

# **DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION**

## **ANNUAL REPORT January 2007- June 08**

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# DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

## Members of the Commission

Thomas P. McGonigle, Esq., Chairman

Patricia C. Engelhardt, RN, MS

Karen E. Gallagher

Vicki L. Givens, RN, BS, NHA

The Honorable Representative Pamela S. Maier

The Honorable Senator Robert I. Marshall

M/Sgt. Walter E. Ferris

Wayne A. Smith

Joseph G. DiPinto

NHA Yrene E. Waldron

Brian L. Posey

Dr. McKinley Wardlaw, Jr.

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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 2007-08 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 by-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;
- investigates 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 as to:
  - o Raising awareness and encouraging/promoting enrollment
  - o Acting as the communications relay point for campaign at the local level
  - o Coordinating provision of technical assistance for the intervention.
- Nursing Home Law training day in Dover, DE
- Residents Rights Rally in Dover, DE. - Presented at the Director of Nursing Workshop.

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

Harry Hill, Director of the Division of Medicaid & Medical Assistance, DHSS; spoke about the role DMMA has taken this past year. DMMA was created three years ago by the Cabinet Secretary and Legislature. The Division's mission is to improve health outcomes by assuring that the highest quality medical services are provided to the vulnerable populations of Delaware in the most cost effective manner.

DMMA's nursing review team enters each facility 3 times a year to review residents that are receiving Medicaid or Medicare services.

DMMA provides service to 160,000 Delawareans through the following programs: Medicaid, Delaware Healthy Children(CHIP), Delaware Prescription, Chronic Renal Disease and the Non-Citizen's Health Care.

Program Integrity was developed as a result of the Medicaid Fraud Control Unit working closely to monitor financial activity for the Division. The unit reviews

anyone (doctors, suppliers, pharmacists) that uses Medicaid dollars to assure there isn't any fraudulent activity.

The Medicaid program offers comprehensive health insurance coverage to low income individuals to include: pharmacy, physician care, inpatient/outpatient services, lab work, x-ray, durable medical equipment, therapies, and home health services.

The Division will be offering three new programs for the disabled: Acquired Brain Injury, Money Follows the Person and Medicaid Buy-In. All should be up and running the end of FY 08.

### **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:

- DLTCRPs Quarterly Assurance Review Team provided the Commission with reports showing whether there were any upgraded or downgraded "G" level deficiencies.
- DLTCRP provided the Commission quarterly Staffing Reports.
- DLTCRP provided the Commission with Investigative Section Activity for calendar year 2007. A further breakdown of the 2,990 cases assigned for investigation was produced. Of the 2,990 cases assigned, 1,346 were substantiated. The average number of days to complete an investigation was 43.
- DLTCRP also sponsors a Director of Nursing mandatory three day workshop for all new DON's.
- The Division has been reviewing and revising the LTC regulations at the request of the Joint Sunset Committee. The draft proposed recommendations will be open for public comment during the first quarter of 2009 fiscal year.

**QUALITY INSIGHTS/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.

Quality Insights of Delaware has sponsored several educational webinar and teleconference calls regarding quality of care issues to State and Private LTC and Assisted Living Facilities in Delaware.

Quality Insights of Delaware presented to the Commission long term care internet information that other States offer to a consumer seeking a facility for a loved one. As a result, the Commission created a website sub-committee and submitted recommendations to the Secretary of DHSS to improve Delaware's website.

**HOSPICE (DIVISION OF PUBLIC HEALTH)**

Mary Peterson, Director for the Office of Health Facilities Licensing and Certification which is responsible for regulatory oversight of acute and outpatient care in the State, provided the Commission with information regarding Hospice Services provided to residents in State and Private Nursing Homes and Assisted Living Facilities throughout Delaware. There are eight hospice providers in Delaware and of that number, two providers offer in house services. 40% of

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

### **DELAWARE HEALTH CARE COMMISSION**

Paula Roy, Executive Director for Delaware Health Care Commission spoke to the Commission about Health Professional Workforce Development and the Delaware Health Education Pipeline. Ms. Roy stated that there is a health care worker shortage, not just limited to nursing professionals. In addition, there are fewer college faculty members available to prepare future health care professionals. In addition, physicians have expressed an increased desire for a balanced life style, quite different from years past.

Further, Ms. Roy offered that the Masters and Doctorate programs available for Delaware nursing students are very slim. There is also concern about having adequate faculty available to teach future nurses at these educational levels.

In addition, Ms. Roy mentioned that the largest area effecting nursing retention is the fact that 27% of new graduates change jobs within the first year.

2006 survey results were provided to the Commission regarding job satisfaction.

The report showed that nurses feel overworked, under appreciated, under paid, prepare too much paper work, and feel an unsafe ratio of nurses/patient.

Ms. Roy offered that the Delaware Health Care Commission is working to produce an Allied Health Care Professional survey that is expected out spring 2008.

## UNIVERSITY OF DELAWARE NURSING PROGRAM

Dean Betty Paulanka discussed Healthcare Workforce Initiatives with Commission members. National and Delaware specific nursing work force data was presented to the Commission on long term care reporting a 20% vacancy rate that will increase to 44% by 2020. It takes approximately 60 days to hire and fill a nursing position.

The average age of new student graduates continues to increase. 1985, the average age was 24 years. In 1995, average age was 29 years. Presently the average age of new student graduates is 31.6 years.

The Federal Title 8 Workforce Development Fund was reduced by 30%.

Delaware and Maryland have provided some educational funding to aid the educational reduction. Most States funding strategies are based on increasing student capacity, increasing faculty, and promoting retention in the nursing profession.

Dean Paulanka emphasizes that the Commission should closely monitor quality of care and how the nursing shortage will impact it. In addition, she recommends that national workforce planning data should be gathered and accessed often, Institutional economic and environmental changes regarding work climate should be constantly reviewed, and stronger educational partnerships should be established.

### **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 15<sup>th</sup> 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 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 Division of Long Term Care Residents' Protection is in the process of updating and amending, 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.). Public hearings will be held during the first quarter of FY 09 to address the updates and amendments.

### **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. The following regulations were presented to the Commission for review and comment:

## Legislation

Senate Bill # 94 w/SA 1- This Act implements the recommendations for the Board of Examiners of Nursing Home Administrators made by the Joint Sunset Committee during its 1998 review of the Board. The entire Chapter has been rewritten and reorganized and necessary modifications have been made to Title 16 to reference the provisions of this Act within the provisions governing Nursing Facilities in general. This Act modifies the definition of “nursing home” as it is used in House Bill No. 259, bringing it in line with other definitions used in the Code while specifically excluding “community group home” from the definition. This Act also clarifies the provisions of House Bill No. 259 governing temporary licensure as an acting nursing home administrator and the registration of nursing home administrators-in-training. This Act also eliminates an unnecessary provision of House Bill No. 259 that staggered the terms of office of members of the Board of Examiners of Nursing Home Administrators as these terms are already staggered. Most provisions of this Act become effective immediately, however, the provisions of this Act governing temporary licensure, preceptors, and nursing home administrators-in-training become effective 6 months following its enactment into law, and the provisions governing original and renewal licensure become effective 6 months following its enactment into law. These provisions are delayed in order to allow the Board sufficient time to promulgate the regulations necessary to implement the many changes this Act requires and to give the regulated community time to become fully informed of the effect these changes will have on their license and activities.

\* Senate Bill # 94 w/SA 1 was passed and signed on 7/5/08.

Senate Bill 175- This Bill includes revisions to Eagles Law, and provides appropriate regulations, steps, and tiers regarding the number of nursing home direct care workers that are necessary to provide appropriate nursing care. The amount of care required is directly commensurate to each resident's medically determined acuity level. This bill also provides civil remedies for non-knowing violations, and criminal remedies for knowing violations.

\* Senate Bill 175 was not acted upon during the 144<sup>th</sup> General Assembly.

Senate Bill 227- This bill creates a program for local, regional, and statewide notification of a missing senior citizen, missing suicidal person, or a missing person with a disability. The bill defines a missing senior citizen as person who is over 60 years of age, whose domicile is in Delaware at the time that he or she is reported missing, whose whereabouts are unknown, and whose disappearance poses a credible threat to the health or safety of the person. The bill further defines a missing person with a disability as a person who has a disability, whose domicile is in Delaware at the time that he or she is reported missing, whose whereabouts are unknown, and whose disappearance poses a credible threat to

the health or safety of the person. The bill further defines a missing suicidal person as a person whose disappearance is voluntary, whose whereabouts are unknown, whose domicile at the time that he or she is reported missing is Delaware, and whose actions, statements, or conduct indicate that he or she may cause or inflict harm upon himself or herself. The bill expands the communications network area to provide greater assistance to investigating law enforcement agencies in their searches for missing persons. This program is similar to the Amber Alert for abducted and missing children.

Senate Bill 227 was signed on 6/17/08.

SCR 24- This bill recommends a Task force to consider the need for adjustments to and/or revisions of Eagle's Law, enacted in 2000 to establish minimum staffing levels for residential health care facilities.

\* Senate Concurrent Resolution 24 was not acted upon during 144<sup>th</sup> General Assembly.

HB 361- This Bill removes the Sunset provision of the previous version of § 3000A, allowing licensed practical nurses, under the supervision of registered nurse instructors, to instruct students during the clinical phase of certified nursing assistant training programs.

\* House Bill 361 passed both chambers and was signed by the Governor 7/3/08.

HB 381- This Act enables an agent, surrogate or guardian of the person to have full authority and standing under the Health Insurance Portability and Accountability Act ("HIPAA"), its regulations and standards, to act as the personal representative under HIPAA, even if the advance health-care directive, surrogate confirmation or guardianship order does not so expressly provide. For example, the agent, surrogate or guardian of the person would qualify to obtain medical information about the declarant or disabled person that is protected under the privacy rules of HIPAA. This would help the agent, surrogate or guardian of the person make health-care decisions on behalf of the incapacitated declarant or disabled person.

\*House Bill 381 was signed 7/3/08.

## **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 will fund 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 State and Private Nursing Homes and Assisted Living Facilities.

## **VI. CULTURE CHANGE**

The Commission participated in a workshop in Washington, D.C. regarding “Culture Change”, which 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.

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 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. STATE WEBSITE RECOMMENDATIONS**

The Commission met for a working session to explore and prepare State website recommendations to the Secretary of Delaware Health and Social Services (DHSS). As a result, the Secretary approved website recommendations for a consumer who is looking for information regarding State and private nursing homes and assisted living facilities in Delaware. The Commission created a Website Sub-Committee to explore further enhancements.

## **VIII. NURSING HOME AND ASSISTED LIVING FACILITY VISITS**

Members of Delaware Nursing Home Residents Quality Assurance Commission visited 39 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.

## **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 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.
- Focus on State employee recruitment and retention challenges to aid in the quality of care for residents.
- Promote community outreach and therefore make recommendations for process improvements.

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