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*Delaware Nursing Home Residents  
Quality Assurance Commission*

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**DNHRQAC Legislative/Advocacy Subcommittee Meeting of October 16, 2023  
@ 1:00 p.m.**

**Virtually via Cisco Webex**

**Anchor Location: The Vero @ Newark – 924 Barksdale Rd Newark, DE 19711**

**FINAL MINUTES**

Subcommittee members in attendance: Chris Marques, Esquire; Mary Peterson, RN and Cheryl Heiks.

Subcommittee members not in attendance: Dr. Avani Virani, Kori Bingaman, Hooshang Shanehsaz, RPH and Lisa Furber, DNHRQAC Chair.

Others Present: Margaret Bailey, DNHRQAC Executive Director.

The meeting was brought to order @ 1:00 pm. Ms. Bailey mentioned this subcommittee was created to address legislative/advocacy efforts relating to long term care services and supports in Delaware. In addition, this subcommittee might have an opportunity to weigh-in on Federally proposed legislation, too.

1. Welcome from subcommittee members

DNHRQAC subcommittee members introduced themselves and provided information regarding their current and past roles relating to Delaware long term care.

This was the first DNHRQAC Legislative/Advocacy Subcommittee Meeting. A series of (3) meetings were scheduled to discuss & draft a response to CMS Proposed Nursing Home Staffing Standards Rule. Once this subcommittee prepares a response to the proposed rule, a copy of the draft will be forwarded to the entire DNHRQAC membership for review. DNHRQAC scheduled a “Special Meeting of October 31, 2023, to vote & finalize its response to the proposed rule.

Due to lack of quorum, subcommittee members present engaged in an open dialogue. Ms. Bailey will reach back out to subcommittee members to find out their commitment regarding the next 2 meetings and remind them about the tight timeline for preparing and submitting a response to the proposed rule. Ms. Bailey will confer with Patrick Smith, Esquire, who represents DNHRQAC, beforehand.

2. Discussion of:

CMS Proposed Nursing Home Staffing Standard Rule

Ms. Bailey forwarded the CMS Proposed Nursing Home Standard Rule to DNHRQAC Legislative/Advocacy Subcommittee members for review, in advance of the meeting. In addition, information regarding recent webinars hosted by National Consumer Voice and others outlining CMS Proposed Nursing Home Staffing Rule was also sent to DNHRQAC members.

Ms. Bailey mentioned she reached out to Delaware Health Care Facilities Association (DHCFA) and LeadingAge for a response template. LeadingAge forwarded a copy of their guide. Ms. Bailey recently forwarded the guide to the entire Commission. Ms. Peterson added that DHCFA should also have a copy of template from American Health Care Association (AHCA)/National Center for Assisted Living (NCAL).

Ms. Bailey asked Mr. Marques if the Attorney General's (AG) Office plans to submit a response to the Federal proposed staffing rule. Mr. Marques will inquire within, and let the subcommittee know whether the AGs Office plans to weigh-in on the proposed rule.

Mr. Marques suggested the subcommittee discuss the proposed nursing home staffing rule and where it intersects with Delaware law.

Ms. Peterson mentioned that Delaware already exceeds 3.0 HRPD proposed in this rule. In Delaware statute, Eagle's Law requires 3.28 HRPD, which has been in place for more than 20 years for Skilled Nursing Homes (SNF).

Ms. Heiks stated that 3.0 HRPD is certainly up for discussion but believes there is push back on several levels and whether the HRPD number is higher or lower, it needs to be funded and will eventually hit the Medicaid budget. Ms. Heiks mentioned when the analysis was done in 2001, CMS only lists 2 Delaware facilities that would be defined as rural (Methodist Country House and Stonegate – both located in New Castle County). In reference to rural, it means these 2 facilities will be given more time to adapt to a change in HRPD. "Perhaps the definition of rural included a number of individuals per square mile." "When you look at southern Delaware, that seem rural to me" per Ms. Heiks.

Ms. Bailey shared that during the DNHRQAC Meeting of 9/19/2023, Ms. Moore, Nursing Home Administrator (NHA) at The Moorings @ Lewis, mentioned that despite raising hourly pay for RNs, LPNs and CNAs, they are struggling with workforce recruitment and retention. Ms. Heiks believes some facilities must compete with post-acute facilities (same workforce pool).

Ms. Heiks mentioned Delaware SNFs current census is 81% - 83% (depending on whether the State licensed facilities are included in the mix). Prior to the pandemic, the SNFs averaged a census in the mid 90 percentile. During the pandemic, the census was roughly to 67%, but not for very long.

Ms. Bailey asked how many Delaware facilities are still using agency staff within SNFs. Ms. Heiks stated that most SNFs are still using agency staff to complement the workforce and some as much as 50%. "Agency staff does not give us an opportunity to provide consistent care, build relationships so staff knows the residents and it's a big driver of cost."

Mr. Marques asked if the temp staffing agencies are being used for facilities to meet the minimum HRPD and mentioned it was his understanding that some individuals elect to work for a staffing agency to make more money. Ms. Heiks mentioned they will make a little more money but won't have the same benefits as permanent facility staff members do. Additionally, temporary agency staff often likes the flexibility to work when they would like to work. They might also have to set aside money to pay their taxes (Social Security, Federal and State) if they have a 1099 or pay their own liability insurance.

What will affect Delaware, per Ms. Peterson, is the availability of a registered nurse (RN) 24-hours a day, 7 days a week. Currently, Delaware law only requires an RN for 8 hours during 24-hour period. As a result, the Director of Nursing (DON) can qualify as RN for the 8 hours in 24-hour period in DE statute.

Additionally, Ms. Bailey mentioned the Federal proposal does not include Licensed Practical Nurses (LPN). The proposal only refers to certified nursing assistants (CNA) and RNs. Ms. Peterson stated that LPNs are heavily relied upon within nursing home environment and make up a large section of the work force.

Ms. Heiks mentioned individuals currently being served within Delaware long term care facilities and workforce composition has changed over the years. The need for services because of Delaware's aging population versus available staff has made everything more unbalanced.

Further, Ms. Heiks added that home care has increased over the years and therefore is able to offer a compliment of individuals to assist folks who want to age at home. The workforce is quite competitive among home care, nursing homes, hospitals, etc.

In home care, Ms. Heiks shared that there isn't really any oversight in the community and nobody to reach out to if staff person is in trouble. Also, Ms. Heiks mentioned that home health care can take care of fewer people than assisted living or long-term care setting.

Ms. Heiks mentioned, if a facility has a nurse or CNA arrive late for their shift and it impacts the required staffing numbers in Delaware, a facility is cited first and then facility can request Exigent Circumstance Waiver from Division of Health Care Quality (DHCQ).

Ms. Heiks shared an analysis (Clifton Larson Allen, LLP) she recently received from American Health Care Association (AHCA) regarding the number of nurses it would take for Delaware to meet the proposed 3.0 HRPD. The analysis provided data nationally, too. The data was extracted from Care Compare, specifically the Payroll Based Journal (PPJ). The analysis report also included cost and census impact of the proposed rule. Ms. Heiks will provide a link of the report to subcommittee members. She reiterated that 97% of Delaware SNFs in report are considered urban and doesn't believe facilities with a high Medicaid mix would be able to meet all 3 criteria in the proposed rule.

Ms. Peterson mentioned LeadingAge, Medicare Payment Advisory Commission (MedPAC) and Long-Term Care Community Coalition (LCCC) supplied different numbers regarding the impact of the proposed rule, too. Mr. Marques concurred and stated LeadingAge estimates the cost to implement the proposed rule is higher than the Clifton Larson Allen Analysis report for AHCA.

Ms. Heiks suggested subcommittee members consider stating in the group's response to the proposal that "there are varying reports as to the cost for this proposal and that whatever it may be, it would need to be funded."

Ms. Peterson added that in her opinion, she does not believe 4.1 HRPD is enough for the majority of "current" SNF residents & provided an example: Someone to be bathed, fed, repositioned, incontinence apparel change, dressed, fed and multiple other tasks exceed 4.1 HRPD. The biggest factor is funding.

Mr. Marques asked whether the staffing proposal will increase overall job satisfaction. The following example was provided: I am getting burnt out. I am the only person, working by myself and there is a 2 person assist. I don't have a choice whether to assist this resident or have them sit in their waste longer than necessary.

Ms. Heiks shared there are several ideas floating around about how to increase workforce, however not necessarily dedicated to long-term care. Ms. Peterson mentioned on the flip side, lots of proposals can be created to increase work force, however it's a multifaceted issue that will not be solved without leadership, respect and other items addressed within long-term care culture. Unfortunately, these are not items the subcommittee has time to work on before providing comments on the proposal. Also, there isn't a quorum of subcommittee members present during this meeting.

Ms. Heiks mentioned she will add leadership training, for NHAs and facility owners, back into DHCFA's educational opportunities.

The proposed rule does not address licensed intermediate care facilities. In Delaware, there are 2 intermediate care facility's: Stockley and Mary Campbell Center. Both are surveyed the same as skilled nursing facilities.

Ms. Heiks mentioned she is on the Non-Acute Long-Stay Patient Task Force where individuals have been residing in the hospital for a long- stay and have complex/complicated needs that would require more than just the normal SNF staffing ratio to take care of them. Examples provided: Someone needing advanced specialties or 1:1 or 2 :1 care. SNFs are not able to take on this type of resident due to staffing uncertainly. She mentioned building could close or have fewer beds available.

Ms., Bailey asked if any Delaware SNFs have considered decertifying any beds. Ms. Heiks shared that she is not aware of any Delaware facilities have elected to decertify any beds but instead have made capital investments to redo their footprint. "The budgets are built on a certain number of people & overhead per square foot. Some other States have made enhancements that have paid to decertify some beds to take them off-line. Facilities that can afford to do so have made some more private rooms available in case of infection prevention as needed. A lot of the buildings in Delaware are not new construction and don't offer flexibility to reconfigure the layout."

Ms. Heiks thought, in the past, there was some type of investment capital as part of the Medicaid reimbursement that stopped after a period during Governor Markell's term. She mentioned some other States have a capital investment that can be used for quality care enhancements (like addressing behavioral health and substance abuse disorders). These folks perhaps need a drug recover/long term care like some other States have done to control the environment while someone is becoming stable.

Ms. Bailey asked whether DHCFA knows the current number of nurses vs LPNs that work in Delaware SNFs. Ms. Heiks mentioned she can find out and share with subcommittee members.

Ms. Peterson mentioned that transparency on spending as stated in the proposed rule as important. "More transparent reporting of how Federal Government money and State Medicaid is being spent by the facility." She provided this example: Some other States that have a large organization that owns a nursing home might also own other companies that provides services such as physical therapy and contract with them. In return they pay more for the services instead of offering services in-house. It looks like they are losing money but, they are paying their own corporation and therefore making higher profits than what is being reported. It's called Related Parties Transactions.

Ms. Peterson reiterated 3 issues with the current Federal proposal: RN hours, 3.0 HPRD (& no mention of LPNs) and transparency.

#### Discussion of Subcommittee Timelines

Responses regarding the proposed rule must be submitted by November 6, 2023.

The subcommittee mentioned they would need to determine who on the subcommittee would be responsible for submitting the response to the Federal Register, on behalf of DNHRQAC.

Other Legislative/Advocacy Efforts Subcommittee Members Mentioned Might be Worth Exploring in the Future

Delaware should require temporary staffing agencies to register. Ms. Heiks mentioned at least 20 other States have some type of legislation around registration and monitoring of their activities.

DNHRQAC may want to consider looking at how much temporary staffing agency's is being used to meet staffing numbers and perhaps look further into what percentage of care should be provided by facility vs temp agency staff.

Delaware may want to look at the landscape of services provided throughout the State: Hospital, Rehab, SNF, Acute, etc.

DNHRQAC may want to look at SNF services for sex offenders.

DNHRQAC may want to look at specialty staff currently needed in long term care facilities.

Delaware may want to look at Medicaid reimbursement rates and why they have not changed in Delaware since 2008.

3. Public Comments

Nobody from the public attended this subcommittee meeting and therefore there wasn't any public comments.

5. Next Meeting

Thursday October 19, 2023 @ 1:00 pm: Cisco WebEx & Anchor Location: The Vero @ Newark.

6. Adjournment

The meeting was adjourned at 2:24 p.m.