
*Delaware Nursing Home Residents
Quality Assurance Commission*

DNHRQAC “Special” Meeting of October 31, 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; Dr. Melissa Winters, PsyD; Christopher Marques, Esquire; Senator Spiros Mantzavinos; Jennifer McLaughlin, OT; Mary Peterson, RN, BSN; Molly Crumley, RN, BSN, MBA and Representative Kim Williams.

Commission members not present: Hooshang Shanehsaz, RPH and Dr. Avani Virani. Patrick Smith, Esquire (DNHRQAC Deputy Attorney General) was also not present.

Other attendees: Margaret Bailey, DNHRQAC Executive Director and Kevin Andrews, Public member.

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

There were a few technical challenges mentioned by commission members relating to the Delaware Public Meeting Calendar and obtaining access to the virtual meeting link. Ms. Bailey will follow up with Delaware Government Information Center (GIC) regarding the Delaware Public Meeting Calendar.

1. Call to Order

This meeting was called to order by DNHRQAC Chair, Lisa Furber, at 9:05 am.

2. Approval of the meeting minutes:

A motion to approve the meeting minutes draft of September 19, 2023, were accepted and seconded, as written.

3. Approval of Response to CMS Proposed Rule on Nursing Home Minimum Standards

DNHRQAC Legislative/Advocacy Subcommittee met 3 times: 10/16/2023, 10/19/2023 & 10/26/2023 to review CMS proposed rule and determine whether DNHRQAC would write a letter of support (limited to 5,000 spaces).

The DNHRQAC Legislative/Advocacy Subcommittee members voted and by full majority, elected to craft a response to CMS proposal. A “final” copy of the subcommittee’s response (draft) was forwarded to all commission members in advance of the meeting.

DNHRQAC Legislative/Advocacy Subcommittee spokesperson, Mary Peterson, also shared (via screen) the draft response during this meeting.

Ms. Peterson summarized each paragraph of DNHRQAC's response draft:

- *Who we are & summary of DNHRQAC*
- *Do we support the proposal(s)?*
- *Supports minimum staffing of 3.0 hours per resident per day (HPRD).*

Delaware established a 3.28 HPRD requirement which has been in place for many years. Subcommittee members also acknowledged 2001 CMS study where 4.1 HRPD was recommended.

Ms. Heiks expressed concern about whether CMS plans to calculate HPRD – daily or weekly. Ms. Bingaman mentioned from a building perspective, facilities in Delaware are calculating HPRD on a daily basis. Ms. Bailey added that during DNHRQAC Eagle's Law Staffing Waiver Subcommittee meeting of 8/28/2023, staffing calculations were discussed. Delaware law states facilities can calculate staffing ratios using Phase 1 (daily) or Phase 2 (averaged over a week). During this meeting, DHCQ shared that most Delaware facilities elect to use Phase 2 (weekly average).

Ms. McLaughlin asked if the subcommittee believes 3.0 HRPD isn't enough, should that be stated in the response? Mr. Marques stated the legislative/advocacy subcommittee supports 3.0 HPRD as the bare minimum. Even as a bare minimum, the subcommittee recognizes the CMS hour per resident per day proposal only applies to RNs and CNAs. Ms. Peterson shared language from response draft "We believe that a level higher than 3.0 HPRD would be more appropriate to the level of care required in a nursing home today, we support at least 3.0 HPRD as minimum."

Ms. Bingaman reminded commission members that Delaware's 3.28 HPRD includes RNs, CNAs and LPNs.

Ms. Heiks added that it might be beneficial for the State of Delaware to make some improvements in staffing agency policies and encourage our Federal delegates to look at it from a policy development perspective. Ms. Peterson agreed and suggested the DNHRQAC Staffing Model Subcommittee may want to add this to their list of priorities.

- *Expressed the proposed rule does not include licensed practical nurses (LPNs) as LPNs are the backbone in Delaware long-term care industry. Delaware includes LPNs in HPRD calculation of 3.28.*

Senator Mantzavinos mentioned he's heard of concerns regarding LPNs vs CMS proposed rule. Ms. Peterson shared the subcommittee believes CMS was short sighted in not including LPNs in the proposed rule. The subcommittee therefore wrote in the response draft that LPNs are a vital part of the industry and should be included in HRPD calculation.

- *Supports 24/7 Registered Nurse (RN) as Delaware already requires 24/7 RN.*
- *Suggested CMS should undertake evidence-based study of staffing models to determine if there is a standard staffing level that would be appropriate (implement within 2 years).*

- *Waivers should be the exception to the rule and tracked so any exceeding threshold should be addressed.*
- *Supports Medicaid transparency provisions (spending & cost reports).*
- *Supports Facility assessment requirements based on residents needs and acuity. Delaware already meets the proposed facility assessment requirements.*
- *To be effective, the rule provisions need to be enforced by regulators.*

Ms. Peterson added that subcommittee members asked Ms. Bailey to reach out to the industry and State agencies with questions a few times as they were crafting a response. This was to find out whether there would be any unintended consequences as a result of DNHRQAC's response. Delaware Medicaid Office felt they could handle any enhanced reporting requirements. The industry did not supply a response to subcommittee during the time this group met to discuss the proposal.

After summarizing DNHRQAC draft response, all Commission members were asked to share their comments and provide feedback about the draft response before a motion was brought forth to vote on finalizing DNHRQAC's response to the CMS proposal.

Ms. Bingaman mentioned that Delaware buildings calculate HRPD daily as opposed to weekly.

Commission members were polled individually as to whether they supported the draft response. As a result of poll results, the draft response to CMS proposal was approved as written by a majority of "full" commission members present.

DNHRQAC members in support of DNHRQAC response draft:

Ms. Furber, Ms. Peterson, Senator Mantzavinos, Representative Williams, Ms. Bingaman, Mr. Marques, Ms. Jones, Ms. Crumley, and Ms. McLaughlin.

DNHRQAC members not in support of DNHRQAC response draft:

Ms. Heiks mentioned she was the one member of the legislative/advocacy subcommittee that was unable to vote in support of the draft response. Ms. Heiks stated the reason for not being able to support the response as written was not because she doubts the goals of the proposal. Ms. Heiks believes there are some things missing in the proposal that are going to make it successful for the industry. As a result, it is why she was not able to support DNHRQAC response letter in its entirety. Ms. Heiks appreciated being part of the subcommittee process, discussion & expertise of commission members who served on the subcommittee.

DNHRQAC members not present and therefore did not vote on DNHRQAC response draft:

Mr. Shanehsaz, Dr. Winters and Dr. Virani.

4. Email address to be used for Response to CMS Proposed Nursing Home Standard Rule

Commission members voted and approved the use of Ms. Bailey's State email address as means of transportation to submit the response on behalf of DNHRQAC. An individual poll was conducted and all commission members present supported DNHRQAC's response to CMS proposed rule to be submitted by using Ms. Bailey's State of Delaware email address.

DNHRQAC By-Laws

As a result of creating multiple DNHRQAC subcommittees, Ms. Furber mentioned she will work on modify language in existing DNHRQAC by-laws (to add info about subcommittee's) and forward draft to commission members for consideration, before November 21, 2023 meeting.

DNHRQAC Legislative/Advocacy Subcommittee - Next Meeting

Ms. Bailey will send poll to subcommittee members to schedule the next meeting.

5. Next DNHRQAC (full) Meeting – Tuesday November 21, 2023 @ 9:30 am. This meeting will be conducted via virtual platform and an in-person anchor location.

6. Adjournment

This meeting was adjourned at 10:34 am by Lisa Furber, DNHRQAC Chair.

Attachments: DNHRQAC Meeting of October 31, 2023 – meeting agenda
DNHRQAC Meeting of September 19, 2023 – meeting minutes draft
CMS Proposed Nursing Home Staffing Standard Rule - DNHRQAC draft response