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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION  
Eagle's Law Staffing Ratio Waiver Subcommittee

In-person & Virtual Meeting

Cisco Webex

Anchor Location: The Vero @ Newark 924

Barksdale Rd Newark, DE 19711

**Meeting of September 25, 2023 @ 1:00 pm**

FINAL

Subcommittee members present: Norma Jones, Dr. Melissa Winters, PsyD, Cheryl Heiks and Jennifer McLaughlin. All subcommittee members attended virtually.

Subcommittee members not in attendance: Hooshang Shanehsaz, RPH.

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); Mary Peterson, DNHRQAC member; Karina Eslifani, Wilmington University student and Natalya Chamorro, Wilmington University student.

1. Call to order

This meeting was called to order at 1:00 pm. Subcommittee members introduced themselves, and participants were greeted. The group elected Dr. Melissa Winters, PsyD as this subcommittee's spokesperson.

2. Approval of minutes

Subcommittee members approved meeting minutes of August 28, 2023 as written.

2. Discussion of:

Suspension of Eagles Law Staffing Ratios Until July 1, 2024

Subcommittee members recapped the current suspension of nursing home staffing ratios, contained in Eagle's Law, until July 1, 2024. As mentioned, "New" Epilogue language was approved by Joint Finance Committee (JFC) members during JFC Mark-up Meeting - May 2023.

*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 subcommittee was established to create a formalized nursing home staffing ratio waiver process relating to Eagle's Law and applicable policies & procedures. Any further legislative action after creating a waiver process would be something separate. Dr. Winters mentioned she believes this subcommittee is supposed to determine what the waiver process should look like and implement the process once the suspension is lifted next year.

Ms. Jones shared that she was unclear what this group was going to be doing. She would like to see the ratio of staff to residents change from what appears in Eagle’s law. Ms. Heiks clarified and mentioned this group is not tasked with deciding whether existing staffing ratios in Eagle’s Law is enough, but rather create a waiver process if a facility cannot meet the current statute ratios, once the suspension is lifted.

Eagle’s Law: <https://delcode.delaware.gov/title16/c011/sc07/index.html> is located in 16 Del. C. § 1162.

Delaware 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.”

Language in Delaware Code that nursing home staffing has to be adequate or the Division of Health Care Quality can take enforcement action:

*“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.”*

#### Name Change

Ms. Bailey reminded subcommittee members that during full commission meeting of September 19, 2023, member Ms. Peterson suggested this subcommittee consider name change. Ms. Peterson mentioned that Eagle’s Law does more than mandate staffing ratios.

Subcommittee members agreed with the suggestion and the name was changed to “DNHRQAC Eagle’s Law Staffing Ratio Waiver Subcommittee”.

#### Exigent Circumstance Forms

During a previous subcommittee meeting, members asked DHCQ to provide copies of all Exigent Circumstance Forms received from Delaware nursing homes, January 2018 – present. This would provide subcommittee members with an idea of patterns, situations, time frames, and other circumstances where special waivers were granted by the Division. Ms. Bailey will follow up with DHCQ regarding the requested documents.

#### Next Steps

Dr. Winters suggested subcommittee members begin to consider the following:

- Developing a standardized waiver process
- Creating measurable objectives
- Developing an application
- Creating clear mission/goals
- Figuring out timelines
- Listing questions

Dr. Winters will forward a list of her questions to subcommittee members so the group can begin to develop clear goals and objectives. She encouraged other members to share questions, too.

Ms. McLaughlin mentioned she had a few suggestions the group might want to consider when creating measurable objectives: determine waiver timeline(s); figure out how long waiver will be good for; information DNHRQAC will be requesting from facility, etc.

Ms. Heiks mentioned a facility's human resource department and Department of Labor might also be able to provide helpful information.

Ms. Peterson recapped her understanding of this subcommittee's task at hand – to develop a waiver process. Additionally, she mentioned that exigent circumstances were processed immediately when she was DHCQ Director. "Honestly in the 6 years I was with the Division, the only exigent circumstance ever received by the Division was for staff members calling out due to a snow emergency. As a result, DHCQ would immediately grant a waiver. Staff couldn't get in and therefore a facility's Director of Nursing (DON) was providing direct care to residents, etc."

Ms. Peterson stated that exigent circumstances is not really defined in Delaware Code, however, DHCQ already has authority to grant immediate response exceptions. Ms. Peterson suggested the subcommittee may want to look at Delaware Code where DHCQ has authority to grant an exception for a brief period of time, like a snowstorm, so additional staff not defined in Eagle's Law, could perform direct resident care and still maintain required staffing numbers. She believes (but would need to go back & look) that language in Delaware Code granting DNHRQAC authority to waive staffing ratios would apply for longer periods of time, not immediate issue (situations such as trouble recruiting/work force).

Ms. Bailey will contact DHCQ to find out their definition of exigent circumstances to help this group define their roll in creating a waiver process. Members recapped and stated that Delaware nursing home staffing ratios were waived as part of Governor Carney's Emergency Declaration, which ended May 11, 2023. The "newly added" epilogue language granted nursing home staffing ratios to be waived until July 1, 2024 was introduced/voted upon during May 2023 Joint Finance Committee (markup) Meeting.

### 3. Public Comment and

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

4. Next DNHRQAC Eagles Law Staffing Ratio Waiver Subcommittee Meeting – Tuesday October 24, 2023 @ 11:00 am. Anchor Location and Cisco WebEx will be available for meeting participants.
5. Adjournment

The meeting was adjourned at 2:10 PM.

Handouts: 8/28/2023 subcommittee meeting minutes draft  
9/25/2023 subcommittee meeting agenda