

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Meeting of March 12, 2002
Herman M. Holloway, Sr. Campus
Main Administration Building - Room 301
1901 N. DuPont Highway, New Castle, Delaware

MINUTES

Commission Members Present: Patricia C. Engelhardt; John A. Fogelgren; Karen E. Gallagher; Rep. Pamela S. Maier; Sen. Robert I. Marshall; Bonita J. Maull; Thomas P. McGonigle, Esq. (Chairman); Phyllis R. Peavy; and Dr. McKinley Wardlaw, Jr.

Commission Members Absent: None

Others Present: Sandra Dole (President, Delaware Council of Activity Professionals); Tim Hoyle, Long Term Care Ombudsman (DHSS Division of Services for Aging and Adults with Physical Disabilities, DSAAPD); Brian Posey (AARP); Steve Tanzer (State Senate); Sarah E. Thankachan (Delaware Healthcare Association); Carol Ellis, Director, Catherine McMillan, Deputy Director, and Judith E. Johnston, Ph.D., Quality Improvement Administrator (DHSS Division of Long Term Care Residents Protection, DLTCRP)

1. Call to order

Chairman McGonigle called the meeting to order at 10:10 a.m. He offered condolences from Commission members to Bonita Maull, whose mother recently passed away.

2. Approval of the Minutes of the February 12, 2002 meeting

The Minutes of February 12, 2002 were approved as written.

3. Minimum nursing staffing

- Letter from Courtland Manor

Chairman McGonigle asked that the Commission discuss a letter from Courtland Manor regarding minimum staffing, before the scheduled presentation by DLTCRP staff. (The letter, dated February 20, 2002 and sent to Chairman McGonigle was handed out to Commission members at the meeting.) Chairman McGonigle said that Courtland Manor was requesting that the Commission reconsider its recommendation to the Governor and General Assembly to go to Phase II of the minimum staffing requirements in Eagle's Law.

Chairman McGonigle stated that he did not think that the Commission had statutory authority to do this. Further, even if the Commission had the authority, he did not think he would change the recommendation. He asked the Commission members for comments. Senator Marshall asked that, in light of the extensive, highly professional report prepared by Dr. Rhodes, the Commission reject the request by Courtland Manor. After listening to waiver requests from several nursing homes, the Commission provided exemptions to the

staffing ratios in Phase II of Eagle's Law for a period of 90 days from February 13, 2002, which was actually 120 days (from January 1). Senator Marshall said that the Commission provided facilities an opportunity to come into compliance with the staffing by shift requirements of Phase II of Eagle's Law. The best way to protect Delaware's nursing home residents is by providing adequate staffing ratios during each shift. He rejected Courtland Manor's request. Sen. Marshall also said that he took exception to the letter sent to the facilities covered under Eagle's Law that said that the Division "may" impose civil penalties. Civil penalties "shall" be imposed on those who are in violation. He said that the law is clear that the Division is to enforce Phase II of Eagle's Law. It has no discretionary authority to provide an administrative waiver to a facility out of compliance.

Rep. Maier said she had a different opinion from Sen. Marshall. She liked the letter as written and disliked dealing with a heavy hand toward nursing homes. There is a local as well as national shortage of nurses, she said. Sen. Marshall said that most of Delaware's facilities are in compliance with Eagle's Law with the hours per resident per day requirement, and they are working to meet the shift ratios. He said that a small percent, about 30%, refuse to comply. If the majority can comply, then the others can, too.

Chairman McGonigle asked for a motion to reject reconsideration of the recommendation made to the Governor and Legislature to move to Phase II of Eagle's Law. The motion was seconded and passed unanimously.

Ms. Engelhardt read the mission of the Division of Long Term Care Residents Protection: to promote the quality of care, safety and security of people living in long term care facilities and to ensure facilities' compliance with applicable state and federal laws and regulations designed to protect these residents.

Answering questions from Rep. Maier about the staffing ratios, Sen. Marshall said the Legislature provided the money for staffing ratios by shift, creating a funded mandate. He said that some facilities are departing from an earlier agreement to increase staffing that would provide quality care to residents. He said that there could be a bill to eliminate staffing by shift. Chairman McGonigle said that if a bill were introduced, the Commission would review it.

- Report from the Division on Phase I of Eagle's Law - DLTCRP staff

Mr. Smith, head of DLTCRP's Licensing Section, discussed the Division's handout to the Commission showing facilities' compliance with Eagle's Law. The first group shows those facilities in compliance with Phase II's 3.28 hours per resident per day. Mr. Smith said that the information is based on the most recent surprise, complaint, follow-up, and annual surveys. Some surveys date back to 2001. The second group consists of facilities that had surveys prior to January 2002. The information therefore shows compliance with the Phase I hours. When asked if the facilities are saying that they cannot meet the 3.28, Mr. Smith said he did not think facilities are saying that they cannot meet the hours. He thought they are saying they are having difficulty meeting the staffing ratios on some shifts, such as 11 p.m.-7 a.m. and weekends.

Senator Marshall requested that the term "staffing ratios by shift" be used instead of "matrix," because the former term is clearer. He said there has been resistance from a few facilities to meet the ratios, and they refuse to find innovative, creative ways to attract and retain staff. Rep. Maier asked Mr. Smith if he has a list of facilities that do not meet the shift ratios. Mr. Smith said Licensing is keeping track of the shift ratios, but since the facilities have waivers until May 13, he did not include that information. He said that

he has data on compliance with the shift ratios for Phase I and will put it in a chart for the Commission. Mr. Smith said that there is not 100% compliance with Phase I. Senator Marshall asked if there was a pattern of non-compliance of facilities and if any enforcement action been taken. Ms. Ellis said that at this time no enforcement action has been taken by the Division against a facility for that particular issue of compliance. She said the hours per resident are computed on a daily basis, i.e., the 3.28 must be reached every day. According to the law, though, the staffing ratio is met on a weekly basis.

Dr. Wardlaw suggested offering extra compensation for the more difficult shifts. Ms. Maull suggested that, instead of looking at barriers, facilities should look at other ways to recruit and retain personnel, such as using shift differentials, scheduling innovations, meeting with the Delaware Development Office, and using the State transportation program for employees. Mr. Tanzer said that no long term care facilities had contacted him for information about the program after the last Commission meeting. He also said that Sen. Marshall, Mr. Letnaunchyn, Ms. Berster, and Ms. Waldron had an open house to present this innovative program to facilities several months ago, and only three nursing homes attended. Chairman McGonigle said that the Commission would send a reminder letter to nursing homes about the program. Mr. Tanzer said he would give the Commission brochures about the program to include with the letter.

It was requested of Mr. Smith that the survey date be listed for each facility with the next facility compliance report he gives to the Commission. He agreed.

Senator Marshall asked Ms. Ellis for the Division's plan to let all facilities know that they must be in compliance with the Phase II ratios after May 13, 2002. Ms. Ellis stated that the Division will send a reminder to all facilities prior to May 13, 2002. In response to questions from Sen. Marshall and Rep. Maier, Mr. Smith said the Division now cites facilities that are below 3.28 and, after May 13, facilities not meeting the staffing ratios will be cited and given a deficiency statement. He said the facility must then give a plan of correction with a date of compliance to the Division. Ms. Peavy noted that the shift ratios are a great benefit in helping family members tell if a facility has adequate staffing.

Mr. Tanzer asked what the Division is doing now to make sure that facilities shown in Mr. Smith's list as staffing below 3.28 in their last survey are currently in compliance. Mr. Smith said that some of the surveys are still in the process of completion, and one facility is disputing the finding. Commission members requested that the Division give a report on the compliance status of the facilities at every meeting, including any annual surveys, follow-up visits, surprise inspections, and enforcement action.

There was some discussion about the use of temporary agency staff and options to this. It was suggested that temp agencies be contacted to see if they have difficulty finding personnel.

In response to Rep. Maier's question about the possibility of speeding up the process for receiving and accepting a facility's plan of correction for deficiencies, Ms. Ellis and Mr. Smith stated that the Division is following the process set by the Federal government. Chairman McGonigle stressed that the Division must be both aggressive and proactive in making sure that there is follow up to ensure proper care for residents and that the survey process is not just a paper process.

4. Update on nurse supervision time project - DLTCRP staff

Ms. McMillan reported that the Division has contracted with Linda Rhodes, Ed.D., to do the Commission's report required by Eagle's Law, regarding the percent of time that nurse supervisors must spend on supervision (at least 25%) vs. direct resident care. Ms. McMillan said the report from Dr. Rhodes will be in two parts. The first part will be a briefing paper on the issue. The second part will be an all-day forum on April 10 to look at questions about supervision, to be attended by advocates, long term care associations, RN educators, State surveyors, RN supervisors, Directors of Nursing; and certified nursing assistants. The two reports will be combined into a one final report. Dr. Rhodes has started the report, which will be done before May 1, 2002, the deadline for the Commission's report to the Governor and General Assembly.

Chairman McGonigle said the Commission's next meeting will be held April 17, 2002, rather than April 9, to have time to get and review the report. He emphasized the importance of members being prepared to decide on recommendations at the meeting, so the report can be finalized and sent to the Governor and General Assembly. Because the deadline is so tight, Rep. Maier said that deadline may have to be extended. Chairman McGonigle agreed that an extension would ease the pressure, and he asked Rep. Maier to follow up on this. She said she would work on getting an extension to June 1.

5. DSAAPD's Delaware Cares brochure - Tim Hoyle, Long Term Care Ombudsman, DSAAPD

Mr. Hoyle reviewed the brochure handed out to Commission members entitled, "Delaware Cares About Your Well-Being." It will be distributed to all nursing homes and assisted living facilities, to stay at the bedside of all residents. Because of budget constraints, there are not enough brochures to let residents and families keep them. The brochure will also be on the Internet. Mr. Hoyle said that he would check on the cost of the brochures, per Rep. Maier's question. Chairman McGonigle thanked Mr. Hoyle on behalf of the Commission for the excellent job on the brochure.

6. Location of meetings

Chairman McGonigle said that there was a suggestion to hold some Commission meetings in various long term care facilities throughout the State. He said these would be scheduled, unless there was an objection. There was none. Commission members could tour the facility after the meeting, but only if it had been pre-planned. Rep. Maier requested the Commission meet in Dover in May, since the Legislature will be in session at that time.

7. Old/other business

- Restraints - Rep Maier said one of her constituents inquired about using restraints to keep nursing home patients from falling out of chairs and beds. Brief discussion followed. Mr. Smith and Ms. Engelhardt gave the procedures that must be followed for restraints to be used. Mr. Hoyle said that, as an advocate, he is against restraints. There may be occasions when restraints are appropriate, but there has been a move away from restraints and toward providing alternatives. Ms. Peavy described a very progressive restraint-free program, "Untie the Elderly," used in Kendall at Longwood and said that she would give Rep. Maier their Website.

- Status of Commission brochure - Dr. Johnston said that the brochure will be printed and sent out with a cover letter from Chairman McGonigle. The Commission will get copies.

8. Public comment

- Quality of life - Ms. Dole said to remember that quality of life goes hand-in-hand with quality of care. Discussion followed about end-of-life care, pain management, and hospice plans that look at each person as an individual and at their needs in a holistic approach. Ms. Peavy said that these issues and an activities professional representative should be part of the training for the Division's Director of Nursing Workshop. Dr. Johnston will follow up with Barbara Webb, Training Administrator for the Division.
- Assisted Living Regulations – The dates of the public hearings on the proposed changes are March 11, 2002 and March 15, 2002.

9. Next meeting

The next meeting is scheduled for April 17, 2002 at 10 a.m. (Note. The date of the meeting was later changed to April 30.)

10. Adjournment

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

FINAL MINUTES

The Minutes of March 12, 2002 were approved by the DNHRQA Commission on April 30, 2002