

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

ANNUAL REPORT FY 2009

(July 1, 2008- June 30, 2009)

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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

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ANNUAL REPORT 2009

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I. BACKGROUND INFORMATION

The Commission

The Delaware Nursing Home Residents Quality Assurance Commission (the Commission) was established in 1999. 29 Del. C. § 7907. The Commission's principal charge is to monitor Delaware's quality assurance system for nursing home residents in both privately and State operated facilities with the goal that agencies responsible for the oversight of facilities are coordinating efforts to achieve optimum quality outcomes.

As part of its monitoring effort, the Commission reviews state agencies responsible for investigating complaints of abuse, neglect, mistreatment and financial exploitation, as well as other agencies that have input on the quality of care in Delaware's nursing homes. The Commission reviews reports of serious citations of quality of care issues and staffing patterns prepared and presented on quarterly basis by the Division of Long term Care Residents Protection as directed by the Joint Sunset Committee in 2006.

The Commission is also charged by the General Assembly and the Governor with conducting specified studies relating to long term care and reporting its findings to the General Assembly and the Governor. Finally, the Commission is required to prepare and submit an annual report to the Governor, the Secretary of the Delaware Department of Health and Social Services (DHSS), and members of the General Assembly. This is the Commission's 2009 annual report.

Appointment of Commission Members

- The Commission is composed of a total of 12 members, eight of whom are appointed by the Governor.
- One of the members appointed by the Governor is to be a representative of the developmental disabilities community protection and advocacy system established by the United States Code.
- The remaining members are to include representatives of the following: consumers of nursing home services, nursing home providers, health care professionals, law enforcement personnel, and advocates for the elderly.
- Of the remaining four members, two members are appointed by the Speaker of the House, and two members are appointed by the President Pro-Tempore of the Senate. These four members serve at the pleasure of their appointing authorities.

Frequency of Meetings

While the Commission is only required by statute to meet at least quarterly, the Commission usually meets on a bi-monthly basis.

II. AGENCY REVIEWS

Introduction

Pursuant to 29 Del.C. § 7907(g) (1), the Commission is required to review and evaluate the effectiveness of the quality assurance system for nursing home residents. To do so, the Commission requests information and takes testimony from representatives of state agencies. These include the Division of Long Term Care Residents Protection (DLTCRP), the Ombudsman's Office, Division of Medicaid and Medical Assistance, the Delaware Department of Justice, Adult Protective Services, Board of Pharmacy, Office of the Public Guardian, law enforcement agencies, other state agencies, health care professionals and nursing home providers.

To that end, the Commission invited representatives from state agencies and other presenters to appear and testify before the Commission. The following is a summary of these agency reviews:

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES, LONG TERM CARE OMBUDSMAN PROGRAM

Victor Orija, Senior Social Services Administrator of the Division of Services for Aging and Adults with Physical Disabilities, provided information and testimony to the Commission about the Ombudsman Program. The Ombudsman's role is one of impartial fact-finder to ensure that residents in long term care facilities receive fair treatment.

Ombudsman responsibilities include actions to:

- Mediate disputes;
- investigate complaints regarding quality care and residents' rights violations;
- advocate for residents;
- recruit, train, and retain volunteers. The goal is one volunteer per facility.

The Ombudsman's Office generally handles non-criminal complaints and refers violations of the law to the DLTCRP and the Attorney General's office as applicable. The Ombudsman Program is not an enforcement agency and does not have law enforcement powers but tracks cases and complaints as required by the Federal Administration on Aging. In addition, the Ombudsman participated in the following Delaware events to promote resident's rights through efforts including:

- LANES in the Advancing Excellence in Nursing Home Campaign
- Nursing Home Law training day in Dover, DE
- Residents Rights Rally in Dover, DE.
- Director of Nursing Workshop.
- Consultation with residents, families, and facility staff.
- Outreach and education about residents' rights.
- Witness the execution of Advanced HealthCare Directives.

DIVISION OF MEDICAID & MEDICAL ASSISTANCE (DMMA)

Ms. Rosanne Mahaney, Deputy Director DMMA provided an overview on the “newly implemented” Medical Assistance Programs and an expansion to an existing program that the Division was able to roll out in FY 09 despite the current fiscal environment.

Money Follows the Person Program is a 5.3 million dollar federal grant from CMS designed to help transition individuals from Delaware institutions to the community. This is a State matched program that provides a 75% federal match for services; with the State providing the remaining 25% for services received. The grant is for 5 years and the program received federal approval in June 2008. To date, three individuals in NCC facilities have transitioned to the community. This is not a Medicaid qualifying program. This is a program that provides wrap-around services to Medicaid recipients during their first year in the community. Once the individual leaves the facility, they placed into one of the Medicaid Home and Community

Based Waiver Programs.

Ms. Mahaney shared that the program was designed to assist States in rebalancing their long term care service delivery by identifying essential community-based services and supports to enable recipients to remain safely in the community on an ongoing basis. The expectation is to serve 100 individuals in the program over 5 years.

Medicaid Buy-In Program is a Medicaid qualifying program offering medical assistance for disabled workers. The goal of the program is to assist individuals that work and make too much money to receive Medicaid services. It allows individuals to buy in to Medicaid by paying a monthly premium so they can continue to receive medical services and work, too. Implementation of this program is currently planned for FY 2010. This program is funded through the General Fund and is federally matched. It is anticipated to service 100-150 individuals.

Medical Assistance during transition to Medicare (MAT) is an existing Medicaid Program that was expanded FY 09. This program was originally designed to assist Supplemental Security Income (SSI) recipients who lose their eligibility for SSI because they begin receiving Social Security Disability, but who do not yet qualify for Medicare. SSI recipients automatically qualify for Medicaid. Individuals who receive Social Security Disability are often over the income limit for Medicaid. The MAT Program bridges the gap by providing these individuals with Medicaid until Medicare begins. The program was originally just for SSI recipients but the program was expanded in FY 09 to serve anyone who loses Medicaid due to receipt of Social Security Disability benefits, but who do not yet receive Medicare.

DIVISION OF LONG TERM CARE RESIDENT PROTECTION (DLTCRP)

Judge Susan Del Pesco, Director DLTCRP; Tom Murray, Deputy Director DLTCRP; and Robert Smith, Licensing Administrator DLTCRP provided commission members with assurance review, staffing and other matters related to long term care. Discussion included:

DLTCRP's Quarterly Assurance Review Team to provide the Commission with reports showing whether there were any upgraded or downgraded "G" level deficiencies.

DLTCRP provided Commission quarterly QART Reports.

DLTCRP provided quarterly Staffing Reports to the Commission as a result of Eagle's Law enacted in 140 General Assembly Senate Bill 115.

DLTCRP provided the Commission quarterly Staffing Reports.

DLTCRP provided the Commission with the Civil Monetary Penalty Report which reflected 15 civil money penalties imposed FY 09 YTD and totaling \$59,857 (\$40,520 Federal; \$19,337 State). The Division has used funds from this account to provide training in the following areas: Proper completion & use of the MDS, Hydration Techniques and DoN workshops

DLTCRP investigates complaints in nursing homes and assisted living facilities.

The Division supplied documentation as to 3,606 cases assigned for investigation in 2008. Abuse, neglect, mistreatment or financial exploitation

was substantiated in 2,117 cases.

DLTCRP sponsors a Director of Nursing mandatory four day workshop for all new DONs. The Workshop was held in October 2008.

DLTCRP, revised and collapsed the LTC skilled/intermediate facility regulations into one set of regulations. The new regulations became effective January 2009.

DLTCRP will be adopting the new CMS survey methodology for certified nursing Homes. Division staff are being trained on the CMS Quality Indicator Survey (QIS) process which is a computer-assisted process designed to achieve more comprehensive and consistent surveys for nursing homes. Although the survey process is revised under the QIS, the federal regulations and interpretative guidance remain unchanged. Every state is required to move to this process eventually. To date, 11 states have already begun the process of transferring from traditional surveys to QIS paperless surveys.

By October 2009 all surveyors will have been trained and certified nursing home surveys will be conducted using this process. CMS has provided Delaware with the \$42,000 to purchase computers and training on the new system.

DLTCRP's future plans include providing more education for caregivers with a special focus on Certified Nursing Assistants who provide the majority of hands-on care to the residents.

DLTCRP will set up a web-based Adult Abuse Registry if the pending legislation passes.

QUALITY INSIGHTS OF DELAWARE

Quality Insights of Delaware, Margaretta Dorey, provided information to members regarding the association's contract with CMS to bring quality improvement programs to every health care provider in Delaware. She further mentioned that

adequate staffing levels, workforce retention and increased documentation at the medical record, surveyor and nursing administrator levels are essential for successful quality outcomes.

Quality Insights of Delaware offers educational opportunities to address quality of care issues for State and Private Long Term Care and Assisted Living Facilities in Delaware.

Project Coordinator, Mary Rodger, presented the new “5 Star Nursing Home Report” that appears on CMS’s website. The report was designed to assist residents and families in making distinctions between high and low performance nursing homes. Additionally, CMS hopes to stimulate nursing homes to improve quality.

The report is based on the best, most available data. The system has an overall 5 star rating system (5 being the best possible). The annual state survey which includes health inspection for the past three years and last 36 months of substantiated complaint surveys are used to compile data in the report.

The state survey is weighted- most recent survey accounts for half, the previous 1/3 and the 3rd year back is factored at 1/6th.

Number scoring is used regarding health inspection surveys related to scope and severity. Points are added as the scope and severity increases. There are additional points accumulated if a scope/severity “F” tag appears as a result of sub-standard care in the quality of life section. Penalty points are assigned for this instance.

Finally, if any repeat visits are required to clear a deficiency for an “F” tag or above, the regulations require the service agency return. Penalty points are assigned in this instance, too. The first visit, no points are assigned- 50 points

assigned for 2nd visit, 75 points for 3rd, and 100 points for the 4th. CMS's rationale is simply put-nursing homes that cannot clear deficiencies within 1 visit appear to have problems with quality of care being provided to their residents.

The second area of rating is the staffing measure. Stars can be added or subtracted based upon facilities staffing numbers. The staffing calculation is very complex. The staffing measure uses 2 calculations- RN hours per resident day and total nursing (RN, LPN and CNA) staff hours, but heavily weighed towards RN's. The staffing numbers are derived from OSCAR data, which is directly inputted by facilities to the state survey agencies. The staffing measure is case-mix adjusted based on the RUGS category (Residents Utilization Groups) related to morbidity, acuity, and level of rehab. The third measure is derived from 10 self-reported Quality Measures. Again, stars can be added or subtracted based on the home's performance. DE Health Care Facilities Association and Quality Insights of Delaware held a workshop in February 2009 which walked providers through the technical manual.

HOSPICE SERVICES

Mary Peterson, Director of Office of Health Facilities Licensing and Certification, spoke to the Commission regarding Hospice services in Delaware.

Hospice Services are provided to residents in State and Private Nursing Homes and Assisted Living Facilities throughout Delaware. The hospices providers include; Compassionate Care Hospice, Delaware Hospice, Heartland Hospice, Odyssey Healthcare, Season's Hospice and Palliative Care and Vitas Healthcare. Two of the hospice providers offer in-house services. A third hospice provider is expected to open an in-house facility in the summer of 2009. Presently, approximately 40% of

hospice care is provided within nursing homes or assisted living facilities throughout Delaware.

OFFICE OF THE PUBLIC GUARDIAN

The Office of the Public Guardian presented obstacles and barriers this non-judicial agency of the courts has been facing regarding guardianship cases.

DNHRQAC heard challenges OPG continues to address due to the growing need for guardianship representation in Delaware. The Commission had an opportunity to also hear OPG's budgetary "wish list" items and other resources that would aid the unit: create a client data management system and hire a nurse case manager to assess individual competency levels to improve services offered to individuals state-wide. It also appeared that education specific to Advance Directives may need to be explored further.

As a follow up, the Commission contacted the Court of Chancery, which recently created a Guardian Liaison Executive Director position to address guardianship issues state-wide. Two Masters have been assigned to specifically hear guardianship cases quickly. The information is being shared with all State and Private Nursing Homes and Assisted Living facilities in Delaware.

POLYPHARMACY

Van Buren Medical Associates provides medical director services for a large percent of the nursing homes in the State of Delaware. Dr. Ralph Aurigemma, the primary Medical Director for the practice, decided that a proactive approach to this role was necessary to achieve the highest level of functioning and quality of life for Delaware long-term care residents.

Debra Lynch, RN, MSN presented polypharmacy-which means taking a large number of medications. A thorough review process of the medications prescribed for LTC residents was determined by Dr. Aurigemma to be of great importance since Delaware nursing homes are above the national average for the number of medications each patient utilizes.

The Department of Health and Human Services made polypharmacy a part of the Healthy People 2000 agenda. The elderly population is at great risk because of normal physiological changes that occur with the aging process. Many drugs increase the risk of falls, pressure ulcers, dehydration and hospitalization.

Ms. Lynch offered that in Delaware most physicians are trained on clinical practice guidelines for the average adult, not the elderly. Prescribing practices for the elderly are very different than those used for a younger adult. The medications prescribed for the elderly effect their liver, kidneys and other organs differently than how a middle aged person's body would be affected.

Ms. Lynch stated that nationwide >75% of hospitalizations for the elderly were due to adverse drug reactions and could have been prevented. The adverse reactions were from known pharmacological agents and frequently prescribed medications.

The likelihood of having an adverse drugs event for 2 medications is 6%, 5 medications 50% and 8 medications 100%. Based on information gathered from MDS records (Aspen and Oscar), 30% of Delaware's nursing home residents take 8 or more medications and therefore have a 100% chance of having an adverse drug event.

Screening for polypharmacy in the nursing home population is crucial to prevent:

geriatric syndrome, confusion, falls, incontinence, urinary retention and malaise. These often lead to the prescribing cascade of additional medications to combat side effects.

One of the largest contributors for polypharmacy occurs when a resident is sent to a specialist or hospital. The average nursing home resident has five diagnoses. After being seen by a specialist, an additional list of medication orders might be written. One practitioner is often not reviewing all medications being prescribed by many specialists, which prompted Van Buren Medical Associates to create the polypharmacy program.

The group's focus was to eliminate risk, and reduce the number of medications for each resident. This was achieved by optimizing non-pharmacological alternatives such as: toileting programs versus incontinence medications, behavioral intervention instead of anti psychotic medications, and environmental changes (e.g. removal of overhead announcing system or bright lights). In addition, targeted goals were defined for each medication. After a specified review period; it was determined whether a resident could successfully be taken off a particular medicine.

Van Buren Medical Associates worked closely with four large Delaware nursing home facilities to reduce the number of medicines given to each resident. The process included: reviewing all residents' charts, interviewing nursing staff and making recommendations from a predetermined list of medications that could be gradually tapered and perhaps no longer given to a resident.

As a result of the polypharmacy program, the number of medications in all four

facilities were reduced at least 10%. One southern Delaware facility saw a \$30,000 reduction in a one month pharmacy bill.

Ms. Lynch stated that the process was simple when it came to residents under the care of Dr. Aurigemma's practice. Orders were written to eliminate, reduce or symptoms monitored during the review period. Family members were contacted and informed.

Ms. Lynch offered that if residents in the facility were not a patient of Dr. Aurigemma's, Van Buren Medical Associates would contact the appropriate physician to let them know their recommendations and present supporting documentation. It was up to that physician to write the new medication orders. There wasn't any resistance from other physicians.

Ms. Lynch shared that F Tag 329 regarding unnecessary medications was updated by CMS which states that a facility can be fined civil monetary penalties if they do not follow the guidelines set forth for the prevention of polypharmacy adverse consequences.

An article regarding Polypharmacy appeared in the December 2008 issue of the Delaware Medical Society's Journal.

DEMENTIA CARES

Carol Lovett presented a 15 minute educational video from a workshop that the Division of Substance Abuse and Mental Health is offering called CARES.

CARES focuses on providing professional caregivers with the skills to better interact with the growing population of people suffering from Dementia. It was developed using a person centered approach to care as opposed to the medical model.

Patients who suffer from Dementia are unable to change their behavior, and they

have lost the ability to communicate in the traditional ways. It is up to caregivers to adjust their own interactions and expectations when caring for this population. The CARES Workshop provides an individualized, interactive and educational approach to learning new and more effective ways in which caregivers can interact with, and care for Dementia residents. During the 2-day free workshop, participants are given the opportunity to better understand their patients who suffer from Dementia through a series of role-play exercises and a study of how the brain is physically altered by the disease.

After attending the CARES Workshop, caregivers will have learned how to:

- Connect with residents
- Assess their behavior
- Respond appropriately
- Evaluate what works
- Share information with other caregivers

The CARES Workshop is available in New Castle and Sussex Counties as well as in an on-line format.

Ms Lovett is a LCSW-G and the volunteer facilitator for the workshop.

She has been working with a variety of DHSS agencies and law makers to lobby for a mandatory Dementia Training Program for professional caregivers.

Questions regarding the workshop should be directed to **Dana Wise, DSAMH**

Administrative Specialist, at 302-255-9480 or e-mail

DSAMH.training@state.de.us or visit the Division of Substance Abuse and Mental Health website at: www.dhss.delaware.gov/dhss/dsamh/train.html

DISABILITIES LAW PROGRAM

Ms. Laura Waterland, Esquire provided testimony regarding the Disabilities Law Program, which provides advocacy services for individuals with disabilities in

Delaware. The program is part of Community Legal Aid Society, Inc and is offered state-wide.

Protection and Advocacy services are made possible through 8 federal grants which include: Protection and Advocacy for Individuals with Mental Illness, Protection and Advocacy for Traumatic Brain Injury, Protection and Advocacy for Individuals with Developmental Disabilities, Protection and Advocacy of Individual Rights, Protection and Advocacy for Voter Access, Protection and Advocacy for Beneficiaries of Social Security, Protection and Advocacy for Assistive Technology and Advocacy for Victims of Crime with Disabilities.

The Disabilities Law Program has a Patient Advocate on site at the Delaware Psychiatric Center. Services are also offered to private psychiatric facilities such as Rockford Center and Meadow Wood Behavioral Health System.

The Disabilities Law Program is involved with housing law discrimination, Medicaid advice and appeals, community based waivers, and ADA access.

The Disabilities Law Program does not get involved with personal injury cases, employment or criminal representation; however, the Disability Law Program assists the Public Defenders Office to provide the best outcome of a person's disability.

The program also provides drafting for Advanced Directives and Powers of Attorney for individuals. They do not assist in drafting guardianship, but provide reference materials.

Ms. Waterland offered that the Disabilities Law Program does take appeals for nursing home cases involving medical or financial discharges. They also accept complaints for abuse and neglect, but generally will refer to the Ombudsman, DLTCRP or Adult Protective Services.

The Disabilities Law Program has federal authority which permits access to all

records in nursing home facilities. In addition, the authority extends also to the right of access to residents which means they do not need permission to see/speak to a resident if a report was filed.

ELDER LAW PROGRAM

Mr. Bill Dunne, Esquire presented the Elder Law Program to the Delaware Nursing Home Residents Quality Assurance Commission.

The Elder Law Program provides free legal assistance to Delawareans age 60 and over. There isn't an income requirement to utilize the services; however tend to work more with individuals who are socially or economically needy.

The services offered include drafting Powers of Attorney and Advanced Health Care Directives. The appointed facility Ombudsman is present as a witness during the signing of either document.

The Elder Law program assists with financial issues such as credit card debts. Assistance is also provided for housing problems and issues involving public benefits such as Medicaid and Social Security.

One growing trend observed by Mr. Dunne is that some individuals are financially abusing Powers of Attorney. There are cases pending in the Court of Chancery regarding property deeds.

MEDICAID FRAUD CONTROL UNIT

Mr. Daniel Miller, Esquire provided an overview of the Medicaid Fraud Control Unit to the Commission. The unit polices the Medicaid budget for fraudulent activity. The

unit receives referrals, investigates, and prosecutes the cases. The policing includes any health care facility in Delaware that receives Medicaid money. MFCU investigates and criminally prosecutes instances that arise in nursing homes, assisted living facilities, hospitals, and group homes.

Referral's to MFCU come from several entities: DLTCRP, facilities, and other agencies. The MFCU Chief Investigator receives referrals and makes recommendations to MFCU Director based on solvability and resources. The MFCU Director then makes the final determination based on the number of active cases, current workload and merit or lack thereof with the referral.

DLTCRP performs administrative review; and if abuse, neglect or financial exploitation is substantiated, the referral is then forwarded to MFCU to determine whether the case merits criminal investigation.

Mr. Miller stated that often the victim of the crime cannot speak to the alleged abuse or neglect.

Medicaid Fraud Control Unit is federally funded. They prepare an annual report to their federal oversight agency which includes calendar year statistics.

Referrals are tracked per facility. The unit looks to see if a facility is performing poorly in the survey process and number of referrals received will spark the unit to be more apt to open an investigation even if the solvability factors are less.

MFCU has a dual demand- prosecute criminal neglect, abuse and financial exploitation in nursing homes and to make sure Medicaid dollars is spent wisely.

DART PARATRANSIT

DART Para Transit is challenged with demand versus budgetary constraints in providing service to Delawareans. There are 12,000 customers in the Para Transit database which includes individuals with disabilities, elderly and individuals being

transported to/from renal care.

FY 07, DART Para Transit provided 812,000 service trips. FY 08, the number of trips totaled 855,000. FY 09 (through 12/08) there were 452,000 trips thus far. Based on the numbers through Dec. 08, they are anticipating on providing a record number of Para Transit trips for FY 09.

150 new Para Transit applications are submitted each month. It appeared that individuals from the surrounding tri-state area are moving into Delaware to utilize services here. Border to border service is provided to individuals residing in Delaware.

DART Para Transit went under review through the Federal Transit Administration in late 2007., The Americans for Disability Act states that comparable service must be provided for Para Transit riders as they would for the general public on a fixed route (It's mandated to be provided within $\frac{3}{4}$ mile of a fixed route service). In NCC, there are a number of fixed routes. As one moves further downstate, the more spread out the population becomes and less number of fixed routes. DART Para Transit is faced with demand and lack of resources to maintain what is required by ADA.

ADA requires Dart Para Transit to provide next day service. The reservation call center is available to take reservations 8:00 AM and 4:30 PM at 1-800-553-3278 and open 7 days a week. Staff is available in the Reservation Call center to assist customers during hours that Para Transit buses are in service M-F 5:00 AM-11:00 PM, Saturday 5:00 AM-8:00 PM and Sunday 8 AM-6:30 PM. The center remains open to assist with cancellation(s) or to check on the status of a requested trip (until the last customer is picked up).

Individuals can cancel a reservation by calling the 800# to speak with a live

representative or to leave a voice message.

DART Para Transit drivers have a 5 minute wait procedure in place. The driver attempts to make contact with the customer, especially since they offer door-to-door service.

DART Para Transit staff worked with an advisory committee to develop a no-show policy. Repeat offenders can have their transportation privileges suspended, however it will not affect the rider in getting to a medical appointment.

The standard is that individuals can ask for transportation to any destination in Delaware. Under ADA, DART cannot prioritize Para Transit trips, but they are looking into prioritizing other trips not covered under ADA.

Para Transit determined after review that there was a missing educational link with agencies (such as renal care services) that prevented customers of becoming aware of the service. Staff contacted renal care agencies and customers to determine whether the individual's will need to utilize the service or should the reservation be cancelled.

DART Para Transit staff shared that a person needs to be diagnosed with a disability and have a limited functional or cognitive capacity preventing the use of public transportation to qualify for Para Transit services.

Nursing Home Para Transit riders provided DART Staff with feedback during the presentation. DART Para Transit offered that they are available to meet with facilities to discuss any issues/concerns.

Para Transit submitted bids for additional contractual transportation services and are waiting to hear back.

Para Transit provided commission members with performance measures submitted yearly to the Federal Government.

HOSPITAL DISCHARGE PROCESS

Linda Brittingham, Corporate Director of Social Services Christiana Care, provided an overview of services and barriers regarding the hospital discharge process.

During the admission process, the level of care is assessed: acute, observation or outpatient status. The assessment begins at admission to a unit or during the emergency room visit.

The level of care a patient receives is based on several criteria. Criteria is based on intensity of service (what type of treatment you are getting) and severity of illness (how ill you are). The Medicare Diagnosis Related Group may be inpatient, outpatient or an observation code (GI, Cardiac, pain and change in mental status are all examples of diagnosis that may be determined an observation level depending on care needs).

Individuals admitted for a 3 day observation status does not qualify the person for nursing home admission. Ms. Brittingham forwarded the list of DRG's that commonly can be either acute or observation based on the intensity of service and severity of illness to commission members.

In planning for the hospital discharge, payment options are determined and a choice form is completed (specific to Christiana Care) to find out what services the patient wants. Referrals are made for appropriate services by service selection, paperwork is completed, and the person is discharged with services. Ms. Brittingham urged health care providers (hospitals, nursing homes, and service providers) to get together to define issues and diagnoses for long term care.

Ms Brittingham mentioned there are barriers faced in the discharge

process. Those barriers include: difficult to obtain level of care for confusion or supervision; lack of bed options-beds can be frozen due to staffing levels; not able to meet special needs(bariatric); complex care needs; cognitive disability care needs; dialysis care; equipment needs; and geriatric psychiatric care.

Ms. Brittingham also mentioned the following perceptions as barriers:

-Lack of Medicaid Bed Availability and the hesitancy from nursing homes as to whether they will accept Medicaid as the payment source depends on the person's care needs.

-Nursing Home Insurance Contracts issues:

A. Payment Issue: The perception is that one insurance company doesn't pay and therefore facilities will not accept a person who has that insurance. However after research Ms. Brittingham has not found anything to support that the company does not pay.

B. Coverage Issue: Evercare (Managed Medicare Product) - only 2 facilities in Delaware will admit with this coverage. A person would have to go back to traditional Medicare for more nursing home placement options.

- Nursing Home programming issues: It was stated that nursing homes should

1. Create programs to reflect resident's needs and funding.

2. Create a niche to build a sustainable program.

Ms. Brittingham urged that a separate rate is needed for those with dementia, head injuries, drug, alcohol, and other factors that cause behavioral issues. The resources needed are intense for a person with this complex medical behavioral.

WESTSIDE HEALTHCARE

Sarah Noonan, Deputy Director of Westside Family Healthcare presented to the Commission. Westside offers comprehensive healthcare services in high need

communities which are available to all, regardless of income- via sliding fee-scale and includes: Family Medical Care, Women's Health Services, Disease Management Prevention, Dental Care, Mental Health Care, Podiatry Care and Pediatric& Adult Immunizations. Their website is: www.westsidehealth.org.

Westside has an on-site pharmacy at one of its locations. They also offer on-site laboratories at each location.

Westside is the largest community health center in the state and has 3 locations in New Castle County. Westside plans to open another facility in the Bear, Delaware area in Summer 2009.

Westside received Economic Stimulus funds in March 2009, through the American Recovery and Reinvestment Act, to open the Bear health center.

2008, Westside had 75,000 visits for 17,000 patients. Presently, a fourth of daily Westside healthcare visits are a result of urgent care needs.

Ms. Noonan shared that all of the facilities are ADA compliant.

Healthcare services are available on weekdays, weekends and evening hours to assist wage workers. There are 26 providers, none of whom are volunteer clinicians. Westside has been utilizing an Electronic Health Record system since 2007 (and one of the first interfacers with DHIN).

Westside's fee source breakdown includes: 5% Medicare, 34% Medicaid, 50% uninsured and 11% private insurance. Federal grants aid in providing a portion of the funding source for the uninsured.

Westside's mission is to provide equal access to quality health care regardless of the ability to pay. Their vision is to eliminate health disparities.

BRAIN INJURY ASSOCIATION

Devon Dorman, President of the Delaware Brain Injury Association, presented information regarding BIAD to commission members. The association's mission includes: prevention, research, education and advocacy.

In Delaware, the elderly population is at risk of brain injury due to falls, and injuries-TBI (Traumatic Brain Injury) related.

Due to a wide range of ages that are affected by brain injury, not all individuals are able to be cared for in a nursing home setting.

There are many factors to consider when assisting brain injured individuals. If the person is young when the injury occurs they might need many years of care. The person might only need short term care such as rehabilitation services. The person then might be able to return to their family.

Ms. Dorman stated that it does not matter what the cause of the injury was or how severe-that no two people come out of a brain injury alike. Some individuals need longer term care while others need support services. There are also those that walk out of a hospital or rehabilitation center and can return to their lives with a fair degree of normalcy (limited deficits).

Peach Tree Acres, located in Harbeson, is an 18 bed facility for individuals with brain injuries. The facility has a long wait list. Residents of Peach Tree Acres participate in the ABI Waiver which includes: Case Management, Assisted Living, Adult Day Services, Day Rehabilitation, Cognitive Services, Person Care Services, Respite Services and Personal Emergency Response Systems.

Brain Injury Waiver issues include: tight eligibility requirements, limited participant slots, not enough providers and is not well publicized.

Major barriers for Delaware brain injured survivors: lack of post-acute& sub-acute inpatient rehabilitation facilities, lack of long term brain injury assisted living facilities, no assistance for young to middle aged adults, difficulty with Medicaid/Medicare eligibility, and lack of local behavioral rehabilitation facilities.

A federal TBI Implementation grant offered previously permitted 44 states to compete that was limited to 13 states in 2009. Delaware ranked 15th on the list and therefore will not be receiving any grants in 2009 to defray costs associated with the program.

HIPAA has limited BIAD from setting up a TBI Registry to obtain statistical data. The association feels it necessary to collect statistical data and present their findings to support the need for more brain injury services in Delaware.

ADULT PROTECTIVE SERVICES

Pamela Williams, Administrator for Adult Protection Services, presented to the commission about their program through the Division of Services for Aging and Adults with Physical Disabilities.

Elder abuse is a serious under-reported crime in our country and Delaware. In the past 5 years the number of elder abuse cases has increased. The phone number to call to report elder abuse is (800)223-9074.

The mission of the APS program is to ensure the safety and well-being for Delaware Senior's and adults with physical disabilities.

The unit of 11 has an administrator, 2 Supervisors, and 8 case manager positions for all 3 Delaware counties- of which, 3 case manager positions are

vacant. The case managers investigate allegations of abuse, neglect and financial exploitation of adults in the community.

Of elder abuse cases, 1 in 14 will be reported and most commonly referred by: 1) a hospital or a doctor's office, 2) home health aide, and 3) family member.

95% of adult abuse occurs in the community, of which, 60% of allegations stem from abuse by a family members such as son, daughter, grandchild or spouse.

Two-third of Adult Protect Service cases are resolved with adding services within the community like setting up: food, transportation, or home healthcare aides.

Approximately 5-10% of the clients referred to APS need to enter assisted living or a nursing home.

The majority of APS cases are Self Neglect cases - individuals living alone and needing service assistance because of their ADL's. In these cases APS contacts agencies in the community to assist the individuals.

Adult Protective Services is challenged in regards to: community resources, funding, housing or emergency shelter, training/education. It was stated that elder abuse is far behind in offering seniors service compared to what is available to protect children.

The Elder Justice Act was reintroduced in April 2008 to help provide more money to all adult protective services in the United States and other agencies that work with senior population.. Additional funding would help with providing more services and staff as well as an emergency shelter.

The APS Unit does not have staff available after 4:30 PM, so if there is an emergency, 911 should be called. The police will follow up with APS the next business day.

Adult Protective Services works with the Senior Protection Unit within the Attorney

General's Office with respect to Financial Exploitation cases. APS and the Senior Protection Unit will go to investigate cases together.

A Mandatory training for first responder's regarding elder abuse was held April 1st & 2nd 2009 in New Castle County.

DNHRQAC wrote to DHSS Secretary Landgraf recommending that the 3 APS vacancies be filled so the unit did not have to utilize social workers in other departments within their agency to help with their case load. The commission also recommended that APS case workers be considered essential personnel.

A phone call regarding physical abuse or extreme neglect must be investigated within 24 hours and has been a challenge due to APS being under-staffed.

Ms. Williams stated that the lack of housing for seniors in emergency and crisis situations is one of the biggest concerns for Adult Protective Services and feels that awareness regarding this need is essential.

BOARD OF PHARMACY

David W. Dryden, R. Ph., J.D. and James L. Kaminski, R. Ph. from the Board of Pharmacy, Office of Controlled Substances presented to the Commission. The Board of Pharmacy is a regulatory board involved in inspection, investigation and licensing for oversight in dispensing, prescribing and storing medication.

The Board of Pharmacy/Office of Controlled Substances regulates and inspects facilities and practitioners who prescribe, dispense and store drugs.

Board of Pharmacy regulations are located at: www.dpr.delaware.gov . The board is reviewing and updating several pharmaceutical regulations. The regulatory changes will affect: 1, 5, 11, 15, 18, 20, and 21.

Consultant pharmacists are required to perform monthly resident chart reviews in nursing homes. If any irregularities are noted, the pharmacist must document and send a copy to the nursing home administrator and Director of Nursing.

The Board of Pharmacy oversees the drug distribution system in nursing homes. Regulation 11 was written mainly for consultant pharmacists to develop policies and procedures specific to drug storage, distribution, drug recalls, etc.

The Board of Pharmacy, along with other healthcare entities, has been requested through a law by the General Assembly to review prescription pad changes that could assist with diversion issues. The Board suggests including safeguards mandated for Medicaid prescription pads for all Delaware prescription pads. A further recommendation included adding a numbering system to the prescription pads, similar to a checking account.

In addition, the Prescription Monitoring System is being utilized in 38 states where pharmacists enter data into a centralized computer base. It allows a 100% analysis of prescriptions. Presently, pharmacists rely on other pharmacists' accuracy in recalling what was prescribed and yields 30-40% return. PMS would permit a doctor to access all medication prescribed for a particular resident which is not currently available for Delaware residents.

The Board of Pharmacy does not want to see mini pharmacies forming in nursing homes so it proposed recent regulatory changes regarding emergency medications:

- A. Automation-Previous Board of Pharmacy Rules and Regulations stated restocking was to be performed by pharmacists only. The proposed change would allow nurses and other healthcare professionals to have access.

B. Quantities- Facilities can have 60 different oral dose mediations (without board review) and unlimited inject-able medications for true emergencies. To stock more than 60 different oral medications required board review.

III. JOINT SUNSET COMMITTEE

The Commission oversees that the Joint Sunset Committee's recommendations made for the Division of Long Term Care Residents' Protection are reviewed as follows:

- ✓ The Division of Long Term Care Residents' Protection established a Quality Assurance Review Team (QAR Team) that reviews deficiency reports quarterly. The QAR Team provides a written quarterly report to the Commission regarding any upgrades to "G" level or above and downgrades to "G" level or below by the QAR Team, setting forth the number of such downgrades and upgrades at each facility and the reason for each. Quarterly reports are submitted to the Commission on the 15th of every September, December, March and June.
- ✓ A Medical Director was added to the QAR Team who reviews medical records, advises the Division on medical issues, testifies on the Division's behalf at Informal Dispute Resolution hearings, and participates in the QAR Team.
- ✓ The Division of Long Term Care Residents' Protection submits a written quarterly report to the Delaware Nursing Home Residents Quality Assurance Commission identifying a nursing home's noncompliance with staffing ratios by shift under Eagle's Law (16 Del. C. §1162).
- ✓ The Division of Long Term Care Residents' Protection recently updated and amended, pursuant to the Administrative Procedures Act, all Regulations that had not been amended since the 1990's. (Skilled Nursing Facility, Adopted 7/1/56, Amended 5/15/90; Intermediate Care Facility, Adopted 7/1/56, Amended 10/13/94; Rest Family Care Homes, Adopted 7/1/56, Amended 3/4/93; Rest Residential Homes, Adopted 7/1/56, Amended 5/15/90.). Public hearings were held in the first quarter of FY 09 to address the proposed updates and amendments.

V. LEGISLATION AND REGULATION REVIEW

Regulations

The Commission is required to review regulations and legislation effecting long-term care residents in the State of Delaware. The following regulations were presented to the Commission for review and comment:

Title 16 § 3201 Skilled and Intermediate Care Nursing Facilities became effective January 2009.

Legislation

House Bill #159- This bill requires the Department of Health and Social Services to adopt regulations that require at least one hour of training annually for certified, licensed, or registered healthcare providers, as well as for healthcare providers who are partially or fully funded by the State, who provide services to persons diagnosed as having Alzheimer's disease or other forms of dementia, or with mental illness.

* HB # 159 was sent to Senate Finance Committee on 6/19/09.

House Concurrent Resolution #10- Declaring May 14, 2009 as Direct Support Professionals Day in Delaware.

* HCR # 10 was passed in the Senate on 5/13/09.

House Concurrent Resolution #16-This concurrent resolution designates May 2009 as "Older Americans Month" and urges us to honor older adults and the professionals, family members, and citizens who care for them, and to improve the lives of older adults.

- HCR # 16 was passed in the Senate on 5/13/09.

House Resolution # 28- This Resolution creates a pilot program to provide cell phones with limited service to twenty-five (25) individuals who rely on DART Para Transit services and who are at risk of adverse health and emotional outcomes in the event of delayed or missed service appointments. Cell phone service will be limited to dialing DART Reservations and 911 in the event of an emergency.

- HR # 28 was passed in the House on 6/16/09.

Senate Concurrent Resolution # 15-This Resolution recognizes the week of June 11th through June 18th, 2009 as National Network of Career Nursing Assistants Week and June 11th, 2009 as Career Nursing Assistants' Day.

- SCR #15 was passed in the House on 5/13/09.

Senate Concurrent Resolution # 22- This Senate Concurrent Resolution strongly encourages all Delaware hospitals and healthcare facilities within the State of Delaware to adopt the national color standards for patient alert wristbands if they have not already done so.

- SCR # 22 was passed in the Senate on 6/23/09

House Bill # 165-This act permits the Department of Health and Social Services to provide 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.

* HB # 165 was signed 6/30/09

House Bill # 112 w/HA 1- This Bill allows each competent adult patient to receive visits in a Hospital or Nursing Facility from whomever the patient or resident desires, subject to restrictions set forth in the Bill. In addition, this Bill ensures that hospitals and other healthcare facilities defined in the Bill can maintain a safe environment by restricting visitations by those who pose a threat to patients and/or staff, or could interfere with patient care or the right of other patients to enjoy a non-disruptive environment.

In addition, this Bill requires the Hospital or Nursing Facility to honor advance health-care directives and any similar documents, subject to limitations set forth in the Bill. Furthermore, the Bill clarifies that hospital visitation rights created by this section do not supplant rights otherwise conferred by law. It also eliminates any inconsistency with existing visitation rights in licensed long-term care facilities while explicitly requiring adherence to advance health care directives and powers of attorney.

* HB #112 w/HA 1 was signed on 6/18/09.

Senate Bill # 44- This Bill amends Delaware's Health Record Privacy Statute to allow protected health information to be released for specific health research purposes while still adhering to federal HIPAA regulations.

*SB # 44 is out of committee on 4/1/09.

House Bill #6- This Bill requires the Secretary of the Department of Health and Social Services to implement a mandatory dress code for all Department employees working at the Delaware Psychiatric Center (DPC) within one year of the date of enactment of this Bill, subject to funding by the Legislature. The intent of this Bill is to

help delineate employees of the DPC from patients thereof with the purpose of increasing visibility of such employees.

*HB #6 entered House Health & Human Development Committee on 03/10/2009.

House Bill #69- This Bill establishes a career training program for direct care staff providing long-term care services to enhance consumer care and satisfaction with improved employee training and retention. This Bill is modeled after a similar act in Pennsylvania.

* HB # 69 was stricken on 6/9/09.

House Bill #75- This Bill allows each competent adult patient to receive visits in a Hospital, nursing home or nursing facility from any individual from whom the patient desires to receive visits, subject to certain restrictions set forth in a visitation policy related to the patient's medical condition, the number of visitors simultaneously permitted in a patient's room, and visitation hours and/or order of a Court. In addition, this Bill requires the Hospital, nursing home or facility to honor advance health-care directives and any similar documents, subject to certain limitations set forth in the Bill.

* HB # 75 was stricken on 4/2/09.

House Bill #34- This Bill creates a committee to assess deaths of individuals receiving residential mental health services through the Division of Substance Abuse and Mental Health or funded private providers. The purpose of the Committee is to assess causation; promote improvements in policies, practices, and the service delivery system; and reduce prospects for preventable deaths.

* HB # 34 was stricken on 6/9/09.

House Bill #36- This Bill clarifies the role of the Community Legal Aid Society, Inc. (CLASI), designated for the past 30 years as Delaware's Protection and Advocacy Agency pursuant to federal law, in protecting patients and residents in nursing and similar facilities. As a complement to the existing protective system operated by the Department of Health and Social Services, CLASI is authorized to solicit and investigate reports of abuse, neglect, mistreatment and financial exploitation in covered facilities. Finally, the Bill deters interference and retaliation against persons cooperating with such investigations.

* HB # 36 was signed 8/24/09

House Bill #37- This Bill adds various protections to the Mental Health Patients' Bill of Rights Act, including safeguards in administration of restraint and requirement of an enhanced patient grievance system for DPC patients.

* HB #37 was sent to Senate Executive Committee on 6/29/09.

House Bill #38- This Bill requires mental hospitals and residential centers covered by the Mental Health Patients' Bill of Rights Act to report deaths and critical incidents to the State Protection & Advocacy Agency which is authorized by federal law to investigate such occurrences.

* HB # 38 was signed 8/24/09

House Bill# 39- Currently statutory anti-retaliation and protective provisions for patients and others only apply to licensed long-term care (LTC) facilities. Only part of the Delaware Psychiatric Center (DPC) is a licensed LTC facility. This Bill, to protect all patients and employees at DPC, applies such protections to all the DPC facilities.

* HB #39 was signed 8/24/09

House Bill # 41- As the State mental health delivery system evolves from a primarily institutional to a community-based model, it is important to define minimum patient rights in community facilities. This Act establishes a community mental health treatment act with rights paralleling those of patients in the substance abuse treatment system compiled in Chapter 22 of Title 16 of the Delaware Code.

* HB #41 was sent to House Health & Human Development Committee on 01/14/2009.

House Bill #42- This Act creates the Delaware Psychiatric Center Authority and removes the Center from the purview of the Department of Health and Social Services.

* HB #42 was sent to House Health & Human Development Committee on 01/14/2009.

V. COMMISSION STAFFING

The Delaware Nursing Home Residents Quality Assurance Commission members hired a full-time Administrative staff person as of January 31, 2007. The Administrative Office of the Courts funds the salary and budget of this position. The person reports to the Commission and works closely with State Agencies to aid in the quality of care for residents in licensed State and Private Nursing Homes and Assisted Living Facilities.

VIII. NURSING HOME AND ASSISTED LIVING FACILITY VISITS

Members of Delaware Nursing Home Residents Quality Assurance Commission and staff visited 62 nursing homes and assisted living facilities. There were also 7 visits to Hospice providers. The purpose of the visits was to promote an atmosphere of information sharing so that the Commissioners would be able to fulfill their responsibility to monitor the effectiveness of the quality assurance system in the State of Delaware. Commissioners interacted with facility administrators, staff, residents and families.

IX. COMMISSION GOALS

The Commission has set the following goals for its work in the coming months:

- Foster and promote abuse/fraud investigation training for law enforcement agencies statewide.
- Continue to review agency performance and coordination.
- Continue to review and comment on regulations proposed concerning long term care.
- Focus on assisted living by reviewing what other states are doing to ensure quality of care and provide recommendations to the Governor and Members of the General Assembly.
- Foster and promote collaborative initiatives that will reduce high turnover of nursing home staff and help recruit qualified nurses to long term care.

- Monitor and if needed recommend enhanced enforcement of Eagle's Law so as to ensure minimum staffing level compliance.
- Enhance outreach to consumers of long-term care to increase Commission profile so as to ensure the Commission is called upon to review problems and deficiencies in long term care.
- Address quality of life issues for nursing home residents including end-of-life and hospice care services.
- Identify "Gaps" in services available for aiding in the care for the elderly and disabled.
- Provide access to National Crime Information Center (NCIC) database to DLTCRP investigators.
- Monitor "length of stays" for nursing facility residents in hospitals.
- Monitor results and request updates from the Quality Improvement Initiative Study.
- Review educational programs such as Certified Nursing Assistance (CNA) and make educational recommendations to enhance the programs.
- Focus on State employee recruitment and retention challenges to aid in the quality of care for residents.

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