
DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION
Eagle's Law Waiver Sub-committee
In-person & Virtual Meeting
Cisco Webex
Anchor Location: The Vero @ Newark
924 Barksdale Rd Newark, DE 19711
Meeting of August 1, 2023
FINAL

Sub-committee DNHRQAC member(s) present: Norma Jones (virtually), Dr. Melissa Winters, PsyD (in-person) and Hooshang Shanehsaz, RPH (in-person).

Sub-committee DNHRQAC members not in attendance: Cheryl Heiks and Jennifer McLaughlin.

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); and Raetta McCall, Consumer (virtually).

1. Call to order

The meeting was called to order at 9:30 AM. Commission members were identified for the record.

2. Discussion of:

Suspension of Eagles Law Until July 1, 2024

There was a discussion regarding the suspension of nursing home staffing ratio's, also known as Eagles Law, until July 1, 2024. "New" Epilogue language was approved by Joint Finance Committee (JFC) members during JFC Mark-up Meeting - May 2023. The "new" epilogue language is able to be viewed in House Bill 195, page 179 section 187 & pdf page # 181 that states:

Section 187. Long-term care facilities must continue to provide 3.28 hours of direct care per resident 4 per day. However, the staffing ratios required in 16 Del. C. § 1162 are hereby suspended until July 1, 2024.

This sub-committee was established to create a formalized nursing home staffing ratio waiver process relating to Eagles Law and applicable policies & procedures. The full (DNHRQAC) commission voted and agreed to create an Eagles Law Waiver Sub-committee during a previous meeting.

Members of the sub-committee reviewed Eagle's Law:

<https://delcode.delaware.gov/title16/c011/sc07/index.html> which appears in 16 Del. C. § 1162.

Per Code: "If a nursing facility cannot meet the shift ratios due to building configuration or any other special circumstances, they may apply for a special waiver through the Division, subject to final approval by the Delaware Nursing Home Residents Quality Assurance Commission."

Special waiver requests mentioned in the CODE have not been shared with DNHRQAC.

"Notwithstanding the minimum staffing requirements established in this subchapter, to the extent additional staffing is necessary to meet the needs of residents, nursing facilities must provide sufficient nursing staffing. If the Division finds unsatisfactory outcomes in a facility, the Department may impose

protocols for staffing adequacy, including but not limited to staffing levels above the minimum required under this subchapter. Evidence of a failure to meet the nursing staffing needs of residents shall be grounds for enforcement action under this chapter.”

As a result, sub-committee members believe it would be beneficial to review all Exigent Circumstance Forms DHCQ received January 2018 – present. This would provide members with an idea of patterns, situations, time frames, and other circumstances where special waivers were granted by the Division.

The Public Health Emergency (PHE) was lifted May 11, 2023. Lifting the PHE would mean Delaware nursing homes would need to comply with Eagle’s Law, which is specific to Delaware.

Sub-committee members reviewed Code language defining direct care and staff positions.

“Direct care” shall mean an activity performed by a nursing services direct caregiver that is specific to a resident. Direct care activities are as follows:

- (1) “Hands-on” treatment or care, including, but not limited to, assistance with activities of daily living (e.g., bathing, dressing, eating, range of motion, toileting, transferring and ambulation); medical treatments; and medication administration;*
- (2) Physical and psychosocial assessments;*
- (3) Documentation, if conducted for treatment or care purposes;*
- (4) Care planning; and*
- (5) Communication with a family member or a health-care professional or entity, regarding a specific resident.*

“Nursing services direct caregivers” shall mean certified nursing assistants, licensed practical nurses, registered nurses, advanced practice nurses and nursing supervisors when and only when providing direct care of residential health facility residents. The director of nursing (“DON”), assistant director of nursing (“ADON”), and/or registered nurse assessment coordinator (“RNAC”) may be designated as a nursing services direct caregiver and counted in the direct care hours and minimum staffing ratios when exigent circumstances require that they discontinue their administrative and managerial duties in order to provide direct care. Within 24 hours of the exigent circumstance(s) that require that the DON, ADON and/or RNAC provide direct care, the facility shall notify the Division in writing of this emergency situation and provide documentation of the amount of direct care time that was provided by the DON, ADON and/or RNAC.

(f) “Nursing supervisor” shall mean an advanced practice nurse or registered nurse who is assigned to supervise and evaluate nursing services direct caregivers no less than 25 percent of the nursing supervisor’s time per shift. Up to 75 percent of the nursing supervisor’s time per shift may be spent providing direct care. Registered nurses (RN) holding the following positions may provide the supervision required of a nursing supervisor, and the supervision may be counted towards the minimum 25 percent supervision required per shift:

- (1) Director of nursing (“DON”).*
- (2) Assistant director of nursing (“ADON”).*
- (3) Registered nurse assessment coordinator (“RNAC”).*
- (4) Director of in-service education (RN).*

(5) *Quality improvement coordinator nurse (if an RN).*

(6) *Nursing home administrator (if an RN).*

After reviewing Delaware CODE, DNHRQAC Eagle's Law Waiver Sub-committee members decided it would be beneficial to do the following:

1. Invite a nursing home facility staff member responsible for ensuring appropriate staffing hours are met to next subcommittee meeting.
2. Request from DHCQ:
 - A. Copy of all staffing ratio "desk reports" currently being used to monitor a nursing home facility staffing level (this began October 1, 2022 during Public Health Emergency). Subcommittee members ask this report to include information pertaining to staffing ratio's per shift and 7 days a week.
 - B. Copy of all Exigent Circumstance Form requests – January 2018 to present.
 - C. Invite DHCQ designee, responsible for determining whether a facility is in compliance of staffing ratio's to next sub-committee meeting. If not in compliance, a copy of letters sent to facilities (January 2018 – present) as to such and DHCQ to produce documents regarding whatever "remediation plan" the Division put into place to ensure the situation was corrected.
 - D. Copy of all Federal and State CMP violations imposed (facility name, date, amount) related to staffing deficiencies (January 2018 – present).

Sub-Committee Meeting Frequency

Sub-committee members collectively agreed this group should meet monthly for now but will revisit and adjust meeting schedule if needed.

Sub-Committee Rules

Ms. Bailey mentioned per DNHRQAC Deputy Attorney General Patrick Smith, Esquire, that "sub-committee meetings are considered public bodies for purposes of the meetings. This means even sub-committee meetings need to be posted on Delaware Public Meeting Calendar (at least 7 days in advance) and open to public (29 Del. C. 10004). The full Commission can declare how many people are in the subcommittee @ the onset. If there is a quorum of that subset, that quorum can vote. Then subcommittee can recommend their vote to the full Commission to adopt. By way of vote, the full Commission can delegate authority for subcommittee members to vote on certain things. How this would work is a quorum of full Commission would convene and hold vote to delegate authority for subcommittee to vote on "X" issue. If a majority of full Commission votes to delegate, the subcommittee now has power to vote for the full Commission."

Email or Portal

Ms. Bailey mentioned she was in touch with the Judicial Information Center (JIC) to ask about a resource mailbox and/or portal for this endeavor. Ms. Bailey was advised it would take about two weeks to set up a resource mailbox (such as DNHRQAC_Waiver@delaware.gov). A portal would take time to plan and execute, not to mention funds would be needed to support the portal. This sub-committee will need to decide in the future the best method for transmitting documents to/from facilities and who will be able to access the information.

3. Public Comment

There weren't any comments or questions from the public during this meeting.

4. Next DNHRQAC Eagles Law Waiver Subcommittee Meeting – Monday August 28, 2023 @ 2:00 pm: Anchor Location and Cisco WebEx will be available for meeting participants.

5. Adjournment

The meeting was adjourned at 10:22 AM.