-service and information to increase staff awareness of certain basic proactive and preventative measures. This will help facilitate earlier risk detection of podiatric or related issues (which if not identified could potentially grow into more serious complications) that ultimately will lead to better foot health and, whenever reasonably possible, can stave off podiatric-related declines in residents.

As we look at the entire interdisciplinary team, it is important to assure there is a spot for the center's chosen podiatrist. When there is a sign of a possible or actual change in the resident's status, as we consider the clinical risk possibilities for the circumstances, remember to consider foot health and the associated foundational health opportunities.◆

Dr. Sidney Weiser is Owner/Director of Quality Podiatry Group of Florida, Ltd., an FHCA Associate Plus member. He can be reached by contacting Michael Vernof at mvernof@qualitypodiatry.com.

Robin A. Bleier is the President of RB Health Partners, Inc., a clinical risk Medicare and operations consultancy firm that has a strategic alliance with Moore Stephens Lovelace and consults with FHCA on quality affairs. Robin can be reached at (727) 786-3032 or robin@rbhealthpartners.com.

LTC LEGAL ISSUES & TRENDS, cont. from page 5

The Grievance Officer

With a few steps that may seem time-consuming upfront, you can avoid time spent in repeat investigations by getting to the source of issues fasters. Inevitably, a successful grievance program will make AHCA complaint surveys less frequent, cut down on surveyors' burdens, and make the surveyors happier. A win-win for everyone involved.◆

Updated ADRD Training Curriculum for Nursing Centers and ALFs Now Available

FHCA has released updated versions of required Training Curricula for the Special Care of Nursing Center and Assisted Living Facility (ALF) Residents with Alzheimer's Disease or Related Disorders (ADRD). Both products are available for purchase and replace FHCA's prior versions that expire this month (Jan. 12 for nursing centers and Jan. 23 for ALFs).

FHCA's Training Curriculum for the Special Care of Nursing Center Residents with Alzheimer's Disease or Related Disorders relates to the specialized training referenced in Chapter 400.1755, F.S. and Sections 58A-4.001 - .002, FAC that nursing facilities licensed by the Agency for Health Care Administration are required to provide to direct contact and direct care staff upon employment. The ALF curriculum relates to the specialized training referenced in Chapter 429.178, F.S. and Section 58A-5.0191, FAC, that stipulates assisted living facilities licensed by the Agency for Health Care Administration that advertise that they provide special care for persons with ADRD or maintain secured areas as described in Chapter 4 of the Florida Building Code must provide to direct contact and direct care staff upon employment. FHCA's nursing center curriculum is approved for a three-year cycle (Nov. 29, 2016 - Nov. 29, 2019), as is the ALF curriculum (Dec. 6, 2016 - Dec. 6, 2019), both by the Department of Elder Affairs through their designee, the Florida Policy Exchange Center on Aging with USF.

Of note, in the absence of any contraindicating Interpretive Guidance, FHCA's nursing center curriculum should also assist providers in complying with Phase I Training Requirements from the CMS Reform of Requirements for LTC Facilities. § 483.95 (c) (3) which stipulates that facilities must provide training to their staff on dementia management.

FHCA's Nursing Center ADRD product includes both one- and three-hour curriculum, while the ALF ADRD product includes both Level I and Level II curriculum. Both include the required basic, written information for non-contact, non-care staff; a post-test and class activities; CMS' Focused Dementia Care Survey Tools; and regulatory authorities. General copyright policy allows one copy of each curriculum per facility. Both products are designed to be taught in a facility-based setting by an approved Alzheimer's trainer.

Copies of FHCA's Training Curriculum for the Special Care of Nursing Center and Assisted Living Facility (ALF) Residents with Alzheimer's Disease or Related Disorders (ADRD) are available for purchase at www.fhca.org/online_store/curriculum. Please allow two weeks for processing your order.◆

Court enjoins DOL Final Rule regarding overtime

By Mike Miller

Miller Tack & Madson, FHCA Labor Relations Consultant

Recently, a federal judge in the Eastern District of Texas issued an order enjoining (i.e., preventing) the United States Department of Labor (DOL) from implementing and enforcing its Final Rule regarding overtime. The Final Rule, which was scheduled to take effect on December 1, 2016, would have increased the minimum salary threshold for exempt executive, administrative and professional (collectively, EAP) employees from the current $455 per week to $921 per week. The Final Rule, enjoined by the judge, also includes an automatic updating mechanism that adjusts the minimum salary threshold every three years.

The issuance of the Final Rule was in response to a memorandum issued by President Obama directing the Secretary of Labor to "modernize and streamline the existing overtime regulations for executive, administrative, and professional employees." According to President Obama, the overtime regulations had not "kept up" with the country's modern economy. Since the issuance of the Final Rule, employers have struggled to determine how to comply, and some employers even made sweeping changes in anticipation of the Final Rule's implementation.

Following the issuance of the Final Rule, 21 states filed suit against the DOL, the DOL's Wage and Hour Division and their agents challenging the Final Rule. The state plaintiffs sought emergency preliminary injunctive relief in October 2016. Additionally, the Plano Chamber of Commerce and over 50 other business organizations filed suit challenging the Final Rule. Both cases were consolidated by the federal court. In reaching its decision to issue a preliminary nationwide injunction, the court reasoned, among other things, that "nothing in the EAP exemption indicates that Congress intended the Department to define and delimit with respect to a minimum salary level," and the DOL exceeded its delegated authority. The court further reasoned that the DOL lacks the authority to implement the automatic updating mechanism set forth in the Final Rule.

Even though the DOL is currently prohibited from implementing and enforcing its Final Rule, a decision on the merits of the Final Rule is still pending. This means it is possible, although perhaps unlikely in light of the new Trump administration, that the Final Rule is not dead yet — just in a coma. For some employers who have already implemented sweeping changes, news of the injunction may be too late as they grapple with whether or not to rescind such changes and the potential challenges in doing so.

Court denies plaintiffs' request to enjoin OSHA's Final Rule

In another recent federal court decision, this one arising in the Northern District of Texas, a different federal judge denied the plaintiffs' request for a preliminary nationwide injunction to prevent the Occupational Safety and Health Administration (OSHA) from implementing the anti-retaliation provision of its Final Rule, which requires employers to establish a "reasonable procedure" for reporting work-related injuries and illnesses that does not deter or discourage employees from reporting them.

According to OSHA, "blanket post-injury drug-testing policies deter proper reporting." While OSHA's Final Rule does not specifically address mandatory post-incident drug and alcohol testing, OSHA has cautioned that drug testing policies should limit post-incident testing to situations where drug use likely contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use — not drug use in the recent past. However, according to OSHA, employers required to test pursuant to a state or federal law (e.g., U.S. Department of Transportation regulations or state workers' compensation laws) may continue such testing because it is not retaliatory in nature.

The Final Rule also questions the validity of certain incident-based safety incentive programs which reward employees for avoidance of accidents. In an effort to enjoin the implementation of OSHA's Final Rule, the plaintiffs in this case argued, among other things, that the Final Rule "unlawfully target[s] incident-based safety incentive and mandatory post-accident drug testing programs and that these programs "significantly reduce the overall number of workplace injuries." The court was not persuaded and ultimately denied injunctive relief finding that the plaintiffs failed to make their required showing of irreparable harm.

So, the anti-retaliation provisions of OSHA's Final Rule are now in effect. However, a decision on the merits of plaintiffs' legal challenge to the Final Rule remains pending. As the court explained, its denial of the plaintiffs' request for injunctive relief "is not a comment or indication as to whether defendants will ultimately prevail on the merits. This determination is left for another day." We will keep you posted regarding any developments.◆

Mike Miller is with Miller Tack & Madson, FHCA's Labor Relations Consultant. Learn more about MTM at www.peolawyers.net.

OSHA seeks information on workplace violence in health care

By Max Hauth

In a recent Department of Labor publication, a real concern was expressed on the amount of workplace violence that took place against employees providing health care and social assistance. Evidence indicates that the rate of workplace violence in the health care industry is substantially higher than private industry as a whole. The Occupational Safety and Health Administration (OSHA) is now considering whether a standard is needed to protect health care and social assistance employees from workplace violence. The agency is interested in obtaining information about the extent and nature of workplace violence in the industry and the nature and effectiveness of interventions and controls used to prevent such violence. It also seeks information on issues that might be considered in developing a standard, including scope and the types of controls that might be required.

OSHA's analysis of available data from the Bureau of Labor and Statistics (BLS) Survey of Occupational Injuries and Illnesses in 2014 indicated that workers in this sector experienced workplace violence-related injuries at an estimated rate of 8.2 per 10,000 full time workers. This is over four times higher than the rate of 1.7 per 10,000 workers in the private sector. Individual portions of the health care sector have higher rates. Psychiatric and substance abuse hospitals rate over 64 times higher than private industry as a whole (109.5 per 10,000), and nursing/residential care facilities were 11 times that of the private industry as a whole (18.7 per 10,000 full time workers).

Seventy nine (79) percent of serious violent incidents reported by employers in health care and social assistance settings were caused by interactions with patients/residents. It has also been noted that there is a reluctance to report workplace violence in a health care setting.

Workplace violence exacts a high cost today. It harms workers, often both physically and emotionally. Employers also bear several costs. A single serious injury can lead to workers' compensation losses of thousands of dollars in additional costs for overtime, temporary staffing or recruiting and training of replacement staff. Even if a worker does not have to miss work, violence can still lead to "hidden costs," such as higher turnover and deterioration of productivity and morale.

In a study of the state of Washington's workers' compensation data (1907-2007) of at least 2,2,47 workplace violence claims, the average claim per time lost was $32,963.

OSHA has now submitted a Request for Information (RFI) on the "Prevention of Workplace Violence in Healthcare and Social Assistance."

Submit your comments and any additional material (for example, studies and journal articles) to the OSHA Docket Office No. OSHA-2016-14 or RIN 1218-AD 08, Technical Data Center, Room N-3653, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

To read or download submissions or other material in the docket, visit www.regulations.gov or the OSHA Docket Office at the address above.◆

Max Hauth is President of Hauth Health Care Consultants in Lakeland and a frequent contributor to the FHCA Pulse on life safety issues. He can be reached at emhauth@aol.com or (863) 688-0863.

WELCOME NEW MEMBERS

ASSISTED LIVING FACILITIES

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ASSOCIATE MEMBERS

Focos Innovations, *Clearwater*

The Minos Group, *Pace*

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Quality Improvement

Facility Operations

Consumer Information

COVER STORY *continued from page 1*

Deborah Franklin Tapped to Head FHCA Quality Department

Award and Arthur H. Harris Government Services Award recipient and a graduate of the American Health Care Association Future Leaders of Long Term Care in America program. Deborah has served on the Governor's transition team for the Florida Department of Elder Affairs, the Lt. Governor's Health Care Planning Council and the Hillsborough County Indigent Health Care Advisory Council.

"Florida's long term care providers are making tremendous strides in quality. I can't think of anyone better than Deborah to help FHCA strengthen the programs and services we offer to help our members meet and exceed the expectations of quality performance," said Emmett Reed, FHCA Executive Director. "She is a remarkable individual, and her leadership skills, knowledge of our issues and passion for the profession will benefit us all, and most importantly those who live and work in our member centers."

"I am very excited to join Emmett and the team of experts at FHCA," said Deborah Franklin. "FHCA has and always will be a leader in advocating for quality, and I'm thrilled to use my skills and experience to support our members as we work to further our profession's efforts in continuous quality improvement."

Deborah holds a Bachelor's Degree in Health Care Administration and has devoted most of her career to nursing center quality and senior care advocacy. She understands the needs of residents and caregivers, having worked as an administrator in a number of nursing centers. She is well-respected and admired by government entities, peers and colleagues alike. Deborah will begin her tenure with FHCA on January 9, 2017 and can be reached at *dfranklin@fhca.org*. ◆

PRESIDENT'S MESSAGE *continued from page 3*

Starting the New Year off right

in the U.S. District Court for the Northern District of Mississippi granted a request by the American Health Care Association to bar the CMS from implementing a rule that bans arbitration agreements in skilled nursing centers. The injunction applies nationwide and prohibits CMS from bringing action against any long term care facility that continues to use pre-dispute arbitration agreements after November 28, 2016.

In a follow-up to the meeting, Kim indicated that she reached out to the CMS Central Office which confirmed that due to legal issues, surveyors will NOT be investigating for compliance with the binding arbitration agreements. CMS sent out a Survey & Certification Memo to states on this issue, and members can find it posted on the FHCA website under the Survey Readiness section.

We also discussed resurveys, and Kim pointed out that resurveys will be conducted using the new regulations, even for those surveys conducted before the CMS Reform of Requirements Phase I implementation date of November 28. She reiterated that if your center was cited for a tag that changed under the new regulations, be particularly mindful of those changes.

Another item the group focused on was the appointment of the Grievance Officer, also required under the new federal regulations. Karen Goldsmith penned an article for this month's *Pulse* with excellent suggestions on who best to serve in that capacity and how to make that position most effective for your center, which in turn will make the survey experience more efficient for surveyors — in other words, a win-win.

These timely discussions and rapid responses from AHCA are exactly what I had hoped for when I envisioned putting this Task Force together. It's important to note, though, that the success and productivity of these meetings is only as good as the input you provide us. When you suggest discussion points and offer up your experiences and/or challenges, it gives us meaningful content to share around the table. And all of this, in the end, serves to your benefit.

Our next meeting will take place in Tallahassee in conjunction with the FHCA Board of Directors meeting on February 10, and we plan to rotate these meetings around the state with the goal to also include AHCA regional staff at future meetings.

As we look to build the next agenda, we need your feedback. FHCA's Region Vice Presidents will be reaching out to the District Presidents to prepare for these meetings. We're asking members for your input by sharing your ideas with your District Presidents, be it at monthly meetings or through one-on-one conversations. FHCA's Quality Department will also be logging ideas to put in the queue.

It's the New Year, and we're off to a great start. I appreciate your continued support and am grateful to everyone helping us make this Task Force a success. Stay engaged and keep your information and ideas coming. This is one return on your membership investment you don't want to pass up!◆

By Lorne Simmons, Moore Stephens Lovelace

2017 is anyone's guess

Happy New Year to all of our readers! In 2016, we saw the implementation of several initiatives, including the Comprehensive Care for Joint Replacement (CCJR) bundled payment model, Payroll-Based Journal (PBJ) reporting system, the expansion of HIPAA Audits to include Business Associates of providers, and the Agency for Health Care Administration's (AHCA) study of a Prospective Payment System (PPS) reimbursement system for Medicaid.

The New Year will also pose significant challenges to providers, including a new White House Administration with many changes to health care policy, and a new Centers for Medicare and Medicaid Services (CMS) director. The coming year will have its share of new reporting requirements, including new reporting for re-hospitalizations and the Value Based Purchasing (VBP) program.

This year will also be a little unpredictable with several reimbursement issues in play, including the PPS reimbursement model and the fate of managed care's role in Medicaid reimbursement. These and other possible changes will impact the way providers do business and continue to provide the highest quality care for their residents.

Brakes put on DOL rule

Just before Thanksgiving last year, a U.S. District Court Judge granted an Emergency Motion for Preliminary Injunction and thereby enjoined the Department of Labor (DOL) from implementing and enforcing the Overtime Final Rule set to go into effect on December 1, 2016. The rule updated the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region of $47,476 annually for a full-year worker and provided a method to keep the salary level current to better effectuate Congress' intent to exempt bona fide white collar workers from overtime protections.

On December 1, 2016, the Department of Justice, on behalf of the Department of Labor, filed a notice to appeal the preliminary injunction to the U.S. Circuit Court of Appeals for the Fifth Circuit. As of the penning of this article, the injunction remains in effect nationwide. It is more than likely that the appeal process will not be resolved prior to the transition of a new Administration in Washington later this month, which could address the issue at the Executive Branch level. However, employers must remain watchful and plan their strategy to minimize the impact this ruling will have on their costs.

Employers have four basic strategies to choose from:

Scenario 1 — Increase existing salary to meet the new threshold. This is the best strategy for hourly employees that average near the new threshold of $47,476 in annual pay and is the simplest change to implement.

Scenario 2 — Pay additional overtime based on current salary. This strategy involves no changes on the part of the employer. Employees making less than the annual threshold receive overtime pay based on the calculated hourly rate using their current salary. This strategy is best suited for lower salary range individuals with little to no overtime opportunities. Although it is the easiest strategy to implement, it can also be the more expensive option for higher salaried workers.

Scenario 3 — Restrict or forbid overtime. No calculations are necessary, but the employer should ensure that time is tracked

Scenario 4 — Reclassify employees to an hourly rate adjusted to remain cost-neutral. This strategy is probably the most difficult (and risky) to implement. In this scenario, the employer calculates a lower hourly salary for employees that regularly or frequently work overtime hours. Average overtime hours are estimated and used along with the employee's current regular hourly rate to calculate a new regular hourly rate that will result in no extra cost to the employer. This strategy has the potential to be the most contentious with employees. Obviously, employees will see it as a reduction in pay and view the employer as forcing overtime hours to maintain their annual income. Other issues, such as employment contracts and unionized workers, will also make this strategy difficult and tedious to implement (the DOL might have a problem with this as well, since it's an obvious side-step of their regulation).

There are other strategies, as well, such as a fixed salary for a fixed hour workweek or a fixed salary for a fluctuating workweek. Regardless of how you plan to prepare, we strongly recommend employers consult their legal counsel and consider contacting a wage and hour attorney familiar with state and local laws in order to prepare their strategy should the DOL rule eventually be implemented.

Medical directors and Stark laws

There has recently been increased federal enforcement activity related to medical directors. Issues have included using more directors than commercially necessary and arrangements that appear to be paying for referrals. We recommend having all physician arrangements reviewed by your compliance officer or legal counsel for compliance with federal Stark laws.◆


Lorne Simmons and Sandy Swindling are with Moore Stephens Lovelace, P.A., FHCA's CPA Consultant. Learn more about MSL at www.mslcpa.com.

Answers to your ombudsman program questions

by Lee Ann Griffin

The Administration for Community Living (ACL) published new Frequently Asked Questions that provide additional guidance to implement the final regulations regarding States' Long-Term Care Ombudsman Program. State Long-Term Care Ombudsman programs (Ombudsman programs) serve as advocates for residents of nursing centers, board and care homes, assisted living and similar adult care facilities. They work to resolve problems of individual residents and to bring about improvements to residents' care and quality of life at the local, state and national levels. There has been significant variation in the interpretation and implementation of the Ombudsman program among states. This has resulted in residents of long term care facilities receiving inconsistent services from Ombudsman programs in some states compared to other states. The new questions cover ombudsman authority to resolve complaints about the guardian or other representative of a resident, conflicts of interest of supervisors, intake processes to handle inquiries, appropriateness of people conducting Ombudsman program activities, Ombudsman program staff with professional licensing requirements and court orders to disclose Ombudsman program information.

Providers can glean a few interesting process expectations by reviewing these questions that are directed to Ombudsmen representatives. For example, according to the FAQs, states should have a grievance process for accepting a complaint by a facility about the manner in which a representative of the State Long Term Care Ombudsman Office (Office) carries out ombudsman services (such as visit to reside, complaint handling, or a facility staff training) while in the facility. Most ombudsmen interacting with assisted living communities are mutually respectful, keeping the resident at the center of the advocacy. However, if there are instances where an assisted living community believes an ombudsman's interaction has been inappropriate, the Office will receive a complaint from the provider through their Grievance Process.

Another interesting point contrasts the Ombudsman role in abuse investigations. As Florida's assisted living community knows, the Older Americans Act requires the Ombudsman program to "identify, investigate, and resolve complaints that … relate to action, inaction or decisions that may adversely affect the health, safety, welfare, or rights of the residents." Abuse, neglect and exploitation of residents are among the complaints that fall within this purview.

However, according to the FAQ, Ombudsman programs are not appropriately the official substantiator (or, finder of fact) for abuse complaints on behalf of the state or other governmental entity. While the complaint resolution function of the Ombudsman program requires "investigation," an Ombudsman investigation is not for the same purposes an investigation by protective services, licensing and regulatory agencies, law enforcement or other entities that represent the state or other government entity in determining whether abuse occurred. In most states, substantiation determinations are made by adult protective services and/or the state's licensing and regulatory agency, not by the Ombudsman program.

In contrast, when an Ombudsman program receives any complaint (including related to abuse), it investigates solely for the purpose of gathering necessary information to resolve the complaint to the resident's satisfaction. It does not investigate in order to officially determine whether any law or regulation has been violated or for purposes of taking official protective, regulatory or enforcement action. The goal of the investigation is to resolve the complaint to the resident's satisfaction, but not to substantiate whether the abuse or other allegation occurred.

Assisted living providers will likely recognize this federal rule; Florida Health Care Association's members contributed the only comments from a state association when the rule was in development in 2013. Two of the three comments (related to access to records) were adopted by the U.S. Administration for Community Living.

Most providers are familiar with the directives that outline their provider type responsibilities to the Long-Term Care Ombudsman Program; for assisted living providers, these are specified in Chapters 429.28; 429.34; 429.35; and 429.41, Florida Statutes.

To fully understand the way Florida's Long-Term Care Ombudsmen are expected to interact with assisted living communities, it's helpful to review Florida's statutory directives to the State Long-Term Care Ombudsman Program. These are found at Chapter 400, Part I, Florida Statutes: Long-Term Care Facilities: Ombudsman Program with the section related to access located at Chapter 400.0081, Florida Statutes.

A copy of the Administration for Community Living (ACL) Frequently Asked Questions document is available at https://aoa.acl.gov/AoA_Programs/OAA/resources/faqs.aspx#Ombudsman.◆

Lee Ann Griffin is FHCA's Director of Regulatory & Education Development. She can be reached at lgriffin@fhca.org.

UPCOMING EVENTS

Some meetings noted herein may also carry CE credits. Additional information and registration can be found at www.fhca.org.

MEETINGS/EVENTS

FEBRUARY

February 10, 2017
FHCA Board of Directors Meeting
Tallahassee, FL

MARCH

March 15, 22 and 29, 2017
FHCA Lobby Wednesdays
Tallahassee, FL

APRIL

April 5 and 19, 2017
FHCA Lobby Wednesdays
Tallahassee, FL

CONTINUING EDUCATION/TRAINING

JANUARY

January 24-26, 2017
FHCA RAI-MDS-PPS Bootcamp
Miami Jewish Health Systems • Miami, FL

FEBRUARY

February 2-3, 2017
FHCA NIPPing Infections in the Bud
Specialized Training in Infection Prevention & Control
Health Central Park • Winter Garden, FL

APRIL

April 25-27, 2017
FHCA RAI-MDS-PPS Bootcamp
Hawthorne Health and Rehab of Brandon • Brandon, FL

When dreams become reality

Recently, Consulate Health Care of Winter Haven residents were treated to an amazing Great Gatsby-themed senior prom. The event featured beautiful decorations, and residents were outfitted in incredible costumes that appeared as though they had come straight out of a movie. The elaborate event was organized by Keitia Itacy (Kiki), the center's activities director, along with the support of the activities department and the executive director.

When asked what inspired her to plan such an elaborate event Kiki said, "I ask the residents what they are interested in, and then we create it, mak[ing] sure the residents like it first, and that they're happy." This year, Kiki wanted this event to be very special for the residents, so she asked coworkers and members of the hospice to adopt residents and help them find something to wear. She also had volunteers help with residents' hair and makeup.

Kiki is a very motivated and driven employee. She began at Consulate Health Care of Winter Haven as a certified nursing assistant in 2004. She learned that her passion lies in not just helping people, but making them happy. Kiki found that putting on events and making someone's day is the best part of being a caregiver. As such, she went back to school to achieve her dream of being the activities director. Since then, Kiki has put on hundreds of events of all sizes and themes. She has organized outdoor canvas painting, several themed dances, and many outings. According to Kiki, "Bingo and trivia are not enough. They (the residents) are still alive and they want to have fun."

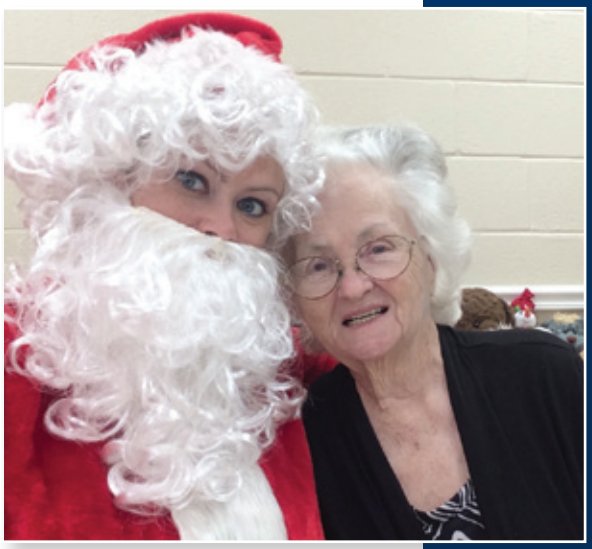
Kiki truly loves what she does, and for her, coming to work is not a job, it's her passion. When asked what she believes is the most important of her job, Kiki said, "To have passion and to make the residents feel like they are home and can enjoy themselves again." Kiki loves delivering amazing events to her residents. "I love what I do. It is sometimes difficult, but with the great family at Consulate Health Care, we make it happen." ◆

good news

florida health care association around the state

Quality Award Correction

FHCA incorrectly reported in the December 2016 Pulse the nursing center achieving the 2016 Bronze Quality Award at the AHCA/NCAL Annual Convention. Congratulations to David Hunt (center), administrator of Crestwood Nursing Center, for earning this prestigious award.



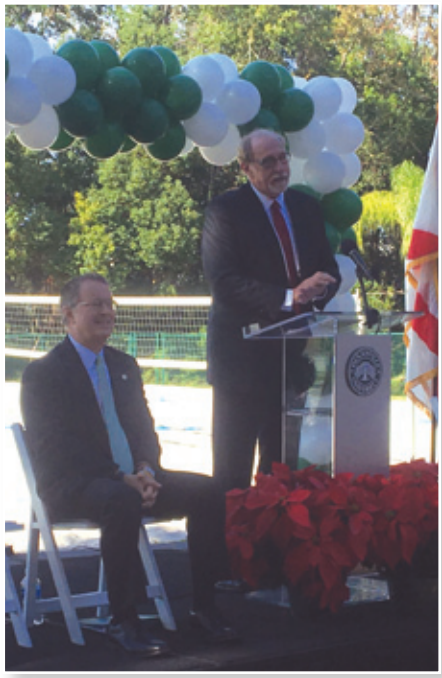
Christmas Cheer

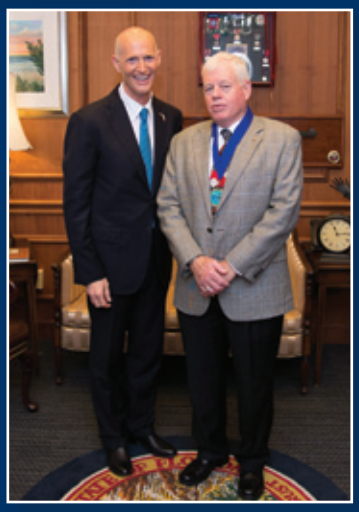
Residents at Rosewood Healthcare and Rehabilitation Center enjoyed a trip to Bellingrath Gardens in Theodore, Ala. Family members joined in the fun that included dinner, a visit with Santa and an enjoyable evening.

Groundbreakings

Last month, the team at Palm Garden of Gainesville hosted a groundbreaking ceremony to celebrate planned expansion and enhancements to the center.

During its December groundbreaking ceremony, Dolphin Pointe Health Care, a Clear Choice Health Care center, shared news about their new center, located in Jacksonville, which will offer rehabilitative therapy and skilled nursing services to area seniors.





Disaster Response Recognition

Florida Department of Veterans' Affairs Executive Director Glenn Sutphin (right) accepts the Hurricane Matthew Disaster Response Medal from Gov. Rick Scott at the Capitol, Nov. 10. Three state veterans' homes were in the path of October's Hurricane Matthew, but their shelter-in-place preparations ensured a safe continuity of care for residents and staff.

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Since becoming an approved service corporation company for FHCA in 1993, Edge has helped over 250 FHCA members meet their background screening requirements and kept them informed of pertinent legislative issues. Edge offers a variety of background checks including: drug screening, fingerprints, criminal, sexual offender, license verifications and references. Contact Nate Archibald at (321) 676-8822 or by email at natea@edgeinfomation.com, or visit www.edgeinformation.com for more information.

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