

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus, Springer Building, Class Room #3

1901 N. duPont Highway, New Castle, DE

Meeting of August 10, 2004

MINUTES

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

Commission Member Absent: Walter E. Ferris, Jr.; Dr. McKinley Wardlaw, Jr.

Others Present: Carol Barnett and Lisa Henry (Division of Services for Aging & Adults with Physical Disabilities); Sandra Dole, President (Delaware Council of Activity Professionals); Lawrence J. Haas, Majority Administrative Assistant (Delaware State Senate); Tim Hoyle, Ombudsman (LTC, DSAAPD); Laura Waterland, Esq., Sr. Staff Attorney (Disabilities Law Program); Robert H. Smith, Licensing and Certification Administrator and Joan Reynolds, Staff Support (Division of Long Term Care Residents Protection).

1. Call to order

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

2. Approval of the Minutes for April 13, 2004 and May 28, 2004 meetings.

The Minutes for April 13, 2004 were approved as written.

The Minutes for May 28, 2004 were approved as written.

3. Discussion of

- Staffing compliance in nursing homes presented by Division of Long Term Care Residents Protection

Rob Smith, Licensing and Certification Administrator, Division of Long Term Care Residents Protection, reported on staffing compliance in terms of Eagle's Law in Delaware nursing home facilities. Mr. Smith gave each member a handout showing a year of data updated through August 1, 2004. There are about 119 survey inspections of nursing homes a year counting annual, complaints, and surprise. Every time the Division surveys a facility a minimum of 3-weeks staffing report is required. If there are complaints based on staffing during a certain period, the surveyors get a 3-week report of staffing for that period. Consequently, there could be 6, 9, or 12 weeks of staffing reports examined. The minimum nursing facility staffing level for nursing services is 3.28 hours per resident per day for 365 days per year. In comparing data of non-state owned facilities with state owned facilities it is noted that state owned facilities tend to staff higher. Mr. Smith separated the Non-State Nursing Facilities from the State Nursing Facilities in this report to the Commission. The staffing hours shown in the data are an average for each day from 119 surveys in a year's time. The data shows staffing for each day of the week which confirms that facilities are meeting the law's requirement of 3.28 hours per day for each resident. Mr. Smith said the Division is mandated to do at least one survey per facility per year. Eight to ten surveys of the 119 reported surveys are state owned facilities. In isolated incidences where staffing is not consistently 3.28 or higher, the facility is not scheduling enough staff to compensate for call-outs. Those facilities are cited for staffing.

Mr. Smith said Nursing Home Compare on the federal website looks at staffing completely differently than the state. It separates facility employees from agency employees. Since it was noted that Nursing Home Compare information tends to be incorrect, a DHCFA seminar was held for facilities on how to complete federal and state staffing forms. The Division is in the process of preparing a website. Questions about the state website

included: Would staffing levels and deficiencies be posted for each facility? Would facilities with higher levels of staffing be posted?

State owned facility staffing is significantly higher and is not averaged in with non-state owned nursing facilities. This may be due to the fact that the state owned facilities admit more difficult residents who need one-on-one care. Other nursing homes may be more reluctant to take these residents. Chairman McGonigle requested a breakdown of facilities (names withheld); he would like the data broken down into 2 sections: one to include annual surveys to determine the averages for annual surveys for each facility and the averages for the number of complaint surveys for each facility.

Mr. Smith discussed daily staffing ratios of CNAs and nurses. Chairman McGonigle said the closeness of the ratios for the CNAs suggest there are some facilities not meeting the ratio because the data shows an average. Mr. Smith said the few isolated cases are cited and he described the Division's process of surveying, citing deficiencies, plans of corrections, looking for patterns and the monetary penalty procedure which is based on doubling of what it would have cost the facility to maintain staffing ratios. Those facilities fined have been principally in New Castle and Sussex Counties. A shortage of nurses and in some areas the shortage of CNAs create staffing problems, as does administration turnover. Discussion followed on the requirements for a nursing home administrator.

Mr. Smith answering Chairman McGonigle's questions said that most complaints come from residents' families and that regardless of how high the staffing ratio the facility has to meet the needs of the residents. Every complaint received by the Division is assessed and placed into the data based complaint system. Surprise surveys are not complaint driven. The Chairman requested the number of surprise surveys to be included in the report from the Division.

Discussion followed on Phase 2 Weekly Staffing Ratios. Mr. Smith noted the ratios are higher. The most common issue in terms of staffing is call-offs by scheduled staff on weekends and holidays. Administrators need to motivate and encourage a team spirit among their employees.

Sen. Marshal asked if there is a curriculum for CNAs that would create an opportunity for career advancement. Ms. Waldron will take a survey of how many facilities have senior CNAs acting as informal leaders on staff. It was requested that before the next Commission meeting both Mr. Letnaunchyn and Ms. Waldron will have checked the regulations for CNA curriculum and advancement. Rep. Maier asked Rob Smith if he would request from Carol Ellis, Director of the Division, to report on information on the CNA career ladder.

Sen. Marshall asked Mr. Smith to respond at this meeting or later, more formally in writing, to the contents of an e-mail the Senator had received from a Registered Nurse in reference to enforcement of Eagle's Law. Sen. Marshall said this e-mail highlights the issue of professional staffing, Eagles' Law and the seriousness of the Division's mission and whether or not the mission is being performed. Is there a need for more education and training of nursing home professional staff due to the frequent turnovers? Ms. Waldron said there is a need for fact-finding to get an accurate, full report of the e-mail complaint. Many questions followed concerning the e-mail. Mr. Smith, referring to the e-mail, stated that Eagle's Law is presented and explained at every DON workshop. Facility staff members can report complaints directly to the Division where the complaint is placed into the complaint database and investigated.

Sen. Marshall gave members copies of a letter from Sen. Charles Grassley directed to Dr. Mark McClellan, Administrator, CMS, in reference to serious concern about the quality of care in the nation's nursing homes. Senator Marshall requested that both the e-mail document and Senator Grassley's letter be read into the formal meeting. Chairman McGonigle stated both documents would be attached to the Minutes of this meeting.

Chairman McGonigle requested responses for the next Commission meeting to the following issues:

1) The e-mail complaint letter. 2) To improve quality of care and to better oversee Eagle's Law should any changes or regulations be made with respect to the law to enable better enforcement and ease of administration? 3) Are more resources needed for the enforcement of Eagle's Law? Is there anything else that would help enhance the purposes behind Eagle's Law? What tools are needed? 4) In addition to any law changes, regulation, resources, if you have issues with respect to cooperation between and among agencies, talk about that and any recommendations you might have. Mr. Smith stated one suggestion is that a supervisor's time could be increased from the present 25% to possibly 100% for overseeing staff instead of 75% spent on direct care. Mr. Letnaunchyn said that this suggestion needed to be carefully considered. The Chairman stressed that the Commission is focusing on making recommendations for needed changes to the General Assembly, to the Administration or to the appropriate agencies.

Discussion followed about cultural changes in facilities. Ms. Waldron is meeting with Quality Insights Organization and discussing cultural change. DHCFA will be working with QIO to look at both the Pioneer movement and Eden Alternative. CMS supports this type of programming. It was requested that Mary Roger of Quality Insights who is involved in these meetings be invited to make a presentation to the Commission.

- NHRQA Commission goals for 2004, including Commission sub-committees.

Chairman McGonigle said the experience of S.B. 225 has helped him to focus on the enabling legislation charge for the Commission. It became clear that the Commission has strayed far from the core mission with respect to some of its goals. Combining that fact with the failure to pass S.B. 225, he stated that members need to focus on exactly what the Commission should be doing effectively, under the enabling statute. The Commission's principle goal is to insure that the appropriate agencies are effectively enforcing state laws, cooperating with each other and that complaints are being answered in a timely way. While the present list of goals includes great ideas, it is too aggressive for a volunteer commission with no assigned professional staff. The Commission needs to be accountable; if problems develop in the nursing home sector it could justifiably be asked of the Commission where it had been. The Chairman asked members to review, before the next meeting, the enabling legislation and consider honing present goals. In terms of setting agendas, the first focus should be to make sure every appropriate agency is performing from a quality assurance perspective. It was suggested that the Commission create a calendar to schedule ongoing reports that include a list of set criteria and answers to Commission questions. Reports from the Division of Long Term Care; Office of Attorney General; Ombudsman; Quality Insights and any other organizations responsible for residents' quality assurance would be scheduled. To make agency reporting more effective, members are asked to participate in sub-committees that will do preliminary work with the reporting agencies. For consideration, sub-committee titles are: Agency Review Sub-Committee; Legislative and Regulatory Sub-Committee; and Quality Sub-Committee.

Sen. Marshall said he remained committed to the Commission having a full time executive director. He, along with Rep. Maier, will push for this legislation. Drafting ideas would be left to the Commission.

Rep. Maier requested that Carol Ellis and Mary Roger attend the next meeting since they will be giving information to the sub-committees.

The following topics will be presented and/or discussed at the September meeting:

Report presentation from Rob Smith.

Commission's Goals - members are to review before the meeting

Commission's Enabling Legislation - members are to review before the meeting

Sub-Committees – members select a sub-committee on which to serve.

CNA Senior question

#### 4. Old business/New Business

S.B.119 passed legislation and the request submitted to the FBI is still pending.

Del Dot has granted the Commission's request for a bus stop on Route 40 at Troop 2 in the next 4-6 weeks. If this has not been finalized by the September meeting, the Chairman will call Del DOT.

The Feeding Assistant Train the Trainer program will be held August 17 and 18. Ten to twelve facilities have registered to send members for training.

Faithful Friend has a program in which they bring dogs and cats to visit in nursing homes. They have asked to make a presentation to the Commission. An invitation will be extended.

#### 5. Public comment

The 3<sup>rd</sup> Annual Residents' Rights Rally will be held October 5, 2004. Rep. Maier will represent the Commission where she will speak on residents' rights.

Ms. Dole attended the Pioneer Network Conference and she is pre-approved for giving continuing education credits for a 5-hour workshop on resident-centered care.

6. The next meeting will be held on Tuesday, September 14, 2004 at 10:00 A.M. The location will be Herman Holloway, Sr. Campus, Main Building Annex, 2<sup>nd</sup> floor conference room 269.

#### 7. Adjournment

The meeting was adjourned at 11:50 A.M.

Final Minutes approved September 14, 2004