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*Delaware Nursing Home Residents  
Quality Assurance Commission*

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**DNHRQAC Legislative/Advocacy Subcommittee Meeting of October 19, 2023  
@ 1:00 p.m.**

**Virtually via Cisco Webex**

**Anchor Location: The Vero @ Newark – 924 Barksdale Rd Newark, DE 19711**

**FINAL MINUTES**

Subcommittee members in attendance: Chris Marques, Esquire; Mary Peterson, RN, Dr. Avani Virani, and Cheryl Heiks. A quorum of subcommittee members was in attendance. All subcommittee members attended this meeting virtually.

Subcommittee members not in attendance: Kori Bingaman.

Others Present: Margaret Bailey, DNHRQAC Executive Director (in-person) and Steven LePage, Public member (virtually).

This meeting was brought to order @ 1:05 pm. Ms. Bailey mentioned DNHRQAC legislative/advocacy subcommittee was created to be able to weigh-in and respond to legislation, regulations and other items related to long term care services and supports in Delaware. In addition, this subcommittee might have an opportunity to weigh-in on Federally proposed items, too.

1. Welcome from subcommittee members

DNHRQAC subcommittee members introduced themselves and provided information regarding their current and past roles relating to Delaware long term care.

This was the second DNHRQAC Legislative/Advocacy Subcommittee Meeting. A series of (3) meetings were scheduled to discuss & draft a response to CMS Proposed Nursing Home Staffing Standards Rule. Once this subcommittee prepares a response to the proposed rule, a copy of the draft will be forwarded to the entire DNHRQAC membership for review. DNHRQAC scheduled a “Special” Meeting on October 31, 2023, to vote & finalize its response to the proposed rule.

Since the initial subcommittee meeting (October 16, 2023), Ms. Bailey contacted subcommittee members to find out their commitment for the next 2 meetings and reminded them about the tight timeline set forth to prepare and submit a response to the proposed rule. Ms. Bailey conferred with Patrick Smith, Esquire, who represents DNHRQAC, before reaching out to subcommittee members. As a result, two subcommittee members elected to be removed from this subcommittee due to the small window of opportunity remaining to respond to CMS Proposed Nursing Home Staffing Standard Rule.

2. Approval of Meeting Minutes:

A motion was made to postpone voting on meeting minutes of October 16, 2023, until the next subcommittee meeting. The motion was seconded and carried.

3. Discussion of:

Subcommittee members discussed the proposed rule:

A. 3.0 HPRD – Subcommittee members compared propose HPRD to Delaware Code: 29 Del. C. § 7907, where 3.28 HRPD has been statutorily mandated in Delaware for more than 20+ years.

Ms. Peterson mentioned there is a provision in Delaware Code where HPRD for resident's care could be increased to 3.67, however it's never been implemented because there needs to be funding (Medicaid) to go with it.

The 4.1 Federal recommendation as a minimum came from a 2001 study. The study was verified again by a study this past year. In 2001, Delaware didn't have a ventilator or dialysis unit in nursing homes, for example.

Ms. Heiks added that there is a supply and demand issue in Delaware and so we need to figure out how to address this issue. Other health care environments have expanded and therefore the pool of available workforce is spread thin. "We need to find a way to get more people in the long-term care industry and not compete with other health care settings for the same workforce or be reimbursed differently."

[Delaware Code Online](#)– Ms. Heiks mentioned discussions regarding this language has come up in previous discussions:

*(f) For those facilities that are not required by state or federal regulations to have a registered nurse on duty on each shift, a licensed practical nurse with 3 years long-term care experience may serve as a nursing supervisor, provided that no registered nurse is on duty. There shall be a nursing supervisor on duty and on-site at all times.*

**Action Item:** Subcommittee members asked Ms. Bailey to reach out to DHCQ and find out which facilities in Delaware are impacted with this language.

B. Registered Nurse (RN) on site 24/7 – Currently in Delaware, RNs are required to be on duty every shift 24/7. The nursing supervisor needs to be a staff member of the facility, not someone from a temporary staffing agency serving as a nursing supervisor unless exigent circumstances exist.

Dr. Virani added that contingency plans are important and that situations do arise that might affect staffing, but residents require care, too. As a result, what are the facilities contingency plan. And do facilities have anything in place to make sure staff doesn't burn out so quickly or easily to be able to retain staff and provide job satisfaction.

C. LPNs vs proposed rule – Mr. Marques mentioned the Federal proposed rule doesn't appear to have flexibility relating to licensed Practical Nurses (LPNs) as Delaware statutorily does in the staffing calculation. As a result, it may require Delaware to shift things around a bit to match up with what the Federal Government is proposing.

Ms. Bailey asked Mr. Heiks if she was able to determine the percentage of RNs vs LPS staffed in Delaware long term care facilities. **Action Item:** Ms. Heiks will connect with industry providers and will forward data to the subcommittee.

D. Transparency for Medicare and Medicaid expenditures - Subcommittee members were not sure how the payment system is currently set up to track expenditures or impact this would cause for DMMA or DHCQ. **Action Item(s):** Subcommittee members asked Ms. Bailey to reach out to Delaware Division of Medicaid and Medical Assistance (DMMA) and find out whether they anticipate any impact as a result of the proposed rule regarding the transparency piece of this proposal. Ms. Heiks will also contact the industry and ask whether or how this piece of the rule may impact facilities, too.

E. Enhanced Facility Assessment – Dr. Virani asked about this item within the proposed rule and what it means/entails. Subcommittee members mentioned that part of the assessment is supposed to include information from all levels of facility employees (CNA, RN, etc) regarding care needs of every resident. This area in the proposed rule also incorporates requirements for a facility’s recruitment and retention efforts.

After a resident assessment has been completed, a subcommittee member asked who would be receiving or reviewing assessment information to ensure its accurate. Ms. Peterson read from her personal response to the proposed rule “the new provisions would require facilities to develop and implement staffing plans that are based on residents needs and acuity. The assessment should keep in consideration residents physical and behavioral health issues and be developed with input from facility staff including leadership, management, direct care staff and staff that provides other services. These plans would also include staff retention and hiring plans.”

Ms. Peterson further added that she imagines a regulatory oversight piece would need to be implemented, because of the enhancement (DHCQ) to determine whether a facility is assessing residents’ acuity and developing staffing plans based on residents’ acuity’s related to physical and behavioral health. In addition, DHCQ would need to review facilities hiring and retention plans.

Dr. Virani believes the enhanced facility assessment piece would need to continue to evolve since a resident’s acuity can change and therefore, wonders how the assessment piece will continue to be reviewed for accuracy. Ms. Peterson added that assessments are not new in long term care, the proposal is just enhancing what facilities are currently required to do. Dr. Virani wonders how the enhancement will impact staff changes.

Ms. Peterson reminded subcommittee members that DNHRQAC recently created a staffing model subcommittee. She hopes this other subcommittee will be able to develop a staffing model based on acuity, since there currently isn’t one for care or staffing.

F. Submitting a response – Ms. Peterson offered to share a copy of the response she already submitted to CMS. **Action Item(s):** Ms. Bailey will contact Patrick Smith, Esquire, to find out whether agency responses need to be submitted using a State of Delaware email address, since all subcommittee members are not State of Delaware employees and therefore do not have a State email address. Ms. Peterson will forward a copy of her response to the proposal to subcommittee members.

#### Discussion of Subcommittee Timelines

Responses regarding the proposed rule must be submitted by November 6, 2023.

#### Recap/Thoughts

Subcommittee members stated Delaware is ahead of the Federal proposed rule in many aspects: HPRD, RN 24/7 per shift, etc.

Subcommittee spokesperson – This item was tabled and will be revisited at the next subcommittee meeting.

Items DNHRQAC Legislative/Advocacy Subcommittee members voted upon/decided during today’s meeting:

A. Support 3.0 staffing minimum that CMS proposed as is or recommend that it needs to include LPNs - Subcommittee members all agreed to support the 3.0 minimum and will keep discussion open whether any language should be added in the proposed rule for LPNs.

B. Support for RNs 24/7 – Subcommittee members all agreed to support RNs 24/7 as stated in proposed rule.

C. Support for transparency in reporting of expenditures, particularly Medicaid and Medicare dollars – Subcommittee members expressed they would like to hear from DMMA & long-term care facilities before voting on this item in the proposed rule. The group would want to make sure this proposed item would not uproot a billing system or whatnot.

D. Support enhanced assessments as stated in the proposal for the facilities - Subcommittee members agreed to review the April 18, 2023, Executive Order before the next subcommittee meeting and resume discussions on this item of the proposal. Mr. Marques provide the following link: [Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers | The White House](#).

E. Does the subcommittee want to offer differing items to the response to the proposals? Subcommittee members will plan to come prepared to the next meeting with anything else they would like considered.

#### 4. Public Comments

Mr. Steven LePage provided public comments regarding CMS Proposed Nursing Home Staffing Standard Rule; shared his experience regarding Delaware nursing homes and provided technology ideas to supplement staffing in the long-term care industry. Subcommittee members invited Mr. LePage to attend the next full commission meeting of November 21, 2023, to present his ideas.

#### 5. Next Meeting

Thursday October 26, 2023 @ 1:00 pm: Cisco WebEx & Anchor Location: The Vero @ Newark.

#### 6. Adjournment

The meeting was adjourned at 2:56 p.m.