
*Delaware Nursing Home Residents
Quality Assurance Commission*

DNHRQAC Meeting of January 16, 2024

9:30 a.m.

Virtually via Cisco Webex

Anchor Location: 20151 Office Circle Georgetown, DE 19947

FINAL

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Kori Bingaman, RN, NHA; Norma Jones; Christopher Marques, Esquire; Senator Spiros Mantzavinos; Jennifer McLaughlin, OT; Mary Peterson, RN, BSN; Hooshang Shanehsaz, RPH and Dr. Melissa Winters, PsyD. Deputy Attorney General (DAG) Patrick Smith, Esquire was also in attendance.

Ms. Furber attended the meeting in-person @ the anchor location. The remainder of commission members, presenters and members of the public attended this meeting using Cisco WebEx virtual platform.

Commission members not in attendance: Dr. Avani Virani; Molly Crumley, RN, BSN, MBA and Representative Kim Williams.

Others Present: Margaret Bailey, DNHRQAC Executive Director; Corinna Getchell, DHCQ; Kim Reed, DHCQ; Jim McCracken, LeadingAge; Rob Smith, DHCQ; Denise Elliott, DHCQ; Harry Palmer, DHSS; Annette Moore, The Moorings @Lewis; Sean Dwyer, DE Valley Chapter Alzheimer's Assoc; Brandon Williams, DE Senate; Staci Marvel, DMMA; Kevin Andrews, Public; Sherry Armstrong-Kerns, DHCQ and one unidentified individual, Brittany.

1. Approval of the meeting minutes

Meeting minutes draft of November 21, 2023 were approved as written.

2. Approval of Revised By-Laws

Tabled until March 19, 2024 DNHRQAC meeting.

3. Approval of FY23 DNHRQAC Annual Report

Tabled until March 19, 2024 DNHRQAC meeting.

4. Discussion of:

DHCQ Updates

DHCQ staff members: Corinna Getchell, RN, Director; Denise Elliott, RN, Deputy Director; Rob Smith, Licensing Administrator; Sherry Armstrong-Kearns, RN, Compliance Nurse and Kim Reed, RN, Nursing Administrator attended the meeting and shared updates relating to the Division. DHCQ provided a summary of their activities September - December 2023.

Annual and Complaint Surveys: September - December 2023

Rob Smith, DHCQ Licensing Administrator, shared 4th Qtr 2023 information with commission members:

Nursing Homes/SNF

12 annual surveys (6 by HMS)

17 complaint investigations (6 by HMS)

Assisted Living Facilities

2 annual surveys (by State surveyors)

5 complaint investigations (by State surveyors)

176 Complaints Investigated

27 Complaints Investigated (by State surveyors)

Ms. Bailey asked how many of the complaints investigated were substantiated and how far back were the complaints submitted to the Division. Mr. Smith said DHCQ would need to run a report to provide the information. Ms. Heiks mentioned the information would be useful in determining any trends and future improvements.

Ms. Moore, the Moorings, shared that any complaint could be substantiated but believes the Commission should know how many complaints resulted in a citation and facility reportable.

Ms. Bingaman asked whether any of the complaint surveys are conducted as a desk audit. Mr. Reed stated all complaint surveys are conducted on-sight.

DHCQ contracted with Health Management Systems (HMS) to assist with annual and complaint surveys due to Division workforce vacancies and backlog.

Ms. Getchell advised the complaints being investigated during this period include complaints from prior years, too. DHCQ is still trying to catch up on a backlog. HMS is primarily focused on Centers for Medicare & Medicaid Services (CMS) certified nursing home surveys.

DHCQ stated an internal staff member is responsible for conducting a review of this contractor's work. The survey report is given to DHCQ where the Quality Assurance Team (QART) will scrutinize findings, same as DHCQ normally does with their own internal surveyor staff.

Dr. Winters asked whether a substantiated complaint will always rise to a deficient practice. Ms. Reed stated a complaint either results in a deficient practice or not per the CMS State Operational Manual (SOM), Chapter 5.

DHCQ advised they use CMS's SOM (Chpt 5) to triage complaint surveys: [Medicare State Operations Manual \(hhs.gov\)](#). During triage, the Division will follow-up on a complaint within the CMS guidelines: 2 -3 days, 10 days, etc.

Commission members were reminded the Long Term Care Ombudsman Program (LTCOP) can assist with complaints, too.

Top Delaware nursing home citations during 4th Qtr 2023 surveys:

- F812 - Food Procurement
- F657 - Care Plan Timing
- F656 - Developing of Care Plan
- F684 - Quality of Care
- F695 - Respiratory/Trac Care & Suctioning

Exigent Circumstances

The term "exigent circumstances" means a short-term emergency or other unavoidable situation, and all reasonable alternatives have been exhausted. Examples include: call-off's, resignations or weather-related circumstances.

Within 24 hours of the exigent circumstance(s) that require that the Director of Nursing (DON), Assistant Director of Nursing (ADON) and/or RNAC provide direct care, the facility shall notify the Division in writing of this emergency and provide documentation of the amount of direct care

time that was provided by the DON, ADON and/or Registered Nurse Assessment Coordinator (RNAC).

The term “exigent circumstances” means a short-term emergency or other unavoidable situation, and all reasonable alternatives to the use of a temporary employee as a nursing supervisor have been exhausted.

Within 24 hours of the exigent circumstances that require the use of temporary employment agency staffing to fill a nursing supervisor position in a residential health facility, the facility shall notify the Division in writing of the exigent circumstances and the expected duration.

During 4th Qtr 2023, three Delaware nursing homes submitted exigent circumstance forms to DHCQ relating to direct care provided by DON, ADON or RNAC and/or use of temporary staffing agency to fill nursing supervisor position.

DHCQ has noticed downstate is having a difficult time recruiting staff members and there is a lot of competition with other health care establishments. The Division is monitoring the facilities recruitment efforts. None of the facilities were out of compliance with staffing hours per resident per day (HRPD).

4th Qtr 2023 Staffing Report

Rob Smith, DHCQ Health Care Facilities Administrator, shared a copy of the 4th Qtr 2023 Staff Report with commission members. Ms. Bailey forwarded an electronic copy of the report to DNHRQAC members in advance of the meeting.

Due to facility staffing shortages, DHCQ began increasing their involvement in nursing home staffing oversight - effective October 1, 2022. Note: The Staffing Report does not apply to licensed assisted living facilities.

Each licensed nursing home in Delaware is required to submit staffing levels at least quarterly, in addition to every time a survey is conducted by DHCQ.

If a staffing deficiency is identified, a deficiency report is issued and facility will be given an opportunity to correct said deficiency, by submitting a plan of correction. After DHCQ receives an acceptable plan of correction, a random staffing check is conducted to assess the facility’s compliance with staffing requirements.

If a facility is not in compliance, further action may be taken by DHCQ (i.e., Civil Monetary Penalty, which could be as much as \$1,000/day fine).

As a result, 4th Qtr 2023 Staffing Report shows private nursing homes at a HRPD of 3.70. The State operated nursing homes HRPD @ 7.53. The minimum required HRPD in Delaware is 3.28.

The 4th Qtr 2023 Staffing Report indicates two Delaware private nursing homes did not meet 3.28 HRPD on a day or two during this period. As a result, the following Civil Monetary Penalties (CMP) were imposed:

Seaford Center \$4,500

Milford Center \$2,000

4th Qtr 2023 Quality Assurance Review Team (QART) Report

Mr. Smith shared a copy of the 4th Qtr 2023 QART Report with commission members. Ms. Bailey forwarded an electronic copy of the report to commission members, prior to the meeting.

Mr. Smith mentioned all “G” level deficiencies or higher are automatically sent to the Attorney General’s Office.

October 1, 2023 to December 31, 2023, QART reviewed 6 nursing home surveys (12 tags total) involving “G” level or higher deficiencies as recommended by surveyors during an inspection.

After review, the QART Team upheld all of the “G” level and above citations involving:

F684 - Quality of Care (“H”)- The facility failed to ensure that each resident received treatment and care in accordance with professional standards of practice and the comprehensive person-centered care plans.

F689 - Accident Hazards (“G”)- The facility failed to ensure the resident's environment was free from accident hazards and/or adequate supervision was provided to prevent accidents.

F697 - Pain Management (“G”) -The facility failed to ensure the treatment and care was in accordance with professional standards of practice related to pain management.

F880 - Infection Control (“IJ” “J”) - the facility failed to implement their infection control program for COVID-19.

F686 - Pressure Ulcers (“G”) - The facility failed to provide care and services to promote healing and prevent pressure ulcers.

F760 - Resident Free of Significant Medication Errors (“IJ” “J”) - The facility failed to ensure resident received the correct dose of insulin.

F711 - Physician Visits (“IJ” “J”) -The facility failed to ensure that the physician reviewed a resident’s total program of care including medications.

F600 - Freedom from Abuse, Neglect and Exploitation (“IJ” “J”) The facility failed to ensure that three residents were free of sexual abuse from a resident with a history of sexually inappropriate behavior.

F692 - Nutrition/Hydration (“G”) The facility failed to recognize, evaluate and address a residents hydration status to ensure proper hydration and health.

F689 - Free from Accident Hazards (“IJ” “J”) The facility failed to provide adequate supervision that contributed to the elopement of a resident and put the resident at immediate jeopardy and risk of a serious adverse outcome.

F635 - Admission Physician Orders (“IJ” “J”) The facility failed to ensure that readmission physician orders for two anti-seizure medications were accurately transcribed into the electronic health record for a resident’s immediate care of her seizure disorder.

F695 - Respiratory Care (IJ” “J”) The facility failed to provide respiratory care that was consistent with professional standards of practice and the comprehensive person-centered care plan for two residents.

Mr. Smith mentioned that all of the surveys that appear on the QART Report were conducted by DHCQ, except for one facility, which was surveyed by Health Management Systems (HMS).

Ms. Getchell mentioned she believes the contract with HMS goes until September 2024.

DHCQ said that during calls with CMS, there appears to be an increase nationally in the number of “IJ” and actual harm citations.

Ms. Peterson asked whether any or all of the actual harm citations were considered past non-compliant and/or whether the deficiencies were abated. Mr. Smith will look at the entire survey notes and get back to the Commission. Ms. Peterson stated that some of the deficiencies listed on the 4th Qtr 2023 report are quite egregious. Ms. McLaughlin concurred.

Mr. Smith mentioned CMS & the State of Delaware took further disciplinary actions: denied payments for new admissions; imposed hefty Civil Monetary Penalties (CMP) and placed a management company in two of the facilities to monitor/help facility gain and maintain compliance (at the expense of the facility).

DHCQ said it’s been several years since a “monitor” has been placed in a Delaware nursing home as a remedy or because of what was found during a survey. Ms. Getchell mentioned there are corporations that specialize in doing temporary management or monitoring that could be used if necessary.

Commission members asked if the citations were because of what was found during an annual survey or a result of a complaint. If it was due to a complaint, how far back was the complaint reported to DHCQ. DHCQ will check into this further.

Senator Mantzavinos asked DHCQ if they are seeing an upward trend. Ms. Reed mentioned the survey teams are bringing a lot of open complaint surveys with them during each annual survey. As a result, the Division is seeing an increase in high level citations, due to the volume of intakes, facility reported incidents and complaints. The Division advised during 4th Qtr 2023, there was more DHCQ staff and contractors that were able to take on a bigger workload.

Ms. Heiks asked if there are any similarities relating to certain topics or issues the Division has identified. She additionally asked to see if some training could be offered to avoid these situations from occurring in the future. Mr. Smith mentioned a summary of the deficiencies cited was provided to commission members in the QART Report.

Ms. Furber asked if a staffing agency person was involved with a “G” level deficiency, are they able to be disciplined the same as a facility staff member. Ms. Getchell mentioned that if there is an allegation against an individual regarding abuse, mistreatment or neglect in a facility, it would be investigated for that individual, regardless to whether they are an agency staff member or work for the facility. If it was verified the allegation happened, the individual would be placed on the Adult Abuse Registry. Facilities can report anyone to the Division of Professional Regulations (DPR). DPR is responsible for imposing any type of professional license reprimand. Facilities can state they do not want a particular agency staff person working in their building. DHCQ is obligated to contact DPR regarding abuse, mistreatment and neglect, too.

Ms. Bingaman shared the following information to verify a license:

CNA - registry.prometric.com/PublicDE

RN/LPN or NHA - [License Verifications - Division of Professional Regulation - State of Delaware](#)

Senator Mantzavinos mentioned House Bill (HB) 204 is pending in the House relating to temporary staffing agencies serving long term care facilities.

Commission members were asked to forward any additional questions relating to the deficiencies cited during this time frame to Ms. Bailey. The list will then be forwarded to DHCQ for a response.

Fingerprinting

Due to a delay in implementing the new DHCQ Background Check Center, the Division began offering (11/22/2023) old paper & ink style fingerprinting services in two locations.

Fingerprinting is being offered by appointment only in Newark and Georgetown. The fee for fingerprinting is \$85 per person. Once completed, the prints are sent to the Federal Bureau of Investigation (FBI) in Dover, DE. As a result, the process is delayed by a week.

The Division is not seeing the volume they anticipated when they rolled out the paper & ink fingerprinting services. To date, the number of paper & ink fingerprinting completed by DHCQ:

47 Newark
8 Georgetown

Ms. Getchell mentioned DHCQ anticipates the new Background Check Center will be live in July 2024. It will be able to communicate with SBI's new fingerprinting system.

5. Old Business/New Business

DNHRQAC FY25 Budget

Commission members discussed FY 25 budget. Ms. Bailey provided a summary which included:

- "New" FY24 Epilogue language was added by Judicial Branch, allowing them to prepare a report about Non-Judicial Agency's future placement (report due to OMB & JFC by 2/1/2024).
- Administrative Office of the Courts (AOC) met with Non-Judicial Agencies on a few occasions to discuss possible options, should the Non-Judicial Agencies be moved out of the Judicial Branch.
- JLOSC will also be preparing a report regarding the Non-Judicial Agencies.
- Although DNHRQAC will be included in the FY25 Governor Recommended Budget (GRB), Non-Judicial Agencies were advised that additional operating budget requests would not be included in Judicial Branch's submission.
- DNHRQAC did request additional staff positions for FY 25 to be able to carry out its mission (first time ever requested).
- AOC suggested Non-Judicial Agency's reach out to their own contacts to advocate for additional FY25 operating funds.
- AOC suggested DNHRQAC put together a letter, that will accompany their report, as to the Commission's feedback on future placement. The letter is due to AOC by the end of the week.

- It appears that AOC is willing to keep DNHRQAC's Executive Director position under the Courts until position is vacant, however is siding with JLOSC to move the program to Department of Safety and Homeland Security. Ms. Bailey shared this could potentially cause unintended consequences, should commission staff and program be in two different branches of State Government.

Ms. Furber mentioned since there is a focus on new placement for the Non-Judicial Agency's, it is unintentionally placing barriers on the Commission work relating to the Eagle's Law Staffing Ratio Waiver application and process.

In particular, needing technology services relating to an electronic application and avenue for transporting data within State Government related to a waiver, which is supposed to begin July 1, 2024. The Commission was advised that due to limited staff, the Judicial Information Center (JIC) is not able to assist with a waiver application at this time.

Commission members were asked if they would like to formally respond to AOC's report. DNHRQAC does not meet again until March 2024.

Mr. Patrick Smith, Esquire, stated commission members could vote that the outcome of a meeting to prepare a written response will instill power and bind the position of the commission. Members voted and approved the writing of an addendum to be included with AOC's report.

Ms. Bailey will reach out to commission members this afternoon and schedule a time for available commission members to help craft an addendum. Once finalized, this will be forwarded to the full commission.

6. Public Comment

There were no public comments raised during this meeting.

7. Next DNHRQAC Meeting – TBD (possibly February 2024).

Ms. Furber suggested Commission members consider adding a meeting in February 2024, to continue discussing items that couldn't be addressed during today's meeting. A poll will be sent to commission members to figure out whether there will be a meeting in February 2024.

Regardless, the next scheduled meeting will be held on Tuesday March 19, 2024 @ 9:30 am. This meeting will be conducted via virtual platform and in-person anchor location. Details will be available on the Delaware Public Meeting Calendar.

8. Adjournment

This meeting was adjourned at 11:26 am by Lisa Furber.

Attachments: DNHRQAC Meeting of November 21, 2023 – minutes draft
DNHRQAC Meeting of January 16, 2024 – meeting agenda
4th Qtr 2023 Staffing Report
4th Qtr 2023 QART Report
of Surveys/Top Citations Report

Definitions:

Immediate jeopardy complaints allege a situation that indicates that there continues to be an immediate risk of serious injury, harm, impairment, or death to a resident. State survey agencies are required to start an on-site investigation **within two business days** of receipt of complaint or incidence report.

Non-Immediate Jeopardy - High (High Priority) complaints allege a situation in which the provider's non-compliance with one or more Federal requirements may have caused harm that negatively impacts the individual's mental, physical, and/or psychosocial status and are of such consequence to the person's well-being that a rapid response by the State survey agency is indicated. State survey agencies must initiate an on-site survey **within ten business days** of prioritization.

Non-Immediate Jeopardy – Medium (Medium Priority) complaints are assigned this priority if the alleged noncompliance with one or more requirements caused no actual physical and/or psychosocial harm but there is the potential for more than minimal harm to the resident(s) (Severity Level 2). State survey agencies must initiate an on-sight survey **within 45 business days**.

Non-Immediate Jeopardy – Low (Low Priority) complaints are assigned this priority and the Division tracks for possible trends to determine if there are common themes that suggest areas for focused attention when the **next on-site survey** occurs.