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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION  
(DNHRQAC)

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 May 10, 2024 @ 2:00 pm**

Final

Subcommittee members present: Norma Jones; Cheryl Heiks; Mary Peterson, RN; and Dr. Melissa Winters, PsyD. Subcommittee members attended virtually. A quorum of subcommittee members was present.

Subcommittee members not in attendance: Kori Bingaman, RN, NHA

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person); Rob Smith, Division of Health Care Quality (DHCQ); Julie Devlin, Esquire, Department of Health and Social Services (DHSS) Leadership; Tim Mastro, DHSS Communications; Josh Garnick, DHSS Communications, Paul Smiley, Gilpin Hall and Kevin Andrews, Public Member.

1. Call to order

This meeting was called to order at 2:06 pm. Subcommittee members and other attendees introduced themselves. A quorum of subcommittee members was in attendance.

2. Approval of minutes

Meeting minutes draft of March 26, 2024 and April 18, 2024 were approved as written.

3. Discussion of:

Eagle's Law Staffing Ratio Waiver Awareness Efforts, Social Media and DHSS Webpages

Subcommittee members provided background information related to Eagle's Law Staffing Ratio Waiver to DHSS staff members that joined the meeting.

By law, the Delaware Nursing Home Residents Quality Assurance Commission has authority to review staffing ratio waiver requests from skilled nursing homes to determine whether the waivers are appropriate and decide on the outcome.

Prior to this year, the Commission has not dealt with reviewing staffing ratios. It's not that staffing ratios were not an issue before, but it wasn't as exaggerated as it has become since COVID. During COVID emergency orders, staffing ratios per shift requirements for skilled nursing facilities (SNF) were waived.

Last year, in the budget epilogue language, the Joint Finance Committee (JFC) gave a blanket waiver for an additional year that nursing homes did not need to meet the staffing ratios per shift, which is due to expire June 30, 2024.

Ms. Peterson stated “as a Commission, we are looking to make sure that nursing home residents get the care they need and deserve. The intent of this waiver is to not necessarily provide more of a burden on an already burdensome system, but rather to make what is required by law, work. The Commission oversees the quality of care in facilities and ensures the rights of the residents are protected. And that is what we are trying to do”.

SNFs have two requirements for staffing (per Eagle’s Law):

1. Provide 3.28 hours of care per resident per day which was not waived during emergency orders & is still in effect today.
2. Meet certain staffing ratios per resident per shift for Registered Nurse (RN)/Licensed Practical Nurses (LPN) and Certified Nursing Assistants (CNA).

As a result, DNHRQAC has been working on a process and educational tool to figure out how to handle staffing ratio waiver requests going forward. The staffing ratios per shift, per Delaware Code, will be back into effect effective July 1, 2024.

The process has been developed, thanks to Dr. Winters, who provided the initial outline and what to include in a staffing ratio waiver request form. Dr. Winters also prettied up the PowerPoint Presentation, too. We now have a presentation for educational purposes to share with skilled nursing homes.

The PowerPoint Presentation was shared during the meeting, slide by slide.

The subcommittee members have been trying to figure out how to present the staffing ratio waiver process and form to skilled nursing homes so they will be prepared - effective July 1, 2024. The subcommittee would like to present the staffing ratio waiver in some type of technical way, maybe via Zoom or whatnot to make it easier for nursing home staff to attend when it’s convenient for them to do so instead of having to leave the facility to go somewhere for training.

Additionally, the subcommittee needs to post the PowerPoint Presentation on websites, so nursing home facilities have access to it and make it easier for staff to review when it’s best for them.

Ms. Heiks added that in DE Code Title 16 Chapter 11 §7, it also states the Division of Health Care Quality (DHCQ) has a role to play in a staffing ratio waiver process, too. Ms. Heiks mentioned she believes language in the DE Code states how the 3.28 HPRPD should be funded. Additionally, Ms. Heiks stated there has not been an increase in Medicaid reimbursement rates for more than 16 years. Finally, Ms. Heiks reminded the group about Federal staffing mandates that are coming down the road that may cause additional complexity to this process.

Subcommittee members added a disclaimer slide to the PowerPoint Presentation, too:

*“This training resource has been developed based on Delaware Code, current as of May 1, 2024, and is subject to change in response to State and/or Federal legislation.”*

The Federal Government recently announced a staffing mandate to include 3.4 hours of staff to resident care per day. Therefore, in anticipation of Federal mandate, this subcommittee noted there may need to be some adjustments to the waiver process down the road.

It was suggested by Ms. Heiks, who represents Delaware Health Care Facilities Association (DHCFA), to create a training video for the staffing ratio waiver. As a result, Ms. Furber, DNHRQAC Chair, prepared a video & forwarded it to nursing homes that volunteered to test/pilot the staffing ratio waiver process. Ms. Bailey mentioned that Ms. Furber plans to share feedback about the video with subcommittee members. The volunteer nursing homes were asked to provide feedback to Ms. Furber by May 17, 2024.

Ms. Devlin, Esquire mentioned DHSS could support the staffing ratio waiver on multiple fronts: sharing on social media outlets, including on DHSS webpages, and other ways to assist with promoting this effort. She further added that DHSS is currently working on updating their webpages. Ms. Devlin offered to contact DHCQ to figure out the best way to communicate the message regarding staffing waiver and training/educational offerings.

Ms. Devlin further added that “in a recent email from DHSS Cabinet Secretary to Ms. Bailey, it was reiterated that DHSS is a willing partner and wants to make sure residents in our state are healthy and thriving in facilities”.

Ms. Bailey has been in touch with Division of Health Care Quality (DHCQ) and industry representatives (DHCFA and LeadingAge) to figure out when the subcommittee can attend one of their meetings and present about the staffing ratio waiver (such as the mandatory Director of Nursing Workshop on June 4<sup>th</sup> or other dates/times).

**Action Items:** Ms. Bailey will forward Power Point Presentation, fillable Staffing Ratio Waiver Form and Video to DHSS Communications Department. Ms. Bailey will follow up with DHCQ, DHCFA and LeadingAge as to dates/times to present to Delaware long term care facilities.

#### 4. Public Comment

Mr. Kevin Andrews asked when the Federal Government staffing mandate of 3.4 goes into effect, how will it impact this staffing ratio waiver or can language be added to state it would automatically happen. Ms. Peterson mentioned the federal staffing requirement that was published recently is higher than the Delaware staffing requirement (3.28).

As a result, Delaware would need to conform with the Federal mandate. As a result, everything would need to be changed in Delaware to mirror the Federal requirements for skilled nursing facilities. As long as the staffing ratio waivers remain in law, they would need to conform also to any Federal mandates.

Subcommittee members agreed they would need to discuss the interpretation of the Federal staffing mandate as it relates to Eagle’s Law in Delaware, since Eagles Law has a few staffing components: hours per day per resident vs ratio of staff to resident per shift.

#### 5. Next Meeting

The next DNHRQAC Eagle’s Law Staffing Ratio Waiver Subcommittee will be held on April 18, 2024 @ 9:30 am.

In-person and virtual attendance options will be available. The meeting information will also be posted on the Delaware Public Meeting Calendar.

#### 6. Adjournment

The meeting was adjourned at 3:00 pm

Attachments: 5/10/2024 Eagle’s Law Staffing Ratio Waiver Subcommittee Meeting agenda  
4/18/2024 Eagle’s Law Staffing Ratio Waiver Subcommittee Meeting minutes draft  
3/26/2024 Eagle’s Law Staffing Ratio Waiver Subcommittee Meeting minutes draft  
Eagle’s Law Staffing Ratio Waiver PowerPoint Presentation