

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Meeting of April 30, 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; Thomas P. McGonigle, Esq. (Chairman); Phyllis R. Peavy and Dr. McKinley Wardlaw, Jr.

Commission Members Absent: None

Others Present: Tim Hoyle, Long Term Care Ombudsman (DHSS Division of Services for Aging and Adults with Physical Disabilities, DSAAPD); Sarah E. Thankachan (Delaware Healthcare Association); Carol Ellis, Director, Catherine McMillan, Deputy Director, Judith E. Johnston, Ph.D., Quality Improvement Administrator, and Mitzi Murphy, Community Liaison (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 announced the resignation of Bonita J. Maull as a Commission member, effectively immediately. He will send a letter to Ms. Maull on behalf of the Commission members, thanking her for her service on the Commission.

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

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

3. Nurse supervision time project - discussion of report from Dr. Rhodes

The group voted and unanimously agreed to postpone discussion of the report by Linda Rhodes, Ed.D., "Registered Nurse Supervision in Nursing Homes and Eagle's Law 25 Percent Minimum for Supervisory Functions: A Briefing Paper" until the May meeting. Rep. Maier confirmed that HB 445, giving the Commission an extension of the report's due date to June 1 (from May 1), had been introduced. Chairman McGonigle asked Commission members to read the report before the next meeting and be prepared for discussion and a decision.

4. SB 326 and SB 327 (Minimum staffing requirements and Certified Nursing Assistant (CNA) training)

Commission members were given copies of SB 326 and SB 327, as well as a letter regarding SB 326 from Chairman McGonigle to Senator Vaughn, Chairman of the Senate Finance Committee, dated April 17, 2002. Chairman McGonigle said that the letter gives his concerns about SB 326, and he asked for discussion. Senator Marshall stated that the letter articulated well the dangers of the bill becoming law and rolling back reform of the last five years. Sen. Marshall moved that the Commission oppose SB 326 and SB 327. Discussion followed.

Senator Marshall explained that SB 326 eliminates staffing by shift ratios, including for Phase I, already in effect. He said that at the Commission meeting of February 12, 2002, after several facility administrators requested waivers of the Phase II ratios, the Commission gave a waiver to all facilities that extended the date of compliance with the Phase II ratios from January 1, 2002 to May 14, 2002. Sen. Marshall said that the industry then proceeded to work against the mutual agreement and apparently had

no intention to comply with Phase II. SB 326 and 327 are the result. Sen. Marshall mentioned that he had a phone conversation on April 29 with Ms. Ellis about the Division needing to be ready to enforce compliance of the Phase II requirements of Eagle's law. Ms. Ellis said that the Division will enforce whatever the law says. Sen. Marshall asked that the Division have a plan of action for May 14, to inform facilities that the Division would be monitoring and requiring compliance with staffing ratios by shift. Ms. Ellis stated that if SB 326 is defeated, prior to May 14, the Division will have contacted all facilities reminding them of the criteria of Phase II.

Discussion of SB 326 continued. Chairman McGonigle gave three reasons why the ratios in the current law are important: (1) the ratios ensure staffing for the harder-to-staff shifts, as well as the easier shifts; (2) they provide for easy monitoring and enforcement of compliance for adequate staffing--for Division staff, families, and residents; and (3) the ratios assure a measure of quality or training of staff, because they require a blend of licensed and unlicensed staff. He said he feared that if the ratios are eliminated, there would be a higher percentage of unlicensed staff, as opposed to more highly trained staff.

Rep. Maier expressed concern that if SB 326 did not pass, nursing homes will threaten to close. Ms. Engelhardt stated there are over 6000 registered nurses in the State, and there are many CNAs. Both recruitment and retention are key. Rep. Maier asked about the status of the industry's response to the transportation initiative. (Information on DART's Night Owl Shuttle was sent to every facility by Sen. Marshall and Rep. Maier, with a cover letter from Chairman McGonigle.) Sen. Marshall said that he would get information regarding the response to Rep. Maier.

In answer to a question from Dr. Wardlaw, Sen. Marshall explained about the Medicaid funding for the increased staffing and the amount put in the budget for the State share of the Medicaid. He said that Medicaid reimbursement should be tied to the shifts, not just the daily staffing requirement, which is not done now. Additional discussion followed about the bill. Sen. Marshall stated that he thought that the Division of Long Term Care Residents Protection, now part of the Department of Health and Social Services, should be given independent status, in order to create the best possible protective system for nursing home residents, as was done for children's issues.

Referring to an article in Better Years about the Visiting Ombudsman Program, Mr. Hoyle and Ms. Peavy noted that 40% of nursing home residents do not have regular visitors. Families are one of the first lines of defense to ensure high quality care along with sufficient staffing. Adequate staffing and family involvement are both important.

The Commission discussed SB 327, which reduces the training requirements to become CNAs from 150 hours to 120 hours. In response to a question from Rep. Maier, Ms. Engelhardt said that the regulations for the law requiring 150 hours of training went into effect in March 2002. Ms. Engelhardt said that some schools already had 150 hours of training. Sen. Marshall said that the Skills Center could offer two classes a session. The supply and interest are overwhelming. Ms. Engelhardt, who tests people for the CNA certification, said that "no shows" for the tests are a problem. There is a better show rate when testing is done in facilities; however, not many facilities have chosen this option.

Ms. Ellis said that she did not think there has been enough time to evaluate the 150 hours of training, to say that it is not working. She also told the group that the Division is changing to a new testing contractor, D&S Diversified Technologies, effective July 1, 2002. Ms. Ellis gave reasons for the change from the previous testing contractor, ASI. Ms. Ellis stated D&S is in the process of getting testing sites, and she would press for getting more in-facility sites.

Chairman McGonigle said that, looking at Senate Bills 326 and 327 together, the acuity level in nursing homes is increasing; SB 326 allows the industry to choose staffing, so it is likely there will be more CNAs; and SB 327 reduces CNA training. This combination of sicker residents, staff who are not as highly trained, and reduction of CNA staff training does not make sense.

Chairman McGonigle asked for a vote on the motion that the Commission oppose SB 326 and SB 327. The Commission voted unanimously to oppose the bills.

5. Other/old business

- Proposed rule by Centers for Medicare & Medicaid Services (CMS) on paid feeding assistants. The Commission discussed the proposed rule. Comments are due to CMS by May 28. Ms. Engelhardt gave some of her concerns with the proposed rule. She said a nurse would be responsible for choosing who would get fed by the feeding assistants. She would then be responsible if she chose wrongly. Also, the feeding assistants are supposed to get training, but the proposed rule does not say how much. After further discussion, the group agreed to talk more about the bill at the May meeting.
- Cost of printing the DSAAPD "Delaware Cares about Your Well-Being" brochure. Following up on a question by Rep. Maier at a previous meeting, Mr. Hoyle said the cost of printing the DSAAPD brochure was \$1.16 for subsequent printings per copy, after the initial run.
- Commission staff. Ms. Ellis said that in complying with the requirement to cut costs, the Division is bringing in-house some activities, instead of having contractors. The CNA Registry will be brought in-house as of July 1, 2002. Calculating of Division staff time to divide costs between Medicare, Medicaid and State funds will also be done in-house. Between now and the first of July, there will be a transitioning of Commission staffing from Judy Johnston, who will be taking on new responsibilities, to Mitzi Murphy. Ms. Murphy is an Ombudsman and meets with families and residents after the surveys are completed. Chairman McGonigle welcomed Ms. Murphy and, on behalf of the Commission, thanked Judy Johnston for her work.

6. Public comment

There was no public comment.

7. Next meeting

The next meeting is scheduled for May 14, 2002 at Capitol Nursing Home in Dover, at 9:30 a.m. Touring the facility after the meeting will be available.

8. Adjournment

Chairman McGonigle adjourned the meeting at 11:30 a.m.

FINAL MINUTES - Minutes of April 30, 2002 were approved by the DNHRQA Commission on May 14, 2002