
DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION
Virtual Meeting
Cisco Webex
FINAL
Meeting of January 18, 2022
Minutes

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Norma Jones; Ed Black, Esquire; Jennifer McLaughlin; Hooshang Shanehsaz; Kyle Hodges; Representative Kim Williams; Tonya Burton and Lt Gov Bethany Hall-Long.

Commission members not in attendance: Amy Milligan and Karen Gallagher. Randolph Vesprey, Esquire, DAG was not present.

Ms. Furber introduced Dr. Melissa Winters, PsyD, NHSP. Dr. Winters was recently appointed by Governor's Office to serve on the Commission.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Corinna Getchell, DHCQ; Candace Esham, Consumer; Staci Marvel, DMMA; Mark Brainard, JLOSC; Val McCartan, Delaware State Senate; Jim McCracken, LeadingAge; Sandra Hale, LTCOP; Steven LePage, Consumer; Alyson Vann, DSAAPD; Denise Elliott, DHCQ; Porsha Green, Consumer; Meredith Newman, News Journal; Amanda McAtee, JLOSC. There were 7 other individuals that joined the meeting by phone and not identified.

1. Call to order

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

2. Approval of the Minutes for the meeting of:

The meeting minutes' draft of November 16, 2021 were approved as written.

3. Approval of notes:

Working Session #2 of December 21, 2021 were approved as written.

4. Facility Visitation Rubric:

Members discussed the Facility Visitation Rubric that was created by DNHRQAC Chair Furber. The rubric draft was distributed to commission members in advance of the meeting. The rubric was developed as a result of JLOSC recommendations.

Members elected to remove “/Commissioners” on the last line of the form. If commission members join Ms. Bailey during a facility visit, this will be notated in the comment section.

Members approved Facility Visitation Rubric form with corrections noted.

5. Discussion of:

Long Term Care Ombudsman Program (LTCOP)

Saundra Hale, State Ombudsman, provided updates to the commission. Ms. Bailey provided a list of questions in advance of this meeting.

LTCOP recent staffing changes: 1 staff member retired effective Jan 1, 2022 & another LTC ombudsman is on leave with no expected return to work date. Ms. Hale is in the process of hiring a new ombudsman also.

LTCOP 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 resolves complaints on behalf of LTC Residents, family members, or other concerned parties. The program also provides opportunities for Volunteer Ombudsmen to serve as friendly visitors/advocates in LTC setting.

November 1, 2021 – December 31, 2021, LTCOP conducted:

- 6 assisted living facility visits
- 31 skilled/nursing home visits
- 4 home and community-based visits

There are 2 new volunteer ombudsman going through onboarding process. They have provided a total of 7 visits during 11/1/2021 - 12/31/2021.

LTCOP distributed the remainder of posters for residents of LTC facilities to have on display in their rooms. The posters provide LTCOP contact information.

Most common reasons during this time frame for contacting LTCOP:

- Dietary
- Environment conditions
- Lack of staffing
- Lack of response to complaints

There have been 3 facility discharges during this time frame due to:

- failure to pay
- facility closure
- no longer able to care for their needs at the facility

Ms. Hale mentioned LTCOP is currently working with others to provide staff and volunteer training in the future. LTCOP is also revising internal practices to document and track data/outcomes related to discharges, facility visits, types of complaints, fair hearings and other activities associated with LTC residents.

To contact LTCOP: Phone: 1-800-223-9074 or Email: DelawareADRC@delaware.gov.

Division of Health Care Quality (DHCQ)

Corinna Getchell, RN & DHCQ Director provided updates on behalf of DHCQ.

QART Report: During 4th Quarter of 2021, the Quality Assurance Review Team (QART) reviewed 2 survey's involving a 'G' level or higher deficiency. Deficiencies are based on scope and severity and 2 of the surveys conducted by DHCQ during this period rose to a "G" level of harm. After review, the QART Team upheld the "G" level citations by survey staff. The deficiencies included:

F689: Free of Accident Hazards/Supervision/Devices - An unsafe transfer was performed using a Sit-to-Stand mechanical lift with only one CNA as opposed to Hoyer Lift (full body mechanical lift) with two CNAs per resident's care plan, resulting in fracture of resident's leg.

F880: Infection Prevention and Control - Facility failed to maintain safe environment by not implementing appropriate infection control practices as directed by Centers for Disease Control and Prevention (CDC), State of Delaware's Division of Public Health (DPH) and State's Health Operation Center (SHOC) during COVID-19 outbreak in facility. As a result of non-compliance, the likelihood of serious adverse outcome of COVID-19 spreading to additional residents could have occurred if not corrected.

Staffing Report: As of 1/14/2022 (4th Qtr 2021), all skilled facilities were in compliance with Eagle's Law (3.28 hours per resident required). It appears the private skilled facilities hours per resident = 3.49 and state operated facilities = 7.29.

Since December 15, 2021, DHCQ completed:

4 annual recertification survey

13 complaint surveys

37 complaints investigated (not sure # of outstanding complaints at this time)

Ms. Esham, Consumer, asked DHCQ if they would provide data regarding backlog of investigations & number of completed investigations during next commission meeting.

DHCQ continues to have staffing vacancies for multiple reasons: COVID-19 exposure, COVID-19 +, etc. Ms. Getchell echoed concerns of workforce vacancies across all environments/industries, compensation and other factors impacting healthcare workforce. "The staff vacancies do impact our ability to conduct our workload."

Ms. Getchell mentioned that guidance has changed quite frequently throughout the pandemic.

CMS released revised visitation guidance for skilled certified facilities on November 12, 2021. The revisions were effective immediately. Delaware has been using consistent LTC guidance throughout the pandemic which includes the following: skilled/nursing homes, assisted living facilities and rest residential.

Ms. Getchell shared that “vaccination and testing isn’t required for visitors but facilities in counties with high level of community transmission can offer testing to visitors but cannot required testing as a condition to enter facility. Facilities should encourage visitors to test prior to visit. Facilities can ask visitors about vaccination status but cannot refuse visitation if visitor is not vaccinated. Visitors should be wearing masks (@ minimum) and appropriate Personal Protective Equipment (PPE) - whether visiting someone in quarantine or isolation areas. “

“Facilities can no longer limit the frequency and length of visits, number of visitors or require advance scheduling of visits. It says in CMS’s newest visitation guidance that core principles are consistent with CDC’s guidance and should always be adhered to. If someone cannot adhere to the guidelines, they are putting safety of residents and others at risk. Visitors who are unable to adhere to the core principles of COVID-19 infection prevention should not be permitted to visit or should be asked to leave.”

“The guidance states visitation should occur under most circumstances with a couple of exceptions. An example: If DPH states the facility should temporarily pause visitations if there is an outbreak or such issues. Some facilities would like to test all visitors when they enter the building, so we are looking at that further.”

DPH testing guidance: routine and outbreak testing guidance. At this time, the county positivity rate is high (in all 3 counties) and so currently unvaccinated staff are required to test 2x week. Vaccinated staff are not required to participate in routine testing.

The definition of fully vaccinated: 2 weeks after receiving 2nd dose of 2 dose series or 2 weeks after one dose of J & J.

Ms. Getchell mentioned that CMS released (November 4, 2021) regarding vaccine mandate for all certified Medicare & Medicaid facilities. The mandate was reissued 12/28/2021 & allows for religious and/or medical exemptions. This mandate requires 1st dose of 2 dose vaccine series to be administered by January 27, 2022 and 2nd dose of 2 dose vaccine series by February 28, 2022. LTC facilities must have policies and procedures in place.

Ms. Getchell shared that facilities have been facing staffing shortages and Center for Disease Control & Prevention (CDC) issued guidance for facilities to mitigate staffing shortages. “There is a chart provided to facilities that outlines conventional contingency and crisis staffing. Facilities must follow the guidance but if they need staff to come back to care for residents, they can bring back staff from isolation or quarantine at different times and allow them to work in different capacities. A number of facilities are struggling with staffing, and some have resorted to using these measures.”

Incident Response Teams (IRT) - When a COVID-19 outbreak occurs, these professionals will support long term care (LTC) facilities. Duties include: COVID-19 testing, vaccination, outreach, training and education on infection prevention methods and mitigation strategies in LTC facilities. IRT’s function is not intended to replace the responsibilities of the LTC facilities but will instead supplement existing operations. Since November 1, 2021, there have been 38 facility visits by IRT’s. The Division also followed-up with 45 phone calls.

In addition, DHCQ followed up with facilities not in outbreak mode to see if they need any assistance with resident/staff vaccines, boosters, vaccine administration, etc.

“There were roughly 84 or 85 National Guard Members that went through CNA Training (DTCC): 75 classroom & 16 clinical hours. The group completed training and began sitting for exam a few days ago. After successfully passing the exam, they will be assigned to facilities to help decompress the hospitals. The number of COVID cases in Delaware hospitals are the highest they have ever been. The State is still working on which facilities the National Guard members will be assisting, but the plan is to provide assistance in each county.” DNHRQAC asked DHCQ to provide information regarding said placements, once the list is available.

DHCQ has been hosting weekly calls with LTC facilities since recent surge of the pandemic (previously calls were hosted by State Health Operations Center). Providers, DNHRQAC, industry organizations, and multiple state agencies attend these calls.

The Division’s number one priority is to conduct Infection Control Surveys (ICS) when a COVID19 outbreak occurs. After ICS are completed, the Division focuses on annual and complaint surveys.

DHCQ is continuing to see an increase in COVID-19 outbreaks within LTC facilities. The COVID vaccine has not eradicated the virus but so far has helped decrease symptoms & severity of illness.

DNHRQAC Membership Updates

Ms. Furber asked commission members to provide a very brief 2 minutes or less update regarding the area the member represents on the commission. For example, Ms. Furber serves as designee for Community Legal Aid Society, Inc. (CLASI). As a result, Ms. Furber would share brief updates that might be of interest to the commission regarding the work that CLASI is doing related to long term care.

Hooshang Shanehsaz, State Pharmacy Director:

- Continue to vaccinate LTC staff members, whether initial series or booster
- COVID19 positive case numbers around the State have been alarming
- Hospital systems have been overwhelmed with Omicron hospitalizations
- Hospitals (some) having trouble acquiring or offering monoclonal antibodies
- Not all medications are working well against Omicron (as it did with Delta)
- Pharmacies are hoping oral medication will be available, but might be in short supply

Cheryl Heiks, Delaware Healthcare Facilities Association Executive Director:

Ms. Heiks provided most recent stats available through National Healthcare Safety Network (NHSN) data (note: there is a 2-week lag):

- 87% of Delaware LTC staff fully vaccinated/more than 90% partially vaccinated

- 91% of Delaware LTC residents fully vaccinated (remainder might not be eligible for other dose at this time or refused to get vaccinated)
- 77% of Delaware LTC residents received their booster
- 32% of Delaware LTC staff received their booster

*Data does not include assisted living facilities

“At this time, although cases are high, the fatalities are relatively low due to the fact that 77% of residents have received the booster.”

Facilities have been hosting vaccination & booster events throughout the State.

CMS issued rules that include guidelines for staff vaccination rates to reach 80%, 90% and 100%. This begins on January 27, 2022.

Currently, fully vaccinated means an individual is beyond two weeks in a two-dose series (Pfizer & Moderna) or in a one dose vaccine - J & J. Mr. Shanehsaz mentioned CDC has been considering whether a booster will be included in fully vaccinated definition. The standards might change in the future. Immunocompromised individuals are required to have a third dose (of Pfizer or Moderna) in order to be considered fully vaccinated. A 4th dose is currently under consideration for immunocompromised individuals.

Hospitals are sending out a daily bed availability report to acute and sub-acute facilities throughout the State to improve communication between both environments. This report provides hospitals with a snapshot of the number of staffed beds available. This number unfortunately can change if COVID+ cases are discovered after receiving testing results.

Ms. Furber mentioned commission members will have an opportunity to provide updates to the group at the beginning of each open public meeting.

6. Old Business/New Business

Joint Legislative Oversight and Sunset Committee (JLOSC) Recommendations

Chairman Furber stated that a progress report is due 1/31/2022 and read the list of JLOSC recommendations to the group. Members have been discussing JLOSC recommendations during the past several months.

Ms. Bailey mentioned she reached out to Judicial Information Center (JIC) after December 21, 2021 Working Session #2 to discuss name change and process for doing so on Judicial Branch webpage, etc.

Commission members discussed whether to move forward on name change to webpage, etc or wait until legislation has been passed. Ms. Furber mentioned some type of “advertisement” will need to occur so stakeholders and others are aware of the name change. It was the consensus of commission members present to wait until legislation has been passed before pursuing name

change activities. As there was not a quorum of commission members present during this part of meeting discussion, members decided to wait and discuss this during the next commission meeting.

Eagles Law and staffing ratios for assisted living facilities - Members discussed both recommendations during Working Session #2 (December 21, 2021). Both recommendations are important but during the pandemic and staffing shortages, members agreed to hold off further discussion until conditions are better.

Ms. Heiks suggested that a group of people need to get together to address health care workforce shortages like discussions occurred around primary care physicians and behavioral health gaps.

This group would include other advocates and stakeholders to promote attention around healthcare workforce; particularly around needs in long term care. Ms. Heiks added that perhaps we should consider modernizing healthcare education system: on-line training, test out options or career track strategies, etc for all environments: home health, hospitals, long term care, etc. “We should light the fire and get people to begin thinking about how we can fix this problem.” Further, Ms. Heiks added that there may be a value for DNHRQAC to help increase the number of healthcare workers, especially those trained and interested in long term care.

Ms. Furber suggested the commission spend a big portion of the next meeting to brainstorm ideas with community partners and groups to collaborate with to create a strong advocacy effort around workforce. Commission members present agreed to flush this out during the next meeting. As a result, this will be added to DNHRQAC Meeting agenda of March 15, 2022.

Ms. Bailey will also reach out to DNHRQAC DAG, Randy Vesprey, Esquire, to find out whether “long term care” is defined in Delaware Code.

Criteria of Facility Visits - Draft rubric was distributed to members. The form was slightly modified and approved by commission members earlier in the meeting.

Elder Caucus - Recommendation was stricken by JLOSC.

Annual Report Updates - Some of the items were addressed earlier in the meeting. Ms. Bailey is working on creating a breakdown of Executive Director duties and making sure job duties are up to date. Most of the items such as providing recommendations to DHSS, Governor, General Assembly and other stakeholders will be included in annual report. Commission members will continue to discuss JLOSC recommendations regarding annual report.

FY 21 DNHRQAC Annual Report

Ms. Bailey provided outreach to commission members that expressed interest in helping to modify the annual report (to also include JLOSC recommendations). The sub-committee will meet in the near future to assist with the report.

DNHRQAC Response to Governor Emergency Orders

Ms. Bailey asked commission members how/if they would like to respond to Emergency Orders, in particular Governor Carney's Emergency Orders of January 3, 2022. The Emergency Order Declaration:

A. POWERS OF DELAWARE EMERGENCY MANAGEMENT AGENCY (DEMA) AND DELAWARE DIVISION OF PUBLIC HEALTH (DPH).

1. The Public Health Authority is authorized to make, amend, and rescind orders, rules and regulations under Title 16 necessary for emergency management purposes.
2. The Public Health Authority is authorized to:
 - i. Suspend all state-required deadlines and timetables for performance of facility and agency licensure activities as the Public Health Authority deems necessary; and
 - ii. Suspend any regulatory requirement found in Title 16 of the Delaware Administrative Code that the Public Health Authority deems an impediment to staffing facilities and agencies during the pendency of the emergency; and
 - iii. Suspend any regulatory requirements related to the provision of in-home medical care and personal services under Title 16 of the Delaware Administrative Code as the Public Health Authority deems necessary.
3. The requirement that long term care facilities provide documentation to the Division of Health Care Quality as to the amount of direct care time that was provided in an emergency by a Director of Nursing, Assistant Director of Nursing, or registered nurse assessment coordinator as required in 16 Del. C. § 1161(e) is hereby suspended.
4. Long term care facilities must continue to provide 3.28 hours of direct care per resident per day. However, the staffing ratios required in 16 Del. C. § 1162 are hereby suspended.
5. The requirements in Chapter 93 of Title 16 are hereby suspended for acute care hospitals that seek to increase their bed capacity in order to treat COVID-19 patients, so long as any such hospital obtains approval from the Division of Public Health. Hospitals that wish to increase their bed capacity to treat COVID-19 patients must submit a plan to OEMS@delaware.gov. Plans must include a justification for increased beds, and assurances for adequate staffing, maintenance, and safety. Plans may not be implemented until approved by the Division of Public Health. Hospitals that increase bed numbers pursuant to this section must eliminate beds and return to the previously approved number of licensed beds, or seek a Certificate of Public Review, if so ordered by the Division of Public Health or upon the termination of the State of Emergency.
6. The following requirements are waived or modified for members of the Delaware National Guard who complete a Certified Nursing Assistant course after January 1, 2022:
 - i. The requirement in 16 Del. C. §3002A that Certified Nursing Assistant trainees must complete a total of 150 clock hours of training. However, such individuals who wish to become certified must complete 75 classroom hours and 16 clinical hours before sitting for a certification exam.
 - ii. The requirement in 16 Del. C. §3004A that Certified Nursing Assistant trainees must complete a mandatory orientation period is hereby waived.
 - iii. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of their criminal history report obtained after January 1, 2022. However, no member of the Delaware National Guard may work as a Certified Nursing Assistant in a long-term care facility if they have a conviction deemed disqualifying by the Department of Health and Social Services.
 - iv. In lieu of the requirements in 16 Del. C. § 1141, members of the Delaware National Guard shall provide each facility they work in as a Certified Nursing Assistant a copy of a drug screening obtained after January 1, 2022 that meets the requirements established by the Department of Health and Social Services.

B. MISCELLANEOUS.

1. This Order and any emergency rules or regulations effected therefrom remain effective until the termination of the State of Emergency, except as may be rescinded, superseded, amended, or revised by additional orders.

Delaware hospitals are operating at a crisis standard of care and DNHRQAC members wonder if LTC facilities will adopt these standards of care, too. Everyone wants to make sure facilities have adequate staff to meet appropriate level of care. DNHRQAC understands the challenges facilities are facing with staffing during COVID19. As these emergency orders relax some of the regulatory oversight, members want to be sure resident care isn't compromised.

Mr. Shanehsaz agreed and mentioned he had a recent discussion with Dr. Levy regarding the same. He mentioned that facilities try their best not to send residents to the hospitals unless they must do so because the hospital system is overstressed. Further, with oral medication being available, facilities have been asking their pharmacy providers if they have such medication on hand. The pharmacy provider acts as a gatekeeper to make sure there will not be any adverse drug interactions.

Ms. Jones shared her experience as a resident of a LTC facility and observation during outbreak status.

Continued discussion around the commissions response to emergency orders will be added to DNHRQAC Meeting of March 15, 2022.

3. Public Comment

Ms. Esham provided an update regarding an investigation she filed regarding her grandmother's care in a Delaware assisted living facility. She's offered to volunteer & assist with creating a data dashboard regarding the backlog of complaints: # of cases open, average length of investigation, etc. Ms. Esham added that perhaps this information would be useful to show the urgency of filling the staff vacancies or wage increase study.

Ms. Green shared her recent experience regarding rehab services for her dad (New Castle County). She too, has offered to assist so other families do not have the same experience with their loved one.

Mr. LePage provided commission members with details regarding his journey with a Sussex County LTC facility for his dad. Mr. LePage has figured out how to extract nursing home information data from CMS and import into a webpage. The information can be filtered by facility.

4. Next meeting commission meeting will be on Tuesday March 15, 2022 @ **location to be determined.**

7. Adjournment

The meeting was adjourned at 11:13 AM by Lisa Furber.

Attachments: DNHRQAC Meeting of January 18, 2022 agenda
DNHRQAC Meeting of November 16, 2021 draft
DNHRQAC Working Session #2 of December 21, 2021 draft
Staffing Report 4th Qtr 2021
QART Report 4th Qtr 2021
Facility Visitation Rubric draft