

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus – Room 301
1901 N. DuPont Highway, New Castle, DE

Meeting of April 11, 2006

MINUTES

Commission Members Present: Patricia C. Engelhardt; Walter E. Ferris; Karen E. Gallagher; Vicki L. Givens; Sen. Robert I. Marshall; Rep. Pamela S. Maier; Thomas P. McGonigle, Esq. (Chairman); Brian L. Posey; Yrene E. Waldron

Commission Member Absent: Joseph M. Letnaunchyn

Others Present: Steve Autman (Consumer); Michael Dura (Delaware Health Care Facilities Association); Sean Finnigan (State Senate); Meghan Garcia; Sue Hansen; Carol Lovett (Consumer); Beth Miller (THE NEWS JOURNAL) Pamela Tyranski, Deputy Director (Division of Medicaid & Medical Assistance DHSS); Tom Murray, Deputy Director; Mitzi Murphy and Joan Reynolds, Support Staff (Division of Long Term Care Residents Protection DHSS).

1. Call to Order.

The meeting was called to order at 10:10 AM

2. Approval of the Minutes.

The Minutes of March 14, 2006.

It was requested that the Minutes of March 14, 2006, specify who is speaking during the Agency Review discussion to differentiate between individual opinions and the Commission's position. A more nearly verbatim transcription was requested by Ms. Waldron and Chairman McGonigle.

Ms. Engelhardt asked for corrections to be made on page 2 of the draft March 14, 2006 Minutes. Outreach is for the Annual Report and Culture Change Position Paper is for the Quality Initiatives Subcommittee

3. Discussion

- Update - Administrative Staff Hiring for DNHRQA Commission

Chairman McGonigle spoke with the Administrative Office of the Courts from where the new Administrative staff support person is located budget-wise. He discussed with that office issues concerning flexibility in hiring for casual seasonal or on an hourly basis as opposed to full-time. Chairman McGonigle thinks they might consider this kind of flexibility after the Commission goes through the interviewing process and selects the applicant. A promising resume has been received and it will be circulated among members of the interview committee, Rep. Maier, Pat Engelhardt, Karen Gallagher and Chairman McGonigle. If the position is to be reposted, Chairman McGonigle requested the interview committee prepare a more clear and accurate job description.

- Staffing reports from DLTCRP

Rob Smith gave to members prepared staffing summary spreadsheets with the most current staffing numbers from all of the facilities. Chairman McGonigle referred to the March 14, 2006 meeting about staffing and the role of the Commission. He e-mailed to members copies of one of the probable cause documents in the alleged criminal case which outlines some of the issues that were raised. He also attached for context, a copy of the minimum staffing law and a copy of the DNHRQA Commission enabling legislation. Chairman McGonigle in discussing the context of this, as discussed at the last meeting, it's not the role of the Commission to reinvestigate this issue. The Commission's role is to provide recommendations and guidance on the big picture issues related to staffing and staffing compliance and Eagle's Law. Chairman McGonigle said he is passing out these documents for background as it relates to that issue, not for reinvestigating this case. He noted highlights of the probable cause documents show a pretty disturbing story that is still an allegation since it has not gone through the judicial process. There appears to be some concern with record keeping, records, and how the Division goes about making sure these staffing standards are met. He said this in the context of the Minutes that were sent to members on March 30, 2006. The Commission discussed some of these same issues on April 12, 2005, i.e. how, in a self-reporting system, can there be assurance that information received is accurate. The Chairman introduced Rob Smith for a discussion of the Division's position and what part the Commission should play.

Referring to the probable cause documents, Mr. Murray pointed out that item 50, which speaks of Eagle's Law and how it is enforced, needs to be put in context. The person who's quoted or is referenced in this paragraph is the analyst who does the calculations based on the information provided by the facility. That person has a narrow scope of responsibility and the comments in this document simply focus on his role in determining compliance with Eagle's Law. As Rob reported to this Commission in April 2005, the Division's survey team had concerns about staffing at the facility in question, they pulled payroll sheets, assignment sheets and discovered that there was a person listed on an assignment sheet who was not on the sign-in sheet for that day. That is what prompted the Division to cite the facility for the deficiency and to refer this case to the Office of the Attorney General. Today, we see the results of that referral to the Attorney General.

Chairman McGonigle asked Mr. Smith to explain how the Division realized that there was something wrong. Mr. Smith said the Division looked at assignment sheets and payroll sheets. There was one name on the sign-in sheet but not on the payroll and that triggered it. Chairman McGonigle said his recollection was surveyors didn't necessarily go to payroll. He asked Mr. Smith what triggered going to payroll. Mr. Smith said that while surveyors don't necessarily go to payroll sheets but when there is a bad survey, many deficiencies, and civil money penalties imposed then they go into payroll. Mr. Smith said what is described in the April 12, 2005 Minutes of how we assess the staffing is exactly what we do. The surveyors are in there looking and our analyst gets the numbers and puts them on the spreadsheet. If the analyst has questions he will call the surveyors or he'll call the administrators to get back-up if he finds discrepancies. Mr. Smith discussed the fact that the majority of Delaware providers are following and exceeding Eagle's law of 3.28 hours per patient day (ppd), and in addition exceeding Eagles' Law minimum ppd. They are also doing their record keeping above board, according to the standards that have been set forth in law and regulations. Mr. Smith said that when there are questions, surveyors get additional backup by going to sign-in sheets, attendance sheets that are posted at the nurses stations, and while there, they do a headcount. The majority of facilities are computerized which expedites receiving these sheets.

Ms. Waldron thanked Mr. Smith for his explanation because, she said there has been an assumption or perception that the majority of providers are not doing their jobs and that the Division has not been doing its job. Ms. Waldron said whereas she hears from her members that the Division is pretty tough on them, surveyors do a lot of digging when things don't look right. In this case, it's apparent that LTCRP did its job which resulted in this case being opened and now we will have to wait and see whether these allegations are true or not. Chairman McGonigle said this case came to the Division in April 2004. He asked Mr. Smith if the Division went back years to review issues of staffing in this facility. Mr. Smith will have to check. Mr. Murray said this arose as an annual and complaint survey. When in April 2004 the surveyors went to this facility they were not launching an investigation. This was a routine survey where surveyors gathered information and made a determination and sent it on to the AG's office.

Sen. Marshall asked if the April 2004 Green Valley Pavilion survey was initially a complaint survey. He said there is a distinction between complaint and annual surveys but Mr. Smith is using both interchangeably. Mr. Smith said anytime surveyors go into a facility for an annual survey they will pull open complaints to do at the same time. Sen. Marshall said he raised the question because Dan Miller of the AG office said that the initial contact by the Division with the facility was a complaint driven survey and then there were questions that led to an annual survey. Sen. Marshall asked what kinds of conditions would trigger a field surveyor on a complaint survey to determine that there should be an extended or substandard survey at that facility. Mr. Smith said that he does the scheduling. If the surveyors find a lot of care issues, residents not being turned and problems with tube feedings, when there's multiple issues then they look at everything as we would on a standard survey. Sen. Marshall asked if that happened at Green Valley Pavilion. Mr. Smith said he would have to check the records if it was triggered by a complaint or not. He said that the 2004 survey at Green Valley Pavilion was a major one. Civil money penalties were imposed on the management company. He said there are two processes; the State can impose on them directly or the Federal government based on the Division's report can impose them. Mr. Posey asked when the Division began its process because the allegations began in January 2003 and the survey was completed in April 2004. He asked how long open complaints are collected before a surprise survey is done. The triage system for complaints was explained by Mr. Smith. He explained that the Division does complaint surveys ongoing in addition to closing out all complaints that are open against the facility at the time of its annual survey. More serious complaints are handled in a timely manner.

Referring to the probable cause documents, Mr. Posey said the Commission's approach should be to find systemic issues and to find them the commission needs to determine if this is an isolated issue. He said the information the Commission gets from the Division allows Commission members to understand the processes. The Commission needs to be sure the tools needed to do the job are in place. Mr. Smith said that in this particular case the Division did not know the assignment sheets were falsified. Looking at the payroll for salaried staff is not necessarily a true check on who is working. There's no accountability of how many hours a person works.

Ms. Waldron said there is a Medicaid Reimbursement Review Team that reviews twice a year. They reviewed this facility in May 2003 and October 2003. The role of the Medicaid nursing team is to assure, based on what they are reviewing, that the care provided to the patient for whom Medicaid is paying is commensurate with the level of reimbursement. In fairness to the Division, if there are questions of whether or not patients received their care, the Medicaid nursing team needs to come forth and discuss this issue as well. Ms. Waldron said she has been requesting this Commission to look at all agencies that have oversight over all the residents in facilities, to meet for a full day's retreat. The charge as members of the DNHRQA Commission is to make sure all oversight agencies are doing their jobs and are communicating clearly. Ms. Waldron stated the Commission may find communication lapses and systemic problems that need to be addressed.

On behalf of the Medicaid office, Ms. Tyranski responded. In her opinion, Ms. Tyranski feels that the Medicaid team, the Division, the Ombudsman, and the AG's office are all working according to how the MOU's were written. Ms. Murphy said the Division receives an extensive report from the Medicaid agency when they do a review of Medicaid recipients in nursing homes. It is a required, pre-survey requisite, to pull the Medicaid report from which surveyors can pull names of residents for whom perhaps, Medicaid found there had been many treatments. Chairman McGonigle said there are two components to this issue; there is the Medicaid part and some of the alleged fraud that went on with it and the Eagle's Law part. This Commission has been charged with focusing on Eagle's Law. Ms. Tyranski said the Medicaid investigation was triggered around the same time the Division raised some of its concerns, it was a joint effort. Chairman McGonigle said the Commission's role is to look and see if there is more that can be done to prevent problems, if resources are needed, we are supposed to make recommendations to the General Assembly and to the Governor. Medicaid nurses go twice a year to facilities on reimbursement reviews. She said they did not get funding for additional positions. One of the initiatives Ms. Tyranski has undertaken is to streamline the cumbersome data collection process so perhaps Medicaid nurses can be sent out 3 times a year with present staffing. In her estimation this could uncover the sort of fraud that has been alleged. If reimbursements reviews were done 4 times a year it would benefit the residents and make it easier for the Division to detect a provider that is not performing according to standards. Chairman McGonigle asked Ms. Tyranski if, in her view, those reviews would reveal the alleged fraud and not simply because substandard patient care was noticed. She said the more frequently the nurses go into a facility the more opportunities there would be to observe. She said there are so many areas that impact patient care. What is important is to identify areas where clients can be put in some sort of jeopardy. Ms. Givens said as a nurse the first priority is to provide the needed care and documentation is secondary. Ms. Tyranski said if stellar care is documented with add-ons and it is obvious the patient has not been cared for, that will raise a red flag.

Mr. Murray said 5% of reported incidences are from other than facilities and 95% are reported by facilities. Sen. Marshall said referring to Green Valley Pavilion he had heard that a former employee or employees were responsible for that facility reaching the present level of investigation, not the Division nor the Medicaid office. He asked how are those kinds of problems that were occurring in that facility detected. Whether you are there once a month or every 3 months there are certain issues that are undetected, could there be a systemic problem? If we could identify that systemic problem we could work as a commission to improve conditions so problems like it don't fall under the radar screen. Mr. Murray, referring to the alleged criminal case, said it started as an incident report that was received by the Division and investigators responded. They detected a problem and contacted the licensing surveyor. The two of them worked the case and as a result there was a full annual survey taken. Following that survey the Division discovered a discrepancy between staffing records and payroll records. This was referred to the Office of the Attorney General. The facility was cited, CMS imposed civil money penalties, and the Division had a management company go into the facility. All this happened in 2004. Meanwhile, Mr. Murray said the Attorney General's investigation is continuing.

Mr. Posey asked if the processes are in place but it takes 1-2 years to find the alleged problems, all during that time period people can be harmed, neglected or having issues. Relative to systemic issues, are there ways that

investigators, surveyors, Medicaid nurses could do their jobs more easily both procedurally, legislatively, and to respond to complaints earlier so that allegations of neglect and abuse do not continue over the time between discovery of the problem and the time charges are made and the issue finalized. He asked if there are ways employees can communicate problems such as lack of patient care or any wrongdoing to their supervisors or employers. Chairman McGonigle asked if the Division has what it needs to timely respond to these sorts of issues or to pick up on these issues by reviewing staffing spreadsheets. Mr. Murray said if the Division was fully staffed it could respond more quickly. It presently has 6 vacant nurse positions fully funded but is unable to find applicants. He said the Division does not need more positions it needs more people. Additionally, to filling these positions, residents would be better served if Medicaid reimbursement audits were done 4 times a year.

Mr. Murray said the Division has an approved list of management companies from which to select when the Division issues that kind of sanction. The company meets with the Division and facility to identify the problems. The company reviews the facility's policies, scheduling, documentation and procedures. It watches how health care is provided. The facility pays for this service. Only in extreme circumstances are DONs counted in staffing per Eagle's Law. If it is noted on a facility's records that a DON is filling this role multiple times but they are not signed in that day, this prompts further investigation.

Chairman McGonigle has a further concern about a facility administrator who, allegedly stressed repeatedly to staff that the ppd hours should not go above the minimum 3.28 as required by Eagle's Law. He asked if the Division found this to be a problem. Mr. Murray said their finding is everybody is staffing above 3.28. Good managers recognize there will be call-offs so they staff above the minimum. The Eagle's Law Regulations have not been promulgated by the Division. The statute contains specific language about levels of care and maintaining standards.

It was agreed by members to recommend to the Legislature that salaries should be increased for the nurse vacancies in the Division and for currently employed nurses.

A motion was made to write a letter to the Joint Finance Committee also recommending increased staffing for the Medicaid office to enable it to do at least 4 audit reviews a year. The motion was seconded and passed.

- DNHRQA Commission - Subcommittee Reports
 - Agency Review Subcommittee - Chair - Tom McGonigle
 - Legislative/Regulatory Subcommittee - Chair, Sen. Marshall
 - Quality Initiatives Subcommittee - Chairs, Pat Engelhardt, Brian Posey
- Ms. Engelhardt said there would be Quality Initiatives Subcommittee meeting after the Commission meeting on May 9, 2006.

4. Old Business/New Business

Ms. Waldron announced the All-Stars Awards program presented by DHCFA to be held May 17, 2006 at the Sheridan. She will extend invitations to Commission members.

5. Public Comment

Mr. Autman asked if it is possible to divert funds collected through penalties to use as an incentive for hiring and/or increased education for nurses. Ms. Waldron said that CMS dictates that those funds must be used for staff training within the Long Term Care sector. Mr. Autman emphasized that it is imperative that there is documentation to protect the providers and to provide information that will lead to enhancement or correction of mistakes. Mr. Autman recommended that the Commission find a way to incorporate the Informal Dispute Resolution into the Rights of Residents and the fact that a family member can attend it.

Mr. Posey asked about the State website, a nursing home compare website. It is being actively worked on at this time

6. The next meeting will be May 9, 2006 at 10:00AM.at DHSS Campus, Main Building, Room 301.

7. Adjournment

The meeting was adjourned at 12 Noon.

FINAL MINUTES – The April 11, 2006 Minutes were approved as written.