
*Delaware Nursing Home Residents
Quality Assurance Commission*

DNHRQAC Meeting of September 19, 2023

9:30 a.m.

Virtually via Cisco Webex

Anchor Location: 20151 Office Circle Georgetown, DE 19947

FINAL

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Kori Bingaman, NHA; Norma Jones; MBA; Dr. Melissa Winters, PsyD; Christopher Marques, Esquire; Brandon Williams (proxy for Senator Spiros Mantzavinos); Jennifer McLaughlin, OT; Dr. Avani Virani; Mary Peterson, RN, BSN and Hooshang Shanehsaz, RPH.

Ms. Furber and Ms. Peterson attended the meeting in-person @ the anchor location. The remainder of commission members and members of the public attended this meeting using Cisco WebEx platform.

Commission members not in attendance: Molly Crumley, RN, BSN, MBA and Representative Kim Williams.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Sandra Hale, LTCOP; Denise Elliott, DHCQ; Jim McCracken, LeadingAge; Rob Smith, DHCQ; Robert Stewart, Consumer; Maggie Goonan, Consumer; Jennifer Christensen, LTCOP; Annette Moore, The Moorings; Karen Crowley, DHCQ; Dayna Scott, DMMA; Sean Dwyer, DE Valley Chpt Alz. Assoc; Timothy Ericksen, DSAAPD; Kevin Andrews, Consumer and Anessa Zivic, public member. There were three unidentified individuals that attended by phone.

Commission members introduced themselves and welcomed the newest commission member, Kori Bingaman, NHA. Ms. Bingaman was recently appointed by Governor Carney to serve as Sussex County provider.

1. Approval of the meeting minutes:

Meeting minutes draft of July 11, 2023, were approved as written.

2. Discussion of:

Eagles Law Waiver Subcommittee

Members of the Eagles Law Waiver Subcommittee and Ms. Bailey provided an update regarding the meeting of August 1, 2023 & August 28, 2023. Both subcommittee meetings set a foundation of information sharing where subcommittee members reviewed DE Code; looked at definitions such as direct care; discussed phase 1 & phase 2; invited industry and DHCQ representatives to provide details relating to the calculation, etc.

This subcommittee was established to create a formalized nursing home staffing ratio waiver process in Delaware relating to Eagles Law and any applicable policies & procedures. The full (DNHRQAC) commission previously voted and agreed to create an Eagles Law Waiver Subcommittee due to newly added epilogue language presented and voted upon during May 2023 Joint Finance Committee Meeting for FY 24 budget.

The next subcommittee meeting will be held hybrid (Cisco WebEx & Anchor Location: The Vero @ Newark) on Monday September 25, 2023 @ 1:00 pm. Specific meeting details are posted on Delaware's Public Meeting Calendar.

Ms. Peterson suggested this subcommittee consider changing the name to reflect "Staffing Ratio Waiver Subcommittee".

Ms. Furber suggested subcommittee members elect a spokesperson to be able to provide updates to the full Commission. Currently, this subcommittee is meeting monthly. The Eagle's Law Waiver Subcommittee meetings are posted on Delaware Public Meeting Calendar. Ms. Furber mentioned that anyone is able to join public meetings, including other commission members not serving on the subcommittee.

DNHRQAC members suggested that once subcommittee meeting minutes are voted upon/approved, to please forward them to the entire commission.

Other DNHRQAC Subcommittee's

Ms. Peterson suggested the Commission consider establishing a staffing model subcommittee, especially to review appropriate staffing models to meet resident's needs. She mentioned that after 9/13/2023 Consumer Voice webinar: Unpacking CMS Proposed Nursing Home Staffing Rule, she contacted one of the presenters, Dr. Charlene Harrington, for a copy of "Appropriate Nursing Staffing Levels for U.S. Nursing Homes".

In addition, Ms. Peterson contacted another individual, Cristina Flores, to see if she could forward any information relating to an assisted living (AL) staffing model. Ms. Flores mentioned she was not aware of a specific assisted living standard staffing model because AL is so different from skilled nursing facility (SNF) and most states just require "enough staff." Ms. Flores further added that some software used by AL facilities allows them to predict their staffing needs by using assessment data, therefore, she believes Dr. Charlene Harrington's article could be used as a basis for an AL model.

During this meeting, there was mention about advocacy needed regarding Medicaid reimbursement rates and whether the commission would consider taking a position regarding this subject. Ms. Heiks shared that Medicaid reimbursement rates have not been adjusted in Delaware since 2008. Ms. Heiks suggested it would be beneficial if the rates were reviewed every so often, instead of having to ask during every annual budget hearing.

Additionally, Ms. Heiks mentioned the Legislative/Advocate Subcommittee could provide testimony/support during the State's budget hearings, too.

Ms. Furber mentioned there have been discussions in the past regarding additional subcommittees. Commission members voted and approved the following additional subcommittees during this meeting:

Legislative/Advocacy
Annual Report
Staffing Models

Ms. Furber will email commission members and ask for volunteers to serve on one or more of the “new” subcommittees. Commission members will indicate which “new” subcommittee they prefer, subcommittees will be formed & meetings will be scheduled.

The first order of business for the DNHRQAC Legislative Subcommittee is to draft a letter regarding CMS Proposed Staffing Standard Rule – comments due 11/6/2023.

CMS Nursing Home Staffing Standard Proposed Rule

Ms. Bailey recently forwarded information to commission members regarding CMS Proposed Nursing Home Staffing Standards. Comments are due by November 6, 2023.

Commission members agreed the first task for the DNHRQAC Legislative/Advocacy Subcommittee would be to write a draft response to CMS Proposed Staffing Standard Rule.

Commission members voted to hold a special (full) commission meeting on Tuesday October 31, 2023 @ 9:30 am (virtual and anchor location options) to finalize a response regarding CMS’s proposal. A draft of the commission’s response to CMS Proposed Staffing Standard Rule will be crafted by DNHRQAC Legislative/Advocacy Subcommittee and forwarded to the full Commission in advance. All commission members are encouraged to attend the meeting on October 31, 2023 @ 9:30 am.

FY 24 Nursing Home \$5M Metrics (HB 195) Reform

A representative from the Division of Medicaid and Medical Assistance (DMMA) was not in attendance. As a result, Ms. Bailey will reach back out to DMMA’s Director Ted Mermigos & Steve Constantino, Healthcare Reform, to ask them to provide updates during November 21, 2023 commission meeting regarding specifics relating to House Bill 195.

Ms. Heiks mentioned she believes DMMA sent a proposal to CMS for the \$5M nursing home funds and waiting for an approval.

Ms. Peterson said it would be useful if DMMA would also provide an explanation as to why Medicaid funding has remained flat since 2008.

Ms. Heiks mentioned Delaware Health Care Facilities Association (DHCFA) is going to provide DMMA with examples of what other states are doing relative to Medicaid funding.

Ms. Furber said this might be another topic DNHRQAC members may want to consider taking a position on within the legislative/advocacy subcommittee.

Long Term Care Ombudsman Program (LTCOP)

Sandra Hale, State LTC Ombudsman, provided updates regarding LTCOP activities October 1, 2022 – June 30, 2023 (data reported to coincide with Federal year):

SNF/Nursing Homes:
260 Cases Closed
191 Cases Verified

Assisted Living Facilities:
94 Cases Closed
74 Cases Verified

Top reasons for contacting LTCOP during this time frame (Administration of Community Living created the metrics):

SNF/Nursing Homes:

Care – 34%
Autonomy, choice, rights – 18%
Admission, Transfer, Discharge, Eviction – 14%

Assisted Living Facilities:

System: Other (Non-facility) – 29%
Care – 18%
Autonomy, Choice, Rights – 6%

During this time frame, LTCOP completed 762 in-person visits (456 in NCC) involving the following activities:

45% Resident complaint visits
34% Required routine access
11% Advanced Health Care Directives
8% Resident Council Meetings
2% Resident Visits – Non-Complaint Driven

LTCOP currently consists of: (1) State Ombudsman, (4) facility assigned Ombudsman, (2) Home and Community-based Ombudsman and (1) volunteer coordinator Ombudsman. There is currently one LTC ombudsman vacancy.

LTCOP received a grant earlier in the year that was used to (temporarily) help with facility visits. At this time, LTCOP has not asked for additional staff positions to complement their existing staff and case load.

October 2023, the LTCOP “routine access” visits will be changing. Based on a facilities (licensing) capacity, the following will apply:

Nursing Homes

1 - 49 residents, continue with routine visits, unchanged
50 – 99 residents, 6 routine visits
100+ residents, 9 routine visits

Assisted Living Facilities

1 - 49 residents, 4 routine visits
50 – 99 residents, 5 routine visits
100+ residents, 7 routine visits

“Routine access” visits are in addition to other LTCOP visits, such as complaint driven or for other reasons. LTCOP plan to continue to build on their presence by attending Resident Council and Family Council meetings.

Ms. Hale mentioned that opening more facilities in Delaware will continue to impact the delivery of services provided by DHSS, including LTCOP and DHCQ.

Ms. Peterson expressed concern, too with stretching existing staff too thin or being able to provide optimal service, if the number of licensed facilities continue to increase but DHSS staff compliment does not grow.

Ms. Hale mentioned Delaware LTCOP will be rolling out Promoting Empowered Expert Residents (PEER) - October 2023. Grant funding is being used for this program for items

such as printing of materials, advertising, etc. For more information about PEER, please contact Sandra Hale: 855.773.1002 or [DHSS OSEC Ombudsman@delaware.gov](mailto:DHSS_OSEC_Ombudsman@delaware.gov).

PEER educates residents on resident rights, provides self-advocacy training and empowers residents to act for themselves. Training is provided through the local Ombudsman office.

Long-term care residents are trained to self-advocate and empower their fellow residents to improve their quality of life and quality of care in long-term care facilities. As a result, PEER is a partnership between residents, facility staff, and the local ombudsman.

Currently, the following States offer PEER: PA, CO, and LA. Delaware will be the 4th state to implement this program, which originated in Pennsylvania. Participants will attend 5 (2 hour) training sessions and upon completion, will receive a certificate as a Delaware PEER Support Specialist. There will be a graduation ceremony upon completion for each resident.

Empowerment training is also available for facility staff to assist them with negotiating issues of communication, creating resident councils, confidentiality, reporting issues, etc.

Ms. Furber encouraged Ms. Hale to attend a future commission meeting and provide updates regarding PEER. Ms. Furber mentioned she supports this program personally and believes the commission will also.

Ms. Hale added that LTCOP plans to initially offer PEER within 2 Delaware assisted living facilities (5 residents of each location). Currently, LTCOP staff is providing awareness of this initiative during resident council meetings.

October is Residents Rights month. The 2023 theme is “Amplify our Voices”. Residents Rights Month was created in 1981 by National Consumer Voice Residents for Quality Long-Term Care. Residents can participate and amplify their voices by creating & forwarding videos, essays, poems or artwork to info@theconsumervoice.org.

Bingo kits were used last year to celebrate Residents Rights month and are still available. Therapeutic cats/dogs were also distributed to several Delaware LTC “memory care” facilities last year. LTCOP staff observed residents interacting with the mechanical animals and received positive feedback. Ms. Bingaman mentioned that ACTS in Seaford still use the mechanical pets for memory care residents and the resident rights bingo kits.

October 12, 2023 is Ombud’s Day to educate and provide awareness of the history & practices of the Ombudsman profession.

DHCQ Updates

DHCQ staff members: Denise Elliott, Rob Smith and Karen Crowley attended the meeting and shared updates relating to the Division. Ms. Bailey submitted a list of questions to DHCQ in advance of the meeting.

DNHRQAC members suggested there be a list of standard questions DHCQ responds to at each Commission meeting.

Mr. McCracken mentioned slide presentations would be helpful because its often difficult to take notes and a lot of information is provided during the Commission meetings.

DHCQ continues to host Zoom meetings with Delaware long term care providers monthly and share guidance updates, resources, etc.

DHCQ Staff Vacancy Updates

Mr. Smith mentioned there are currently 6 DHCQ staff vacancies: 4 compliance nurses, 1 nurse supervisor and 1 ombudsman position. Mr. Smith added that many of the surveyors are new and in different stages of training. “It takes a long time to become a proficient surveyor” per Mr. Smith.

Director of Nursing DON Workshops

Ms. Elliott mentioned the next DON Workshop will be held on 10/10/2023. The June 6, 2023 DON Workshop yielded low participation. Ms. Bailey will follow up with DHCQ regarding reasons for low participation, as attendance is mandatory per State regulations.

Minimum Data Set (MDS) Training

DHCQ will be hosting a virtual MDS Training 10/17/2023 – 10/19/2023. MDS Consultant, Amy Franklin, will present during this workshop. The Division plans to host another MDS training - March 2024. Continuing Education Units (CEUs) will be available for participants.

The Long-Term Care Minimum Data Set (MDS) is a health status screening and assessment tool used for all residents of long-term care nursing facilities certified to participate in Medicare or Medicaid, regardless of payer. The assessment is also required for Medicare payment of skilled nursing facility stays.

Civil Monitory Penalties (CMPs)

Ms. Elliott provided an update regarding Federal and State CMPs.

The Federal CMP Funding Program is still on pause. A meeting was scheduled for September 25, 2023 to have CMS & State Agencies discuss the Federal CMP Funding Program & pending fund submissions, however the meeting was recently cancelled. The Division is waiting to learn when this meeting has been rescheduled.

(Federal) Resident Trust Fund (funds managed by CMS):

FY 23 - \$277,857.32 available

FY 24 - \$2,351,508 available

*These funds are not currently available due to the pause on this Federal program.

State CMPs (funds managed by DHCQ):

FY 2023 State CMPs – \$1,934,788.58

FY 23 Expenses - \$29,403.93 (in-person visit aids & 10 air filters)

*Remainder of FY 23 balance was carried over into FY 24

Annual and Complaint Surveys: July 1, 2023 – September 1, 2023

Rob Smith, DHCQ Licensing Administrator, shared the following information with commission members during 3rd Qtr 2023:

Nursing Homes/SNF

5 annual surveys
5 complaint investigations
2 follow-up
12 total surveys
129 complaints investigated

Assisted Living Facilities

5 annual surveys
6 complaint investigations
11 total surveys
44 complaints investigated

Mr. Smith advised the complaints being investigated by DHCQ include complaints from prior years, too. As a result, Mr. Smith shared DHCQ is still trying to catch up and has a backlog.

Ms. Peterson expressed concern with the number of surveys currently being conducted every quarter by the Division. She mentioned that if DHCQ continues with, for example, 5 nursing home surveys per quarter, that would only total 20 surveys per year. That equates to less than half of the licensed nursing homes in Delaware.

The most common citations during 3rd Qtr 2023 for Delaware nursing homes:

Infection Control
Accident Hazards
Food Procurement and Storage
Quality of Care
Development of Comprehensive Care Plans
ADL Care for Independent Residents
Pressure Ulcers

The most common citations during 3rd Qtr 2023 for Delaware assisted living facilities:

Not providing assessment before contract is signed
Not providing medical evaluation prior to admissions
Immunizations (pneumonia, flu & ppd testing)

Mr. Smith mentioned the Division recently entered a contract with HMS to assist with annual and complaint surveys due to workforce vacancies and backlog. Additional questions about the contract with HMS were asked during this meeting. Ms. Bailey will follow up with the Division to obtain a copy of the contract and other details.

It appears DHCQ has an internal staff member who will be responsible for conducting a review of this contractor's work. The survey report will be given to DHCQ where the quality assurance team will scrutinize findings, same as DHCQ normally does with their own internal surveyor staff.

Ms. Peterson asked if someone reviewing survey results will be able to tell whether a survey has been completed by DHCQ staff or the contractor. Mr. Smith mentioned they will take this into consideration.

Ms. Hale asked whether HMS will be required to contact LTCOP & others, prior to the survey. Mr. Smith mentioned the survey process & notifications will remain the same as it is now.

Mr. Marquez asked whether the salaries offered on behalf of the State of Delaware, DHSS, are as competitive as what the contractors will be paid or is it just easier to have someone work for a contractor.

Ms. Bailey asked DHCQ to send a copy of the Request For Proposal (RFP) to see what was offered in the contract and other details. Ms. Peterson wondered for transparency purposes about the cost to hire a contractor instead of funding DHCQ appropriately to do their job. She added as a taxpayer she would rather see more positions funded within DHCQ and adjust salaries instead of bringing in another company and paying them twice as much to complete the same work.

DHCQ mentioned recently they contracted with another company to complete Informal Dispute Resolutions (IDRs). Any assisted living facility, nursing home, or home health agency may request an Informal Dispute Resolution (IDR) which provides a facility the opportunity to request informal review of specific deficiencies cited during an inspection. Mr. Smith will forward information to the Commission about the company recently hired on behalf of DHCQ to facilitate IDRs in Delaware.

Ms. Heiks added that facilities are finding out temporary agencies might not have the right knowledge base and commitment to LTC residents & facilities. She further mentioned that as a contractor, it doesn't mean they aren't qualified but it's a "needs must circumstance", from what she is hearing.

New Facilities Opening in Delaware

Mr. Smith shared The Lodge @ Lewis will be opening soon. This facility is owned by Vantage Point and offers 175 units: 80 independent, 63 assisted living and 42 memory care. Mr. Smith mentioned there are additional assisted living facilities anticipated to open soon, too.

Discussion pursued about the process of opening/licensing an assisted living facility in Delaware, which is quite relaxed and different than opening/licensing a nursing home.

There was mentioned that DNHRQAC expressed concerns several times with former DHSS Cabinet Secretary, Molly Magarik, about opening more licensed facilities in Delaware. The reasons stated included concerns with the lack of workforce and regulatory oversight, especially in assisted living facilities.

Ms. Heiks shared the current average building census in Delaware is roughly 79%.

3. Old Business/New Business

DNHRQAC FY25 Goals

Ms. Furber mentioned the goals of the Commission tie into the FY 24 annual report, a copy was as recently provided to commission members for review. She further added that during

JLOSC review, certain items were asked to be included in the annual report and although she doesn't think attachments should make an annual report 150 plus pages, there should be a way to provide what is needed via charts, tables. Anyone is also able to request copies of the actual documents. Ms. Furber suggested the annual report subcommittee could work on suggested goals that already appear in the draft annual report and other items not currently contained in the report draft. The subcommittee could report back to the full commission during meeting of November 21, 2023.

DNHRQAC FY 25 Budget

Commission members voted/approved the request to add an Administrative Specialist and Management Analyst position in FY 25 operational budget request. Ms. Bailey will contact Administrative Office of the Courts (AOC) to include this staffing request.

DNHRQAC Meeting Schedule

Commission members were advised by Ms. Furber that the full DNHRQAC meeting schedule will remain unchanged for 2023. She added there will be additional meetings scheduled as they relate to subcommittee business (Legislative/Advocacy, Eagles Law Staffing Ratio Waiver, Annual Report and Staffing Models).

4. Public Comment

Ms. Annette Moore, NHA & Executive Director for The Moorings at Lewis, mentioned despite offering generous hourly rates in Sussex County, she is not able to get enough staff. Ms. Moore believes the reason why she cannot obtain enough candidates is due to sub-acute medical rehab facilities opening and admitting individuals that do not meet the criteria and they are afraid if they send someone to a post-acute facility (nursing home), they will get dinged in payment. As a result, the individual goes home and then shortly afterwards returns to the hospital. Another reason why Ms. Moore believes the pool of potential staff candidates is low, is because she's observed more facilities opening around The Moorings and nobody is looking at what resources are currently available in the area before opening another building.

Ms. Moore agreed on the importance of having a subcommittee look at staffing models. The Moorings skilled/nursing home unit is @ 73% capacity - 20% Medicare, 62% private pay and 17% Medicaid. This 40 bed unit is staffed at 4.12 ppd.

Mr. Kevin Andrews congratulated Ms. Moore for doing a great job despite being at 73% occupancy. He imagines the residents appreciate what she is doing.

In addition, Mr. Andrews provided kudos to Ms. Hale and LTCOP staff "who clearly demonstrate a State agency that can be effective, respond to complaints and complete routine facility checks". He added that Delaware needs to stop opening more assisted living facilities. "We need to put a cap on the supply until the supply of staff catches up."

Mr. Andrews asked about the exemption the Commission has been tasked with working on (Eagle's Law Staffing Ratio Waiver) and how DHCQ is currently evaluating staffing in SNFs/nursing homes.

Mr. Smith replied that DHCQ is ensuring facilities are complying with the staffing law of 3.28. “This is ensured by reviewing staffing every quarter and every time DHCQ goes into a facility, we access the 3.28 hours per resident per day.”

5. Next DNHRQAC Meeting – Tuesday October 31, 2023. This meeting will be conducted via virtual platform and in-person anchor location.

6. Adjournment

This meeting was adjourned at 11:51 am by Lisa Furber.

Attachments: DNHRQAC Meeting of July 11, 2024 – minutes draft
DNHRQAC Meeting of September 19, 2023 – meeting agenda
DNHRQAC FY 23 Annual Report - draft