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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION  
Virtual Meeting  
Cisco Webex  
FINAL  
Meeting of March 16, 2021  
Minutes

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Lorraine Phillips, Ph.D.; Norma Jones; Dr. Michela Coffaro, Psy; Ed Black, Esquire; Kyle Hodges; Representative Kim Williams; Lt Gov Bethany Hall-Long; Hooshang Shanehsaz; Karen Gallagher and Amy Milligan. Karin Volker, Esquire, DOJ was also in attendance.

Commission members not in attendance: n/a.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Carol Lovett, Consumer; Staci Marvel, DMMA; Zita Dresner, Esquire, CLASI; Michelle Petacone, Consumer; Mary Catherine McLaughlin, Consumer; Kathleen McGuinness, State Auditor; Meagan Glasner, LeadingAge; Candace Esham, Consumer; Terry Harman, Genesis; Master Pat Griffin, Esquire, Court of Chancery; Kristen Najera, LTCOP and Jim McCracken, LeadingAge. There were 4 additional individuals that joined the meeting by phone/webex and not identified.

1. Call to order

The meeting was called to order at 9:32 AM by Lisa Furber, DNHRQAC Chair.

2. Approval of the Minutes for the meeting of:

The meeting minutes' draft of November 17, 2020 & January 19, 2021 were approved as written.

In addition, DNHRQAC FY20 Annual Report draft was approved by commission members as written.

3. Discussion of:

Guardianship – Court of Chancery

Master Patricia Griffith, Esquire, provided updates to the Commission regarding Delaware guardianships. A Guardian is a person appointed by the Court to make medical and/or financial decisions for another individual. There are three types of guardianships: Guardianship of an adult person, guardianship of an adult person's property and guardianship of the property of a minor child who is under eighteen.

Currently, there are two Masters in Delaware that handle all entry-level guardianship cases. All information is considered confidential, and documents/hearings are not open to the public.

Guardianship is controlled by Delaware laws. The rules govern the guardianship process and statute governs the authority.

Most common adult guardianship situations in Delaware include individuals with dementia, traumatic brain injury, autism, etc.

Guardianship cases remain open until death, recovered or less restrictive actions are in place to serve in the best interest of the individual.

Currently, there are 1,963 active adult guardianship cases: 59% in NCC, 22% Kent & 19% Sussex. There are approximately 230 new cases filed yearly and 219 cases terminated yearly.

CY20: There were 217 new adult cases filed and 250 adult cases terminated.

After the Courts review of numbers, the number of cases terminated have been significantly higher as this vulnerable population has been hit hard during the pandemic. The Courts have worked with guardians and nursing homes during the pandemic to be able to get access to information and other updates. This helps to ensure clients in nursing homes are receiving the best possibly care.

A Guardianship Petition packet includes: Petition, Physician's Affidavit, Preliminary Order, Consent Form and Final Order.

The Court will appoint an Attorney Ad Litem (AAL) who will represent the individual that is alleged with a disability. AAL meets with the individual, family and doctor before making a guardianship recommendation to the Court. The Attorney Ad Litem receives a small fee for their service. Their role is to deem whether guardianship is necessary and whether the person seeking guardianship is appropriate. Attorney Ad Litem will file a report of their findings to the Court.

If person with alleged disability contests guardianship, a second Attorney Ad Litem is hired to represent the individual. The Courts wants to make sure there is due process before altering an individual's rights.

Master Griffith shared that taking the step to become a guardian for an adult should be a last resort and should only be considered when other alternatives have failed or are no longer appropriate.

Alternatives to guardianship include acting as a surrogate decision maker or having the individual execute an Advance Health-Care Directive and/or Durable Personal Power of Attorney appointing an agent. These alternatives allow the individual to retain his or her individual rights, have a voice in choosing who may make decisions on his or her behalf, and avoid the cost and difficulty of petitioning the Court to appoint a guardian.

If a guardianship petition has not been contested, the petitioner appears before a judge who will sign the order. Most routine guardianships are not contested and take about four weeks from start to finish.

During COVID-19 pandemic, routine guardianship hearings are being held by phone. Master Griffin shared that this process has been extremely helpful in having all family members attend and weigh-in on the case. The Attorney Ad Litem process during COVID-19 pandemic was looked at more closely, to make sure they can be involved and whether said visits can occur in-person or Zoom. The AAL's have been very creative and resourceful in ensuring they can understand the situation.

An Emergency Petition can also be filed. An interim guardian is appointed for 30 days. This situation occurs when the individual with an alleged disability is in imminent substantial harm or financial loss. Emergency petitions are rarely granted but more often seen when an individual is admitted to the hospital and nobody is there to make urgent medical decisions.

If a guardianship petition is contested by others (such as family), they will have an opportunity to respond to petition and the case will be assigned to a Master for a full evidentiary hearing. During COVID-19, contested hearings have not been able to be held in-person and therefore held via Zoom.

Master Griffin shared that the Office of Public Guardian (OPG) provides guardianships services to individual's who do not have someone willing or able to serve as a guardian. OPG is the office of last resort when individual's typically do not have others to serve as guardian. The number of individual's currently served through OPG is roughly 11% of guardianship cases.

Additionally, there are four fee-for-service professional guardianship companies in Delaware that work closely with the Court of Chancery.

Hooshang Shanehsaz asked whether the Courts considers guardianships in time sensitive capacity or situational for individuals with physical, mental, or behavioral concerns. Master Griffith shared that the Courts does terminate cases after recovery. An example: physician says individual with stroke no longer needs assistance.

Also, as asked by Kyle Hodges, Court Rule 180 (C) gives individuals the opportunity to petition to terminate guardianship if their needs can now be met through supports outlined in the petition and no longer needed.

Guardianship can be full or limited (personalized for person with disability). If individual can handle certain tasks and articulate that they want to do so, the Court will incorporate in the order.

Ed Black, Esquire asked who should be contacted if a fiduciary misappropriated funds. Master Griffin encouraged folks to reach out to Delaware's Adult Protective Service (APS) Unit, especially if individual has finances. The Court would appoint a fee-for-service guardianship company or another family member. OPG would be involved with cases such as this one if the individual does not have any funds.

Cheryl Heiks asked if Master Griffin could discuss the Non-Acute Patient Medical Guardianship Taskforce. SCR30 was passed in House & Senate during last legislative session (150<sup>th</sup> GA). The

Guardianship Task Force shall study the needs and options of non-acute hospital patients in need of medical guardianship services, including funding, legal, regulatory, and policy changes that would allow for medical guardians to be immediately available when a non-acute patient needs guardianship to transition from an acute care setting to an appropriate location and level of care and report its findings and recommendations.

For more information about Delaware adult guardianship: [Guardianship - Court of Chancery - Delaware Courts - State of Delaware](#).

#### Division of Health Care Quality (DHCQ)

Corinna Getchell, MSN, Director of Division of Health Care Quality (DHCQ) was not able to attend due to technical difficulties.

#### Long Term Care Ombudsman Program (LTCOP)

Kristen Najera, LTC Ombudsman, provided updates to commission members. State Ombudsman, Jill McCoy, presented during commission meeting of November 17, 2020 with updates.

The Long-Term Care Ombudsman advocates for residents who live in long-term care facilities as well as those who live in other settings (such as their own homes) and receive home and community-based services.

The Ombudsman program investigates and resolves complaints on behalf of these individuals. Complaints can be made by residents, family members, or other concerned parties. The program also provides opportunities for Volunteer Ombudsmen to serve as friendly visitors/advocates in nursing homes.

Since December 1, 2020, LTCOP staff has not had any in-person LTC facility visits due to COVID-19 facility outbreaks. All staff interaction since 12/1/2020 has been done through facetime or telephone (75 total).

Most complaints received since December 1, 2020: visitation guidelines, discharge appeals, and personal care issues (bathing, hair washing, etc). LTCOP also forwards referrals to DHCQ and other state agencies as deemed appropriate.

LTCOP current has the following ombudsman staff members: 2 community, 1 volunteer services and 5 assigned to LTC facilities.

Norma Jones expressed concern with LTCOP staff not being able to enter facilities during the pandemic as they are resident's voices. Ms. Jones added that other individuals besides facility staff have been able to enter the buildings during COVID-19.

Representative Kim Williams suggested the commission invite DHSS Cabinet Secretary, Molly Magarik, and other DHSS staff to DNHRQAC Meeting of May 18, 2021. Lisa Furber offered to send a meeting invitation.

### LeadingAge

Jim McCracken, President & CEO LeadingAge, presented to the commission. Meagan Glaser, LeadingAge Vice President, also joined the meeting.

LeadingAge is a 501(c)(3) tax exempt charitable organization focused on education, advocacy, and applied research.

LeadingAge New Jersey & Delaware is the statewide association of non-profit senior care organizations dedicated to advancing quality aging services in New Jersey and Delaware. It was founded in 1931.

LeadingAge New Jersey & Delaware represents non-profit nursing homes, assisted living residences, residential health care centers, independent senior housing, and life plan communities throughout the entire state(s) of New Jersey and Delaware.

LeadingAge New Jersey & Delaware serves over 140 member communities, many of which are supported through religious, fraternal, and governmental sponsorship. In support of its mission, LeadingAge New Jersey & Delaware encourages collaboration with businesses, communities, state and local government, and other public and private entities also committed to enhancing the quality of life for the senior citizens of New Jersey and Delaware.

January 2020, LeadingAge New Jersey expanded its mission to serve members in Delaware.

Currently, the following Delaware facilities are members of LeadingAge: Acts Retirement Life Communities - Cokesbury Village, Country House and Manor House; Moorings at Lewis; St. Francis Life/ Trinity Health PACE and Westminster Village.

LeadingAge contact: 609.452.1161 or [info@leadingagenjde.org](mailto:info@leadingagenjde.org).

#### 4. Old/New Business

### COVID-19 Pandemic

Ms. Bailey shared stats as of Sunday 3/14/2021. There has been a total of 1,511 deaths in Delaware due to COVID-19. Of the deaths reported, 719 have been LTC residents.

March 10, 2021, Centers for Medicaid and Medical Assistance (CMS), in collaboration with the Center for Disease Control Prevention (CDC), issued updated guidance for nursing homes to safely expand visitation options during the COVID-19 pandemic public health emergency.

According to the updated guidance, facilities should always allow responsible indoor visitation and for all residents, regardless of vaccination status of the resident, or visitor, unless certain scenarios arise that would limit visitation for:

- Unvaccinated residents, if the COVID-19 county positivity rate is greater than 10 percent and less than 70 percent of residents in the facility are fully vaccinated,
- Residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the criteria to discontinue transmission-based precautions, or
- Residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from quarantine

The updated CMS guidance also emphasizes that “compassionate care” visits should be always allowed, regardless of a resident’s vaccination status, the county’s COVID-19 positivity rate, or an outbreak. Compassionate care visits include visits for a resident whose health has sharply declined or is experiencing a significant change in circumstances.

CMS continues to recommend facilities, residents, and families adhere to the core principles of COVID-19 infection control, including maintaining physical distancing and conducting visits outdoors whenever possible. This continues to be the safest way to prevent the spread of COVID-19, particularly if either party has not been fully vaccinated.

#### Joint Legislative Oversight and Sunset Committee (JLOSC) Updates

Ms. Furber and Ms. Bailey provided testimony to JLOSC members last month. There will be a review of proposed JLOSC recommendations on April 1, 2021 (virtually).

#### DNHRQAC FY20 Annual Report

Commission members voted to approved DNHRQAC FY20 Annual Report (draft) as written.

#### 5. Public Comment

##### Health Observances

March - National Nutrition Month  
3/14 – 3/20 Patient Safety Awareness Week

April - Occupational Therapy Month  
4/22 - 4/28 World Immunization Week  
4/15 National Prescription Drug Take Back Day

#### World Elder Abuse Awareness Day (WEAAD)

A Senate Joint Resolution will be sponsored by Senator Hansen, Representatives Longhurst, Williams and Griffith. WEAAD is June 15, 2021 and provides awareness regarding elder abuse, neglect and financial exploitation.

### State Auditor's Office

Kathleen McGuiness, State Auditor, attended today's meeting. During State Auditor's FY22 Joint Finance Committee (JFC) Budget Hearing last month, a JFC member mentioned that DNHRQAC had some questions regarding the long-term care facility examination reports. Ms. McGuiness emailed DNHRQAC Executive Director (this morning) with a response to the questions. If there are any follow-up questions, please let Ms. Bailey know and she will direct the questions to the State Auditor's Office.

### DNHRQAC Membership Vacancies and Hold Over's

Ms. Furber mentioned that Ms. Bailey is working with the Governor's Office regarding membership vacancies and hold overs. Once an updated is provided, Ms. Bailey will share with the commission.

6. Next meeting commission meeting will be on Tuesday May 18, 2021 @ **location to be determined.**
7. Adjournment

The meeting was adjourned at 11:09 AM by Lisa Furber.

Attachments: DNHRQAC Meeting of March 16, 2021 agenda  
DNHRQAC Meeting of January 19, 2021 - draft  
DNHRQAC Meeting of November 17, 2020 – draft  
DNHRQAC FY 20 Annual Report draft