

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus, Main Bldg., Room 301

1901 N. duPont Highway, New Castle, DE

Meeting of January 14, 2003

MINUTES

Commission Members Present: Patricia C. Engelhardt; John A. Fogelgren, Jr.; Karen E. Gallagher; Rep. Pamela S. Maier; Sen. Robert I. Marshall; Thomas P. McGonigle, Esq. (Chairman).

Commission Member Absent: Vicki L. Givens; Dr. McKinley Wardlaw, Jr.

Others Present: Sandra Dole, President (Delaware Council of Activity Professionals); Tim Hoyle (DSHSS Ombudsman LTC DSAAPD); Lisa Gaylord (Delaware Healthcare Association); Bob Lawson (Delaware Health Care Facilities Association); Cindy Mannis (Quality Insights of Delaware); John Miller (Office of the Attorney General-Medicaid Fraud); Brian Posey (AARP); Percy Saldana (Client Assistance Program CAP); Melissa H. Shahan (United Cerebral Palsy); Steve Tanzer, Administrative Assistant to Sen. Marshall (State Senate); June Valentine (Delaware Association of Homes and Services for the Aging); Carol Ellis, Director, Catherine McMillan, Deputy Director, Tom Murray, Investigations Section Administrator, Mitzi Murphy and Joan Reynolds, Staff Support (DHSS Division of Long Term Care Residents Protection, DLTCRP).

1. Call to Order.

The meeting was called to order by Chairman McGonigle at 10:10 a.m.

2. Approval of the Minutes of December 10, 2002 Meeting.

The Minutes were approved subject to review of the December 10, 2002 meeting tapes to check for the accuracy of a statement made regarding a Nurse Aide In Training ("NAIT") when failing the certification test, can the NAIT continue working at a nursing facility?

3. Presentation of "Division of Long Term Care Residents Protection, Investigative Section, Incident Reporting and Hotline Update" by Tom Murray, Investigative Section Chief.

Mr. Murray distributed a handout entitled, "Incident Referral Center Methods of Reporting 1999-2002". He stated that the hotline is not being used to the extent expected. The Investigations Unit takes 12,000 to 14,000 incidents a year as required by state and federal reporting regulations. The majority being reported are injuries of unknown origin. Since the inception of the hot line in 1999, 465 complaints have been received by telephone, however, before this month there was no differentiation between calls, whether it was a hotline call or whether it was coming in through the normal business line. Subsequently, it's not certain that all those calls were hotline calls. During normal business hours the hotline calls are immediately referred to an investigator. After hours, callers may leave messages that will be taken by an on-call investigator who checks the machine every 2 hours. If an emergency call comes in, the system will page the on-call investigator who immediately returns the call. On-call investigators report there are approximately 3 messages a week on the machine. There are 3 to 4 emergency pages (immediate responses) a year.

State facilities normally report to the Investigations Unit via the state e-mail system. All complaints, inquiries, referrals are tracked for follow up and outcome. Mr. Murray gave each member the "Incident Referral Center Methods of Reporting" which shows totals of various referral methods for 1999-2002. Mr. Murray described the follow up procedure for the 40 to 50 incidents a day faxed by facilities. The Unit has its own policy and procedures and the incidents are triaged based on the abuse and neglect law. Of approximately 11,000 reported incidents in a year, the Unit usually assigns 10% or 11%. Of 11,000 incidents reported the unit follows up 1,100 or 10%. Up to December 31, 2002, there were 66 cases referred to the Office of Attorney General ("OAG") and the last information received by Mr. Murray was that the OAG had prosecuted about 14 cases. The number of referrals to OAG office has been climbing.

Mr. John Miller of the Attorney General's Office, stated that in 2001 OAG received 190 referrals including referrals from LTCRP and Division of Developmental Disabilities Services ("DDDS"). DDDS' whole system

includes Stockley, the Group Home System, and Neighborhood Group Homes. A few referrals are sent anonymously and an increased number of referrals are coming from law enforcement. Of 190 referrals there was formal investigation on 55 and had 14 successful prosecutions. In 2002 the OAG investigated over 60 cases, there were 16 or 17 successful prosecutions and between 185 and 200 formal referrals of which basically one-third are from LTCRP. Mr. Miller stated OAG makes preliminary investigations of every referral received after which formal investigations may be recommended followed by prosecution. The Unit does not investigate nursing homes exclusively, they continue to investigate other cases from institutional settings within other agencies. In 2001 the State of Delaware had the 6th highest number of successful patient abuse prosecutions in the United States. Sen. Marshall requested that Mr. Miller and Mr. Murray present, at a later time, recommendations on how to improve the present day system. It could then be determined if legislation would be needed.

Mr. Miller said the best referrals come from the Division of Long Term Care Residents Protection investigators and from law enforcement. Since 1998 the Unit has trained over 2000 law enforcement officers including every graduate of the Police Academy. To assist police, the Medicaid Fraud Unit is presently doing in-service counseling. This Unit has also trained all state police officers, Wilmington Police and New Castle County Police. The Units meet together and Mr. Miller and Mr. Murray confer on a weekly basis on ways to improve the system. Thus, Mr. Miller stated, the thoroughness of investigations has dramatically improved. To further insure good communication, the Units try to meet quarterly. In answer to why so many incidents do not require follow up, Mr. Miller gave several examples of injuries of unknown origin, which are not reports of abuse and neglect. However, before nurses perform an annual survey, they review the database for a trend analysis of facilities. The Division places facility caregivers on the Adult Abuse Registry when it is thought that they have met the criteria under the state statute for abuse, neglect, and financial misconduct. If a CNA is flagged on the CNA Registry which operates under federal regulations, they are barred for life from working in a federally certified facility. Some cases get handled under the civil rubric through the Division. In the year 2000, 38 people were put on the Registry, in 2001, 60 were put on the Registry, in 2002, 79 were put on the Adult Abuse Registry.

A major impact on serious cases is that the Criminal Background Check ("CBC") system has prevented "bad guys" from working in long term care in Delaware. To further establish that the system is working, the number of people being disqualified is declining, knowing that they will be flagged. Discussion followed about Home Health Care, Assisted Living facilities and hospitals in reference to the CBC system and the abuse registry checks. It is presently possible for persons denied employment in home health care and nursing homes being permitted to work in hospitals, undetected. New regulations sent recently will define better what needs to be reported by the assisted living facilities. Differences between assisted living facilities and nursing homes include the importance of the initial assessment of the resident applying to assisted living. Ms. Ellis said that every set of state regulations that has been promulgated contains the same definition for an incident and the reportable incident. Regulations for nursing facilities certified by state law will also contain the state definition. Those federally certified federal regulations will continue to apply. Ms. Ellis compared both federal and state regulations for the Commission. Mr. Murray said a complaint is an incident reported by someone other than the administration of a nursing facility. This year 523 complaints were shifted over to licensing for investigation. Mr. Hoyle said that every complaint and component of a complaint of abuse and neglect is referred to the Investigations Unit, tracked in the Ombudsman information system and discussed regularly with Mr. Miller and Mr. Murray. Mr. Hoyle stated that there is no prohibition against the Ombudsman unit investigating; however, it has an MOU to allow LTCRP to take a lead on investigating nursing home abuse and neglect cases with a complainant's consent. It has never happened in Mr. Hoyle's experience that a complainant has refused consent to a referral.

Delaware does not have access to other states' criminal histories. Mr. Murray said the Investigations Unit has to go through Delaware State Police ("DSP"), FBI, and Delaware Criminal Justice Information System (DELJIS) to have access to the National Crime Information Center ("NCIC"), and the national police law enforcement database because the Division is not broadly a law enforcement agency. The Unit has access to the state but not to the federal system which would involve the consent of the FBI. The question is what has the DELJIS Board recommended to the FBI. Ms. Ellis stated there was legislation written specifically to allow non-law enforcement agencies to get access to this information. Sen. Marshall will look into this problem based on the fact that the child care system and those involved have access to NCIC.

4. Review and discussion of the annual NHRQA Commission DRAFT Report.

Commission members were given the new draft report and asked to review and send written comments to the support staff and a redline final draft will be sent to members before the next meeting so a vote of approval can be taken. Chairman McGonigle said additions to the report would include the Commission's review of regulations, and participation in the process with the proposed amendment to Eagle's Law. Trends will include the information and numbers presented at this meeting by Mr. Murray and Mr. Miller, answers to questions previously raised and gaining access to NCIC.

5. Old business/New business

Copies of proposed changes to "Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants", listing information on the public hearings, were given to all members for review and comments.

Ms. Engelhardt noted that in the resurveyed, updated nursing home compare (New Castle County), 2 nursing facilities are worse, 11 are better (in number of deficiencies), and 2 are deficiency-free for 2 consecutive years. Ms. Engelhardt reported on the post-survey meetings she attended.

Discussion followed on the growing issue of persons living in the community outside of institutions and nursing facilities who have no ombudsman or advocacy group. In the community the main abuse is financial exploitation and neglect. Agencies having an interest in these residents are AARP, and Protection and Advocacy (Community Legal Aid Society, Inc.) which is primarily for persons with general disabilities. Adult Protective Services investigates reports of abuse and neglect but there is no large organization acting as an advocate. Chairman McGonigle stated that considering the Olmstead decision and the policy implications of trying to get folks out of institutions into the community, an umbrella of protection is needed. This problem will be put in the Commission's report as one of its goals to help solve.

Mr. Hoyle, following a family's request, shared with the Commission how costs are rising for private-pay patients. One family member stated the facility's costs increased 40% from 2001. In a letter from the facility it states that their raising rates are due to an inadequate raise in Medicaid's reimbursement rates which do not cover the new staffing laws. Thus, facilities are put at financial risk. Mr. Hoyle stated because Delaware does not regulate payment for nursing home care for private-pay patients, there's no violation of rules. The Chairman requested that copies of the letter be made available for members at the next meeting. Mr. Hoyle reported there would be meetings to discuss all the issues in relocation for residents of Governor Bacon Health Center in the event of its proposed closure.

7. Next meeting.

The next meeting will be held on Tuesday, February 11, 2003. The meeting will start at 10:00 a.m. in Conference Room 301, Main Building, Herman M. Holloway, Sr. Campus, New Castle.

8. Adjournment.

Chairman McGonigle adjourned the meeting at 12:00 p.m.

FINAL MINUTES approved February 11, 2003