

# 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 February 11, 2003

## MINUTES

Commission Members Present: Patricia C. Engelhardt; Karen E. Gallagher; Vicki L. Givens; Rep. Pamela S. Maier; Sen. Robert I. Marshall; Thomas P. McGonigle, Esq. (Chairman); Dr. McKinley Wardlaw, Jr.

Commission Member Absent: John A. Fogelgren, Jr.

Others Present: Peggy Bell, Ronald J. Torguson (Delaware Criminal Justice Information System DELJIS); Sandra Dole, President (Delaware Council of Activity Professionals); Bill Howard, Resident Council President, Lisa Satterly, Activity Therapist (Governor Bacon Health Center); Tim Hoyle (DSHSS Ombudsman LTC DSAAPD); Joseph Letnaunchyn (Delaware Healthcare Association); Mr. Michael McDonald (Delaware State Police [Ret.]); Brian Posey (AARP); Jerry Spilecki, Charles E. Welch (Mary Campbell Center); Steve Tanzer (Administrative Assistant to Sen. Marshall (State Senate); June Valentine (Delaware Association of Homes and Services for the Aging); Yrene Waldron (Delaware Health Care Facilities Association); 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.

Chairman McGonigle called the meeting to order at 10:05 a.m.

### 2. Approval of the Minutes of January 14, 2003 Meeting.

With the addition of "(Community Legal Aid Society, Inc.)" which was requested to clarify "Protection and Advocacy" on Page 3, paragraph four, third line, the Minutes were approved as written.

### 3. Discussion of "Issues and Access to the National Crime Information Center (NCIC)" by Mr. Michael J. McDonald.

Chairman McGonigle introduced Mr. McDonald, Director of Information Technology, Delaware State Police (Ret.), Chair of Delaware Criminal Justice Information System ("DELJIS") Board of Managers, and Control Terminal Officer for the State of Delaware vis-à-vis the Federal Bureau of Investigation ("FBI") information system. Chairman McGonigle briefly presented issues arising from the previous DNHRQA meeting concerning the current record check system for nursing home employees. The system is working well but Mr. Murray is unable to access criminal history information from other states on the federal system, National Crime Information Center ("NCIC"). At the direction of the Commission, Chairman McGonigle contacted Mr. McDonald who is the contact person for this issue of getting access to FBI data. Mr. McDonald had previously reviewed this issue for the Division and had recommended to the FBI that access be granted however, access was denied. Mr. Murray stated that the Division's access to DELJIS is very good but DELJIS has no bearing on whether the Division qualifies for access to NCIC. DELJIS interprets the ability of the applicant agency based on its regulations and policies, in order to enable access or deny it. DELJIS felt the Division met the requirements and subsequently, got access to DELJIS. NCIC is different in that it is totally governed by the FBI and Delaware is one of the states that is involved in participative management that is, NCIC is a data base that is managed by each state and the collection of those data bases actually make up NCIC. The information being sought is through the Inter-State Identification Index ("Triple I") allowing one state agency to get to another state's criminal history records.

United States Code, Title 28, Code of Federal Regulations governs criteria necessary in order to be assigned an Original Agency Identifier ("ORI") Requirements include: 1. A governmental agency that meets the definition of a criminal justice agency; 2. 50% of budget must be allocated for the administration of criminal justice. June 3, 1999, the Criminal Background Check unit ("CBC") requested access to DELJIS while thinking that perhaps getting access to DELJIS automatically gave access to NCIC. After receiving access to DELJIS, the unit sought and was denied access to NCIC in November 1999. This decision was appealed based on additional Division budget information and the enabling legislation indicating that the Division perhaps met the criteria. On August 21, 2000, the FBI again denied the ORI status. This is now the present situation because Mr. McDonald does not feel that

anything has changed. Questions for discussion would be why did FBI deny access to NCIC and what legislation is needed to clearly identify the Division as a criminal justice agency? The FBI concluded that the Division does not meet the requirements of a criminal justice agency. They honed in on the specific language in the Division's enabling legislation, S.B. 321, §1134 (d)(5) which states that the Division is to contact the appropriate law enforcement agency upon receipt of any complaint requiring an investigation. They noted that §1134 (d)(12), provided for special investigators with limited authority to arrest. The FBI legal staff upon reviewing this legislation concluded Division investigators are not considered peace officers under Delaware law. Further FBI objections include the submitting of fingerprints for a criminal history check can be given to the employer and not to the governmental agency. Under the FBI's Public Law Statute, fingerprint results taken for the purpose of determining employment go to the agency supplying the information or requesting the background check. Delaware S.B. 13 indicates that the fingerprint record result can go back to the employer. Mr. Murray stated that the CBC of Youth and Family Services ("YFS") has access to NCIC. In restating the Division's position, Mr. Murray said the unit is currently getting federal fingerprint supported criminal history records forwarded by the State Police. A limited access named "zORI" excludes Triple I and not every state responds to this access. A major problem is records supported by fingerprints sent back from FBI have incomplete, and/or non-current dispositions. Having NCIC access does not fully solve the problem of getting dispositions from other states. Researching criminal history dispositions continues to plague the nation because state statutes and classification of crimes differ between states and courts don't always input dispositions in a timely fashion.

Mr. Murray said that at this time all the Division wants is an official way of communicating with the originating agency. National Law Enforcement Telecommunications System ("NLETS") is the communication system between the states. There are serious dissemination issues in that the Division is asking a criminal justice agency, the courts, to provide information on a person's criminal history. Courts are not required by FBI policy to give information to a non-criminal justice agency. While needing the information, currently the policy and procedures surrounding the discussion puts the Division in a no-win situation. Mr. McDonald concluded that the biggest hurdle is that the Division does not have special investigators who have full powers of arrest as in YFS and the Attorney General's Office. Legislation needs to address the arrest power. Mr. McDonald suggested the Division review the FBI letters then carefully tailor legislation specific to FBI objections. After objections have been addressed, Mr. McDonald will resubmit the application asking for access.

Discussion followed concerning the influx of foreign labor in long term care facilities and the limitations in making background checks. There appears to be no language barrier among the individuals hired from the islands who all speak English and are Certified Nursing Assistants.

##### 5. Old/New Business

It has not been established if the Newark Manor Nursing Home fire was caused by chemically treated mop heads put in the dryer or a faulty, old dryer. The facility evacuated residents very smoothly and has placed them in various nursing homes until some time in March. There was no previous finding of a fire hazard in this facility. An ongoing investigation is not concluded regarding a resident's death in the Lewes Convalescent center. The Division of Long Term Care investigated and could not identify a single perpetrator in the Harbor Health Care death incident. It has been forwarded to the Attorney General's Office for further investigation. Sen. Marshall stated that in the last 5 years of Public Hearings it was learned that having enough direct supervision of staff and having enough staff on the floor provide for the best practices and help in preventing tragedies.

Mr. Bill Howard, a resident of Gov. Bacon Health Center, expressed his views on the proposed closure of that state facility. He is concerned about the many residents including himself, who are opposed to being moved. Copies of the letter describing Mr. Howard's concerns will be given to Commission members. Sen. Marshall said he would go to Gov. Bacon Health Center, meet with Mr. Howard and talk with residents. A transition group, headed by the Dept. of Public Health, is working to identify residents' needs and to develop a transition plan. Rep. Maier said residents should be involved in all decision-making.

Ms. Engelhardt reported that there is no Delaware site on the Quality Insights website and requested that those who are responsible to update it.

Chairman McGonigle stated that the Annual Report should be finalized by the next Commission meeting.

5. Public comment

6. Next meeting.

The next meeting will be held on Tuesday, March 11, 2003. The meeting will start at 10:00 a.m. at Westminster Village, Dover, DE. Directions will be provided.

8. Adjournment.

Chairman McGonigle adjourned the meeting at 11:50 a.m.

FINAL MINUTES approved April 8, 2003