
*Delaware Nursing Home Residents
Quality Assurance Commission*

DNHRQAC Meeting of January 24, 2023

9:30 a.m.

Virtually via Cisco Webex

FINAL

Commission member(s) present: Lisa Furber, DNHRQAC Chair; Cheryl Heiks; Norma Jones; Jennifer McLaughlin, OT; Dr. Melissa Winters, PsyD; Senator Spiros Mantzavinos; Christopher Marques, Esquire; and Hooshang Shanehsaz, RPH.

Commission members not in attendance: Tonya Burton, Amy Milligan and Representative Kim Williams.

Patrick J. Smith, Esquire was also present from Attorney General's Office (DAG assigned to represent the Commission).

Others Present: Margaret Bailey, DNHRQAC Executive Director; Mary Peterson, Consumer; Robert Stewart, Consumer; Staci Marvel, DMMA; Tomi Morris, DHCFA; Sandra Hale, LTCOP; Corinna Getchell, DHCQ; Jim McCracken, LeadingAge; Rob Smith, DHCQ; Meggan Towns, DHCI; Deborah Moreau, Esquire, Public Integrity Commission; and Sean Dwyer, DE Valley Chapter Alz Assoc.

1. Call to order

Lisa Furber, DNHRQAC Chair, called virtual meeting to order at 9:32 am.

2. Approval of the meeting minutes:

Meeting minutes draft of December 14, 2022 were approved as written.

3. Discussion of:

Public Integrity Commission (PIC)

Deborah Moreau, Esquire, PIC Executive Director, provided an overview of the State Code of Conduct rules that apply to boards and commissions. A presentation was shared virtually and will be emailed to commission members.

When the General Assembly created the Code of Conduct, there was a balancing test to make sure citizens get what they want in a fair and efficient government. They also do not want to make State employment or membership appointments to boards and commissions so terrible that nobody would ever want to do it.

Pursuant to 29 Del. C., Chapter 58, the State Public Integrity Commission administers and implements/enforces Delaware's ethics law (Code of Conduct) for the Executive Branch, its financial disclosure law for all three branches; and its lobbyists' registration and expense reporting laws. The State Code of Conduct is a group of rules and regulations that State employees as well as appointees to boards & commissions are to follow.

When someone takes on a public role such as member of a board or commission, they are representing all the people that support the government in their mission.

Gifts, payment of expenses, compensation, lunches or anything else of monetary value from organizations outside State Government are not allowed if it results in:

- Impaired independence of judgement
- Preferential treatment to any person
- Official decisions outside official channels
- Any adverse effect on public confidence in government

There are exceptions, due to time constraints or geographic situations where lunch, for example, could be appropriate in some cases.

Code of Conduct - Standards for all State Executive Branch employees (rank and file), officers (Senior level & Elected officials) and honorary State officials (appointees to State Boards & Commissions).

Financial Disclosure - Sources of assets, debts, income, capital gains, reimbursements, honoraria and gifts of certain values must be reported by State elected officials in all three branches of government; Cabinet Secretaries, Division Directors & their equivalents; candidates for State office; other designated officials.

Lobbying - Registration and authorization laws for those lobbying the General Assembly or State agencies, whether paid or not. Quarterly expense reports required for direct expenditures on General Assembly members or agency employees or officials.

Sometimes, a conflict of interest [29 DE C §5805 (a) & (b)] can arise during a public board or commission meeting (personal or professional). To preserve the decision being made, members of a board or commission with a conflict of interest should abstain or recuse themselves in the beginning of said discussion. The individual should log off if it's a virtual meeting or leave the meeting during this portion of discussion. Conflict of interest does have a criminal penalty.

This includes personal or private interest that tends to impair judgement in performing board or commission duties. Public offices should not be used to secure unwarranted privileges, private advancement or gain.

Ms. Moreau added that someone cannot represent a private enterprise before their own board or commission. An individual cannot use their position on a board or commission as an endorsement. They have to remain independent.

Sanctions can be imposed such as removal of a members position/seat on a board or commission. The Attorney General's Office can prosecute if it's a criminal sanction.

Ms. Moreau mentioned that body language or facial expression can also show someone's opinion regarding a particular discussion.

Appearance of impropriety was also discussed. If a reasonable person would think you are being partial, then don't do it. Keep in mind how this will look from the outside.

Additionally, Ms. Moreau shared that nepotism is when a family member benefits and conflict of interest rules this scenario.

Waivers & Advisory Opinions – A written & confidential request unless:

- Applicant Requests in Writing
- Required for Prosecution
- Used to Report Substantial Evidence of a Criminal Violation
- Waiver Granted

An individual cannot simply allege something in order to be reviewed by PIC. PIC does not have jurisdiction over judges. If PIC moves forward with a case, there is a hearing, mini court process and subpoena's will be issued if needed. If a decision is rendered and someone is found guilty, the case will be published. There is also an appeal process.

Person charged has the right to:

Notice & Hearing

Legal Counsel

Call Witnesses, Offer Evidence, Cross- Examine

Examine Tangible Material Evidence

Exculpatory Evidence

Apply for Subpoenas

Confidential unless: Person Charged asks for Open Proceedings or a Violation is Found

Judicial Review by Superior Court

Members of the public are able to file a complaint with PIC. Complaints need to be in writing and notarized.

Ms. Moreau mentioned PIC doesn't often receive conflict of interest questions from boards or commissions very often as most requests for PIC review are limited to subject matter.

Ms. Moreau was invited to present to DNHRQAC members as the group begins establishing subcommittees (legislative, annual report, advocacy, etc). Ms. Moreau mentioned that the procedural structure and approval is up to the board or commission. She further added that boards and commissions want to make sure there are clear statutory guidelines established.

Ms. Moreau mentioned that technology cannot be used when taking action because of open public meeting laws, however this does not apply to subcommittees.

DHCQ Updates, COVID-19 Guidance, etc

Corinna Getchell, DHCQ Director, provided updates regarding DHCQ activities September - December 2022 as follows:

COVID is still present in licensed nursing homes and assisted living facilities however the current situation is a bit more optimistic. Residents need to be isolated if they test positive. Not as many residents are as symptomatic or not as many residents are passing away due to COVID related complications as in the past three years.

Delaware licensed facilities are following current CDC guidance. CDC issued updated guidance in September 2022 relating to testing during outbreaks and exposure.

As of September 15, 2022 (per Delaware Division of Public Health's monthly public stats):

4,837 LTC COVID19 positive cases

1,005 LTC Residents passed away due to COVID19 complications

DHCQ continues to host Zoom meetings with Delaware long term care providers monthly to provide guidance updates, resources, etc.

CMS updates to Nursing Home Compare Webpage and Five Star Quality Rating System:
Adjusting Quality Measure Ratings Based on Erroneous Schizophrenia Coding and Posting
Citations Under Dispute

CMS sent a letter dated 1/18/2023 to State Survey Agency Directors. All CMS updates are forwarded to commission members.

Ms. Getchell said the Division has not received any additional communication from CMS at this point regarding the auditing of schizophrenia diagnosis that is expected to impact the nursing home quality ratings on Nursing Home Compare. The off-site audits are part of an initiative to curb excessive use of antipsychotic drugs. The audit will coincide with adjustments to quality measure star ratings based on erroneous schizophrenia coding. Audits that find a pattern of inaccurate coding may lead to a quality measure downgrade to one star, potentially affecting the facility's overall Five-Star rating. The audits are expected to begin this month.

The Informal Dispute Resolution Process (IDR) gives nursing homes an informal opportunity to dispute citations. When CMS imposes a civil money penalty, providers have the opportunity to request an Independent IDR (IIDR). Currently, these citations are not posted publicly on Nursing Home Compare webpage until the dispute is complete. This process usually takes 60 days but there are some cases that take longer. CMS will post deficiency citation regarding IDR/IIDR on Nursing Home Compare and state whether citation is under dispute. If citation is upheld, it will remain posted and be included in the five star rating. If citation is overturned, the citation will be removed from the Nursing Home Compare webpage. If level of scope or severity has been adjusted, it will be displayed at the reduced level. These citations will not impact the five star rating system until the dispute is complete and survey is considered final. This is expected to begin effective January 25, 2023.

Ms. Getchell mentioned recently the Division has been receiving a lot of requests for IDR's and IIDR's.

Facility Ownership Turnover

Ms. Heiks asked if Ms. Getchell could speak about turnover of facility ownership with the Commission. Ms. Getchell mentioned the Division is contacted when there is a change in ownership. She added that DHCQ has seen a number of ownership changes over the years. Currently, there are a few ownership changes going on that have not officially occurred yet. Ownership changes are also occurring in the acute and outpatient side, too.

Ms. Heiks shared that Delaware isn't unique however inventory of workforce/staff is small and therefore a change in ownership can impact talented workforce.

DHCQ Staff Updates

The Division is still struggling with staffing. They have hired new staff members since last DNHRQAC presentation (Sept 21, 2022). DHCQ has 19 surveyor positions. Of that, 6 staff members have been there less than a year. There are 4 surveyor (position) vacancies. As a result, DHCQ is behind on completing surveys. DHCQ recently had a training workshop for surveyors (hosted by Univ of Colorado) to help focus on problem areas, efficiency tips, etc.

Incident Response Team (IRT)

Incident Response Team (IRT) nurses are working with nursing homes and assisted living facilities to assist with infection prevention strategies when DE Division of Public Health notifies them of an outbreak.

4th quarter 2022, IRT nurses: 35 calls, 1 visit and 8 follow-up emails = 44 contacts

CY 2022, IRT nurses: 160 calls, 31 visits and 64 follow-ups =255 total contacts

Annual and Complaint Surveys: Sept – Dec 2022:

Nursing Homes/SNF

7 annual surveys

16 complaint investigations

4 follow-up

27 total

Assisted Living Facilities

8 annual surveys

7 complaint investigations

0 follow-up

15 total

DHCQ was able to hire a casual seasonal nurse to help with some of the assisted living facility surveys. This position wasn't included in the Divisions staffing numbers and was only working on assisted living surveys during this time frame.

DHCQ began sending an electronic copy of closed & completed survey reports to DNHRQAC (effective 8/31/2022).

Mandatory Director of Nursing Workshop (DON) - DHCQ will be hosting a virtual DON Workshop Feb 8th & 9th. Ms. Heiks asked for a copy of the information distributed to facilities. Ms. Bailey will forward the details to DHCFA.

4th Qtr 2022 Staffing Report

Ms. Getchell shared a copy of the 4th Qtr 2022 Staff Report with commission members. Ms. Bailey will forward a copy of the 4th Qtr 2022 QART Report to DNHRQAC members.

Due to staffing shortages everywhere, DHCQ began increasing its nursing home staffing oversight effective October 1, 2022. Note: This report does not apply to licensed assisted living facilities.

DHCQ tried to spread out their staffing request to facilities. Although requests were made to facilities, some of the requests are still in process.

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

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

If staffing is not in compliance, further action may be taken (ie Civil Monetary Penalty, which could be as much as \$1,000/day fine). As a result, the Staffing Report provided during this meeting reflects a few entries for nursing homes that have been identified as being out of compliance.

The first line of data entered on this report (for a particular facility) is noted. If a facility was not in compliance, the facility had to submit a plan of correction. The 2nd line of data on report reflects when staffing was rechecked (unannounced) by DHCQ. The recheck takes place after DHCQ has accepted a plan of correction.

An example provided was Cadia Renaissance where DHCQ was able to do a follow up to the first staffing request that shows this facility was out of compliance. During the first entry on the staffing report, this facility fell below 3.28 on 2 days.

Per Ms. Getchell, in this scenario, Cadia Renaissance's staffing data collected during the second time around was not good, so the Division is in the process of implementing fines (\$1k per day).

DHCQ mentioned the timing of this report may need to be improved upon as some of the staffing data requested could span over 2 quarters. As a result, the Division is working out the kinks.

4th Qtr 2022 Staffing Report shows there were a total of 8 Delaware licensed nursing homes that were not in compliance for a day or more during this review period.

4th Qtr 2022 Quality Assurance Review Team (QART) Report

Ms. Getchell shared a copy of the 4th Qtr QART Report with commission members. Ms. Bailey will forward a copy of the report to commission members.

October 1 – December 31, 2022, the QART Team reviewed 5 surveys involving 7 “G” level or higher deficiencies recommended by surveyors during an inspection. After review, the QART Team upheld 6 of the “G” level citations involving:

F Tag 684 – Quality of Care

F Tag 692 – Nutrition/Hydration Status Maintenance

F Tag 689 – Free of Accident Hazards/Supervision/Devices (x2)

F Tag 684 – Quality of Care

F Tag 678 – Cardio-Pulmonary Resuscitation

One of the “G” level citations (F Tag 600 – Free from Abuse & Neglect) was downgraded because QART Team felt “documentation was not sufficient to uphold the deficiency. Additionally, this incident occurred before CMS made updates/changes to the regulation that went into effect October 2022 and so those 2 factors influenced the deficiency to be downgraded.”

4. Old Business/New Business

DNHRQAC Subcommittees - Ms. Furber urged commission members to begin thinking about which sub committees (legislative, advocacy, etc) would be most beneficial to carry out the mission of this commission. Discussion on this topic was tabled and will resume during the next scheduled meeting.

Governor Appointed Membership Vacancies & Expired Memberships - Ms. Bailey and Ms. Furber have been in touch several times with the Governor’s Office regarding DNHRQAC governor appointed membership vacancies (2) and expired/heldover memberships (2). The Director for Boards/Commissions, Lori James, recently retired. The new Director for Boards/Commissions is Ray Lewis. As of yesterday, the Governor’s Office stated they would be meeting with the Governor soon to discuss the membership appointments.

Long Term Care and Memory Care Task Force – Ms. Bailey shared the next meeting will be held virtually on Friday January 27, 2023 @ 2:00 pm. Senator Spiros Mantzavinos and Representative Kendra Johnson are co-chairs of this task force. Information about the Long Term Care and Memory Care Task Force is listed on Delaware Public Meeting Calendar: <https://publicmeetings.delaware.gov/#/>.

ChristianaCare Population Health and Post-Acute Performance – Ms. Heiks and Ms. Bailey met with Tony Reed and Brian Mann on January 18, 2023. Ms. Heiks will invite ChristianaCare Population Health and Post-Acute Performance to a future Delaware Health Care Facilities Association (DHCFA) meeting to share updates with industry providers. Ms. Heiks believes this largest hospital provider in Delaware should present to DNHRQAC, too. It appears ChristianaCare is making sweeping changes to the State Health Innovation Model which could impact individuals transitioning among hospital and post-acute setting. Ms. Heiks will connect with Ms. Bailey to prepare a joint presentation for ChristianaCare that will include items around the present state of the industry, information about DNHRQAC, etc.

FY 24 Joint Finance Committee (JFC) Hearings - Ms. Bailey mentioned FY 2024 JFC Hearing schedule was distributed to commission members. There was a consensus among DNHRQAC members present to provide testimony during the DHSS FY 24 JFC Hearings (Feb 2023).

Ms. Furber, Mr. Shanehsaz and Dr. Winters agreed it would be a great idea for the Commission to provide testimony during the budget hearings. Ms. Furber mentioned DNHRQAC will follow up with Patrick Smith, Esquire (DAG) to see if there is something the Commission needs to do in order to make it official.

Ms. McLaughlin and Ms. Heiks offered to help with drafting testimony/letter. Ms. McLaughlin asked whether it would be beneficial for DNHRQAC to attend the JFC Hearings and present testimony (read the letter). Members in attendance did not object to this idea.

5. Public Comment

Mary Peterson - Expressed concern regarding Governor Appointed commission membership vacancies/holdovers. Additionally, Ms. Peterson thanked Ms. Getchell for her presentation and mentioned she has some questions about PIC as it relates to DNHRQAC and whether or not there is conflict of interests or appearance of impropriety. Ms. Peterson wondered whether DNHRQAC would be seeking guidance from PIC as to such. Ms. Peterson thanked Ms. Bailey for providing an update regarding the Long Term Care and Memory Care Task Force since DNHRQAC is charged with oversight regarding quality of care. She encourages on-going updates of the LTC and Memory Care Task Force during every Commission meeting.

Robert Stewart – Mr. Stewart had questions regarding the Public Integrity Commission as it relates to conflict of interest. Ms. Bailey offered to forward Deb Moreau, Esquire’s contact information: Deborah.moreau@delaware.gov and PIC webpage: <https://depic.delaware.gov>.

6. Next DNHRQAC Meeting – Tuesday March 21, 2023 @ 9:30 AM. The location: TBD.

7. Adjournment

This meeting was adjourned at 11:15 am by Lisa Furber.

Attachments: DNHRQAC Meeting of January 24, 2024 - agenda
DNHRQAC Meeting of December 14, 2022 - minutes draft
Public Integrity Commission – presentation
4th Qtr 2022 Staffing Report
4th Qtr 2022 QART Report