

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus – Room 301

1901 N. duPont Highway, New Castle, DE

Meeting of December 14, 2004

MINUTES

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

Commission Members Absent: Walter E. Ferris; Sen. Robert I. Marshall; Brian L. Posey; Dr. McKinley Wardlaw, Jr.

Others Present: Carol Barnett, Planner II; Tim Hoyle, Ombudsman; and Victor Orija, Social Service Administrator (DSAAPD); Sandra Dole, President (Delaware Council of Activity Professionals); Lisa Henry, (Delaware Healthcare Association); Michael J. McDonald, Delaware State Police; Mary Roger, R.N., Project Coordinator, (Quality Insights of Delaware); Carol Ellis, Director; Catherine McMillan, Deputy Director; Tom Murray, Investigations Administrator; Robert Smith, Licensing and Certification Administrator; Mitzi Murphy and Gina Loughery, Staff Support (Division of Long Term Care Residents Protection).

1. Call to Order

Chairman McGonigle called the meeting to order at 10:04 A.M.

2. Approval of the Minutes for October 12, 2004 Meeting

The Minutes for October 12, 2004, were approved as written.

3. Discussion of DLTCRP access to the NCIC database

Michael J. McDonald, Delaware State Police

Tom Murray, DLTCRP

Chairman McGonigle said that over a four-year period there have been two requests made for the assignment of a National Crime Information Center (NCIC) Originating Agency Identifier (ORI) to the Investigative Section, Division of Long Term Care Residents Protection (DLTCRP), Delaware Department of Health and Social Services (DHSS). Both requests have been denied. Mr. Murray, Investigations Administrator, does not have access to this computer database to check applicants for criminal histories occurring in other States, who are applying for Delaware nursing home positions. It is incredibly inefficient for Mr. Murray to have to call other law enforcement agencies for this information.

Chairman McGonigle said that the initial request was denied due to the lack of appropriate statutory authority. Legislation to change the authority was signed into law last year and a new request was submitted pursuant to that new enabling legislation. The response denying that request is the FBI letter dated October 1, 2004. Chairman McGonigle introduced Michael McDonald who discussed this issue with members.

Mr. McDonald said he is the representative to the FBI and National Law Enforcement Telecommunication System (NLETS) for presenting these kinds of issues. He listed three specific areas that the FBI referenced. First, a minor hurdle to address for access is whether or not the initial training and certification given at their police academies would qualify the investigators, who are now retired. It would be important to show ongoing training and certification to continue acting as police officers with police powers. Delaware legislation essentially recognizes them as acting in this capacity. Secondly, the FBI believes that the DLTCRP Investigations process is more a civil than a criminal process. Access is denied based on the delineation between civil and criminal. The FBI is a criminal system not intended for use by civil applicants for positions. However, the DLTCRP Investigations Unit crosses the line when it identifies someone who has committed a crime. Once an individual commits a crime Investigations would have a right, if it had access, to use the data

for investigative purposes. FBI has deemed what DLTCRP Investigations provide is outside the definition of the administration of criminal justice. Mr. McDonald referred to Page 2, of the October 1, 2004 letter, the second paragraph, which lists the performance of activities related to the administration of criminal justice. One of the biggest hurdles is to convince the FBI that a significant portion of the Unit's investigations are criminal investigation. One way to convince the FBI of this fact is to provide a detailed budget showing an allocation of 51% going toward meeting the requirements of their definition of administration of criminal justice. The first thing that the FBI considers is this budget allocation. Mr. McDonald will check to clarify if the Special Investigators at the Division of Family Services (DFS) have State access through DELJUS, the Delaware justice information system, or access to NCIC.

Mr. Murray stated that not having access to the database through NCIC, investigators are unable to know the disposition of a charge so it is unknown if a person is qualified or not to work in a nursing facility. Because Mr. Murray does not have an ORI he is not recognized as a criminal justice investigator so the FBI can't give disposition information. Ms. Ellis stated that every complaint coming to LTCRP that could be construed as abuse, neglect or financial exploitation is investigated as a potential crime. It was stated that this could be counted as detection if it is done 51% of the time. The Division is composed of two basic functions, one being licensing facilities, the other being investigations. On the investigative side of the Division it is likely that 51% of that budget is spent on detection as described by the FBI. The other half of the agency has a separate function. In answer to whether the FBI would consider the Investigative Unit as being the element to reach the 51% requirement Mr. McDonald stated that it has not been his experience with the FBI for some obvious reasons i.e., small units created and identified to meet the definition have been found to investigate a small percentage of the time.

Ms. Ellis asked if the FBI would give access to the Division if it were put in the Delaware Code as a criminal justice agency. From his experience with the FBI, Mr. McDonald said they would say the State only called the Division a criminal justice agency to meet the definition but their activities don't meet the requirements of what the FBI considers to be lawful access. While the relationship is very good with the Office of Attorney General, it cannot query NCIC and then turn that information over to the Investigations Unit. Only the agency that receives the information can use it. Discussion followed concerning what agency could research this unobtainable information, and inform the Investigative Unit if the applicant is qualified or not. There would not be any sharing of actual arrest information. An individual can get information on his/her own disposition because it is their personal criminal history but at this time the Division would rather not put the burden on the applicant. Mr. McDonald suggested the only clear win the Unit may have is to move the investigators under a criminal justice agency that has access to NCIC, i.e. Office of Attorney General or police agency.

Mr. McDonald returned from speaking with DFS and reported that there are 31 employees in that division including supervisors who do have NCIC access. To get the same access the Investigations Unit will have to essentially identify those persons who are doing criminal investigations. It cannot be used for background suitability for employment. Mr. McDonald explained the Interstate Identification Index, (III) a voluntary state system that provides an online name base check. For applicant purposes there must be a fingerprint check. If the 51% of the budget for criminal investigations was not applied to DFS, FBI might have given them access providing only the 31 employees involved in criminal investigations could have access. If a facility employee commits a crime, LTCRP Investigators may have unlimited access to III for investigation of that issue. Mr. McDonald will do the following:

1. Check the acceptance criteria of DSF by the FBI.
2. The certification issue, is ongoing advanced training needed?
3. Will the original police training academy certification meet the FBI requirement?
4. Ask about the funding of the subdivision of DSF.

5. In reference to the 51% can State funding only be considered? Much of the other Long Term Care Residents Protection Division section is federally funded.

Mr. McDonald will report updates to Tom Murray.

4. Quarterly report from the DLTCRP

Rob Smith gave copies of the Staffing Summary Spreadsheets to Commission members. He explained that each month each facility would have the same identifier number. Isolated gray areas on the Nurse Staff Ratios and CNA Ratios show noncompliance of staffing ratios. All facilities were in compliance with Hours per Resident per Day. The cumulative is 3.7, above the last quarter of 3.66. Mr. Smith answered questions from the Commission about the spreadsheets information. In future reports he will distinguish which facilities are using Phase 1 or Phase 2 staffing, they have an option but at all times they must meet 3.28 hours per person.

5. NHRQA Commission position on proposed Executive Director position and responsibilities.

Chairman McGonigle, referring to his November 5, 2004, letter to Governor Minner called for a discussion of who would appoint the Executive Director. He favors making the appointment at the Commission's pleasure. Discussion followed and the majority of Commission members attending favored having the Commission appoint the Executive Director. It was stated that the Commission should follow a process that has been established. Chairman McGonigle will send a letter reporting the Commission's preference for the hiring of the Executive Director and that if there's a decision to recommend that the Commission would want to consult the personnel department on the appropriate way to handle it.

6. Discussion of

- NHRQA Commission sub-committees reports

Pat Engelhardt, Co-Chairperson of the Quality Initiatives Subcommittee reported on a meeting held October 26, 2004. The meeting's discussion centered on culture change and quality of life. Mary Rodger spoke about the coalition that met on Dec. 1, that it was a group of interested stakeholders who felt the best way to implement culture change in Delaware facilities would be to use a survey of resident and staff satisfaction as a measurement tool.

- CNA career ladder advancement – survey of facilities by Yrene Waldron.

Ms. Waldron gave information on the DHCFA Survey Career Ladders to the members.

Discussion followed. Some conclusions are that facilities may have an awareness of a Senior CNA but don't really understand the regulations or have not looked at them closely. Ms. Waldron suggested a program in partnership with LTCRP to review the CNA training regulations and include the Senior CNA program. Also include a speaker who will give the career ladder overview to all the facilities. Most large chains that own facilities have formal programs within their structures.

7. Old Business/New Business

Ms. Ellis announced that Katie McMillan after 4 decades of State service is retiring on December 31, 2004 and Katie's position as Deputy Director will be assumed by Tom Murray on January 1, 2005.

8. Public Comment

9. The next meeting will be held on Tuesday, January 11, 2005, at 10:00 A.M.

The location will be Herman M. Holloway, Sr. DHSS Campus, Main Building, Room 301.

10. Adjournment -The meeting was adjourned at 11:30 A.M.

FINAL MINUTES - The December 14, 2004 Minutes were approved as written.