
*Delaware Nursing Home Residents
Quality Assurance Commission*

DNHRQAC Meeting of September 20, 2022

9:30 a.m.

Virtually via Cisco Webex

FINAL

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Norma Jones; Jennifer McLaughlin, OT; Justin Richards (Representative Kim Williams designee); Dr. Melissa Winters, PsyD; Senator Spiros Mantzavinos; Christopher Marques, Esquire; and Hooshang Shanehsaz, RPH.

Commission members not in attendance: Amy Milligan and Tonya Burton.

Patrick J. Smith, Esquire was present from Attorney General's Office (DAG assigned to represent the Commission).

Others Present: Margaret Bailey, DNHRQAC Executive Director; Rob Smith, DHCQ; Kevin Andrews, Consumer; Saundra Hale, State LTC Ombudsman; Katie Macklin, DE Valley Chpt Alz Association; Mary Peterson, Consumer; Robert Stewart, Consumer, Alyson Vann, LeadingAge; Andi Wozney, DSAAPD; and Annette Moore, The Moorings at Lewes.

1. Call to order

Lisa Furber, DNHRQAC Chair, called virtual meeting to order at 9:33 am.

2. Approval of the meeting minutes:

Meeting minutes draft of July 19, 2022 were approved as written.

3. Approval of FY21 & FY22 DNHRQAC Annual Report draft

Members present approved annual report draft pending discussion about future goals, "Facing Forward: Commission Goals". It was suggested the goals listed within the annual report should be identified as to whether they are result of Joint Legislative Oversight and Sunset Committee (JLOSC) review or otherwise.

Action Item:

Future Commission goals to be discussed during next commission meeting.

4. DNHRQAC Member Updates

Ms. Furber asked commission members to share any updates they may have regarding their membership position as it relates to DNHRQAC's work. Ms. Furber and Ms. Bailey are working with the Governor's Office to fill 2 membership vacancies (Kyle Hodges and Karen Gallagher).

Lisa Furber - Ms. Furber stated she is participating in the Long Term Care and Memory Care Task Force and representing DNHRQAC.

Cheryl Heiks - Ms. Heiks mentioned Delaware Health Care Facilities Association will be hosting a Fall educational and conference tradeshow next week. AGE-u-cate will be

performing a live interactive experience with individuals in the audience. There will be mini tabletop exercises, too.

Dr. Melissa Winters, PsyD - Dr. Winters shared there will be a publication pertaining to some findings related to the effectiveness of the Psychotropic Medication Advisory Committee (PMAC) by Delaware Hospital for the Chronically Ill (DHCI). Mr. Shanehsaz, RPH is also an integral member of PMAC. The first report will go to the Government Efficiency & Accountability Review Board's (GEAR) annual report. PMAC also plans to submit for academic publication as well. Next week, Dr. Winters will be presenting at the Delaware Health Care Facilities Assoc (DHCFA) conference on Creating Your Own Behavioral Health Care Plan.

Senator Spiros Mantzavinos – Co-chair of the Long Term Care & Memory Care Task Force (HCR 110). The taskforce met last week. Next meeting will be held September 22, 2022 and DNHRQAC (Lisa Furber) will be presenting to the group. The task force is a diverse group and the current focus is to provide a common set of knowledge before diving into task at hand. Recommendations to Governor Carney & fellow General Assembly members are due May 2023.

Karen Gallagher - Ms. Bailey shared with the Commission details regarding Ms. Gallagher's Celebration of Life event held last month. This virtual event was hosted by Delaware Developmental Disabilities Council (DDC). The House (Rep Williams & Longhurst) and Senate (Sen Mantzavinos & Poore) prepared a tribute to honor Ms. Gallagher's long-standing advocacy efforts as a member of DNHRQAC & DDC.

5. Discussion of:

3rd Qtr 2022 QART Report

Members of the Commission reviewed the QART Report with Rob Smith, DHCQ Licensing Administrator. A copy of this report will be forwarded to commission members after the meeting. Mr. Smith shared an electronic copy of report during the meeting.

In this quarter of 2022, the QART Team reviewed 3 surveys involving 4 "G" level deficiencies (or commonly referred to as F Tags) recommended by the survey team.

Each Federal regulatory provision is assigned a corresponding F Tag/deficiency # which surveyors use to indicate when a facility has failed to meet (or exceed) a given standard.

QART Team is comprised of DHCQ Director, DHCQ Deputy Director, DHCQ Medical Director, DHCQ Nurse Administrator, DHCQ Nurse Supervisor, DHCQ Licensing Administrator and surveyor who wrote the deficiency.

Two factors are considered when a deficient practice is being reviewed:

1. Severity of the injury, or risk of injury
2. Scope of the deficient practice based on number of Residents affected

After QART Team review, the team determines whether deficiencies cited by survey team were appropriate and should remain at "G" level or be upgraded/downgraded.

"G" level deficiencies cited during this quarter:

F 678 Cardio-Pulmonary Resuscitation – Facility nursing staff failed to locate accurate code status in electronic health record and called 911 (3x's), failed to call a Code Blue and to initiate CPR timely, resulting in approximately a 45-minute delay. Resident was pronounced by paramedics.

F 689 (2) Free of Accident Hazards/Supervision/Devices – The facility failed to ensure supervision to prevent accidents (resulting in a fall with injuries or worse for a few Residents). This deficiency was cited during this survey period for 2 facilities.

F 686 Treatment/Services to Prevent/Heal Pressure Ulcers – The facility failed to ensure pressure ulcer care, treatment and services, consistent with professional standards of practice, were provided to the Residents.

3rd Qtr 2022 Staffing Report

Members of the Commission reviewed the Staffing Report with Rob Smith, DHCQ Licensing Administrator. A copy of this report will be forwarded to commission members after the meeting. Mr. Smith shared an electronic copy of this report during the meeting.

Mr. Rob Smith stated that all nursing homes were in substantial compliance during this review period.

Mr. Smith further mentioned there was a survey conducted a few weeks ago at Seaford Center. At that time, DHCQ collected 3 weeks of staffing data and after review, it appeared this facility staffed one day at 3.21 instead of required 3.28. As a result, this facility will need to write a plan of correction to be reviewed by DHCQ. DHCQ will follow-up with a random audit and determine whether a Civil Monetary Penalty (CMP) will be imposed (or not).

Regardless of staffing ratio requirements, Mr. Rob Smith stated all facilities must meet the needs of all Residents (if they have a higher acuity). As a result, facilities may have to staff higher than the minimum requirements.

Also mentioned, due to staffing shortages everywhere, DHCQ has decided to increase its nursing home staffing oversight starting October 1, 2022. Each nursing home will be required to submit staffing levels at least quarterly in addition to every time a survey is conducted.

Mr. Rob Smith shared that staffing ratios do not apply to assisted living or community homes, just skilled /nursing homes. CMS gathers nursing home staffing data but does not include some staff positions that Delaware law requires (Eagles Law). Eagles Law exempts Director of Nursing (DON), Registered Nurse Assessment Coordinator (RNAC) and Education Coordinator – so these positions cannot be included in staffing numbers.

If a staffing deficiency is identified, a report will be issued and facility will be given an opportunity to correct deficiency by submitting plan of correction. After DHCQ receives an acceptable plan of correction, a random staffing check will be conducted to assess the facility's compliance with staffing requirements. If the staffing is not in compliance further action may be taken (ie CPM). DHCQ will send DNHRQAC report once it has been finalized.

Senator Mantzavinos asked whether instances of non-compliance or trends are tracked by DHCQ. Mr. Smith stated DHCQ does track trends/patterns of non-compliance for all

scenarios, not just staffing concerns. He further added that DHCQ would impose CMP's if a nursing home facility does not meet the minimum Delaware staffing requirement.

Ms. Heiks mentioned at times a situation arises where a staff member may call out unexpectedly and therefore staffing numbers are off. Mr. Smith informed members that in this particular case, the Exigent Circumstances Reporting Form needs to be completed and sent to DHCQ.

The Exigent Circumstances form was recently updated (effective Oct 1, 2022). DHCQ also created a "new" staffing mailbox: DHSS_DHCQ_Staffing@Delaware.gov for facilities to send staffing correspondence.

Mr. Rob Smith will forward an electronic copy of the "updated" Exigent Circumstances Reporting Form to the Commission. This form must be completed and forwarded to the Division within 24 hours of the exigent circumstance (such as a last minute staff call out, replacement staff not available, increased census).

Ms. Heiks also asked if there is an existing waiver in place due to the public health emergency that allows facilities to count all staff that provides some direct care (like DON) to be counted in staffing numbers. Mr. Rob Smith reminded commission members that the law permits facilities to submit exigent circumstances form for situations like call outs and COVID where a DON provided direct care, so the Division has the form on file.

Ms. Sandra Hale asked if the trends are available for cross facility comparison and able to be shared. Mr. Smith mentioned this scenario would be a FOIA request. He added that routine staffing audits are being conducted often by DHCQ because staff issues are occurring everywhere.

There was a question about phase I and phase II staffing ratios. Mr. Rob Smith shared the phases were used to determine staffing ratios before COVID. "The staffing ratios are currently waived. The Division is currently only looking at minimum hours per resident. Once waivers are no longer applicable, DHCQ will be looking at staffing ratios, too."

Long Term Care Ombudsman Program (LTCOP)

Ms. Sandra Hale, State Ombudsman provided the following LTCOP updates:

-LTCOP facility visits (skilled vs AL) since April 1, 2022

Resident Complaint related: Total 49, nursing homes 35; assisted living 14

Quarterly (mandatory) visits: Total 37, nursing homes 26; assisted living 11

Total 86 nursing homes 61; assisted living 25

*The mandatory visits are required per Older Americans Act. These are routine visits for LTCOP to be able to have access to the buildings. Delaware defines the visits on a quarterly (unannounced) basis.

-Number of community visits (complaint related): 4

-# of volunteer ombudsman and visits (recent Federal changes where volunteer's now have same duties and responsibilities as paid ombudsmen):

Volunteer(s) 1
Number of Visits 7

Top five reasons for outreach to LTCOP (facility & community) since June 2022:

1. No response to call bells
2. Lack of assistance
3. Lack of hygiene care/bathing
4. Lack of access to information (records/forms)
5. Concerns with MCO – HCBS Ombudsman

-# of calls/emails since June 2022 relating to visitation or outbreaks in facilities - none

-LTCOP has been notified about 7 discharges since June 2022. Of the 7 discharges, 6 were related to non-payment situations. The remaining discharge was due to facility stating they could no longer meet the Resident's needs. There is a resource email address for discharge notices. LTCOP is also not receiving notice of transfers of bed hold notices.

-Average number of days to resolve residents' rights complaints and goals regarding timeline to resolve such complaint. Per policy (2017), ombudsman have up to sixty days to resolve complaints.

-Average number of days to schedule meetings to address concerns with families and facility staff. The electronic system used in the LTCOP is unable to track the number of days to schedule meetings. Per policy, ombudsman have up to three business days to respond to the initial complaint/reporter. Note, an internal change was made so allegations of abuse, neglect, and/or exploitation are responded to within one business day.

-How long after meeting with family & facility will LTCOP provide a plan to be implemented (any follow-up?). Per policy, the Ombudsman completes follow-up in twenty business days once a complaint has been remediated or addressed. LTCOP does not provide a formal plan or corrective action plan for facilities to follow, as the involvement of the ombudsman is Resident directed. LTCOP does not have jurisdiction to hold a facility accountable in making sure a plan of correction is implemented. If the plan is not being followed, LTCOP would go back to the table and address barriers that might be prohibiting action plan from being implemented. If no success, LTCOP would connect with the appropriate regulatory agency for further assistance, if it's something that would falls within their realm of regulations.

-LTCOP staff changes - Amy Levin, new hire, Kent/Sussex County
Sheila Brisco – No longer with the program (served NCC Community)

Additional LTCOP items:

-Ad campaign to increase awareness and visibility of program through commercials and new hotline specific to the LTCOP is forthcoming. New LTCOP toll free number: 1-855-773-1002. This includes mini-series videos of family councils.

-LTCOP website is being revamped to include online complaint form; the web page will be stand-alone format (removed from DSAAPD).

-Creating set of benchmarks for LTCOP. This is a first of its kind and will be used to measure the success of the LTCOP. The Pioneer Network is helping to create benchmark assessments. It most likely will take a year to fully develop this initiative and then it will be rolled out to other states.

-LTCOP is experiencing difficulty in obtaining required 30-day discharge notices, transfer logs, and bed hold notices from provider community.

-Separate MOUs are needed between the LTCOP and DHCQ, DSAAPD, and possibly DOJ.

-LTCOP will be revisiting Home and Community-Based Services (HCBS) to further define their scope of work. Currently DE Code does not address LTCOP in the community. DE Code defines LTCOP scope of work in long term care facilities.

-Trainer/Educator III merit position has been submitted for approval.

-LTCOP recently revised training curriculum regarding volunteer ombudsmen due to Federal changes. LTCOP has also been communicating with Highmark and AmeriHealth Caritas regarding the long term care ombudsman' program.

Ms. Furber thanked Ms. Hale for including DNHRQAC (Lisa & Margaret) in the recent nursing home regulations 3-day training program offered in conjunction with University of Delaware Professional and Continued Studies. Several DHSS staff members were also in attendance.

October is Residents Rights Month. To honor Residents, there will be multiple events held throughout the State of Delaware. Ms. Hale will forward a master list of Resident Rights events once it has been finalized. LTCOP will provide a presentation and host a game of bingo that will focus on resident's rights. Residents will be taught self-advocacy skills during this event. LTCOP also purchased an animal companion (robotic therapy pet) for each dementia unit (cat & dog).

DHCQ Updates, COVID-19 Guidance

Ms, Bailey provided updates regarding DHCQ activities since DNHRQAC Meeting of July 19, 2022 as follows:

Nursing Home Post Survey Meetings (PSM) - During this time frame, DHCQ completed 5 nursing home facility annual inspections/recertifications. The surveys had been conducted between July 2021 and May 2022.

The number of citations during this time frame ranged between 5 – 11 deficiencies. Ms. Bailey shared the top seven deficiencies cited.

One facility was in COVID-19 outbreak mode during the PSM. One facility was in survey mode again at time of PSM.

Assisted Living Facility Post Survey Meetings - During this time frame, DHCQ did not complete any PSMs related to assisted living facilities.

Level of Community Transmission is still high in all three Delaware Counties. As a result, staff not fully vaccinated are required to test 2x week.

As of September 15, 2022 (per Delaware Division of Public Health's monthly public stats):

4,573 LTC COVID19 positive cases

979 LTC Residents passed away due to COVID19 complications

The "Bivalent booster" is being distributed to long term care facilities. This booster targets BA4 and BA5 variants. Ms. Heiks mentioned National Healthcare Safety Network (NHSN) recently updated the definition of staff who are up-to-date to include this new booster. NHSN is the nation's most widely used healthcare-associated infection tracking system.

Ms. Furber mentioned she and Ms. Bailey met with DHCQ Director, Corinna Getchell to hopefully streamline some of the information the Division is providing right now and give them a little extra space and breathing room due to their staffing shortages.

6. Old Business/New Business

Member Survey Monkey Poll – Meeting dates/times

Ms. Furber shared results of survey/monkey poll conducted to gage commission members regarding suitable meeting date/time. Although not all commission members responded, it appears 3rd Tuesday of every other (odd) month is acceptable to the group. The responses were 50/50 regarding virtual meeting or some form of hybrid meeting. No commission member selected in-person (only) meeting preference.

Ms. Furber asked commission members if they would be willing to meeting during additional times to conduct advocacy work. This would be beyond the already scheduled full commission meetings. The reason for this ask is because proposed legislation and other considerations don't typically align with DNHRQAC's every other month meeting schedule.

Ms. Heiks shared her experience relating to legislation and/or whatnot that might come up between meetings or spontaneously.

Ms. Furber asked DNHRQAC's Deputy Attorney General, Patrick Smith, Esquire whether email is an acceptable form of communication among commission or board members relating to public meeting laws. In particular, if email communication among commission members would be considered official business that may run afoul of the public environment.

Mr. Shanehsaz mentioned that other Government boards or commissions he has participated on were not able to communicate through email about something in particular. It would have been considered conducting business around the public. He mentioned this was not the case for boards or commissions that are not part of the State Government (like private or non-profit organizations).

Further, Mr. Shanehsaz mentioned he believes a legislative subcommittee should be separate and away from every commission members outside interests. Should some type of emergency legislation arise, this group might want to consider allowing emergency board meetings, if needed for the entire group to discuss.

Ms. McLaughlin added that she would have difficulty attending monthly meetings during the day due to work commitments. Additionally, although she does not like the idea of full autonomy from a subcommittee, she likes the idea that a full commission or board has the chance to discuss a particular topic. Ms. McLaughlin likes the idea of emergency meetings but wondered how soon in advance would an emergency meeting need to be provided to the public. Ms. Bailey mentioned the public is required by open public meeting laws to be notified at least 7 days in advance.

Ms. Heiks suggested the full commission might want to consider developing a roadmap for legislative subcommittee that is broad enough and detailed enough for members to feel comfortable. Further Ms. Heiks mentioned, if there are last minute items that arise during end of any legislative session, such items could hopefully be covered under the broad scope of topics previously agreed upon.

Ms. Furber liked the idea of creating a list of more general type topics to support annually. This could be used as a guide for the subcommittee. Members voted and agreed on this item.

Action Item:

During the next commission meeting, members will focus on developing general advocacy goals to support.

Additionally, DNHRQAC will look at ways to structure subcommittees and begin laying groundwork.

Mr. Patrick Smith, Esquire will look further at the public meeting laws and get back to the Commission about this item.

DNHRQAC Sub Committees

Ms. Furber mentioned there was discussion during last commission meeting about moving forward with subcommittees. The subcommittees would satisfy JLOSC recommendations and allow the Commission to be more direct and thoughtful with the various tasks this group needs to complete.

Types of subcommittees suggested: annual report, legislative, executive and any other subcommittee members would like to elect to do so. Ms. Furber opened the floor for discussion. Her hope is to work on establishing the subcommittees and update by-laws and so forth.

During DNHRQAC Meeting of July 19, 2022, there was discussion around a legislative advocacy subcommittee. At that time, DNHRQAC looked at a model the State Council for Persons with Disabilities (SCPD) uses. This legislative advocacy subcommittee is a standalone subcommittee which has autonomy from the full committee. As a result, this subcommittee analyses, discusses and then moves forward with advocating on legislation and other various advocacy related issues.

After DNHRQAC Meeting of July 19, 2022, there were additional questions from commission members. At that time, Mr. Patrick Smith, Esquire (DNHRQAC's Deputy Attorney General) offered to review and provide more clarification.

Mr. Patrick Smith, Esquire shared that he connected with the Public Integrity Commission's (PIC) Director after July Commission meeting. The purpose was to discuss the potential of establishing subcommittees and possibility of /or avoiding conflict.

"Need to make sure the membership of the subcommittee doesn't drown out the overall goal of the membership of the Commission." Mr. Patrick Smith, Esquire encourages the Commission to look at the statute and understand the intent behind the statute relating to diverse viewpoints. He further added that PIC offers training on this topic. Commission members in attendance agreed.

Action items:

Patrick Smith, Esquire will reach back out to the Public Integrity Commission and invite a future DNHRQAC meeting. Commission members present voted and approved this item.

7. Public Comment

No public comment was provided during this meeting.

8. Next DNHRQAC Meeting - Tuesday November 15, 2022 @ 9:30 AM. The location: TBD.

9. Adjournment

This meeting was adjourned at 11:13 am by Lisa Furber.

Attachments: DNHRQAC Meeting of September 20, 2022
DNHRQAC Meeting of July 19, 2022 draft
3rd Qtr 2022 QART Report (screen shared/will be forwarded to members)
3rd Qtr 2022 Staffing Report (screen shared/will be forwarded to members)
LTCOP documents (reports will be forwarded to members)