
*Delaware Nursing Home Residents
Quality Assurance Commission*

**DNHRQAC Meeting of June 14, 2024
9:30 a.m.
Virtually via Cisco Webex
Anchor Location: Milford Place
500 S. DuPont Blvd Milford, DE 19963**

FINAL

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Kori Bingaman, RN, NHA; Norma Jones; Christopher Marques, Esquire; Brandon Williams proxy for Senator Spiros Mantzavinos; Mary Peterson, RN, BSN; Hooshang Shanehsaz, RPH; Jennifer McLaughlin, OT; Dr. Avani Virani and Dr. Melissa Winters, PsyD.

Deputy Attorney General (DAG) Patrick Smith, Esquire was also in attendance.

Ms. Furber and Ms. Peterson attended in-person @ the anchor location. The remainder of meeting participants attended virtually or by phone. A quorum of commission members was present.

Commission members not in attendance: Representative Eric Morrison and Brian Frazee.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Rob Smith, DHCQ; Crystal Mohr, DHCQ; Kevin Andrews, Public and Jim McCracken, LeadingAge.

1. Call to Order & Introductions

The meeting was called to order at 9:35 am.

2. Approval of the meeting minutes

Meeting minutes draft of May 21, 2024 was approved as written.

3. Discussion of:

Eagle's Law Staffing Ratio Waiver

Training:

The subcommittee has been actively working on training all Delaware Skilled Nursing Facilities (SNFs) about the staffing ratio waiver. To date, there have been two presentations:

6/4/2024 - Director of Nursing (DON) Workshop at Edgehill (Dover), hosted by Division of Health Care Quality (DHCQ). There were approximately 22 attendees for this in-person event. Ms. Furber and Ms. Peterson facilitated this training session.

6/5/2024 – Division of Health Care Quality (DHCQ) call with nursing home providers. There were approximately 56 attendees for this virtual training session. Ms. Furber & Ms. Peterson facilitated this training session.

An additional staffing ratio waiver unveiling was held on 6/5/2024. DHCQ Director, Corinna Getchell, attended the LeadingAge Annual Meeting & EXPO. Ms. Getchell shared training materials with LeadingAge members related to the Eagle's Law Staffing Ratio Waiver application and process.

Another virtual training opportunity will be held on 6/17/2024 via Delaware Health Care Facilities Association (DHCFA). Ms. Furber and Ms. Peterson will provide virtual training to DHCFA & LeadingAge members.

Waiver Pilot/Test Run:

This subcommittee reached out to Skilled Nursing Facilities (SNF) to see if they would participate in an educational trial/dry run of the staffing waiver application, which is to begin July 1, 2024. It was decided during a previous subcommittee meeting that having several types of facilities participate would be beneficial, such as having a facility participate from each county, for profit vs not for profit, specialty unit, etc.

Ms. Furber has been the point of contact with facilities that volunteered to participate in the trial/test run. Two SNFs volunteered to participate but no feedback was forwarded to Ms. Furber by the 5/17/2024 due date. She will reach back out to the two facilities. Additionally, Ms. Furber sent the video to a few other SNFs who met some of the criteria: located in each county, has a specialty unit, etc, but has not received any feedback to date.

Transparency:

A question was raised during March 19, 2024 full DNHRQAC Meeting by Senator Mantzavinos about transparency and family notification relating to staffing ratio waivers. Ms. Furber mentioned then, that at minimum, she envisioned the waiver results could be shared during full Commission meetings.

DAG Smith mentioned the waiver application is a public document.

Ms. Bingaman added that concern with identifying a facility during application review was raised in some subcommittee meetings. She mentioned this is going to be public knowledge anyway & that staffing numbers are already available to the public.

Mr. Marques mentioned it would be potentially confusing to talk cryptic about a facility that submitted a waiver application during a waiver review meeting. He added that any identifiers such as a resident's name or whatnot should not be discussed to protect their privacy under Health Insurance Portability and Accountability Act (HIPAA).

Ms. Peterson mentioned the way the waiver applications are structured, she does not foresee discussing individual residents.

Ms. Furber shared there isn't anything in the application questions that is asking facilities to identify individual residents or specific health related HIPAA covered conditions. "There is a general question asking if the facility has a "specialty unit" such as a ventilator, dialysis or rehab unit that may require more of an expertise type staffing model. Although DNHRQAC cannot predict what will be captured on the form, the questions do not lead to identifying any specific resident."

Waiver Decision Subcommittee:

Eagle's Law Staffing Ratio Subcommittee is recommending the use of a smaller subgroup to review, approve or deny waiver requests (5 – 6 individuals).

Concerns were raised about subcommittee members who could be in direct conflict with a particular waiver application. and therefore, other commission members might be more fitting to

serve on the smaller application decision subcommittee to avoid potential conflicts and promote a consistent panel to review waiver applications.

DAG mentioned that third party individuals should not be weighing-in or analyzing waiver applications.

A motion was brought forward to full commission to create a waiver decision subcommittee consisting of commission members Dr. Virani, Lisa Furber, Mary Peterson, Jennifer McLaughlin, Chris Marques and Norma Jones as alternate (will attend meetings & be a voting member if a member is absent). The subcommittee would also include DNHRQAC Executive Director and DHCQ representative as non-voting participants. The majority of waiver subcommittee members would make recommendations to the full Commission to approve or deny applications. This motion was discussed during 5/23/2024 DNHRQAC Eagle's Law Staffing Ratio Subcommittee Meeting where members discussed bringing forward this waiver decision recommendation to the full commission.

Ms. Furber added that all commission members signed a Conflict of Interest Policy and at times there is business the commission will be voting on that may be a conflict and members may have to recuse themselves and not vote on a particular item.

This motion was raised and seconded, a poll was conducted of all commission members present - 8 members voted "yes" and 2 members voted "no".

Ms. Heiks suggested the subcommittee's composition should include representatives from the provider community. Her thoughts shared "individuals who have worked in that world should have an opportunity to be part of the subcommittee or we could run into an issue where buildings would feel like people making the waiver application decisions are not qualified to make the decision because they haven't been in their shoes."

Ms. Furber wondered if the full Commission needs to finalize a staffing ratio waiver application, is it necessary to have a subcommittee look at it ahead of time. Does it make sense from an efficiency standpoint, since several commission members serve on this subcommittee, to make a recommendation to the full commission. "Will it make the full commission vote faster?"

Ms. Heiks shared she is a member of the Delaware Health Resources Board (HRB) that used to have a subcommittee review applications and the applicant was present to answer questions, too. At that time the subcommittee made recommendations to the full Board. This helped speed up the process. Now, applications are reviewed by the full Board without applicant present and it takes several hours to review one application. Ms. Furber stated "I don't know how long it will take to decide on a staffing ratio waiver application since it's never been done before, but I am hopeful the process will continue to be streamlined & improved to the best of our abilities."

Mr. McCracken commented in the chat section stating that he believes an industry representative should serve on the application decision subcommittee and does not believe there will be a conflict unless the facility where they work is seeking a waiver. Ms. Furber used Ms. Bingaman as an example to explain Mr. McCracken's comment. If the facility where Ms. Bingaman works is seeking a waiver, that would constitute a conflict. Ms. Heiks agrees, too.

Ms. McLaughlin stressed the importance of creating an algorithm or some sort of parameters for the Commission to be able to have objective information to support or deny a waiver application.

A motion was made for the subcommittee to develop a review process and decision-making pathway for denied waiver applications, with potential appeals to be reviewed by the full

commission. The meeting did not have a quorum of members at this time so no voting could take place on this motion.

Subcommittee Members - Liability:

In addition, questions were raised regarding liability of waiver decisions.

Dr. Virani asked about personal liability especially related to denial of waiver applications and what would be the checks and balance process for facilities denied but not able to meet staffing ratios. “How do we ensure after a denial has been issued that the facility is in compliance.” Ms. Furber believes this would be something DHCQ would need to monitor through some of their follow-up mechanisms such as through annual and complaint surveys or other means. Ms. Bailey reminded commission members that DHCQ will receive a copy of all waiver application decisions. Ms. Furber added this is important because it will determine whether DHCQ will impose any potential civil monetary penalties (CMP) for non-compliance of Eagle’s Law. Additionally, Ms. Furber reminded members that DHCQ Director agreed to not take disciplinary action for non-compliance while the application is pending.

Action Item: Need to check with DHCQ regarding follow-up on waiver applications for compliance.

DAG Smith reminded everyone that the waiver is not being done for no reason. It is being mandated per DE Code.

DAG Smith will conduct research for Commission and personal liability related to sovereign immunity. “This is a State Commission/entity and therefore my instinct is that this would not be an issue but would like an opportunity to look into this further.” Ms. Furber mentioned this information will be shared with the full Commission once reviewed by DAG Smith. She further added that DAG Smith’s responses to their questions will perhaps help commission members feel more at ease with the process.

Review of Applications – Forum & Frequency:

Subcommittee members mentioned due to this being a time limited process, the group discussed options of how to expedite the waiver (appeal/approve/deny) review process. As a result, subcommittee wondered if they could:

- A. Decide on staffing ratio waiver application outcome and share with full commission.
- B. Make a recommendation to the full commission about waiver applications & full commission would approve, deny or grant appeals for staffing ratio waiver applications.
- C. Receive permission from full commission to grant or approve any waiver applications or appeals. It was the subcommittees recommendation that it would be timelier if the subcommittee received permission from the full commission, if possible, to make waiver decisions.

DAG Smith stated the Eagle’s Law Staffing Ratio Waiver meetings need to be held publicly (virtual and in-person anchor location) & wouldn’t qualify as an Executive Session, per DE Code.

Time sensitivity concerns were raised if waiver reviews must be completed during an open public meeting, as meetings need to be posted on the Delaware Public Meeting Calendar in advance.

There was a discussion about whether to increase the frequency of full Commission meetings to twice a month if the full Commission will be approving or denying waiver applications.

Ms. McLaughlin suggested the group may want to consider looking at alternate meeting times such as after a normal workday to ensure a quorum. It is Ms. Petersons understanding the subcommittee would be able to set a meeting time that works best for the group. Ms. McLaughlin was referring to the full commission meetings that might need to be changed to meet quorum. Ms. Furber stated that if makes sense to have the full commission meet at 4:30 or 5:30 pm for 15 minutes to have a quorum of members review subcommittee recommendations and approve or deny applications, she is amenable to the pleasure of the full commission.

Mr. Marques mentioned it appears there will be a turn around time of 10 days from when DHCQ has completed their section of a waiver application for DNHRQAC to approve/deny waivers. Ms. Furber added that since the volume of waiver applications is unknown at this time, waiver application decision meetings should probably be scheduled weekly, with an option to cancel if no waiver applications have been submitted.

DAG Smith added “My understanding of DE Code Title 16 Subchapters 1162 (c) and 1186, that since it’s for the commission that it’s subject to final approval of the commission that a residential health facility may seek from the commission. I believe the subcommittee should present their recommendation to the full commission and the full commission should vote on it. This is my advice based on reading the statutes and thinking about what is best from a legal standpoint for this commission. This is how Boards such as the Health Resources Board conducts their business and delegating full voting authority to a subcommittee would potentially open challenges that I would advise against.”

DAG Smith understands the mechanical difficulties potentially in working through some issues, but his advice is for the full commission to vote on the subcommittee’s waiver application recommendations.

Ms. Heiks mentioned that statutes are the frame and regulations are the steps and wonders if any regulations have been created to show how this would work as this will have a huge impact on the industry.

Ms. Furber does not believe any regulations were promulgated regarding Eagle’s Law. She added that she is not aware whether or if this is something that can be done at this point or how the process would happen.

DAG Smith stated his review was based on what appears in the DE Code. Ms. Peterson added that DE Code gives DHCQ the authority to write regulations & nowhere in the CODE gives DNHRQAC authority to do so. DAG Smith offered to look at this closer.

Ms. Heiks stated she was not suggesting DNHRQAC write the regulations but rather encourage some regulations be developed and ask for help to detail and define this further. Ms. Bailey mentioned DHCQ has been actively involved with the staffing ratio waiver subcommittee and asked Rob Smith if he could weigh-in on this part of the discussion. At this time, Mr. Smith had left the meeting and therefore unable to provide feedback.

Appeals Process:

Ms. Bingaman mentioned she believes appeals will occur and wants to make sure a process is developed to make a final decision on whether a waiver will be granted or denied. She added that questions will be raised as facilities have a financially invested interest.

There were discussions about an appeals process. Subcommittee members will develop a pathway or fair algorithm to guide subcommittee members. Commission members expressed the need for a clear and consistent review of all applications.

Action Item: Ms. Furber will forward the list of Eagle’s Law Staffing Ratio Waiver questions raised during the meeting to DAG Smith and forward his response to the full Commission.

Use of Volunteers

Ms. Furber suggested this item be tabled at this time. She further added that during FY25 Joint Finance Committee (JFC) Mark-Up Hearings a few weeks ago, JFC members recommended, pending the Governor’s signature, to add a fulltime Administrative Specialist and casual seasonal Data Analyst to DNHRQAC.

4. Old/New Business

Ms. Bailey mentioned World Elder Abuse Awareness Day (WEEAD) is June 15, 2024 and something DNHRQAC asks to be acknowledged in Delaware. This day is recognized annually in Delaware House/Senate Chambers to provide awareness relating to elder abuse, neglect, mistreatment and financial exploitation.

This year, a concurrent resolution (SCR 181) will be co-sponsored by DNHRQAC members, Senator Mantzavinos and Representative Morrison.

5. Public Comment

No members of the public elected to provide public comment.

6. Next DNHRQAC Meeting – July 16, 2024 @ 9:30 am. This meeting will be conducted via virtual platform and in-person anchor location. Meeting invite and details will be forwarded to commission members & available on the Delaware Public Meeting Calendar.

7. Adjournment

This meeting was adjourned at 11:21 am by Lisa Furber, DNHRQAC Chair.

Attachments: DNHRQAC Meeting of June 14, 2024 – meeting agenda
DNHRQAC Meeting of May 21, 2024 – meeting minutes draft