
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 January 11 @ 2:00 PM

FINAL

Subcommittee members present: Norma Jones, Kori Bingaman, NHA and Cheryl Heiks. Subcommittee members attended virtually, and a quorum of subcommittee members were present.

Subcommittee members not in attendance: Dr. Melissa Winters, PsyD

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); Rob Smith, DHCQ; Ruth Ann Lander, Public; Maggie Goonan, Public; Felicia Alderson, Kutz Home and Hayim Weiss, Public. All members of the public and guests attended virtually.

1. Call to order

This meeting was called to order at 2:07 pm. Subcommittee members introduced themselves, and public participants were greeted.

2. Approval of minutes

The meeting minutes draft of December 21, 2023 were approved as written.

3. Discussion of:

After the previous subcommittee meeting, subcommittee members asked Ms. Bailey to submit a list of questions to Division of Health Care Quality (DHCQ) relating to exigent circumstances.

Rob Smith shared the following information regarding exigent circumstances:

The term "exigent circumstances" means a short-term emergency or other unavoidable situation, and all reasonable alternatives have been exhausted.

The director of nursing ("DON"), assistant director of nursing ("ADON"), and/or registered nurse assessment coordinator ("RNAC") may be designated as a nursing services direct caregiver and counted in the direct care hours and minimum staffing ratios when exigent circumstances require that they discontinue their administrative and managerial duties to provide direct care.

Within 24 hours of the exigent circumstance(s) that require that the DON, ADON and/or RNAC provide direct care, the facility shall notify the Division in writing of this emergency and provide documentation of the amount of direct care time that was provided by the DON, ADON and/or RNAC.

The term “exigent circumstances” means a short-term emergency or other unavoidable situation, and all reasonable alternatives to the use of a temporary employee as a nursing supervisor have been exhausted.

Within 24 hours of the exigent circumstances that require the use of temporary employment agency staffing to fill a nursing supervisor position in a residential health facility, the facility shall notify the Division in writing of the exigent circumstances and the expected duration.

The Division had 3 facilities submit exigent circumstance forms during September - December 2023.

1. Delmar Nursing and Rehabilitation Center- facility has been in compliance with the staffing law with no deficiencies cited - average PPD = 3.38

9/2/2023 day shift ADON provided 6 hrs. direct care. due to call offs. Staff not available
9/11/2023 day shift DON provided 8 hrs direct care due to call offs. Staff not available
9/13/2023 day shift DON provided 8 hrs direct care due to call offs. Staff not available
11/17/2023 night shift ADON provided 8 hrs direct care due to call offs. Staff not available
11/19/2023 night shift ADON provided 8hrs direct care due to call offs. Staff not available

2. Courtland Manor- has been in compliance with the staffing law with no deficiencies cited - average PPD = 3.68

9/27- 29/2023 day shift ADON provided direct care 4.0 hrs. Staff not available due to unanticipated resignations. Facility actively recruited.
10/3-4/2023-day shift ADON provided direct care 4.0 hrs. Staff not available due to unanticipated resignations. Facility actively recruited.
10/25, 27, 31/2023 day shift ADON provided direct care 4.0 hrs. Staff not available due to unanticipated resignations. Facility actively recruited.
12/22, 26/2023 day shift ADON provided direct care. Holiday vacations and call offs.

3. Polaris - has been in compliance with the staffing law with no deficiencies cited - average PPD = 3.53. Has high use of agency staff. Nurse Supervisors- 3-11 and 11-7 shifts using consistent Agency RN supervisors - have been actively recruiting without success. New DON hired 12/11/2023 has hired 3-11 and 11-7 RN supervisors to start hopefully in January 2024.

Ms. Bingaman thanked Mr. Smith for sharing exigent circumstances the Division received during 4th quarter 2023. Mr. Smith mentioned the 3 facilities that submitted exigent circumstance forms at that time had exhausted all alternative staffing options and remained in compliance (without deficiencies) and Hours Per Resident Per Day (HRPD) greater than Delaware’s minimum requirement of 3.28. DHCQ uses the law as the Division’s policy to follow for exigent circumstances.

Mr. Smith added that if DHCQ sees a pattern, they contact the facility to make sure they are actively recruiting and have exhausted all their avenues.

Ms. Heiks mentioned in the Milford area, there has been an expansion of services at Bay Health. As a result, it’s added to a more competitive workforce downstate.

Ms. Bingaman asked if facilities who submitted exigent circumstance forms actively admitting new residents. Mr. Smith mentioned DHCQ looks at this when the Division is in survey mode.

Ms. Bailey asked if the Division is checking to see if facilities that need additional staff reach out to their sister facilities for assistance. Ms. Bingaman mentioned in her situation, she can reach out to other

facilities within the same location region to assist with staffing. This was accomplished by creating an agency type pool of staff (per diem) that could go between specific buildings to help, if needed.

Waiver Application and Process

It is DNHRQAC understanding that a waiver application will need to be completed by a facility, sent to DHCQ so they can add more details and then forward to DNHRQAC to make the final decision. The language in DE Code Title 16 states:

1162 (c) Nursing Staffing

If a nursing facility cannot meet the above referenced 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.

However, it appears DHCQ has been interpreting this instead (DE Code Title 16):

1168 Waiver

A residential health facility may seek from the Delaware Nursing Home Residents Quality Assurance Commission a time-limited waiver of the minimum staffing requirements required under § 1162(c) and (e) of this title.

Ms. Bailey mentioned because it appears there might be some confusion about the language in Delaware Code, DNHRQAC Chair and Executive Director has been in touch with DNHRQAC Deputy Attorney General (DAG), Patrick Smith, Esquire. Mr. Patrick Smith has been in contact with DHCQ DAG, Lauren Maguire, Esquire and will continue to update the Commission.

Technology Supports

Ms. Bailey shared that DNHRQAC is located under the Judicial Branch (technology department is Judicial Information Center). JIC is short staffed and therefore at this time not able to commit to helping the Commission create an electronic staffing waiver application.

As a result, Ms. Bailey asked Mr. Rob Smith if Delaware Department of Health and Social Services (DHSS) technology department can assist with the staffing ratio waiver application. Mr. Rob Smith agreed to check with DHSS technology department.

Mr. Rob Smith reminded subcommittee members that DHCQ currently receives all documents manually not electronically. They do not have a system in place to support electronic applications. It appears DHCQ is going to request funding in FY25 budget for IT upgrades, which is too late for this initiative.

The waiver, once created, will be submitted by non-State of Delaware users and crossed shared between 2 branches of State Government (Executive - DHSS and Judicial – DNHRQAC).

Once an electronic waiver application has been created and tested, there will need to be educational sessions held throughout the State so SNFs can be educated on the "new" waiver process. All this is supposed to be ready to launch on July 1, 2024.

Mr. Smith will check with DHSS technology department to find out their availability to assist with the staffing waiver application and process. He further added DHSS technology folks are currently working on 2 big projects: Background Check Center (BCC) and Licensing.

4. Public Comment

RuthAnn Lander clarified that she is an independent nurse consultant who does training for Limited Lay Administration of Medication (LLAM) via contract with Delaware Health Care Facilities Association (DHCFA). Ms. Landers also provides contracted services for long term care facilities.

5. Next Meeting

Ms. Bailey will send subcommittee members a poll to determine next meeting.

6. Adjournment

The meeting was adjourned at 2:57 pm.

Attachments: 1/11/2024 Eagle's Law Staffing Ratio Waiver Subcommittee Meeting agenda
12/21/2023 Eagle's Law Staffing Ratio Waiver Subcommittee Meeting minutes draft
DHCQ document – Exigent Circumstance definition and actual situations in 4th Qtr 2023