

Delaware Nursing Home Residents
Quality Assurance Commission

Annual Report
2001 - 2002

April 15, 2003

**DELAWARE NURSING HOME RESIDENTS
QUALITY ASSURANCE COMMISSION**

Members of the Commission

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I. BACKGROUND INFORMATION

THE COMMISSION

- The Delaware Nursing Home Residents Quality Assurance Commission (the Commission) was established in 1999. 29 Del. C. § 7907. The Commission's principal charge is to monitor Delaware's quality assurance system for nursing home residents. This system regulates both privately operated and state-operated facilities in an effort to help ensure the health and safety of nursing home residents.
- As part of its monitoring effort, the Commission reviews state agencies responsible for investigating complaints of abuse, neglect, mistreatment and financial exploitation, as well as other agencies that have input on the quality of care in Delaware's nursing homes. The Commission reviews enforcement actions taken or not taken on a statewide basis. While the Commission does not conduct investigations or initiate enforcement, the Commission's focus is on ensuring that complaints are investigated in a timely manner and enforcement action is taken where appropriate. The Commission also has specific responsibilities relating to Delaware's minimum staffing law, including the responsibility to hear requests from nursing homes seeking waivers from its provisions. The Commission has the authority to grant such waivers where appropriate.
- The Commission is also charged by the General Assembly and the Governor with conducting specified studies relating to long term care and reporting its findings to the General Assembly and the Governor.
- Finally, the Commission is required to prepare and submit an annual report to the Governor, the Secretary of the Delaware Department of Health and Social Services (DHSS), and members of the General Assembly. This is the Commission's annual report.

APPOINTMENT OF COMMISSION MEMBERS

- The Commission is composed of a total of 10 members, eight of whom are appointed by the Governor.
- One of the members appointed by the Governor is to be a representative of the developmental disabilities community protection and advocacy system established by the United States Code.
- The remaining members are to include representatives of the following: consumers of nursing home services, nursing home providers, health care professionals, law enforcement personnel, and advocates for the elderly.
- Of the remaining two members, one member is appointed by the Speaker of the House, and one member is appointed by the President Pro-Tem of the Senate. These two members serve at the pleasure of their appointing authorities.

FREQUENCY OF MEETINGS

While the Commission is required by statute to meet at least quarterly, the Commission usually meets on a monthly basis.

II. AGENCY REVIEWS

INTRODUCTION

Pursuant to 29 Del.C. § 7907(g)(1), the Commission is required to review and evaluate the effectiveness of the quality assurance system for nursing home residents. To do so, the Commission requests information and takes testimony from representatives of state agencies. These include the Division of Long Term Care Residents Protection (DLTCRP), the Ombudsman's Office, the Delaware Department of Justice, law enforcement agencies, other state agencies, health care professionals and nursing home providers.

To that end, the Commission invited representatives from state agencies and other presenters to appear and testify before the Commission. The following is a summary of these agency reviews:

- **DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES, LONG TERM CARE OMBUDSMAN PROGRAM**

Tim Hoyle, Senior Administrator of the Division of Services for Aging and Adults with Physical Disabilities, provided information and testimony to the Commission about the Ombudsman Program. The Ombudsman's role is one of impartial fact-finder to ensure that residents in long term care facilities receive fair treatment.

Ombudsman responsibilities include:

- Mediate disputes.
- Investigate complaints regarding quality care and residents' rights violations.
- Advocate for residents.
- Recruit, train, and retain volunteers - goal is one volunteer per facility.

The Ombudsman Program has one paid staff person per 1,000 - 1,500 beds. Mr. Hoyle said that the recommended average is one per 2,000 beds. The Ombudsman's Office

generally handles non-criminal complaints and refers violations of the law to the DLTCRP. The Ombudsman Program is not an enforcement agency and does not have law enforcement powers but tracks cases and complaints as required by the Federal Administration on Aging.

Mr. Hoyle said that families are one of the first lines of defense to ensure high quality care along with sufficient staffing. He reports that 40% of nursing home residents do not have regular visitors. Mr. Hoyle believes his agency needs additional staff to help ensure quality.

- **THE DELAWARE BOARD OF NURSING**

Iva Boardman is the Executive Director of the Delaware Board of Nursing and is a member of the Nursing Workforce Supply Committee of the Delaware Healthcare Commission. The purpose of the Committee was to study supply and demand of registered nurses. This Committee focused on four areas:

- Recruitment - Room for minority representation and very little scholarship monies.
- Retention - Workplace environment.
- Education - Need to match education to actual practice areas.
- Public Policy - Committee is looking at the roles of various agencies involved in providing care.

This Committee's guiding principals are:

- Maintain quality of care.
- Leave a legacy of ongoing evaluation collaboration.
- Involve stakeholders.
- Focus on long term solutions.
- Make realistic and measurable recommendations.

Delegation to Unlicensed Staff

The issue of what duties can be delegated to unlicensed staff is governed by the Nurse Practice Act and the rules and regulations promulgated by the Board of Nursing. According to Ms. Boardman, Delaware tightly controls the delegation authority with a specific list of activities that cannot be delegated. In short, Ms. Boardman reports that Delaware is very strict in terms of delegating to unlicensed staff.

Status of Nursing in Delaware

Presentation by Karen Panunto, MS, MRN, Wesley College, Division of Nursing, on the status of nursing in the State of Delaware. Ms. Panunto's research was conducted by the Delaware Nurses Association Division of Legislation and Wesley College. The questionnaires were sent out with licensing registration information from the Board of Nursing. According to Ms. Panunto, there are 500 licensed Advanced Practice Nurses in Delaware and 10,500 Registered Nurses. These numbers were further broken down by age, race, sex, marital status, where working, kinds of certification, salary, and experience. The Commission will follow-up to review and comment on the results of this study.

- **DIVISION OF SOCIAL SERVICES (DSS), MEDICAID PROGRAM**

The DSS/Medicaid Office submitted documents and Ms. Catherine McMillan spoke about the differences between the Medicare program and the Medicaid program. Her testimony is summarized as follows:

Medicare

- A federal program administered by the federal government through the Centers for Medicare and Medicaid Services (CMS).
- Medicare covers acute care services such as physicians, hospital, x-rays, home

health care, etc.

- Medicare is the same in each state and covers very few pharmaceuticals.

Medicaid

- A state medical program that is governed by federal regulations and partially funded by CMS.
- Medicaid has core or basic services that must be covered, according to the federal requirements. These would include but are not limited to hospital, physician, home health, etc.
- States may apply for and receive permission to pay for services under Home and Community Based Waivers.
- Each state's Medicaid program is somewhat unique because of the state's ability to elect to offer "optional" services and/or Home and Community Based Waivers.
- Delaware submitted two Waiver proposals which were financed by the Robert Wood Johnson Foundation, the State, and a matching contribution from the federal government. The proposals are -
 1. Diamond State Long Term Care Program for the Elderly and Disabled.*
 2. Program for people with behavioral health needs.*

The Waiver Programs will:

- Cover Medicaid recipients.
- Provide additional services such as consumer-directed care.
- Place an emphasis on quality assurance.
- Require an internal quality management system to be approved and monitored by the state.

* *These programs are currently on hold.*

- Ensure a grievance/appeal procedure
- Cause the state to conduct hands-on reviews by visits to nursing and personal homes.
- Ensure geographic accessibility.

DELAWARE DEPARTMENT OF JUSTICE

The Delaware Department of Justice (Attorney General's Office) provided documents and testimony to the Commission. The Attorney General's Office is charged with bringing criminal enforcement action, where appropriate.

Deputy Attorney General Timothy Barron, Director of the Medicaid Fraud Unit, and John Miller, Chief Investigator, testified. Mr. Barron indicated that his unit prosecutes fraud that occurs in the Medicaid program. Mr. Barron's unit also investigates and prosecutes cases of patient abuse and financial exploitation in nursing homes.

According to Mr. Barron, Delaware passed the first state statute to cover emotional abuse. The Office of the Inspector General (OIG) oversees all the Medicaid Fraud Control Units and they must submit quarterly and annual reports to the OIG.

Chief Investigator Mr. Miller stated that:

- He is the Chief Patient Abuse Investigator with two other investigators. The unit focuses on criminal prosecution, not civil or administrative enforcement. Mr. Miller believes that the vertical integration between DLTCRP and his office has been good.
- Delaware's fraudulent acts statute is fashioned after the Federal False Claims Act and provides both civil and criminal punishment.
- A Memorandum of Understanding (MOU) was required between the DLTCRP, the Attorney General's Office and Delaware Law Enforcement pursuant to 16 Del. C., §1134 (13). The MOU has been signed by the DHSS Secretary, Vincent Meconi, Attorney

General, Jane Brady, the Delaware Police Chiefs' Council and the Secretary of Public Safety, James L. Ford, as of March 6, 2002.

- The Medicaid Fraud Unit is responsible for training and has completed training for over 90% of Delaware's law enforcement personnel since May, 1998. Under the auspices of the MOU, this training will continue and will include DLTCRP employees.
- Mr. Miller reports that more patient abuse in-service training with Municipal Police Departments is needed especially in Kent and Sussex Counties.

- **DIVISION OF LONG TERM CARE RESIDENT PROTECTION (DLTCRP)**

Carol Ellis, Director DLTCRP, spoke about regulations and other matters related to long term care. Discussion included:

- Regulations for the Adult Abuse Registry and Group Homes for Persons with AIDS.
- Revising the Assisted Living Regulations and the Uniform Assessment Instrument (UAI) to be used for assessing residents when being admitted to an Assisted Living facility.
- The regulations for Group Homes for Persons with Mental Illness.
- The Medicaid Waiver that allows individuals at certain levels to go into Assisted Living instead of nursing homes. The Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) makes the assessment to determine who is eligible for this Waiver. Ms. Ellis and staff met with the former DSAAPD Director, Carolee Kunz, and staff to make sure that the Waiver criteria and the regulations fit together.
- Pediatric facility regulations. Ms. Ellis said that these regulations are required by statute although there are no nursing homes in Delaware currently admitting pediatric residents. In addition, Philip E. Soulé, Director Medicaid, DSS, added that the Medicaid agency is required to ensure quality of care for the children it places. To put something in the regulations that would require a facility that takes an out-of-state Medicaid child to notify the Delaware Medicaid office would take more staff to monitor.

- DLTCRP's interpretation of the staffing bill (Eagle's Law) in reference to minimum staffing. DLTCRP interprets the law as requiring facilities to meet both the Matrix and the hours of direct care per resident.
- The Division's view on S.B. 327 which reduces the training requirements to become a Certified Nurse Assistant (CNA). Carol Ellis said that she did not think there has been enough time to evaluate the 150 hours of training currently required to become a CNA.
- Ms. Ellis reported that the Division is changing to a new CNA testing contractor.
- In order to cut costs, the Division is bringing its Cost Allocation Plan function in-house.
- Ms. Ellis said that the CNA Registry is also being brought in-house to give better service to applicants.

- **CENTERS FOR MEDICARE/MEDICAID SERVICES (CMS) QUALITY INITIATIVE PROGRAM**

Quality Insights of Delaware (Daniel Jones, Dr. Edward Sobel, and Cynthia Mannis) testified on the CMS Nursing Home Public Reporting and Quality Initiative. Dr. Sobel indicated that improving care in nursing homes is a top priority and the project begins with six states sharing information on ten quality indicators. According to Dr. Sobel, a small number of nursing homes in Delaware will be selected to participate. Quality Insights will bring best practices from the six states pilot program to Delaware.

- **MEDICAID QUALITY ASSURANCE REVIEW**

Mary Anne Colbert, RN, Statewide Medicaid Administrator for Medicaid Quality and Patient Acuity Reviews, DSS/Medicaid, testified about the system used by Medicaid to reimburse for the nursing care given to Medicaid residents in Delaware Medicaid certified nursing facilities.

III. STUDIES COMPLETED

- **STUDY ON THE EFFICACY OF STAFFING STANDARDS**

- Delaware's minimum staffing law found at 16 Del. C. §§1161-1169 (Eagle's Law) sets minimum levels for Delaware's nursing facilities. The statute specifies a minimum number of direct care hours per resident per day. It also sets direct care staff to resident ratios. As originally enacted, the law called for incremental increases to be phased in over a three-year period. The first phase began March 1, 2001, and required 3.0 hours of direct care per resident per day with corresponding staff to resident ratios.
- The law provided that the Commission assess the efficacy of Phase I and determine whether the State should progress to Phase II. Specifically, Eagle's Law provided:

On or before December 1, 2001, a comprehensive report assessing and reviewing the quality of nursing facility care in Delaware shall be completed by the Delaware Nursing Home Residents Quality Assurance Commission and submitted to the Governor and the General Assembly. The purpose of the report is to determine the efficacy of the minimum staffing levels required under this chapter, including, but not limited to, the availability of qualified personnel in the job market to meet the requirement, the cost and availability of nursing home care, and patient outcomes based on scheduled facility surveys, surprise inspections and other reviews conducted by the Division. Based on this information, the Commission will determine if increasing the minimum nurse staffing levels to 3.28 hours of direct care with the corresponding increased required shift ratios is appropriate and necessary.

16 Del. C. § 1162(c).

- To that end, in June 2001, the Commission, in cooperation with the DLTCRP, requested the assistance of a consultant in preparing a comprehensive report regarding the efficacy of Delaware's staffing law. Five consulting groups submitted proposals and the Commission, with the approval of DLTCRP, selected Dr. Linda M. Rhodes, former Secretary of Aging for the Commonwealth of Pennsylvania and President of Rhodes & Associates.

- The findings of the study entitled, "Efficacy of the Minimum Nursing Staffing Levels Required Under Eagle's Law: Quality of Care, Labor Trends, and Nursing Home Cost and Availability", were presented to the Commission and the public by Dr. Rhodes on November 13, 2001, at the Grass Dale Conference Center in Delaware City. The findings are also detailed in a written report by the same name available to the public from the DLTCRP. A summary of the findings appears in Appendix A of the current document.

- **Commission Recommendations**

On November 26, 2001, the Commission voted unanimously to recommend to the Governor and General Assembly that the second phase of the staffing levels set by Eagle's Law be implemented. Specifically, the Commission recommended as follows:

Based on the Commission's primary mission to assure quality care for Delaware's nursing home residents, and based on the premise that funds have been/will be appropriated for Medicaid eligible reimbursement to meet the Phase 2 staffing thresholds, it is appropriate and necessary to increase the minimum nursing staffing levels to 3.28 hours of direct care per resident per day and to increase the corresponding required shift ratios.

This recommendation is based on the research of this study that substantiates that quality of care is highly related to providing residents with higher levels of direct care nursing hours every day. The modest incremental change in the minimum of 16.8 minutes per resident per day, or 5.6 minutes more per shift each day (based on having three shifts each day), should not, in itself, cause fewer beds to be made available or cause undue financial harm to providers. Current labor data, especially pertaining to CNAs, indicates that there are more than likely enough people in the labor pool to perform the modest incremental addition of .28 hours per day per resident --- much of which will be provided by CNAs.

- **STUDY ON REGISTERED NURSE SUPERVISION**

- Eagle's Law requires, pursuant to 16 Del.C. §1161, that nursing supervisors spend no

less than 25% of their time, per shift, providing supervision apart from the provision of direct care to residents. The law also mandates that the Commission prepare a report “to determine if the required minimum amount of supervision time is appropriate and necessary, and/or whether it should be adjusted.” 16 Del. C. § 1161(f).

- With the concurrence of DLTCRP, the Commission again requested the consulting services of Rhodes and Associates. On April 10, 2002, Dr. Rhodes conducted a policy discussion group workshop from 9:30 a.m. to 3:00 p.m. Participants included representatives of the nursing home industry and related trade organizations, nurse educators, government employees, advocates, and Commission members. Questions addressed in the workshop included the following:
 - What is supervision?
 - How can you tell when there is good supervision?
 - How would you measure supervisory functions?
 - What gets in the way of effective nursing supervision?
 - How feasible is valid measurement of supervisory time?
 - What can be done to enhance supervision?

- The results were published in a briefing paper entitled “Registered Nurse Supervision in Nursing Homes and Eagle’s Law 25 Percent Minimum for Supervisory Functions” which was provided to the Governor and members of the General Assembly. Although the workshop did not propose any other supervisory thresholds apart from the current mandate of 25%, it was agreed that the current percentage is the minimum that a facility should use. A summary of the findings of the policy discussion group is included in Appendix B of this document.

- **Commission Recommendations**

On May 14, 2002, the Commission voted to recommend to the Governor and the General Assembly that the current 25% minimum be continued and that consideration be given to some of the management issues, such as continuing education, that also were addressed in the briefing paper.

IV. LEGISLATION AND REGULATION REVIEW

Regulations

The Commission is required to review regulations and legislation effecting long-term care residents in the State of Delaware. DLTCRP submitted the following regulations for the Commission's review and comment.

- Certified Nurse Assistant (CNA) - Regulations to implement the CNA training law which include an increase in the number of hours of training from 75 hours to 150 hours to become a CNA.
- Adult Abuse Registry (AAR) - Proposed revised regulations for the AAR.
- Group Homes for Persons with AIDS - Proposed revisions to existing regulations that consisted of streamlining and condensing regulation language to avoid duplication. It also updates the regulations with the new licensing law requirements.
- Nursing Homes Admitting Pediatric Residents - Regulations are required by statute and are an addendum to the nursing home regulations. There were no pediatric regulations to address the quality of care and method of inspection for children that may reside in Delaware nursing homes.
- Group homes for Persons with Mental Illness - Current regulation update which includes admission criteria for eligibility in a group home and the deletion of a requirement for an advisory committee. The Commission disagreed with deletion of the advisory committee and had other concerns with the regulations.
- Guidelines for Director of Nursing (DON) Workshop - These guidelines were written as required by the staffing law (Eagle's Law). This is a workshop for newly hired DONs, and would include current DONs and Assistant DONs.

- Assisted Living Facilities which included the Uniform Assessment Instrument (UAI) for Assisted Living Facilities - Current regulation update which includes a new assessment tool for admission criteria to an Assisted Living facility.
- Proposed federal regulations from the Centers for Medicare and Medicaid Services (CMS) Rules for Paid Feeding Assistants - Commission reviewed these proposed regulations and sent a letter to CMS agreeing with the concept, but urging CMS to allow individual states to adopt training programs.
- Criminal Background Checks for Home Health Agencies - These regulations were required by 16 Del.C. §§1145 and 1146. They require that home health agencies screen applicants before they are employed for criminal history and drug usage.

Legislation

- SB-135 – This bill related to staffing and RN supervision requirements for nursing facilities. The Commission reviewed the legislation and provided comments to the General Assembly.
- SB-326 and SB-327 – These bills related to the minimum staffing requirements in nursing facilities. The Commission reviewed the legislation and provided comments to the General Assembly.
- SB-368 – This bill replaced SB-326 and SB-327. The Commission reviewed the legislation and provided comments to the General Assembly.

V. NURSING HOME WAIVER REQUESTS FROM MINIMUM NURSING

STAFFING LAW

- The Commission is charged with reviewing and making decisions on requests for waivers to Delaware's minimum staffing law. The review is conducted in accordance with 16 Del. C §1168 which provides that:

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. Such waiver will only be granted upon a showing of exigent circumstances, including but not limited to documented evidence of the facility's best efforts to meet the minimum staffing requirements under §1162 (c) and (e) of this title. Any such waiver will be time-limited and will include a plan and a timeline for compliance with this chapter. The Commission may seek input from the Department of Labor in terms of issues of labor availability in connection with any waiver request under this section.

- After the Commission authorized the implementation of Phase II, eleven (11) nursing home facilities requested a waiver. Prior to the hearing, four (4) facilities withdrew their waiver requests.
- The facilities that requested a waiver were asked to make presentations to the Commission, providing evidence and justification for their request. The facilities focused on problems meeting the Matrix aspect of Phase II of the staffing law. The Matrix requires that facility staff be appropriated by a ratio of staff to residents over the three shifts during a day. A lengthy question and answer session followed each presentation.
- After review, the Commission recommended a limited waiver of 90 days for all nursing home facilities to meet the staffing shift ratios (Matrix) requirements under Phase II. The waiver was granted on February 13, 2002, and extended to May 13, 2002. The Commission notified all nursing home facilities via letter. The Commission also noted that nursing home facilities must develop a plan for compliance with Phase II shift ratios/Matrix to be implemented at the end of the waiver period.

VI. OUTREACH

The Commission has attempted to increase awareness of its efforts so that residents, nursing homes and agencies contact the Commission when problems occur. To that end, the following outreach activities have taken place:

- In January, 2001, letters were sent to Resident Councils, Family Councils, and the Directors of Long Term Care Facilities to tell them of the existence and functions of the Delaware Nursing Home Residents Quality Assurance Commission. In addition, a letter was also sent to the State Ombudsman asking that facilities be taught the differences in the way Family Councils (led by family members) and Resident Councils (led by residents) are conducted.
- In February, 2001, the Chair asked Commission members to visit nursing facilities and attend some Council meetings. Photo identification tags were distributed to be worn during the visits. The purpose of the visits is to enhance the Commission's perspective on systemic issues in long term care. In Commission meetings, the names of the nursing facilities that were visited are not revealed but members report on their findings.
- Throughout the year, Commission members attended Resident and Family Council meetings, visited fifteen nursing homes, attended five post survey meetings and two Ombudsman training meetings.
- In August, 2001, a sub-committee wrote guidelines for visiting nursing facilities and produced two informative brochures about the Commission. These two brochures were completed in February, 2002, printed and made available for distribution in July, 2002.
- The Division of Services for Aging and Adults with Physical Disabilities wrote a brochure for residents of nursing facilities and assisted living facilities which is to be kept at the resident's bedside. At the Commission's request, there is a section about the Commission in this brochure.

- The Commission was represented at the Residents' Rights Rally at the Milford Senior Center on October 7, 2002.
- During the calendar year of 2002, three Commission meetings were held in nursing facilities, one in each county. The Commission members were given a tour of one of the facilities.

VII. TRENDS

Agency reviews revealed a number of trends in long-term care worthy of note. They are as follows:

- **Abuse cases – case processing** - An important issue was raised with respect to investigations and enforcement of abuse cases by the DLTCRP and the Attorney General's Office. As reported by the Attorney General's Office, the number of complaints that were received, investigated, and eventually prosecuted in 2002 are as follows:
 - Received: 200
 - Investigated: 60
 - Prosecuted: 17

The Commission recommends that these agencies, DLTCRP and Attorney General's Office, continue to monitor these trends and to further investigate why complaints are not investigated and/or prosecuted. While the Commission recognizes that some complaints do not rise to the level of criminal conduct, and others present difficult obstacles in terms of investigation and prosecution, both agencies must aggressively monitor these trends to ensure that cases do not fall through the cracks.

- **Increased utilization of assisted living** - The Commission has noted the significant increase in the utilization of assisted living as an alternative to traditional long-term care. In addition, a clear trend has developed where the persons being served in assisted living facilities have higher acuity levels than ever before. The Commission notes that assisted living facilities are not duly regulated by both Federal and State officials, as are nursing home facilities (the State is the sole regulatory authority). In short, since assisted living facilities are not subject to the same stringent regulations as long term care facilities, the acuity level in the facilities is on the rise, and their usage is increasing significantly, the

Commission concludes that Delaware must review this matter to ensure that appropriate oversight and regulation is provided for these facilities.

- **Increased reliance on temporary staff** - One of the trends noted by the Commission is the increased reliance on temporary staff to help staff nursing home facilities. Studies conducted by the Commission and others indicate that temporary staff tends to be detrimental to permanent staff morale, as they often get paid more than regular staff at nursing facilities. In addition, the Commission has found a clear link between high usage of temporary staff and quality of care problems. This trend is one that needs continued monitoring and attention.
- **Attracting and retaining qualified nurses for long term care** -The Commission has noted a trend that nursing homes have difficulty attracting and retaining qualified nurses for their facilities. The Commission has found that this is likely to be a long-term problem, as the need for nursing staff will only grow. In 2002, the Commission recommended ten proposals to help address this problem and will continue to monitor the issue.
- **High staffing levels equal quality care** -The Commission notes that studies of Delaware facilities have demonstrated a statistically significant relationship between higher direct care staffing levels and quality care, as measured by the number of deficient practices at a facility. This trend is particularly important in the context of Eagle's Law.
- **Leadership turnover** - The Commission notes that there is a significant statistical relationship between high leadership turnover in nursing facilities and increased deficient practices at these facilities.

VIII. COMMISSION GOALS

Based on the trends observed to date, the Commission has set the following goals for its work in the coming months:

- Foster and promote abuse/fraud investigation training for law enforcement agencies statewide.
- Continue to review agency performance and coordination.
- Continue to review and comment on regulations proposed concerning long term care.
- Focus on assisted living by reviewing what other states are doing to ensure quality of care and provide recommendations to the Governor and Members of the General Assembly.
- Foster and promote collaborative initiatives that will reduce high turnover of nursing home staff and help recruit qualified nurses to long term care.
- Monitor and recommend enhanced enforcement of Eagle's Law so as to ensure minimum staffing level compliance.
- Enhance outreach to consumers of long-term care to increase Commission profile so as to ensure the Commission is called upon to review problems and deficiencies in long term care.
- Address quality of life issues for nursing home residents including end-of-life and hospice care services.
- Review possibility of initiating an adopt-a-mother/grandmother program in Delaware. The Commission recognizes that any such program must maintain the proper balance between need for increased volunteers and the duty of facilities to protect residents.
- Monitor response times for hotline numbers to ensure timely and adequate response.
- Provide access to National Crime Information Center (NCIC) database to DLTCRP investigators.

- Monitor “length of stays” for nursing facility residents in hospitals.
- Monitor results and request updates from the Quality Improvement Initiative Study.

APPENDIX A

RHODES' STUDY SUMMARY OF FINDINGS

Positive Patient Outcomes Related to Eagle's Law Staffing Levels

The research findings exploring the relationship between facilities that had staffing hours at or higher than Phase 1 Eagle's Law minimums and those that did not, over a two-year period, were statistically significant and supported the positive relationship between higher number of hours of direct nursing care per resident per day and quality care/patient outcomes as measured by Nursing Care Deficiencies.

Availability of Qualified Personnel in the Job Market

Based upon the **current** labor market, there appears to be enough qualified personnel to meet the proposed staffing threshold to take effect by January 1, 2002. This modest increase in staffing amounts to 16.8 minutes more per resident per *day*, or 5.6 minutes more per resident per *shift* (based on three shifts per day). Furthermore:

- A resounding 80% of the facilities reported that they have **not** resorted to "limiting the number of residents who are served" in response to "reported staff shortages". This was based upon an 85% survey response rate of for-profit, non-profit and state-operated facilities in Delaware.
- Based upon conservative estimates from both provider training programs and fee-standing training schools for CNAs, there are 323 recent graduates (within the past 12 months) to add to the current labor pool.
- According to 34 facilities in the provider survey, 91% of full-time CNA positions are currently filled, and 82% of the full-time RN & LPN positions are filled. The data indicates the ability of facilities to attract and maintain nursing staff.
- It is plausible that the difficulty that some nursing homes report in attracting and retaining CNAs is linked more to the reported price war being waged between temp agencies and nursing homes for CNAs, rather than the lack of supply. Most temp agencies report that they do not have difficulty in recruiting CNAs, as they are attracted to the flexibility in hours and the higher salary.
- Two of the most common reasons reported by both providers and CNAs for terminating their employment are reversible: transportation and childcare. If the state and providers were to combine their resources and address these two obstacles to employment, there likely would be an increase in the labor pool. The other most common reason cited by CNAs for terminating employment, or not seeking it in the first place, is the work environment. This is also a surmountable obstacle.

APPENDIX B

REGISTERED NURSE SUPERVISION STUDY SUMMARY OF FINDINGS

- Good supervision by an RN is absolutely integral to providing good patient care.
- Supervisory functions are highly related and integrated with direct clinical care
- RN's must have adequate, carved-out time per shift to perform supervisory functions.
- There must be a reasonable and safe balance between expecting a RN to provide direct clinical care (especially with complex cases) while at the same time being held accountable for supervising those under his/her charge.
- Though the group did not address proposing different thresholds for supervision other than the current 25% mandate - it was generally accepted that the threshold is the *minimum* that a facility should follow. No one argued that this minimum is too high and no one argued that this represents a safe ceiling either.
- Assuming quality patient care should be the driving factor in determining how much time an RN dedicates to clinical supervision. In many cases, it requires more than 25% of his/her time.
- *Effective* supervision yields better quality outcomes for residents and in general, the more supervision the better the outcome for residents.
- The most reliable measurement of adequate performance of nurse supervision is based upon resident outcome data, surveyor interpretation of that data, surveyor onsite observations and interviews of residents, family and staff.
- The most reliable measurement to objectively determine whether or not a nurse supervisor has spent 25% of his/her time on supervisory functions is a review of Assignment Sheets; Schedule; Time Sheets; Payroll Records.
- Devising a measurement methodology to validate whether or not a nurse supervisor has met the 25% threshold should not require more paperwork or require nurse supervisors to maintain a daily record that identifies and differentiates supervisory tasks from clinical and/or hands-on care. Any such form would be considered burdensome, non-verifiable and would create arbitrary distinctions between clinical and supervisory functions that do not reflect the realities of practice.
- Most nurse supervisors would benefit from continuous management training on how to supervise, motivate and lead their staff; especially those nurse supervisors without Baccalaureate degrees.
- Even though federal law does not set a predetermined amount of hours that should be performed for adequate supervision, it does require that facilities provide for appropriate and adequate staffing to meet the care demands of its residents.
- There is a perception that there is an unintended financial incentive due to DE Medicaid guidelines to encourage providers to limit the time that RN's spend on performing supervisory functions. Reimbursement can be higher for clinical/direct care than for supervisory functions. However, this is dependent upon many other reimbursement and facility operational factors and is not always true.
- The group felt however, that supervision should not be categorized as an "administrative cost." It is integrally related to clinical care and should be counted as such.
- The overall group interpretation of the intent of Eagle's Law requiring the 25% supervisory threshold is to prevent facilities from forcing RN supervisors to perform direct care functions requiring 100% performance *while at the same time* being held responsible and accountable for performing clinical care supervisory functions of all nursing staff under his/her charge per

shift. Not allowing for adequate and carved-out, clinical care supervision has led to poor quality of care leaving residents at extreme risk and creating an environment where no one person is held accountable to assure that appropriate and effective direct nursing care is being provided to residents. It was also recognized that the 25/75 formula was devised as a legislative compromise and was not based upon researched, objective criteria.