

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus – Room 198
1901 N. DuPont Highway, New Castle, DE

Meeting of December 12, 2006
MINUTES

Commission Members Present: Patricia C. Engelhardt; Walter E. Ferris; Vicki L. Givens; Rep. Pamela S. Maier; Thomas P. McGonigle, Esq. (Chairman); Brian L. Posey; Yrene E. Waldron; Dr. McKinley Wardlaw, Jr.

Commission Members Absent: Karen E. Gallagher; Sen. Robert I. Marshall

Others Present: Steve Autman (Consumer); Sean Finnigan (State Senate); Beth Miller (The News Journal); Victor Orija, State LTC Ombudsman (Division of Services for Aging and Adults with Physical Disabilities); Charles G. Thompson (Consumer); 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 by Chairman McGonigle.

2. Approval of the Minutes of the meeting of September 12, 2006.

The Minutes of September 12, 2006, were approved as written.

3. Discussion

- Update – Administrative Staff hiring for DNHRQA Commission

Chairman McGonigle gave an update on the Administrative Staff interview process. He said there have been 12 to 13 interviews for the position with another 5 or 6 scheduled for next week. There will be a shortlist by next week with second interviews planned. The Commission deferred to the subcommittee to make the final decision. It is hoped the new hire will be in place by January.

- Review Sunset Committee Recommendations

DLTCRP Informal Dispute Resolution Process (IDR) Updates.

Mr. Murray gave members copies of the September 15, 2006, Quarterly Report showing that DLTCRP conducted nineteen annual and complaint surveys between June and September 15, 2006. He explained how the Quality Assurance Review (QAR) team made changes. It gave one upgrade on a facility and three downgrades on three facilities. He explained that the seriousness of the violations is given a letter category with "A" being the least serious and "L" being the most serious. The Sunset Committee has recommended that the Commission be given a quarterly report and explanations of "G" level deficiency changes made by the QAR team. Upon returning from a survey, surveyors prepare a draft survey report with their recommendations of the scope and severity of each of the deficiencies found. That draft report goes to the QAR team for review which usually agrees with surveyors' decisions. However, in this quarter, there were three deficiencies changed. Mr. Murray explained the reasons for the changes. To prepare the survey, surveyors look thru records of residents to determine the seriousness of injuries. They check x-ray reports, emergency room or on-site treatments. Chairman McGonigle asked how the QAR team is assessing the harm. Mr. Murray said the team has access to all the documents reviewed by the surveyors. The surveyors on-site determine the initial scope and severity. Their focus is the record review and the outcome from the incident. The QAR team determines if there is enough evidence to uphold the deficiency if challenged by the facility. At the surveyors' exit meeting with the facility's administrators or subsequent to that meeting the facility may provide documentation that was previously unavailable to the surveyor. This can affect the team's decisions. Surveyors may attend the QAR meetings but are often not available. Any change made by QAR goes back to the surveyor who discusses it with

the Supervisor, Jean Marie McKinney and they make the changes in the document. If they disagree they can meet with the QAR team and bring additional information. Ultimately, the citation goes out as a unanimous opinion. Mr. Murray explained the severity chart to clarify how deficiencies are graded and why the deficiencies were downgraded or upgraded on the report. Facilities can start at any time to present evidence to counter deficiencies imposed by surveyors.

Mr. Murray gave an update on the division's progress in revising the regulations which was recommended by the Sunset Committee. For Rest Family Care the division had to include input from various other agencies that have clients who would be affected. Presently, there are two sets of regulations, one for Skilled Nursing Facilities (SNF) and one for Immediate Care Facilities (ICF). There are only two Immediate Care Facilities still active in the state so their regs will be collapsed and combined with skilled regulations. Rest Residential regulations are redundant with Rest Family Care facilities. The category will be abolished and Rest Residential will become Rest Family Care facilities. The regulations have been put on the state website so that they are accessible to anyone who logs on. After conferring with the appropriate agencies, the combination regulations will be promulgated as new regulations. Chairman McGonigle requested that the Commission review a draft of the new regulations before they go thru the posting process.

Chairman McGonigle said he understands the Informal Dispute Resolution (IDR) to be an opportunity for the facility to deal directly with the Division to resolve issues short of going through the formal process. Most cases criminal or civil are handled this way by the State. Mr. Murray gave to members a handout explaining the purpose and process of the IDR. This process is a precursor to the formal administrative hearing that can follow the IDR. He explained the difference between federal and state violations and he reiterated that the track for following these differences is the same. The purpose of the IDR is to keep meetings between the facility and the division informal. Facilities may present documentation thru telephone calls, desk reviews, revisits or meetings at any time. Facilities are free to choose the IDR process or go immediately to a formal hearing. Mr. Murray said that a State Ombudsman may bring any interested party to an administrative hearing who will be a spectator unless called as a witness by the division or facility. The hearings are subject to the Administrative Procedures Act.

4. Old Business/New Business

As an update, Mr. Posey said Medicaid and AARP and other organizations have assisted in the State's application to CMS for significant funding to provide Medicaid supported residents the opportunity to access state & federal funds to live in the community or their homes in lieu of a nursing facility if they choose. If approved, the total amount provided by the federal government would be about \$7,000,000 and matched by state funds. This would result in the transition of about 100 people, over the next 5 years, leaving long term care facilities and going into the community. A decision process is supposed to occur by the end of December. Ms. Waldron said before any money is appropriated and these programs are established, a set of laws and regulations are needed to protect those residents who choose to live in the community. Present laws do not protect residents for services in the community, i.e. protection against exploitation, abuse and neglect. Discussion followed concerning how to implement this move into the community while ensuring patient safety, non-exploitation, physical protection and services. Ms. Engelhardt reported that Vermont has a waiver permitting family or friends to be paid for giving home care.

5. Public Comment

Mr. Autman said attendance of the affected resident and/or their representative should be mandatory at the IDR process hearing and should not require attachment to the ombudsman's office. Chairman McGonigle said the hearings are related to facility licensing issues, not to personal injury claims or criminal prosecution.

6. Next meeting will be Tuesday, January 9, 2007, at 10:00 AM. The location will be DHSS Campus, Main Building, Room 198.

7. Adjournment

The meeting was adjourned at 11:45 AM.

FINAL MINUTES - The December 12, 2006, Minutes were approved as written.