



Board of Directors Meeting
November 19th, 2020
CHCA, 225 E. 16th Ave. Denver, CO 80203

Board Members Present

Beth Williams, 2nd Vice Chairman
Mark Bedinger, Immediate Past Chair
Chrissy Swanson, District III Chairman
John Brammeier, Chairman of the Board
Carol Glover, District VI Chairman
John Stewart, District II Chairman

Joyce Humiston, Secretary
Jay Moskowitz, Treasurer
Jerusha Siegel, 3rd Vice Chairman
Kenda Spaulding, Vice Chairman Non-Proprietary Facilities
Courtney Petek, Council of Associate Members Chairman

Board Members Not Present

Ron Cook, District V Chairman
Kevin Putnam, Vice Chair for the CCAL
Janet Snipes, Immediate Past Chairman of the Board

Staff Present

Doug Farmer, President and CEO
Colleen Olsen, Exec. Admin. Assistant
Katie O'Dell, Exec. Admin. Assistant
Ann Kokish, VP of Quality &
Regulatory Affairs

Bonita Jones, VP of Operations
Josh Fant, Director of Finance
Erin Thomas, Director of Quality &
Regulatory Affairs

Call to Order

The November Board of Directors Meeting was called to order at 12:37 p.m.

Approval of Board Minutes

The September Board of Directors Meeting minutes and the 2020 Annual Business Meeting Minutes were approved at 12:41 p.m.

Consideration of New Members

Aspen Ridge Alzheimer's Special Care Center: 56 Bed Assisted Living

Legacy Village of Castle Pines: 110 Bed Assisted Living

Vertical Solutions, Platinum Associate

Electrostim Medical Services, Platinum Associate

Source Tech, Platinum Associate

Quiltt, Platinum Associate

Kare: Silver Associate

IntentlyCare: Silver Associate

Motion to Approve New Members at 12:43 p.m.

Partnership Report

Quiltt (Freddie Peyerl)

Quiltt is a resident engagement and communication platform for Senior Living Communities based in Centennial. Their program allows families to stay connected and assists with operational efficiency for communities. Quiltt provides signage and in room displays so that information may be given through out the facility. Some benefits this includes are mobile options, weather and daily menu access, activity and tracking for residents, and surveys for residents and staff. They offer a variety of ways to share media and have a site map available for larger communities. A key benefit that Quiltt provides is a Visitation reservation system has been successful for facilities. Freddie Peyerl believes their platform will improve the quality of life for residents, engage their families and promote transparency for the Senior facility operators.

Vertical Solution (Tyler Lewan)

Vertical Solution is a HIPPA Compliant IT team, with a managed services provider, and dedicated help desk with onsite support. With their efforts they would like to help to enhance the security of senior living communities, by recommending compliance and security solutions. Vertical Solutions is a Microsoft Gold Partner; specializing in Medical Records Information Security. The Solutions team believes in addressing Prevention, Detection, Response & Recovery. They also provide Security Awareness for communities; since staff may be the greatest weakness, with 58% accidentally releasing sensitive information. Their company offers 16 ways to help communities protect against a cyber-attack.

Financial Report

2019 Audit Report (Susan Opalinski – CPA)

Fiscal Focus Partners presented their Audit Findings to the Board of Directors. The CPA firm expressed an unmodified opinion on the 2019 financial statements, which means that sufficient evidence was collected during the audit procedures that the financial statements as presented are a fair representation of the Association's financial standing at 12/31/19. During their procedures Fiscal Focus Partners also identified a material weakness in internal controls as a result of a lack of reconciliation between accounts receivable in MemberSuite which is used to record invoices and payments and accounts receivable in QuickBooks which is used to generate the financial statements. Reconciliations will be performed going forward and journal entries with detailed back up will be made as necessary.

October Financials

The Income Statement compared to budget and Balance Sheet compared to the previous fiscal period were presented for the month ending 10/31/20. The financials continue to be strong due to the PPP loan and the savings on many of our variable costs due to the lack of ability to hold in person functions because of COVID-19. There were no questions or concerns from the board of directors with regards to the presented financials.

PFAB/NFAC Update

No Meetings were held in November. The new PNA amount for 2021 is \$91.35.

Legal Report

Amicus Docket

- **Care Alternatives V. Druding**
This concerns the business of medical necessity under the False Claims Act and whether a differing medical opinion provide an action under the False Claims Act. This case pertains to whether residents were terminal and qualified for Hospice Care. The court in Druding has determined that the Government could bring a false claims act if they so determined. This decision conflicts with another court's decision, so this case is currently pending in the United States Supreme Court, due to the conflict in the circuit courts.
- **Talevski V. Health and Hospital Corp (Appeal Pending in the 7th Circuit)**
District Curt Found that the Federal Nursing Home Reform Act does not create a private right of action. This case was appealed, CHCA is invested in this case because there have been a number of amicus briefs filed in favor of creating this private right of action, including by ARP. CHCA has joined three additional state affiliates in filing a brief to uphold the district court decision. There is now a Colorado decision which has determined on the legal theory that there is no legal private right of action.
- **Avon Nursing Case**
This case in now pending in the 2nd circuit. This case addressed whether CMS can ignore the safety requirement to have an RN on compliant surveys. The district court determined a case on a jurisdictional basis and the case has been appealed. CHCA has monetarily join, as well as filing a brief due to the importance of both issues to Long Term Care.

Colorado Legal Cases

- **Suranyi V Watermark (Harvard Square)**
CHCA joined this case in an amicus brief from an order out of the district court that granted the plaintiffs discovery of medical records and other patients' confidential information. The Facility then took an interlocutory appeal to the Supreme Court to have the decision reviewed. As a result the Supreme Court granted relief on a procedural basis and remanded the case to the district court to conduct a proper
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analysis.

- **Smith V. Surgery Center at Lone Tree**

The case is from the Colorado Court of Appeals' the plaintiffs were alleging a Private Right of Action with respect to regulatory violations involving the surgery center. The regulatory violation under the private right of action theory would give cause for the action as well as liability. This is why CHCA is working diligently to ensure this does not become established in the state.

- **MS Aurora (Aviva at Fitzsimmons) V. Adams County**

This case pertains to the real estate assessment of Aviva at Fitzsimmons, based on its classification by the county as commercial as opposed to residential. This attempted to make the determination based on the length of stay of the resident at the community. CHCA represented the nursing home in the case and filed summary judgement and the court granted the motion in a favorable opinion. It held that the governing statute requires nursing homes to be classified as residential because it is predominately used as a place of residency by individuals. Upon the court entering the order, the county agreed to reclassify the facility as residential and the court undercut the memorandum and materials from the state regarding how to classify the Long Term Care Facilities.

COVID-19 Case Tracking

Nationally the COVID -19 cases are being defended by having motions filed to have cases removed to Federal Court, where it can be argued that the PREP Act provides immunity. The PREPA Act provides immunity from legal liability for losses relating to administration or use of covered counter measures (which includes certain FDA authorized processes used to address COVID-19 or associated health threats). The immunity under this act does not extend to willful misconduct but it does depend on the specific health emergency and the activities related to Federal activities agreements authorized in accordance with guidance with CDC and state. It has been argued in these cases at the Federal level that as a result of this Long-Term Care Providers are immune to state law negligence and unlawful death claims. These arguments have been unsuccessful, because there have not been any records of fully developed activities of the nursing homes related to counter measures.

The current cases are finding that there is a failure on behalf of the facility to enact, follow or implement any counter measures dictated by the guidance. Currently seeking cases with a more fully developed record, at this time it has been decided to support a pending case monetarily and otherwise in the 9th circuit in California called (Martin vs Serrano Post-Acute Center). In this case, the district court refused to hear the case and remanded it to the state court based on the PREP Act immunity provisions do not apply. In the record of the case, there is an indication that the surveyors and additional health department officials believe they are acting in accordance with Federal guidelines. In the PREP Act there is a provision that implies that where someone is acting as an agent of the Federal office, that the PREP Act applies and if counter measures developed as a result of that guidance there may be a question of whether the facility is immune from civil liability with respect to any negligence . It was recommended to the leadership at the Association that they provide monetary and legal support regarding this case.

Greenberg Traurig canvas all district court filings weekly, and Colorado currently has one identified case. This case, Kalig vs Orchard Park is now pending. The defense attorneys in the case have removed the case under the PREPA Act allegations, it is currently pending with a motion to remand to state court. There has been no ruling on the motion; the plaintiff and defense attorney on the case are well known in this area of litigation. The allegation is that the family attempted to have the resident discharged due to COVID-19 outbreak at the facility; the family claims toe discharge was delayed due to the facilities assurances that the resident was being well cared for. After the family had the resident discharged, the resident developed symptoms of COVID-19 and was transferred to a hospital and placed on a ventilator. The complaint only alleges by implication that the residents care was negligent because he ultimately contracted COVID0-19. There is no specific factual allegation in the complaint that the facility with respect to

counter measures that the facility failed to implement. CHCA will continue to follow this case.

If members are aware of any litigation concerning COVID-19 and communities in the Long-Term Care sector, please notify Fred Miles with Greenberg Traurig.

CEO Report

Election Update

The makeup of the legislature in Colorado was not significantly affected by the election; however, Colorado's representation is now more liberal and blue. Another change that will affect CHCA is that Senator Zenzinger will no longer be on the Joint Budget Committee. CHCA will continue working with new representatives to ensure they understand the issues that Long-Term Care is experiencing.

The governor has recommended removing the 2% increase for Long Term Care Communities, this will be CHCA's number one issue that will be discussed, and it will be addressed that doing so would remove growth opportunities for those most affected by the Pandemic.

Nationally, the AHCA lobby team believes there will be a democratic president and a republican senate, they anticipate that there will be one or two more stimulus packages, however, it is unlikely to take place this year. Once there is a new president and congress, it is likely that a new stimulus will take effect. If republicans retain the senate, there is opportunity for Long Term Care to receive liability protection.

Value Based Purchasing

The Value Based Purchasing Payment that Colorado received significantly less than expected, due to community spread being lower than so many other states. There was \$2.4 million distributed to 178 providers in Colorado. It was announced in August, and should have begun in September, however, the calculation was not complete until November. The only way for Colorado to see an increase in future payment is if general community outbreak numbers increase relative to other States.

CHCA Business

Moving to a New Building

CHCA will be relocating to the new office in the first week of December 2020. The New address will be: 4100 S. Mississippi Ave; Englewood, Colorado. Notification will be provided to the membership on December 1st, 2020.

Auction

With the assistance of CHCA Members, CHCA raised approximately \$8,000 during the CHCA Furniture Auction.

2021 Board Dates

Board Meeting Dates were provided to Board of Directors Members, and those attending the November Board of Directors Meeting.

Admission Holds

CHCA has been addressing with the state the problems and concerns that Long Term Care providers in Colorado are having regarding admission holds since the pandemic began. Randy Kuykendall has spoken with the state Epidemiologist, and she understands providers are having more issues with local health departments than we are having with the state. She has committed, and will provide a document in writing that will be shared with the membership, that if Providers have any situations with any county in the state, where they are trying to hold communities to a different standard than the state that providers may send the information to her directly and she will have a state Epidemiologist connect with the county level Epidemiologist to work together to ensure providers only have one set of rules.

The first two contracts are nearly signed for COVID Positive buildings, that will have a different payment structure, and will very clearly have it established that they are COVID positive buildings and have different requirements than other facilities. They are currently working through details regarding bed capacity for known COVID positive patients as hospitals begin to reach peaks where they can no longer take residents.

Vaccine Distribution

Vaccines could potentially begin landing in hospitals within the next ten days and will be ready for distribution at that time. First, Communities should ensure they are signed up with Walgreens, CVS or approved long term care pharmacy to distribute the vaccine to residents and secondly, each state is receiving a share of available vaccines to provide to health care workers. Each state must determine its method of distributing the vaccine. It is confirmed that Long Term care employees are in tier one A (the first to receive the vaccine as healthcare workers will be hospital employees and Long-Term Care employees). The State has a group that is working to determine how to distribute the vaccine. The State will distribute the vaccine through hospitals and local health departments; Health Departments will then determine how they are distributed locally. Long Term Care employees may receive at same times as residents, employees will be able to go through clinics if they miss the initial distribution. CHCA will provide advice to ensure our members and their teams are first in line to receive the vaccines.

Dr. Eber, Colorado Medical Directors Association has developed talking points, which have been shared with CDC, on Vaccine hesitancy, to address that there will not be a requirement that individuals must take this vaccine. It will be imperative to convince people that the vaccine is necessary. Dr. Eber will be on the bi-weekly Membership call next week to provide an overview of what information to share with employee, residents and other resistive to the vaccine. Once CHCA has a document available with these details it will be shared with the membership.

It is important that Leadership take the initiative to show their teams that they believe the vaccine will be beneficial to their residents and their community by getting the vaccine as well.

District Reports

District I: Nothing to Report for District I.

District II: District II held their first district meeting since March (virtually); during the meeting they provided an evacuation drill with Weld County, City or Greeley Colorado (Emergency prep requirement). District II currently does not have any meeting dates planned for December.

District III: District III continues to meet every Thursday with the El Paso County Health Department relating to updates, guidelines, and infection prevention. District III has submitted a grant for chaplain services for members. District III will also hold a leadership meeting to plan a virtual December event. They are currently handling a wildfire, with one building has been evacuated; and have worked with other communities regarding bed availability for residents.

District IV: Nothing to report for District IV.

District V: Nothing to report for District V.

District VI: District VI held an outdoor Halloween parade for residents. The community interaction helped improve resident morale during the pandemic. Communities in District VI will modify activities for Thanksgiving due to COVID.

Other Business

During the November Board Meeting issues concerning the Census and how that will affect funding for Long Term Care, as well as fines by CMP were discussed. Concerns regarding funding no longer being available were examined; Governor Polis utilized \$168 million in funding without legislative approval for social programs; including an executive order directing the Division of Unemployment Insurance to issue one-time stimulus payments of \$375. Questions regarding the states attempt to be a resource to Long Term Care rather than punitive towards communities during outbreaks were addressed.

There are currently 15 administrative licenses being referred to the Nursing Administrative Board regarding infection control surveys. Erin Thomas with CHCA will review how and why these cases were submitted to DORA.

The next Governmental Policy Meeting is scheduled for December 17th, 2020.

Adjourn

The November Board of Directors Meeting was adjourned at 2:45 p.m.
