

---

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 November 30, 2023 @ 11:00 AM**

FINAL

Subcommittee members present: Norma Jones and Cheryl Heiks. Subcommittee members attended virtually.

Subcommittee members not in attendance: Jennifer McLaughlin, OT; Dr. Melissa Winters, PsyD and Kori Bingaman, NHA.

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); Lisa Furber, DNHRQAC Chair; Rob Smith, DHCQ; Paul Smiley, Gilpin Hall; Steve LePage, Public; Rochelle Wilson, Gilpin Hall; Jessica Bannan, Gilpin Hall and Carolyn Martin-Pettaway, Public. Members of the public attended virtually.

1. Call to order

This meeting was called to order at 10:06 am. Subcommittee members introduced themselves, and public participants were greeted.

2. Approval of minutes

The meeting minutes draft of September 25, 2023 and October 24, 2023 were tabled due to lack of quorum.

3. Discussion of:

Purpose of the subcommittee: This subcommittee was established to create a formalized nursing home staffing ratio waiver process relating to Eagle's Law and applicable policies & procedures.

Suspension of Eagles Law Staffing Ratios Until July 1, 2024: "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.*

Delaware Code: Title 16 Chapter 11 §1162 was referenced regarding Delaware nursing home staffing ratios: <https://delcode.delaware.gov/title16/c011/sc07/index.html>.

Mr. Smith shared that currently, the staffing ratio per shift requirements are being waived (due to the added epilogue language referenced above). DHCQ is currently performing staffing desk audits (since October 2022) to ensure Delaware nursing homes are providing 3.28 hours per resident per day (HPRD). The Division is not collecting staffing ratios per shift data at this time. “The staffing information is self-reported and DHCQ surveyors are looking at some payroll records to verify what is being submitted is accurate. This is pretty labor intensive so we can’t do everybody.” per Mr. Smith.

Waiver Application & Technology: Ms. Bailey mentioned the Division of Health Care Quality (DHCQ) and Judicial Information Center (JIC) responded to questions subcommittee members asked her to submit after meeting of October 24, 2024. Both set of responses were forwarded to subcommittee members in advance of today’s meeting.

Mr. Smith shared “DHCQ currently utilizes paper applications. The Division is trying to move towards an electronic submission, but it will take a while to set up an application process.” Ms. Bailey mentioned she believes this is being requested in DHCQ’s FY 25 budget.

Mr. Smiley provided some feedback. He does not believe workforce issues are only in nursing homes but rather across the board in other industries, too. “Gilpin Hall is struggling just find enough people to work & currently using staffing agencies at the highest level yet, just to meet the minimum staffing requirements.” Mr. Smiley is aware the staff per shift waiver is due to end June 30, 2024 and was hoping DNHRQAC can help locate funds to assist facilities with adapting at that time.

Mr. Smiley also encourages DNHRQAC to assist with increasing the number of Certified Nursing Assistants (CNA) and RN Schools in Delaware. “I’m concerned that 100’s if not thousands of folks will not have access to care because we cannot meet the staffing ratios, once the hold is lifted July 1, 2024. I hope this Commission can assist with locating resources so facilities can meet the staffing ratios and be able to continue admitting residents. We hope the product of your efforts is not going to be too labor intensive as facility staff members are doing functions of 2, 3 or 4 people – so much more than they were doing in 2018 and 2019. We want to comply and provide great quality of care, but we need your help to get the resources that we need as opposed to the traditional oversight role the Commission has had.”

Ms. Jones shared her thoughts as a resident in response to Mr. Smiley’s comments, stating staff members are expressing (to her) the need to look at non-traditional staffing options and flexibility to assist with workforce issues.

Ms. Heiks mentioned it’s important for CNA and nursing students to spend time in buildings to understand the work. She added that if a facility is cited a “G” level deficiency or higher, they are not allowed to take students. This CMS practice has been in place long before staffing shortages. As a result, Ms. Heiks suggested this group see if a waiver could be put in place to still allow students to help in the facilities. “It will help students get exposed to the nursing home environment and receive a hands-on experience.”

Due to lack of quorum, this subcommittee did not vote on any items.

#### 4. Public Comments

Ms. Martin-Pettaway mentioned she is a family member of resident in a Delaware nursing home. She added that she sees what goes on in facilities and is not happy with what she sees. Ms. Martin-Pettaway joined today’s meeting to understand what the issues are in the facilities and stated she is disheartened to hear there are not enough State workers to assist with things such as technology. The fact that there is not enough CNAs or nurses is extremely bothersome.

Mr. LePage shared his personal experience with his dad being a resident of a Delaware long term care facility. He added there are technology resources available to assist with workforce. Mr. LePage mentioned he is not against supporting waivers but believes there should also be requirements in place if a waiver was to be granted. He believes keeping families connected and learning about their satisfaction level is important, too.

Ms. Bailey will send subcommittee members a poll to determine the next meeting date/time. This information will also be available on the Delaware Public Meeting Calendar.

5. Next DNHRQAC Eagles Law Staffing Ratio Waiver Subcommittee Meeting – TBD. Anchor Location and Cisco WebEx will be available for meeting participants.

#### 6. Adjournment

The meeting was adjourned at 10:59 AM.

Handouts: 9/25/2023 subcommittee meeting minutes draft  
10/24/2023 subcommittee meeting minutes draft  
11/30/2023 subcommittee meeting agenda  
Response from DHCQ & JIC re: Questions