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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE  
COMMISSION

Emily P. Bissell Hospital  
2<sup>nd</sup> floor conference room  
3000 Newport Gap Pike  
Wilmington, Delaware 19808

**FINAL**

Meeting of July 14, 2009  
Minutes

Commission Members Present: Brian L. Posey, Chairman; Yrene E. Waldron; Karen E. Gallagher; M/Sgt Ferris; Patricia C. Engelhardt; Holly L. Rolt; Vicki Givens; Representative Valerie J. Longhurst and Lisa A. Furber.

Commission Member Absent: Senator Robert I. Marshall; Wayne A. Smith; and Joe DiPinto. Pete Feliceangeli, DNHRQAC counsel, was also absent.

Others present: Margaret Bailey; Tom Murray, Deputy Director DLTCRP; Candace Brothers, Aid to Ms. Gallagher; Lisa Zimmerman, Administrator DMMA; Rosanne Mahaney, Acting Director DMMA; Victor Orija, State Ombudsman; Carol Lovett, Advocate; Patricia Lytle, Elder Advisor A Place for Mom; Mary Rodger, Quality Insights of DE; Sherri Harmer, Guardianship Monitoring Director, Court of Chancery; Stephanie Cygan, Delaware Hospice; Lisa Schieffert, DE Healthcare Association; Patricia Jeanna Flaherty, Vitas Hospice; Lexie McFassel, Attorney for Disabilities Law Program-Community Legal Aid Society, Inc.; and Sheila Grant, Compassionate Care Hospice.

1. Call to order

The meeting was called to order at 9:31 AM by Brian Posey, DNHRQAC Chairman.

2. Approval of the Minutes of the meeting of:

The May 12, 2009 meeting minutes were voted upon and approved with minor changes.

3. Discussion of:

Hospice Collaboration- Sheila Grant, Compassionate Care Hospice

Sheila Grant, RN, BSN, CHPN is the nurse educator for Compassionate Care Hospice. She came to speak about how LTC staff can collaborate with hospice to improve the care for residents.

Currently, six hospice providers participate in the hospice collaboration. Hospice supports LTC staff by: assisting with personal care, offering grief support, ensures 100% coverage for equipment/medications, and providing general inpatient level of care in facilities.

Hospice staff includes: cna's, bereavement counselors, chaplains, and social workers that are able to supplement staff in LTC facilities. A hospice medical director is also available to consult with LTC staff.

Results published in the October 2007 edition of Social Science and Medicine (Duke University study) was distributed to commission members. The report showed that hospice care saves the Medicare program an average of \$2,309 per hospice beneficiary.

Hospice patients tend to have one of the following conditions: Cancer, heart disease, debility, dementia or heart disease.

The Robert Wood Johnson Foundation set aside grant funds to study end-of-life care. States were compared in a report card format- Delaware received a "D"(24.4%) in the 2002 report for # of people older than 65 years of age that used hospice services in their last year of life. Currently, the number is in the low 30 percentile.

Ms. Grant stressed that some individuals might not be aware, misinformed or afraid to learn about hospice services. Doctors, nurses and the public need to be more informed about hospice services that can assist in enhancing care during end of life.

Representative Longhurst asked what other states are doing to promote hospice awareness. Ms. Grant will forward information about other states.

Ms. Waldron stated that it would helpful if the government could assist in providing hospice education and permit better reimbursement for hospice so individual's could remain in assisted living.

Compassionate Care Hospice compiles quarterly survey data. The most common survey response- "we wish we had started hospice sooner".

Presently there are 5 physicians in Delaware that are certified in hospice and palliative medicine.

Local and national hospice trends include: encouraging hospice providers to obtain specialty certification, supporting the Body of End-of-Life Research growth, and collaboratively enhancing professional growth.

Ms. Rolt shared that Brandywine Assisted Living at Seaside Pointe is hosting a panel discussion to include: hospice, skilled vs. assisted living, adult day care and LTC services provided for seniors. The Seniors Lunch and Learn is scheduled for July 25th 12-2 PM. The location: 36101 Seaside Blvd. Rehoboth Beach. RSVP by July 20th to (302)226-8750.

There are 2 new hospice organizations in Delaware: Hospice & Palliative Care Network of DE, Inc. (formed Feb. 2009) and Greater DE Valley Chapter of Palliative Nurses Association (formed 1 ½ years ago, meet by-monthly and provide continuing educational credits).

Chairman Posey asked whether hospice providers distribute tools to facilities that would help them to understand what special services are available. Ms. Roth shared that residents choose which hospice provider to use. Ms. Waldron added that the facilities provide families with contact information of hospice providers and leave the option up to them. Ms. Grant added that physicians often tell families which hospice providers to use.

Chairman Posey wondered if there are objective measurements from a third party that can compare hospice providers. Ms. Grant shared that data is currently being gathered by Medicare similar to nursing home information that is available on-line. The medical association rolled out article approximately 5 weeks ago regarding the criteria to be measured for hospice services.

Compassionate Care uses: certified nursing assistants- no agency staff, lower case loads to provide better care, has a medical director certified in hospice and palliative medicine, offer in-services with nursing cu's for staff, one-on-one crisis care for symptom control and is opening an in-patient facility in September 2009 @ St. Francis Hospital. Compassionate Care also has a massage therapist and dietician on staff.

Chairman Posey asked whether the nursing shortage is also being observed in hospice services. Ms. Grant shared that there is a wait list of individual's that want to work in area of hospice.

In addition, DNHRQAC Chairman asked what would be the typical health professional that fits the mold for someone wanting to provide hospice care. Ms. Grant shared that the typical hospice mold would include someone who has both life and professional experience.

Mr. Posey asked what the certification process is for hospice care. Ms. Grant added that Hospice and Palliative Nurses Association offers certification testing for the National Board for Certification. Prior to taking the test it is recommended one has 2 years experience to show a level of mastery. The certification lasts 4 years in length.

Ms. Bailey asked if the pharmacy regulations, which many are in the process of being re-written, impact hospice. Ms. Grant shared that letters and replies have been sent to the FDA. She further stated there is concern about misuse of opioids and hospice providers continue to share through discussions with FDA how useful the opioids are for hospice patients that need them. They would like opioids to remain available to those that need them but also place safeguards in place to prevent misuse.

Ms. Waldron stated that current safeguards for disposing unused hospice medication(s) consists of placing the unused drugs into a coffee can with coffee grinds. She is concerned that the medications could possibly get into the wrong set of hands and sold or used by another person who was not prescribed the medication. Ms. Grant said that some homes do have a lock box. Ms. Engelhardt added that the Delaware Nurses Association destroys medication a few times each year.

Ms. Gallagher asked how much money one can expect to pay for hospice pharmacy prescriptions and how the payment is determined. Ms. Grant stated that hospice is

charged per patient for formulary medications and the hospice provider is billed directly each month. She added that a family is not charged for each bottle of medicine and that Medicare/ insurance covers all hospice services including medication.

Ms. Gallagher also asked whether hospice providers are being trained to care for patients who have a disability. Ms. Grant shared that she worked as a hospice provider during end-of-life for an individual with a physical and cognitive disability. She added that education for health care professionals who treat those with disabilities is important.

#### Guardianship Monitoring Program- Sherri Harmer, Court of Chancery

The Guardian Monitoring Program was created in November 2008. A guardian is able to be appointed to become a fiduciary in order to make medical and/or financial decisions for someone with a disability or that has become incompetent due to medical condition or age. The monitoring program has 5,100 active guardianship cases- 55% are disabled adults (2,807) and 2,500 reside in LTC/AL facilities in Delaware or community. 224 guardianship cases fall under the Office of the Public Guardian. 2,200 cases involve guardianship of minor's property (assets).

The Office of the Public Guardian Executive Director position is currently vacant.

Ms. Harmer's position is three-fold: creating regulations and rules for fee-for-service guardianship agencies (Senior Partner, Life Solutions, Icor and Supportive Care); direct court liaison between the community or facility and court of chancery; and created a volunteer program with student interns at Wilmington University to assist in the Guardianship Monitoring Program.

Ms. Harmer's jurisdiction remains within the scope of existing guardianship cases.

The Court of Chancery has oversight of guardians and therefore the guardians must provide yearly status reports for their wards. Financial fiduciaries must provide the Court of Chancery yearly with accountings- if the guardian is spending the person's money. Any accounting discrepancy is investigated and sometimes the court can appoint attorney fact finders to assist in financial investigations.

Guardianship can be removed with evidence from other agencies such as the Department of Justice regarding financial or physical abuse of a disabled person.

Master Sergeant Ferris asked what happens if an individual does not have a guardian. Ms. Harmer shared that she works closely with Adult Protective Services and sits on Beau Biden's Senior Initiative Task Force. With both agencies and groups, educational opportunities are available for police officers who respond to a home where an individual is incompetent or disabled and the police are not aware who to contact.

Ms. Waldron shared that some facilities face the issue where a power of attorney depletes a residents assets and the facility does not know where to turn regarding financial exploitation. Ms. Lexie McFassel, Disabilities Law Program attorney, added that when a person has assets and someone else in charge of the assets takes them away one can

contact the Disabilities Law Program to investigate. It is a civil matter she is not sure if it will be investigated by the State of Delaware, unless it is slanted into Medicaid or Medicare Fraud.

Ms. Furber added that one would call the Community Legal Aid (Disability Law Program resides within the Community Legal Aid Society, Inc) in the county in which it occurred.

Representative Longhurst asked what the difference is between financial oversight of a guardian versus power of attorney. Ms. Harmer shared that guardians are required to provide the courts with yearly accounting records and that power of attorney's do not report what is spent.

Ms. McFassel asked whether the Guardianship Monitoring Program has oversight for out of state guardian cases. Ms. Harmer stated that if a person was granted guardianship in another state and moved to Delaware, their order is easily accepted and the person is to abide by Delaware guardianship rules. The person would not need to file a brand new case as if they were applying to become a new guardian. Delaware is involved in the Uniformity Act.

If a disabled person or one deemed incompetent contacts Court of Chancery stating they would like to regain control over their medical or financial decision making, Ms. Harmer investigates those cases, too. An attorney will be assigned to the person who will submit a report to the Court of Chancery to terminate the guardianship due to recovery.

It takes about 30 days after filing guardianship papers with the Court of Chancery to have the case be heard in court.

Ms. Harmer will forward guardianship brochures and her contact information to the commission.

The Guardianship Monitoring Program would like to create a program in DELJIS to run guardians/disabled person's names and should they become arrested, the Guardianship Monitoring Program would receive a prompt. The cost for the tracking system is \$3,000.

#### QART Report- Tom Murray, Deputy Director DLTCRP

The Division conducted 13 surveys and the QART Team reviewed 8 "G" level citations during the 2<sup>nd</sup> quarter of 2009.

One deficiency was originally cited as an unnecessary drug tag but after consultation with the QART Medical Director, the QART Team decided that the responsibility for that mistake should be moved to the Medical Director's tag. Therefore, the 329 tag was dropped and the QART Team instituted a 501 "G" level citation. The QART Team felt the issue fell within the Medical Director's area rather than the facilities area.

Facility 098's "G" level deficiency was downgraded to a "D" level because lab results could not support a level of harm (327-hydration) therefore the citation was reduced to a risk of harm.

Ms. Gallagher asked how the Division determines whether abuse or neglect is determined in a facility. Mr. Murray shared that definitions of abuse and neglect and mistreatment appear in the statutes. Investigators follow-up on complaints by gathering facts from records, perform interviews and analyze whether the information can meet the definitions for Delaware State law.

In order to substantiate abuse or move forward in the prosecution criminally or abuse registry enough evidence has to be present to convince the hearing officer or a judge that abuse occurred. On a complaint survey, the investigator is dealing mostly with Federal regulations which aren't laws but very strict rules. The definitions are different on the Federal side versus the State of Delaware side. There are occasions that investigators don't feel they can prosecute at the State of Delaware level, but can cite for abuse under the Federal definitions.

Chairman Posey asked if the State portion of the survey is being conducted and there is not enough evidence there, do the investigators pass the information on to other agencies that would investigate the Federal side. Mr. Murray stated that the Division routinely screens and refer cases to the licensing side.

#### Staffing Report- Tom Murray, Deputy Director DLTCRP

The 2<sup>nd</sup> quarter 2009 Staffing Report was presented to commission members to comply with Eagle's Law. Nurses/LPN's to residents, aides to residents and hours of residential care ratios appear on the report. The private sector's staffed at 3.82 and State facilities at 5.11 through July 9, 2009.

It was observed by commission members that some of the facilities staff higher than others. Mr. Murray suggested that different reasons could be the cause: construction work such as installing a sprinkler system or a freeze on resident admissions due to the possibility that 2 of the state facilities might have been closed.

Ms. Engelhardt asked if a lot of facilities staff higher than 3.28, then should there be consideration to move on to phase 3 of Eagle's Law (3.67). Mr. Murray suggested there could be a fiscal component involved.

Ms. Rolt shared that facilities have the option to switch between phase 1& 2 at annual survey time.

#### 4. Old Business/New Business:

#### Legislation Initiatives

Mr. Murray shared that the Division decided to eliminate paying for Criminal Background Checks for private and State facilities workers effective FY 10. Now each facility is responsible for absorbing the criminal background costs themselves. Previously the Division spent \$350,000 per year on criminal background checks.

The Adult Abuse Registry (HB165) was passed on 6/25/09 which now allows online access to the names and nature of the conduct committed by those persons who are actively listed on the Adult Abuse Registry as a result of substantiated findings of abuse, neglect or financial exploitation.

The initiative to begin on-line incident reporting with facilities is being piloted with State facilities first. There used to be over 15,000 reports faxed to DLTCRP yearly. Since incident reporting has been reduced due to changes in reportable incidents effective January 2009 (collapsed/modified skilled/intermediate regs), the Division has been working on transitioning to electronic reporting. The State facilities are able to enter the information directly in DLTCRP's database. Down the road, DLTCRP is hoping to permit facilities to query their own information in the incident reporting database. Although a cost savings projection has not been determined, this method of reporting is expected to save man hours, paper and other benefits for the Division and reporting facility.

Ms. Waldron shared that DHCFA met with DLTCRP Director to also discuss having the plan of correction form available on-line like other surrounding States. Many Delaware facilities have been asking to make the plan of correction available electronically for several years. Currently, the process is not available electronically so documents need to be cut and pasted on forms.

Ms. Waldron also shared that DHCFA met with State Police to set up a monthly payment system for facilities that will now be responsible for the payment of criminal background checks.

#### Non US Residents/Citizens

Ms. Beverly Flannigan (US Senator Kaufman's Office) met with Ms. Bailey and Chairman Posey a few months ago. Ms. Flannigan asked what type of care is being provided in Delaware nursing homes and/or assisted living facilities for Non US Citizens or Non US Residents.

Ms. Waldron shared that to the best of her knowledge there are no Illegal Non-US Citizens residing in State of Delaware or private Long Term Care facilities. She further added that it is very likely that there are non American born, legal citizens and legal US residents who came from other countries and receive services in Delaware LTC facilities.

#### DNHRQAC Personnel Sub-Committee

Ms. Bailey shared with members that effective July 1<sup>st</sup>, all State employees will have their salaries reduced 2.5% per the enacted FY 10's budget.

In addition she attended a meeting presented on June 10<sup>th</sup> by Chief Justice Steele that also included discussion about 5 additional paid days off, increase in employee benefit costs and change in disability coverage beginning on day 60. The previous disability onset began at day 21.

Further, Ms. Bailey mentioned that Administrative Office of the Courts was working with Office of Management and Budget to determine why non-judicial agencies employee salary reductions appeared more than 2.5%. Representative Longhurst will also check with OMB about the discrepancy.

### DNHRQAC 2009 Annual Report

Ms. Bailey shared that each agency cited in the DNHRQAC 2009 Annual Report has reviewed their section of the report.

Chairman Posey asked DNHRQAC members to forward “gap” ideas to Ms. Bailey so they can be incorporated in the report.

The members were asked to be prepared to vote on finalizing the 2009 annual report at the September 8, 2009 DNHRQAC meeting.

### 2010 DNHRQAC Meeting Schedule

A 2010 meeting calendar draft was distributed to commission members. The meeting dates listed by-monthly second Tuesday meetings beginning at 9:30 AM.

Chairman Posey asked members to be prepared at the next DNHRQAC meeting to discuss: the number of meetings per year, day of week to meet, time of day to meet and location. He proposes that the commission consider meeting in Kent and Sussex counties at least twice a year.

Representative Longhurst will check with Legislative Hall to see if DNHRQAC can meet there in the future while the legislation is in session.

## 5. Public Comment

Ms. Pat Engelhardt shared that Career Nursing Assistance Day was held June 11<sup>th</sup> in Dover at Del. Tech. Following the program, the DCNA group met at Legislative Hall for the yearly resolution (Representative Longhurst and Senator Hall-Long).

6. Next meeting will be **Tuesday, September 8, 2009** at 9:30 AM. The location:  
Emily P. Bissell Hospital  
3000 Newport Gap Pike  
2<sup>nd</sup> floor conference room  
Wilmington, DE 19808  
Switchboard: (302)995-8400



## 7. Adjournment

The meeting was adjourned at 11:55 AM by Chairman, Brian Posey.

Attachments: Meeting agenda

- Proposed 2010 DNHRQAC Meeting Calendar
- May 12, 2009 minutes draft
- 2nd quarter QART Report
- 2<sup>nd</sup> quarter Staffing Report
- APS recommendation letter to DHSS Sec. Landgraf
- Adult Abuse Registry Press Release
- 2010 Appropriations Bill- HB 290 (LTC Task Force)
- HCR # 28- DART Para Transit Cell Phone Pilot Program
- LTC & Hospice Collaboration