

---

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION  
Virtual Meeting  
Cisco Webex  
FINAL  
Meeting of March 15, 2022  
Minutes

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Norma Jones; Ed Black, Esquire; Jennifer McLaughlin; Kyle Hodges; Karen Gallagher; Representative Kim Williams; and Lt Gov Bethany Hall-Long (Laura Wisniewski was serving as proxy).

Commission members not in attendance: Amy Milligan; Hooshang Shanehsaz; Dr. Melissa Winters, PsyD and Tonya Burton.

Randolf Vesprey, Esquire, DAG was not present. DNHRQAC was recently advised Department of Justice is in the process of assigning a different DAG to represent the Commission.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Barbara Bass, Aide to Karen Gallagher; Corinna Getchell, DHCQ; Candace Esham, Consumer; Staci Marvel, DMMA; Mark Brainard, JLOSC; Val McCartan, Delaware State Senate; Jim McCracken, LeadingAge; Michelle Pedicone, Consumer; Katie Macklin, DE Valley Chapter Alzheimer's Assoc; Steven LePage, Consumer; Mary Peterson, Consumer; Holly Wagner, Esquire, JLOSC; Meredith Newman, News Journal; Amanda McAtee, JLOSC. There was one other individual that joined the meeting by phone and not identified.

1. Call to order

The meeting was called to order at 9:35 AM by Lisa Furber, Chair.

2. Approval of the Minutes for the meeting of:

The meeting minutes' draft of January 18, 2022 were approved as written.

3. Vote on whether to wait or proceed forward with name change at this time &  
Long Term Care/Oversight definitions related to DE Code

Commission members elected to table this agenda item as DNHRQAC was informed yesterday by Delaware Department of Justice they are in the process of assigning a new Deputy Attorney General to represent the Commission.

4. Discussion of:

DNHRQAC Member Updates

Ms. Furber asked commission members during last meeting if they could provide a very brief 2 minutes or less update regarding the area the member represents on the commission and information of interest as it relates to long term care in Delaware. Ms. Furber mentioned

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

Lisa Furber: Appointed to serve as designee of Community Legal Aid Society, Inc (CLASI) Delaware Office. Ms. Furber also serves as DNHRQAC Chair. CLASI continues to expand services for all Delaware citizens, including services for residents living in LTC facilities.

Elder Law Program (ELP) provides limited legal assistance to Delawareans aged 60 years or older such as developing advanced care directives or Powers of Attorney; addressing consumer or housing issues or obtaining benefits such as Medicare or Medicaid. The services provided by ELP are free of charge. ELP added another part-time person to assist in meeting the needs of the community.

Disabilities Law Program (DLP) is a special project of CLASI which is designated by the Governor as the Protection and Advocacy agency in Delaware. DLP provides advocacy services to Delaware residents with physical or mental disabilities. In addition, DLP provides community workshops, general information and referral services. CLASI prioritizes services based on federal agency guidance and needs identified by consumer & community groups.

CLASI recently acquired a new grant which will look at public health strategies in the community. This initiative is in the early stages of development.

Ed Black, Esquire: Appointed as designee of Delaware's Medicaid Fraud Control Unit (MFCU). Mr. Black serves as MFCU's Deputy Director.

This unit is the prosecuting arm for cases of abuse, neglect, medication diversion and financial exploitation of residents living in long term care facilities that receive Medicaid funds in any form.

Mr. Black mentioned he couldn't share a lot about the prosecution of cases because investigations are not general matters of public record.

In addition, this unit has responsibility for investigating fraudulent billing. This includes over billing Medicaid for charges for LTC residents. The resident does not have to be a Medicaid beneficiary.

Representative Kim Williams: Appointed by Speaker of the House and represents the 19<sup>th</sup> District. Representative Williams has been working with DNHRQAC Chair and Executive Director (ED) to address Joint Legislative Oversight and Sunset Committee (JLOSC) recommendations. Representative Williams thanked Chair Furber and ED Bailey as well as all of the commission members for their on-going support and advocacy - all which is extremely important.

Representative Williams will be prime sponsor for two concurrent resolutions in the coming months related to long term care residents and others:

Older American's Month (May)

World Elder Abuse Awareness Day (WEAAD - June)

At this point, Ms. Bailey has been working with Representative Williams' Legislative Aide, Justin Richards, about drafting both of these bills.

Jennifer McLaughlin: Appointed by the Governor to serve as provider in New Castle County. Ms. McLaughlin is an occupational therapist who served adults, mostly in LTC setting, for 24 years.

During the past 6 years, Ms. Laughlin has worked in school-based setting. In addition, she currently provides adult & pediatric home care.

Finally, Ms. Laughlin is trained as a Dementia Care Specialist, which is a topic of extreme interest to her.

Cheryl Heiks: Appointed as designee of Delaware Healthcare Facilities Association (DHCFA), which is one of Delaware's LTC non-profit trade association (since 1968). Currently, this association represents 95% - 97% of facilities/industry in Delaware. Ms. Heiks is Executive Director of DHCFA.

DHCFA hosted a large educational event March 10, 2022 which focused around recovering from COVID19; memorializing lives lost; sharing stories about individuals that went through the trauma of such and honored Delaware National Guard for their assistance with Omicron surge in LTC facilities and DE Hospitals.

The Association will be launching a dementia training series. This information was shared during DHCFA's March 10, 2022 event at the Riverfront in Wilm, DE. The training will be provided by Lori Dierolf, President of Open Door Training & Development.

DHCFA is currently working on staffing issues and workforce development including the natural economic outcome with the rise and overuse of staffing agencies.

Kyle Hodges: Appointed by Governor's Office to serve as an advocate of persons with disabilities or the elderly. Mr. Hodges is Policy Director for State Council for Persons with Disabilities (SCPD).

SCPD is a cross-aged disability council that works on legislation, regulations and policies that impact individuals with disabilities.

Currently, SCPD is working on workforce development directed more towards home and community-based services, which currently reflects a critical staffing shortage.

SCPD is working on developing a proposal around workforce development and will be forwarding such proposal to DMMA/Medicaid Office soon. Mr. Hodges added that workforce is a concern within all environments.

Norma Jones: Appointed by Governor's Office as a Consumer of services and supports. Ms. Jones is a resident of a Delaware LTC facility and strives to get to know all residents within the building. She focuses on trying to point residents into the right direction should they have any

concerns regarding their care and informing them of resident's rights. Ms. Jones encourages other residents to speak up and attend Resident Council Meetings to address any concerns.

Laura Wisniewski (Lt Gov Hall-Long Office): Appointed by Senate Pro Tempore. Lt Governor Hall-Long travels throughout the State of Delaware and has entered LTC facilities and hospitals during the pandemic. Most recently in Lt Gov's role at University of Delaware, nursing students are doing their clinicals at Beebe and Christiana Care hospitals 3x week.

In addition, the Lt Governor's Office continues to work with Ms. Bailey and Ms. Furber on a number of issues in long term care facilities.

Some LTC facilities may benefit from 2022 Lt Governor's Challenge. Nominations will open in late March 2022. For more information: <https://ltgovernorchallenge.org>.

Karen Gallagher: Appointed by Governor's Office to serve as advocate for persons with disabilities or the elderly. Ms. Gallagher shared that she had been sick for a while and will get back to the Commission if there is anything she would like to add at a later date (per Barb Bass, staff support).

#### Emergency or DHSS Departmental Orders and Workforce Advocacy

Ms. Furber mentioned in her mind emergency and/or DHSS department orders & workforce advocacy go together. Discussion was opened up for members to decide how to move forward with advocacy related to supporting workforce and emergency orders.

It's been a while since DNHRQAC members discussed how the group would like to address such items. There are also several new commission members since this topic was discussed last. DNHRQAC meets every other month and sometimes items come up that DNHRQAC might want to take a position on, advocate for or express concerns between meetings.

Mr. Hodges stated he believes it is important for DNHRQAC to take a position on topics that are relevant to LTC services and supports. He suggested members consider having a policy/law type sub-committee created to discuss any new order, regulation or legislation and take position on such.

Ms. Heiks mentioned that not all commission members may agree about a specific position relating to an order, regulation or legislation. As a result, Ms. Heiks suggested the group might want to consider permitting all commission members an opportunity to add comments, if a sub-committee will be responding on behalf of this commission. An example provided by Ms. Heiks: staffing crisis and DHSS Departmental Orders regarding certain waivers.

Ms. Heiks further added that this commission and others need to do everything they can to help find a solution for workforce development crisis and provide support to facilities and residents as much as possible. She would like to see flexible options for training and qualifying workforce.

Ms. Furber asked Mr. Hodges how SCPD policy and law sub-committee addresses difference of opinions regarding proposed regulations, legislation, etc among members. “SCPD policy and law sub-committee meets to determine the groups opinion and does not filter opinion to the full council. In our by-laws, the policy and law sub-committee has permission to comment based on the decision they make. This continues to be our path as long as the policy & law sub-committee is being consistent with the values of the full council.”

Ms. Furber encouraged commission members to begin thinking about how this group would like to structure a policy and law sub-committee knowing there might be differences of opinion regarding any proposed DHSS Department Orders, Emergency Orders, regulations, legislation, etc. Mr. Hodges mentioned DNHRQAC might also was to look at the Administrative Procedures Act. Ms. Furber added that it would be beneficial for a Deputy Attorney General (DAG) to be present in future discussions around this scenario. “As a group, we may want to develop some questions & forward to Attorney General’s Office as they continue to work on assigning a permanent DAG to represent the Commission.”

Ms. McLaughlin added the Commission may want to gather data and about the impact of such orders as it relates to Delaware long-term care residents. An example provided: Was there an increase of issues generally monitored by other agencies that impacted resident’s health and wellbeing including physical, social or emotional? How many more complaints were reported as a result and what was the timing of follow-up for said complaints?

Additionally, Ms. McLaughlin stated that we do not represent the workforce per se but can look at workforce shortages in long-term care environment as it related to departmental orders that were implemented. Further, DNHRQAC might want to include staffing waiver and impact on residents and facilities that weren’t able to have a “normal” workforce staffing level. She believes nobody had control over COVID and everyone did the best they could. If we face another similar situation, we can provide feedback to parties that are making the decisions.”

Ms. McLaughlin further added “My understanding with 3.28 staffing order was to provide more flexibility in how ratio is met not reduce staffing. ” Ms. Heiks confirmed the order was to provide facilities more flexibility in meeting staffing ratios, not reduce staffing ratios.

Ms. Furber shared DNHRQAC has enabling statute that permits this group to make recommendations to General Assembly, Governor and others about improvements to the LTC quality assurance system. “As a result, this commission has a unique opportunity, at this point in time, as we continue forward with the pandemic, to look at the State’s response and make suggestions for lessons learned along the way.”

Ms. Heiks added DNHRQAC might want to also consider looking at how the pandemic effected the workforce & ways to repair staffing shortages. Ms. Furber noted the workforce system feeds itself and is very circular. Looking at all parts of the system as it relates to workforce is important (Background Check Center has been mentioned quite a bit during SHOC/DHCQ calls) including contributing factors that impact the overall system. Ms. Gallagher suggested that if a sub-committee is created to look at workforce and repair staff shortages that an individual with disabilities should be included in the group.

Ms. Furber asked commission members still present (a few commission members logged off meeting and therefore there was no longer a quorum) to take some time and think about this before next meeting. Discussion specifically around workforce will be prioritized during next commission meeting.

The hope is to provide members an opportunity to bring forward motions around workforce, emergency orders and other items to determine DNHRQAC's strategy/plan forward: Do we create sub-committee's; Do we adopt specific models? In return, this will help to strengthen DNHRQAC's advocacy efforts.

Between now and DNHRQAC Meeting of May 2022, Director Bailey or Chair Furber will contact Attorney General's Office about Administrative Procedures Act and ask for guidance regarding advocacy efforts, voting on specific items, etc.

### Division of Health Care Quality (DHCQ)

Corinna Getchell, RN & DHCQ Director provided updates on behalf of DHCQ ("Division").

DHCQ is working on updating information on their website. The Division moved their Wilmington Mill Rd office to Newark, DE (University Plaza) last month.

Staffing Report: As of 3/11/2022 (1st Qtr 2022), 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 = 3.47 and state operated facilities = 5.50.

Ms. Bailey asked DHCQ to please send an updated staffing report as one of the skilled facilities was accidentally omitted on the 3/11/2022 Staffing Report.

QART Report: During 1st Quarter of 2022, the Quality Assurance Review Team (QART) reviewed 5 survey's involving a "G" level or higher deficiency. Deficiencies are based on scope and severity and 5 of the surveys conducted by DHCQ during this period rose to a "G" level of harm. After review, the QART Team upheld the 5 "G" level citations by survey staff.

Ms. Getchell mentioned the Division will forward a complete 1<sup>st</sup> Qtr 2022 QART Report in advance of the next commission meeting, as there are still a few weeks remaining in 1<sup>st</sup> Qtr 2022.

DHCQ continues to have staffing vacancies, especially in the area of surveyors. Currently, there is a 43% vacancy rate for surveyors. As of the four currently filled survey positions, two individuals are newly hired (less than 2 months) and two individuals are still in new phase and not compliant (cannot do surveys on their own yet). "This impacts the amount of work DHCQ can accomplish." stated Ms. Getchell.

Since January 15, 2022 - March 14, 2022, DHCQ completed:

2 annual recertification surveys

11 complaint surveys

2 follow-up visits

## 15 Total Surveys

DHCQ is in the process of interviewing for staff member that would be responsible for conducting Post Survey Meetings (PSM). As a result of staff vacancy, PSMs have not been conducted in a while. The purpose of PSMs is to provide residents and families with details about recent annual inspection and allow them an opportunity to provide feedback. The Division hopes to resume PSMs in the near future.

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. January 15, 2022 - March 14, 2022, there have been 16 facility visits by IRT's. The Division also followed-up with total of 51 phone calls & emails.

Per Ms. Getchell, "There continues to be COVID-19 outbreaks within Delaware LTC facilities. Staff appears to be the primary driver at this time. The number of resident outbreaks has been drastically reduced compared to other points in time."

Ms. Getchell mentioned CDC & CMS continues to make changes related to COVID19 testing, visitation, isolation/quarantine and vaccination guidance throughout the pandemic. Last week, they released testing and visitation guidance. The most recent updates include:

- Adding "up to date" terminology in testing guidance (person has received all of the recommended doses of COVID vaccine).
- Modifying language around routine testing based on community transmission rate (metric for LTC facilities only) vs community level (general public)
- Adding "up to date" language to visitation guidance
- Clarifying LTC visitors must meet COVID19 criteria (same as residents) before entering LTC facilities (cannot go in with reduced quarantine or isolation time)
- Updating quarantining information when a resident leaves facility and is not up to date on vaccines (applies to new admissions or readmissions)

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

Routine LTC facility testing is based on Delaware's community transmission rate which is currently "substantial". As a result, if staff is not up to date on COVID19 vaccinations, they are tested twice a week and use necessary precautions. The community transmission level (for general population purposes) is currently low in Delaware.

Anyone symptomatic, regardless of vaccination status, should be tested for COVID (appears in testing guidance).

National Guard - ½ of those trained to assist during Omicron surge are leaving facilities today. The remaining ½ will be leaving next week.

CMS staff mandatory vaccines - (January 27, 2022 and February 28, 2022 compliance) This applied to CMS certified facilities and providers across the board. As a result, surveyors are looking at vaccine data for annual surveys or if they are investigating complaint about vaccination data. Facilities are still required to report testing and vaccination data to CDC and State of Delaware.

Ms. Furber asked if there was something the Commission could do to assist with workforce as the Division appears to have a high number of staff vacancies. In addition, whether the Division can identify anything that might be helpful for DNHRQAC to advocate on behalf of to offer support. Ms. Getchell shared that the majority of surveyors are nurses. The Division has tried many different things including working with Human Resources and variety of options to recruit staff. Many other healthcare providers are able to offer pretty significant bonuses & salaries that the Division is not able to offer.

In addition, staff retention within the Division is an issue. It takes a year and sometimes longer to train staff. The Division puts in a lot of time and energy to train staff and then some individuals do not decide to stay, which affects our workload. If COVID19 outbreaks continue downward, the Division plans to repurpose/train the Incident Response Team staff (2 or 3 people) to assist with surveys. IRT's are not full-time positions and these individual's do not want to work full-time.

## 5. Old Business/New Business

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

Chairman Furber wanted to share with members that a progress report was completed and sent to JLOSC before 1/31/2022 due date.

#### DNHRQAC Sub-Committees

Ms. Furber mentioned members might want to also consider other sub-committees, too, such as one to organize advocacy efforts. Members were encouraged to bring forth ideas during the next commission meeting.

#### FY 21 DNHRQAC Annual Report

A few commission members met to discuss FY21 annual report and JLOSC recommendations. Ms. Furber thanked Cheryl Heiks and Jennifer McLaughlin for their feedback. Ms. Furber is in the process of finalizing the report draft. This will be forwarded to members soon. In the future, and in order to streamline processes, DNHRQAC might consider using Google Docs or some other document sharing software. Ms. Heiks suggested the Commission might want to see if other States provide similar LTC oversight. If so, perhaps the Commission can get some idea's after reviewing their annual report. Ms. Furber added that sub-committees may even want to contribute to a particular section of the annual report. Ms. McLaughlin offered that members might want to consider a small group or sub-committee all year long to assist Executive Director with annual report, research and other tasks.



## 6. Public Comment

Mr. Steven LePage spoke during public comment and mentioned he build a database to capture skilled staffing ratios by extracting nursing home data from CMS and importing it into his database. The information can be filtered by facility.

Mr. LePage mentioned other aspects should be considered when determining health care quality. Mr. LePage added that falls, complaints (types & #), number of RN/LPN/CNA, etc contribute to overall care someone receives in a specific facility.

Ms. Michelle Pedicone spoke during public comment. She was hoping LTCOP would have been present during this meeting, so she could ask for an update about the complaints she filed a while ago. Ms. Furber mentioned LTCOP was scheduled to attend this meeting and provide an update, but we were informed that something came up and the staff member was not able to attend after all. We hope to have updates from LTCOP during the next commission meeting.

## 7. Next meeting commission meeting will be on Tuesday May 17, 2022 @ **location to be determined.**

Ms. Furber and Ms. Bailey are working with others to determine whether in-person, virtual or hybrid type meetings will be permitted as emergency orders are lifted and things are returning to more of a pre-pandemic state. Ms. Heiks shared that other groups are doing a poll to find out if members are more likely to attend meeting in-person vs virtual. “For anyone who visits LTC facilities, people are encouraged to attend as much as possible virtually” stated Ms. Heiks. Ms. Furber mentioned that it’s important for commission members and other meeting participants to feel comfortable AND promote as much participation as possible.

As a result, Ms. Furber offered to send a survey (survey monkey) to commission members. Members of the public were also encouraged to share their feedback:  
Margaret.e.bailey@delaware.gov.

Ms. McLaughlin asked if the survey could include asking members which day/time works best with their schedule, since many members tend to join & exit our meetings at various times. She added this might help members attend the entire meeting instead of part of a meeting. Ms. Furber agreed to add date/time questions to the survey, too.

## 8. Adjournment

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

Attachments: DNHRQAC Meeting of March 15, 2022 agenda  
DNHRQAC Meeting of January 18, 2022 minutes draft  
Staffing Report 1st Qtr 2022