

# **DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION**

## **ANNUAL REPORT FY 2013**

**(July 1, 2012- June 30, 2013)**

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# **DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION**

## **Members of the Commission as of September 1, 2013**

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The Honorable Representative Michael Barbieri

# DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

## ANNUAL REPORT 2013

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## I. BACKGROUND INFORMATION

### The Commission

The Delaware Nursing Home Residents Quality Assurance Commission (the Commission) was established in 1999 - 29 Del. C. § 7907. The Commission's principal charge is to monitor Delaware's quality assurance system for nursing home residents in both privately run and state operated facilities with the goal that agencies responsible for the oversight of facilities are coordinating efforts to achieve optimum quality outcomes.

As part of its monitoring effort, the Commission reviews state agencies responsible for investigating complaints of abuse, neglect, mistreatment and financial exploitation, as well as other agencies that have input on the quality of care in Delaware's nursing homes. The Commission reviews reports of serious citations of quality of care issues and staffing patterns prepared and presented on quarterly basis by the Division of Long term Care Residents Protection as directed by the Joint Sunset Committee in 2006.

The Commission is also charged by the General Assembly and the Governor with examining policies and procedures to evaluate the effectiveness of the quality assurance system for nursing home residents, including the respective roles of Delaware Health and Social Services, the Attorney General's Office and law enforcement agencies

as well as health care professionals and nursing home providers.

Finally, the Commission is required to prepare and submit an annual report to the Governor, the Secretary of the Delaware Department of Health and Social Services (DHSS), and members of the General Assembly. This is the Commission's 2013 annual report.

### **Appointment of Commission Members**

- The Commission is composed of a total of 12 members, eight of whom are appointed by the Governor.
- One of the members appointed by the Governor is to be a representative of the developmental disabilities community protection and advocacy system established by the United States Code.
- The remaining members are to include representatives of the following: consumers of nursing home services, nursing home providers, health care professionals, law enforcement personnel, and advocates for the elderly.
- Of the remaining four members, two members are appointed by the Speaker of the House, and two members are appointed by the President Pro-Tempore of the Senate. These four members serve at the pleasure of their appointing authorities.

### **Frequency of Meetings**

While the Commission is only required by statute to meet at least quarterly, the Commission meets on a bi-monthly basis.

## II. AGENCY REVIEWS

### Introduction

Pursuant to 29 Del.C. § 7907(g) (1), the Commission is required to review and evaluate the effectiveness of the quality assurance system for nursing home residents. To do so, the Commission requests information and takes testimony (a snapshot in time) from representatives of state agencies. These include the Division of Long Term Care Residents Protection (DLTCRP), the Ombudsman's Office, Division of Medicaid and Medical Assistance, the Department of Justice, Division of Aging and Adults with Physical Disabilities, Guardianship Monitoring Program, law enforcement agencies, other state agencies, health care professionals and nursing home providers.

To that end, the Commission invited representatives from state agencies and other presenters to appear and testify before the Commission. The following is a summary of these agency reviews:

#### Division of Long Term Care Residents Protection (DLTCRP)

Tom Murray, Deputy Director DLTCRP and Robert Smith, Licensing Administrator provided Commission members with assurance review, staffing and other matters related to long term care.

Discussions were held at Commission meetings and included information updates on a variety of issues:

DLTCRP's Quality Assurance Review Team provided the Commission with quarterly reports showing, after team review, whether any "G" level deficiencies recommended by surveyors would be upgraded or downgraded.

DLTCRP provided quarterly Staffing Reports to the Commission as a result of Eagle's Law enacted in 140th General Assembly (Senate Bill 115).

DLTCRP also provided Commission members with a report of Civil Monetary Penalties imposed in Delaware Nursing Homes and Assisted Living Facilities. The monetary penalties imposed by CMS or the State of Delaware are based on the level of harm, improper discharge procedures, pattern of non-compliance, or threat to a residents health and safety.

DLTCRP is currently providing education and coaching for facilities to further develop and expand their emergency preparedness guidelines.

The Division contracted with Delta Development to provide these services to all skilled facilities and will be providing similar education to Assisted Living facilities in the future.

Certified Nursing Assistants (CNAs) who provide the majority of hands-on care to the residents now have an educational tracking system linked to their certificate. This will ensure the CNA stays current with continuing education requirements and can be accessed by employers so that an employer can efficiently determine whether a prospective employee is suitable to work in a long term care setting.

The Electronic Background Check Center for LTC applicants went live March 22, 2013 after a series of seven provider educational sessions. Over 300 providers are on the system and thousands of applicants have been processed. In 2013 DLTCRP held a series of follow-up webinars for providers on issues that arose during the start-up.

### Ombudsman Program

Victor Orija, State Ombudsman, spoke to the Commission about the Long Term Care Ombudsman program which was established to provide advocates on behalf of LTC residents to ensure they have a strong voice in their own treatment and care.

There are four LTC Ombudsman (with dedicated LTC facility coverage) that work with Mr. Orija.

The Ombudsman Program also has volunteers who assist in Delaware's 50 NH's and 33 AL facilities.

The Ombudsmen investigate and resolve complaints; offer friendly visits

with LTC residents; monitor federal and state regulations; provide outreach and education; witness Advance Directives; and advocate for legislative changes.

The Ombudsmen work with many state agencies as well as all licensed nursing homes and assisted living facilities to ensure residents rights.

There is a web based report produced at the end of January each year which is used for funding purposes (National Ombudsman's Report:

[http://www.dhs.gov/sites/default/files/publications/CISOMB\\_2013\\_Annual\\_Report%20508%20final.pdf](http://www.dhs.gov/sites/default/files/publications/CISOMB_2013_Annual_Report%20508%20final.pdf).

### Fresenius Medical

Fresenius Medical Care is the largest dialysis provider in the United States. In addition, they are the largest provider of renal-related products and manufacture 95% of hemodialysis machines sold in the United States.

Ehtesham Hamid, Director of Operations for Fresenius, spoke with Commission members about renal and hemodialysis services. Also joining Mr. Hamid was Keith Mentz, VP Government Operations for Fresenius and Dr. Lindsey Slater, Medical Director for St. Francis Outpatient Dialysis Unit and Dialysis Unit at Christiana Hospital.

Most often patients have three or more co-morbid conditions (such as hypertension and diabetes).

End-Stage Renal Disease (ESRD) patients normally take eight or more

medications daily.

Dialysis can be administered one of two ways: three times a week in a center (which takes about four hours) or receive home modality which patients themselves are trained to administer at home (four times a day or overnight on a cyclor for seven days a week). Most individuals prefer standard center-based dialysis.

There are 572k individuals in the US with End Stage Renal Disease (ESRD) - 400k individuals are on dialysis and 173k have had a transplant. The group shared during their July 2012 presentation that Delaware had 1,449 individuals on dialysis and 500-600 individuals are on a transplant wait list. Two years is the average length of stay on the wait list.

Mortality rate for ESRD runs approximately 20%.

The average cost for dialysis services per year is approximately \$85,000. The program is primarily funded through Medicare.

It is anticipated that there will be a 3.5% growth in population who will need dialysis services by 2016. Currently, 24-45 new patients begin dialysis each month.

There are other problems that dialysis patients face such as compliance, transportation, congestive heart failure, infections, nutrition, access, dental care and diabetes.

## Christiana Care Health Services Behavioral Health Program

Connie McKelvey, RN, MSN, presented to the Commission about the Behavioral Health Program administered through Christiana Health Care Services (Visiting Nurses Association). A team of four professionals visit homebound individuals and follow Medicare guidelines by offering an evidence-based approach to treating seniors suffering from depression and/or anxiety.

Each patient receives a customized treatment plan to help them address depression/anxiety. In addition, many of the clients have other co-morbid illnesses such as Chronic Obstructive Pulmonary Disease (COPD), dementia, cancer or cardiac issues. The program encourages community services (such as day centers or education workshops). In addition, Ms. McKelvey shared that she has many resources available to assist with psychiatric (outpatient annex, memory center and crisis unit) and therapeutic needs (OT, PT, cardiac and wound care).

Many of the individuals visited through this behavioral health program live alone and do not have a caregiver. They are often non compliant with their medical care.

This program is currently offered in New Castle County, Middletown and Delaware City. The team provides a comprehensive assessment (including nutrition) and works with the individual's primary

doctor, in the hopes of keeping the individual out of the emergency room or hospital. The goal is to help individuals understand their illness/consequences and educate them and their families. The group works with agencies and support groups to locate services for a particular individual.

Referrals typically come from hospitals or physician offices. If a homebound individual needs services and has Medicaid, a managed care organization is contacted.

#### Programs All-Inclusive for the Elderly (PACE)

Colleen Yezek, Program Coordinator from the Division of Medicaid and Medical Assistance (DMMA), spoke to Commission members about Program for All-Inclusive Care for the Elderly (PACE). PACE is a Medicare and Medicaid state option that provides community-based care and services to people age 55 or older that would otherwise need a nursing home level of care. PACE was created to meet a person's health care need and allow them to remain living in the community.

The PACE program, administered by the Saint Francis Life Center, opened their doors on February 1, 2013. There are currently five individuals utilizing services at the Wilmington, Delaware location. The goal is to add five participants to the program each month until they reach capacity (200-250).

The PACE Program uses a comprehensive Care Model – a team of professionals and specialists trained in caring for seniors living in the community. The program provides complete medical, health and social services in a central location, including transportation.

Individuals must meet the minimum qualifications:

1. Live within New Castle County
2. A least one activity of daily living (ADL)
3. Express they are able to live in the community
4. Age 55 years+

PACE provides a team of health care professionals to coordinate an individual's care plan. Services include: Adult Day Care, Meals, Dentistry, X-ray Services, Behavioral Health, Physical Therapy, Primary Care, Prescription Drugs, and other services. The program follows Federal Regulations.

Feedback or complaints are directed to Centers for Medicare and Medical Services (CMS) or Division of Medicaid and Medical Assistance (DMMA).

Individuals must meet Medicaid eligibility upon enrollment. At any time a client may elect to leave the program. The PACE organization would then prepare a care plan that would be used upon discharge.

Clients who participate in PACE and then require a higher level of care will be referred to a contracted assisted living or nursing home facility.

#### Division of Medicaid & Medical Assistance

Stephen Groff, DMMA Director, provided an update regarding the Division's activities.

11,000 long-term care and community-based served Delawareans are utilizing Delaware's Managed Care Organizations (MCO's).

Commission member Ms. Waldron reported that Delaware's LTC facilities have had a good working relationship with DMMA and the MCO's.

Mr. Groff shared that many service providers joined to assist individuals during Hurricane Sandy. He added that the value of communication was efficient among DMMA staff, managed care organizations and the

Department of Transportation. All came together to meet the general and specific needs of individuals within the community. The MCO's met with clients prior to the storm to make sure emergency procedures were in place and back-up plans were available.

Delaware's Money Follows the Person Program recently transitioned to the MCO's – Aetna and United Health Care. The transition services are now being coordinated by the MCO's and DMMA staff provides oversight.

#### Dental Service/Oral Health

Dr. Greg McClure, Public Health Dental Director, shared with Commission members updates regarding dental and oral healthcare. Oral care for nursing home residents is performed daily upon admission and on a quarterly basis.

Delaware's Division of Public Health (DPH) provides dental consultation for residents at Emily P. Bissell Hospital, Delaware Hospital for the Chronically Ill, and Delaware Psychiatric Center, however the State facilities have their own dental clinics. The Division is involved with dental clinics throughout the state to provide services for children that are Medicaid eligible.

Dr. McClure mentioned that oral health is important and is systemically linked to heart disease, diabetes, and respiratory disease.

A mobile dental van which was built a few years ago is primarily being used for Division of Public Health's School Dental Sealant Program.

The van has two operative suites. Most dental services are able to be performed however they do not permit the use of sedation or anesthesia.

The Division has a plan to use the mobile dental van in the near future for community organizations and nursing homes and assisted living facilities.

DPH began working with the University of Delaware's Center for Disabilities Studies to develop a daily dental care plan and to provide prevention training for caregivers of medically compromised individuals.

The University of Delaware offered several training sessions (open to the public) in the Summer 2013. DPH utilized the training program developed by Pacific Dugoni School of Dentistry University of the Pacific (California). The intent of this initiative was to provide caregivers with routine dental care and prevention techniques, therefore reducing oral disease.

Dr. McClure added that many nursing home residents wear dentures that require maintenance and monitoring. The training also provided assistance to caregivers so they could assess residents, check for ulcers of the gums and learn how to properly clean dentures.

DNHRQAC submitted a letter of support regarding a DPH grant request with DentaQuest. The purpose of the grant:

1. In year one, the Division will review policies to improve oral health and provide health literacy.
2. The remaining two years will be spent on implementation.

DPH was awarded funds April 30, 2013 to help improve the oral health of Delaware citizens, particularly for underserved or at-risk populations.

#### Delaware Aging and Disability Resource Center (ADRC)

Chris Oakes and Jill McCoy provided an update about the ADRC, a one-stop access point of information and services for older persons and adults with physical disabilities. The core services include: information and assistance, options counseling and service enrollment support.

Delaware's ADRC has been operating for three years. In May 2012 the unit expanded the operation to provide service on a 24/7 basis. The unit is operated by DSAAPD staff with support from various contractors.

ADRC's contact information: [www.delawareadrc.com](http://www.delawareadrc.com) or 1-800-223-9074. There is also a searchable database available on the webpage.

The ADRC is the cornerstone of Delaware's plan to prepare for the rapid growth of the older population and the anticipated expansion of service needs.

There are four staff members at DSAAPD's Milford location, four staff members at Newark location and two options counselors. All calls are recorded for training purposes.

### Statewide Antipsychotic Coalition

Mary Rodger, Quality Improvement Director for Patient Safety for Quality Insights of Delaware, spoke during a Commission meeting about the Delaware Statewide Antipsychotic Coalition which was rolled out by Centers for Medicaid & Medical Services (CMS) in April 2012.

Quality Insights of Delaware is the Medicare quality improvement organization for the state of Delaware. QI of DE is a non-profit organization that contracts with for QIO in three states and end-stage renal disease in six states.

QI of DE brings programming for Medicare to all providers in Delaware including hospitals, nursing homes, home health agencies, and physician offices.

QI of DE also has a contract for the Regional Extension Center under the Affordable Care Act which helps physicians to utilize electronic medical records.

One of CMS's recent National Survey and Certification initiatives was to reduce the amount of antipsychotic medications administered to residents that suffer from dementia. QI of DE has taken the lead on in this state-wide coalition to reduce the use of antipsychotic medication in Delaware nursing homes.

Ms. Rodger mentioned that nine Delaware nursing homes have agreed to participate in this effort. The goal is to reduce the use of antipsychotic medication to 15%. Delaware's current average is 22.3% and the national average is 23.4%.

Ms. Rodger further added that each facility should be working with its medical director, pharmacy vendor and consultant pharmacist to identify residents on antipsychotic medications so the resident can be examined to determine whether the dose of medications may be gradually reduced or discontinued.

Quality Insights of Delaware hosted a two-part webinar series about F tag 329 in January 2013. F tag 329 states every resident's drug regimen must be free from unnecessary drugs and therefore staff is required to

monitor dosage and duration, paying particular attention to any adverse consequences. In addition, QI of DE hosted a live event (February 2013) using an all teach, all learn methodology about antipsychotic medication reduction efforts.

### Quality Insights of Delaware Nursing Home Project

Mary Rodger, Quality Improvement Director for Patient Safety for Quality Insights of Delaware hared that two new quality measures were added to the Nursing Home Compare website beginning July 2012. The new measures include an incident measure that assesses a percentage of short-stay residents that are given medication after admission to the nursing home, and a prevalence measure that assesses the percentage of long-stay residents that are receiving antipsychotic medication.

Ms. Rodger added that consistent staff assignment and constant interaction with a facilities medical director is also crucial in providing quality of care.

### **III. JOINT SUNSET COMMITTEE**

The Commission oversees the Joint Sunset Committee's 2006 recommendations made for the Division of Long Term Care Residents' Protection and reviewed as follows:

- The Division of Long Term Care Residents' Protection established a Quality Assurance Review Team (QAR Team) that reviews deficiency

reports quarterly. The QAR Team provides a written quarterly report to the Commission regarding any upgrades to “G” level or above and downgrades to “G” level or below by the QAR Team, setting forth the number of such downgrades and upgrades at each facility and the reason for each. Quarterly reports are submitted to the Commission on the 15<sup>th</sup> of every September, December, March and June.

- A Medical Director was added to the QAR Team who reviews medical records, advises the Division on medical issues, testifies on the Division’s behalf at Informal Dispute Resolution hearings, and participates in the QAR Team.
- The Division of Long Term Care Residents’ Protection submits a written quarterly report to the Delaware Nursing Home Residents Quality Assurance Commission identifying a nursing home’s noncompliance with staffing ratios by shift under Eagle’s Law (16 Del. C. §1162).

#### **IV. LEGISLATION AND REGULATION REVIEW**

The Commission received notice of regulations and legislation effecting long-term care residents in the State of Delaware, including:

SCR 23 - This Senate Concurrent Resolution recognizes June 15, 2013, as "Delaware Elder Abuse Awareness Day". Passed by Senate June 13, 2013.

HCR 16 - This concurrent resolution recognizes May 6-12, 2013 as National Nurses Week. Passed in both chambers May 2013.

SB 143 w/SA 1 - This legislation codifies regulatory requirements and protects residents of a long-term care facility from removal from their home because they leave for specialized treatment, including mental health treatment. This bill was assigned to the House Health & Human Development Committee on June 30, 2013.

SB 122 - The amendment to Section 49A-120(a) adds a new subsection clarifying that no person may refuse to accept an otherwise valid durable personal power of attorney on the sole basis that it varies from the form set forth in Section 49A-301. The amendment to Section 49A-301

clarifies that the use of the form set forth in Section 49A-301 is merely suggested and not required in order to create a valid durable personal power of attorney. This bill was signed by the Governor 7/31/13.

SB 120 w/SA 1– An Act to amend Title 30 of the Delaware Code relating to Nursing Facility Quality Assessment Taxes. This bill was signed by Governor 7/1/13.

SB 119 w/SA1 – An Act to amend Title 16 of the Delaware Code relating to the Regulation of Hospices and to the Uniform Controlled Substances Act. This bill was signed by the Governor 7/3/13.

SB 56 – An Act to amend Title 31 of the Delaware Code relating to Preventative and Urgent Dental Care for Medicaid Recipients. This bill was out of Committee 6/12/13.

SB 13 SA 2 – An Act to amend Title 16 of the Delaware Code relating to Health Care Decisions. This bill was out of Committee 6/12/13.

HB 154 – An Act to amend Titles 16 and 24 of the Delaware Code relating to Abuse and Neglect of Residents or Patients in Facilities. This bill was passed in House 6/25/13.

HB 42 w/HA2 – An Act to amend Title 16 of the Delaware Code relating to HealthCare Decisions. This bill was signed by the Governor on 5/28/13.

## **V. COMMISSION STAFFING**

The Delaware Nursing Home Residents Quality Assurance Commission members hired a full-time Administrative staff person as of January 31, 2007. The Administrative Office of the Courts funds the salary and budget of this position. The staff represents the Commission and works closely with State Agencies and other stakeholders to aid in the quality of care for residents in licensed Delaware State and Private Nursing Homes and Assisted Living Facilities.

## **VI. NURSING HOME AND ASSISTED LIVING FACILITY VISITS**

Commission Staff and members of Delaware Nursing Home Residents Quality Assurance Commission attended 38 nursing homes and 21 assisted living facilities Post Survey Meetings during July 1, 2012 and June 30, 2013. The purpose of the visits was to promote an atmosphere of information sharing so that the Commissioners would be able to fulfill their responsibility to monitor the effectiveness of the quality assurance system in the State of Delaware. Staff and Commissioners interacted with facility administrators, staff, residents and families.

In addition, the staff received phone calls from family members and the community regarding:

1. How to locate long-term care and/or assisted living facility services;
2. Who to contact regarding MFP services;
3. Which State agency would investigate a nursing home or assisted living facility complaint;
4. How to locate Ombudsman or Guardianship assistance.

As a result of being contacted by family members and the community, the staff provided contact information and alerted the appropriate agencies so they could follow-up with the individuals directly.

Commission staff also worked with an adjunct faculty member at Wilmington University to develop an elder abuse class. Elder Abuse: Identification, Detection and Intervention class which will be offered in the near future.

## **VII. COMMISSION GOALS**

The Commission has set the following goals for its work in the coming months:

- Continue to review agency performance and coordination.
- Continue to review and comment on regulations proposed concerning long term care.
- Focus on assisted living by reviewing what other states are doing to ensure quality of care and provide recommendations to the Governor and Members of the General Assembly.
- Encourage collaborative initiatives that will reduce high turnover of nursing home staff and help recruit qualified nurses to long term care.
- Foster and promote abuse/fraud investigation training for law enforcement and other agencies statewide.
- Monitor enforcement of Eagle's Law so as to ensure minimum staffing level compliance.

- Enhance outreach to consumers of long-term care to increase Commission profile so as to ensure the Commission is called upon to review problems and deficiencies in long term care.
- Address quality of life issues for nursing home residents including end-of-life and hospice care services.
- Identify “Gaps” in services available for aiding in the care for the elderly and disabled.
- Monitor “length of stays” for nursing facility residents in hospitals.
- Monitor results and request updates from the Quality Improvement Initiative Study.
- Review educational programs such as Certified Nursing Assistants (CNA) and make educational recommendations to enhance the programs.
- Focus on employee recruitment and retention challenges to aid in the quality of care for residents.

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