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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 October 24, 2023 @ 11:00 am**

FINAL

Subcommittee members present: Norma Jones, Dr. Melissa Winters, PsyD, Cheryl Heiks and Hooshang Shanehsaz, RPH. All subcommittee members attended virtually.

Subcommittee members not in attendance: Jennifer McLaughlin.

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); Mary Peterson, DNHRQAC member; Steve LePage, Public and Commissioner Douglas Hudson, Delaware Commission of Veterans Affairs.

1. Call to order

This meeting was called to order at 11:03 am. Subcommittee members introduced themselves, and public participants were greeted.

2. Approval of minutes

The meeting minutes draft of September 25, 2023 were tabled due to lack of quorum at the time this was brought forward for a vote. As a result, these meeting minutes will be voted on during the next subcommittee meeting.

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.

As spokesperson for the Eagle's Law Staffing Ratio Waiver Subcommittee, Dr. Winters shared the below list of questions, comments and concerns with the group as they begin to develop a staffing ratio waiver process. This list was forwarded to subcommittee members a few weeks ago and subcommittee members are encouraged to provide feedback and ideas, too.

***Proposed Objective:*** *To develop a standardized process for granting or denying final approval of a facility's shift ratio waiver application. Subcommittee members voted and approved the objective during today's subcommittee meeting.*

The information listed below (*italicized*) was briefly discussed, however subcommittee members did not vote on finalizing: what type of information would be needed in a waiver application, DHCQ's role, decision process, etc.

**For each specific application:**

*Information from Facility:*

- *Explanation of the root cause of issue*
- *Anticipated staffing levels*
- *Anticipated time frame:*
  - *Start to end*
  - *What is the plan to correct the issue, how long will it take?*
- *How they plan to prevent in the future*
- *What other types of supports are available during this time?*
- *#/ type of residents (level of acuity)*
- *Agency usage history*
- *Staffing assignment method*

*Information from DHCQ for each applicant:*

- *What is the facility's history of citations, staffing problems, fines?*
- *What is the percent compliance rate for past 6 months?*
- *Is there a pattern of shortage (days of week, CNA vs nurses)? (this may be a question for the facility, rather than DHCQ)*
- *Have complaints been filed against the facility? If so, what are they and when did they occur?*
- *How bad is the shortage compared to other facilities?*

*Questions for Commission to consider for each applicant:*

1. *Are there patterns of non-compliance and staffing issues?*
2. *Do they have new administration, and when did this occur?*
3. *What impact could this have on other staff?*
4. *How much do they rely on agency staff, and for how long have they relied on them?*
5. *Why isn't agency staff being used to correct the shortage?*
6. *Is their root cause analysis realistic and thorough?*
7. *Are solutions realistic, sufficient, sustainable?*

**General issues:**

- *How many times can a facility request a waiver?*

- *Can the waiver be renewed, and if so, for how long?*
- *What happens if the facility is not able to reach compliance even after their correction has been implemented?*
- *Who has the authority to enforce the terms of the waiver? (we should bring this agency to the table)*
- *How often will waivers be considered by the Commission?*
- *What will DHCQ's role be prior to sending an application to the Commission, since the waiver is submitted to them first and the Commission is supposed to be the "final approval"?*
- *Will the Commission have any liability if a waiver is approved and something harmful happens due to staffing?*
- *Do we have a sense of how many waiver requests we may receive?*
- *How long will we have to issue a decision?*
- *Will there be a monitoring period following the waiver, or will we turn that over to DHCQ after the decision is made?*

**Action Items:** Subcommittee members asked Ms. Bailey to contact Division of Health Care Quality (DHCQ): **1.** Ask DHCQ to comment on the above waiver questions/comments in advance of the next subcommittee meeting. **2.** Provide a representative to attend staffing ratio waiver subcommittee meetings.

Subcommittee members agreed it is imperative DHCQ provides feedback, add items they feel might impact the waiver process, offer suggestions, etc.

#### Other questions/comments by subcommittee members as they navigate the waiver process

Ms. Heiks - Find out if facilities qualify and/or taking advantage of students to help resolve workforce shortages. Eagle's Law does not currently have a provision to include students in the calculation.

Ms. Jones – Facilities tend to have different layouts (units vs floors) and sometimes appear unbalanced relating to the distribution of staff duties. How would the waiver ensure a facility is staffed appropriately.

Dr. Winters mentioned DNHRQAC would need to evaluate whether the method proposed by a facility is appropriate.

Ms. Bailey – Provide mandatory education sessions to facilities after full commission has finalized the waiver process.

Ms. Peterson – DHCQ is responsible for overseeing Eagle's Law and whether facilities are in compliance. As a result, any waiver granted by DNHRQAC would still need DHCQ to provide oversight of the waiver.

#### Application & Transfer of Information Relating to Waiver

Subcommittee members briefly discussed application format options – fill in the blank or multiple choice. Ms. Heiks asked whether it would be beneficial to provide examples to facilities requesting a staffing waiver to assist with completing the application. Ms. Peterson asked if this subcommittee is envisioning the waiver to be a document for facilities to complete. Dr. Winters envisions an application organized in a way to share information needed to make a decision and provide examples or prompts to assist facilities in completing the application appropriately and efficiently.

Ms. Bailey mentioned DTI, in a former discussion, said a portal could be developed for the waiver, but would cost money (didn't know how much) and take time to set up. Ms. Bailey is unsure whether

someone not employed by the State of Delaware would be able to access information via a State developed portal.

Ms. Winters asked whether Microsoft Teams could be used to share waiver information.

Additionally, there was discussion about how the waiver & requested information would be stored, secure, etc.

**Action Item:** Subcommittee members asked Ms. Bailey to contact Department of Technology (DTI) about available storage space within Microsoft Teams, user perimeters and whether it's a secure platform.

Additionally, subcommittee members asked Ms. Bailey to find out if DTI is able to clarify more about a generic State of Delaware email address and who would be able to be granted access to the account, especially if Ms. Bailey is not available.

**Action Item:** Ms. Bailey will contact DTI for more information regarding State of Delaware generic email address and other questions raised relating to user access.

Mr. LePage shared that a database could be created where information could be sent from a facility to DHCQ; DHCQ would then add their piece (patterns of non-compliance, history, etc) and then the collective information would be sent to DNHRQAC for a decision. Mr. LePage mentioned there could also be an opportunity for administrative review, should a facility want to provide more information or challenge a waiver denial.

**Action Item:** Ms. Bailey will contact DTI to find out what type of options there are regarding a streamlined cross agency file sharing system: data security, timeline to create, cost, etc.

### 3. Public Comment

Mr. LePage appreciated the opportunity to share his ideas to the subcommittee. He mentioned there are several options depending on who the subcommittee contacts as to the best path forward. He believes Adobe Acrobat or a web-based system could be used to create a waiver application and then information could be stored in a database. "These options would be more efficient and less burden to help electronically streamline the process."

4. Next DNHRQAC Eagles Law Staffing Ratio Waiver Subcommittee Meeting – Thursday November 30, 2023 @ 10:00 am. Anchor Location and Cisco WebEx will be available for all meeting participants.

### 5. Adjournment

The meeting was adjourned at 12:28 PM.