

DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

ANNUAL REPORT 2006

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DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

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Additional copies of the report are available from the Commission at 3000 Newport Gap Pike Suite 400, Wilmington, Delaware 19808 or by visiting: <http://courts.delaware.gov/AOC/?dnhrqac.htm>. The Commission's phone number is (302) 995-8400 x 8408.

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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 enforcement actions taken or not taken on a statewide basis. While the Commission does not conduct investigations or initiate enforcement, the Commission's focus is on ensuring that complaints are investigated in a timely manner and enforcement action is taken where appropriate.

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 2006 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 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, 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 Service 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:

- 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.

- **DIVISION OF MEDICAID & MEDICAL ASSISTANCE (DMMA)**

Pamela Tyranski, Deputy Director of the Division of Medicaid & Medical Assistance, DHSS; spoke about the role DMMA has taken to increase the frequency of Reimbursement Reviews in the Nursing Homes. As a result of these changes DMMA nurses will visit 3 times a year with present staffing. The Commission wrote a letter to the Joint Sunset Committee recommending increased staffing for the Medicaid Program to enable more reviews per year.

- **DIVISION OF LONG TERM CARE RESIDENT PROTECTION (DLTCRP)**

Tom Murray, Deputy Director DLTCRP, spoke about staffing and other matters related to long term care. Discussion included:

- Nursing staff vacancies continue to be an obstacle in the Division of Long Term Care. If the Division was more fully staffed, it could respond more quickly to allegations.
- The commission members agreed to recommend to the Legislature that salaries should be increased for nurse vacancies and currently employed nurses.
- DLTCRPs Quarterly Assurance Review Team provided the Commission with reports showing whether there were any upgraded or downgraded "G" level deficiencies.

- **CENTERS FOR MEDICARE/MEDICAID SERVICES (CMS) QUALITY INITIATIVE PROGRAM**

Nursing Homes for Quality Insights of Delaware's Project Coordinator, Mary Rodger, provided information on how Quality Insights of Delaware has contracted with CMS to bring quality improvement programs to every health care provider in Delaware. She further mentioned that although adequate staffing levels are essential, so is workforce retention and increased documentation at the medical record, surveyor and nursing administrator levels.

III. JOINT SUNSET COMMITTEE

The commission reviewed the Joint Sunset Committee's recommendations for the Division of Long Term Care Residents' Protection which include:

- ✓ Effective immediately, the Division of Long Term Care Residents' Protection shall maintain full compliance with CMS regulations and appendices regarding nursing home surveys as contained in 42 CFR 483.1 to 483.480 and 488.1 to 488.456.
- ✓ The Division shall follow the CMS regulations and appendices regarding nursing home surveys.
- ✓ No later than June 15, 2006, the Division of Long Term Care Residents' Protection shall establish a Quality Assurance Review Team (QAR Team).
- ✓ The QAR Team shall consist of:
 - The Director of the Division
 - The Deputy Director of the Division
 - The Medical Director of the Division
 - The Quality Assurance Administrator of the Division
 - The Health Facilities Certification Administrator of the Division
- ✓ The QART Team was established and reviews the deficiency reports quarterly.
- ✓ No later than July 1, 2006, the Division of Long Term Care Residents' Protection shall retain the services of a licensed physician to perform the duties of Medical Director, which shall include but not be limited to reviewing medical records, advising the Division on medical issues, testifying on the Division's behalf at Informal Dispute Resolution hearings, and participating in the QAR Team.
- ✓ A Medical Director is a member of the QART Team.
- ✓ No later than July 15, 2006, all nursing home survey reports, whether generated as a result of annual, complaint, and/or surprise inspections, which recommend a nursing, pharmaceutical, nutritional, and/or environmental citation at "G" level or above shall be reviewed and approved by the QAR team within 5 working days of receipt of such report containing a "G" level or above citation. The Team shall review each such citation for application of the appropriate regulations, for accuracy of data, for adequacy of supporting documentation, and for consistent adherence to CMS regulations. A written quarterly report shall be made to the

Nursing Home Quality Assurance 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 reasons for each. The report shall not identify facilities by name. The first such report shall be submitted no later than June 15, 2006. Subsequent quarterly reports shall be submitted on the 15th of every September, December, March and June.

- ✓ The DLTCRP provides the Commission with a quarterly report.
- ✓ Obtain the resident’s/patient’s informed consent to allow the JSC to have access to patient/resident information that is discussed by the family/resident/guardian in a public forum.
- ✓ With regard to future requests for information, require that the Deputy Attorney General provide guidance as to what information to redact AND review the information that has actually been redacted.
- ✓ Clarify the process within the Division of Long Term Care Residents’ Protection as to how administratively a Survey Report is finalized, and specifically how the survey report is finalized following an Informal Dispute Resolution process.
- ✓ Formalize in writing the process of the Informal Dispute Resolution Process, and the authority of the Division of Long Term Care Residents’ Protection to upgrade or downgrade any finding in a survey report. In that regard, make it clear that the survey is either binding (and conclusive as to the matters therein) upon issuance by the Nurse surveyor/survey team, or that it is binding (and conclusive as to the matters therein) only upon the issuance of the final survey report by the Division of Long Term Care Residents’ Protection. Further, make it clear that the Division of Long Term Care Residents’ Protection has the right to resurvey, or not to resurvey, with respect to the initial Nurse surveyor/survey team report in connection with the Informal Dispute Resolution process.
- ✓ Consider amending the informal dispute resolution process to require that the Ombudsman be included on behalf of the resident/patient, (b) the family of the resident/patient, and/or (c) the guardian or other representative of the resident/patient.
- ✓ Mandate that a nursing home cited for violations must provide a thorough Plan of Care (PoC) to address those violations cited in the final survey. The PoC must address each violation(s) and include specific details of how the PoC will be followed up and/or implemented by the facility and the Division.
- ✓ Mandate that the Division of Long Term Care Residents’ Protection submit a written quarterly report to the Nursing Home Quality Assurance

Commission identifying a nursing home's noncompliance with staffing ratios by shift under Eagle's Law (16 Del. C. §1162). The first quarterly report shall be submitted to the Nursing Home Quality Assurance Commission by September 20, 2006. Subsequent quarterly reports shall be submitted to the Nursing Home Quality Assurance Commission 10 days prior to the end of a quarter.

- ✓ DLTCRP provides the Commission with a quarterly staffing report.
- ✓ Recommend that the Division of Long Term Care Residents' Protection update and amend, pursuant to the Administrative Procedures Act, all Regulations that have 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.) Provide written quarterly report to the Nursing Home Quality Assurance Commission. The first quarterly report shall be submitted to the Nursing Home Quality Assurance Commission by September 20, 2006. Subsequent quarterly reports shall be submitted to the Nursing Home Quality Assurance Commission 10 days prior to the end of a quarter. DLTCRP is currently working on the updates.

The Joint Sunset Committee recommends the following statutory changes:

- ✓ The Patients' Bill of Rights includes protection against involuntary resident discharges except for specified reasons and requires that residents be provided the opportunity for a discharge hearing. However, the statute contains ambiguous language which results in residents being transferred from a nursing facility to an acute care facility and then refused the right to return to a nursing facility when their condition no longer requires acute care. Amend the Patients' Bill Of Right by remove this ambiguity to clarify that residents remain the responsibility of the nursing facility, and the facility must permit residents to return to the nursing facility at least until another appropriate placement can be located.
- ✓ Some narrowly worded authority to allow the Division of Long Term Care Residents' Protection to obtain the records of an individual admitted to a hospital from a facility licensed by the Division of Long Term Care Residents' Protection. This comment was made in the March 15 hearing. It was suggested that this would help to improve the quality and hasten the completion of some of the Division's investigations and surveys.
- ✓ Provide the Division of Long Term Care Residents' Protection with the authority to revoke a Delaware CAN certificate for cause. For example the certificate revocation by another state of a Delaware CAN who is also

certified elsewhere or when there is evidence that a Delaware CNA certificate was obtained using falsified information.

The Joint Sunset Committee recommends the following action by the Joint Finance Committee:

- Consider funding additional positions for the Division of Long Term Care Residents' Protection and increasing annual salaries to aggressively recruit and fill vacant positions, including five nurse surveyor positions that are vacant.
- Consider creating/funding additional quality assurance personnel positions for the Division of Long Term Care Residents' Protection.

The Joint Sunset Committee recommends the following action by the Department of Health and Social Services:

- No later than September 15, 2006, the Department of Health and Social Services shall reclassify a vacant position to a Nurse Supervisor for the Division of Long Term Care Residents' Protection, to provide nurse supervision for the Division's Wilmington office.

IV. LEGISLATION AND REGULATION REVIEW

Regulations

The Commission is required to review regulations and legislation effecting long-term care residents in the State of Delaware. DLTCRP submitted the following regulations for the Commission's review and comment.

Legislation

- SB 8 w/SA 1- This Joint Resolution extends the period of time that the Division of Public Health has to promulgate regulations as required by HB 507 of the 141st General Assembly. The Commission reviewed the legislation and provided comments to the General Assembly.
- SB-318 w/SA 1 – This bill is intended to prevent a nursing facility from transferring an individual to an acute care facility and then refusing to accept the individual back as a resident. Section 2 of this bill is intended to grant the Division of Long Term Care Residents Protection the authority to revoke the certificate of a certified nursing assistant. Sections 3, 4, and 5 are designed to give the Division limited authority to

obtain the hospital records of a resident of a nursing facility in cases where the resident's care and treatment at the facility is under investigation or review by the Division. The Commission reviewed the legislation and provided comments to the General Assembly.

- SB 190- This Act known as the Personal Assistance Services Agency Act, establishes a system through which the minimum standards of consumer protection, abuse reporting and service evaluation are adopted and enforced by persons; assistance service agencies and the DHSS Division of Public Health. As with residential agencies, this Act requires that each care giver is subjected to a criminal history record investigation and that the terms, scope and duration of service are documented by the agency. Services are provided pursuant to Service Plan, which must be reviewed and revised, as necessary, to protect consumers and to ensure compliance with state and agency standards for consumer protection and choice. The Commission reviewed the legislation and provided comments to the General Assembly.
- HB 261 w/HA 1 – This Act allows the Delaware Department of Health and Social Services, the Health Care Commission or any contractor working on behalf of these entities access to certain data for compiling statistics regarding supply and demand, and projections of licensed health care professionals. The Act also requires the Delaware Department of Health and Social Services and the Delaware Health Care Commission provide their subsequent report to the Division of Professional Regulation. This legislation requires submission of requested information in electronic format and requires information collected only to be used for purposes for which the data is furnished. Finally, this legislation limits use of individual confidential data and provides penalties to intentional violations of those limits. The Commission reviewed the legislation and provided comments to the General Assembly.
- HB 355- This Act will ensure that eligible persons may receive services from the Division of Services for Aging and Adults with Physical Disabilities even when those persons are receiving primary case management services from another State agency. The commission reviewed the legislation and provided comments to the General Assembly.
- HB 412- This bill amends the Delaware Statue to allow open sympathetic and compassionate communication between health care providers, patients and their families. The Commission reviewed the legislation and provided comments to the General Assembly.
- HB 498- This Bill requires criminal background checks for applicants seeking licensure as registered and licensed practical nurses in the State of Delaware. The Commission reviewed the legislation and provided comments to the General Assembly.
- Senate Concurrent Resolution 40- This resolution recognizes the week of June 15th through June 22nd, 2006 as Career Nursing Assistants' Day.

V. COMMISSION STAFFING

The Delaware Nursing Home Residents Quality Assurance Commission members participated in the recruitment process of hiring a full-time Administrative staff person. The Commission reviewed potential candidate resumes and applications. There were many interviews conducted and several job classifications were pursued. The Administrative Office of the Courts will fund the salary and budget of this position. The administrative position is expected to be filled in January 2007.

VI. CULTURE CHANGE

“Culture Change” in long-term care (including nursing and assisted living facilities, adult day care, and in-home care) is an ongoing transformation based on person-directed values that restore control to elders, other individuals with special needs, their families, and those who work closest to them. This transformation includes changing core values, choices about the organization of time and space, relationships, language rules, objects used in everyday life, rituals, contact with nature and the community (internal and external) and resource allocation. Within long-term care this change is generally conceived as a change from the “traditional medical model” with its emphasis on medical diagnoses and care to a model that recognizes, equality with medical needs, the residents social, emotional, and psychological needs. (Sources: Pioneer Network and PEAK)

Respect for the rights of the individual is a key component in honoring the person-directed values that are behind the “Culture Change” Initiative. The Delaware Nursing Home Residents Quality Assurance Commission is committed to supporting culture change by encouraging facilities to become less task oriented and more focused

on the resident's life and usual routine, not on meeting the facilities' time schedules. The Commission supports a model where the facility encourages respect of residents by staff and a greater connection to the community, thereby creating a "home" environment for the residents.

The Commission believes that the most important aspect of culture change is moving all care delivery to a resident-centered decision making process. Culture change is a philosophy cultivated within a facility based on the desires and needs of the residents, their families and the facility staff. All levels of management must adopt person centered care concepts and philosophy. Staff members must be included and orientation, daily coaching and repetitive educational sessions will aid in the success of the ongoing culture change process.

VII. NURSING HOME AND ASSISTED LIVING FACILITY VISITS

Members of Delaware Nursing Home Residents Quality Assurance Commission visited 20 nursing home and assisted living facilities. 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.

VIII. COMMISSION GOALS

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

- Hire administrative staff for the Commission.
- 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 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.
- Monitor response times for hotline numbers to ensure timely and adequate response.
- 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.