



Larry Hogan | Governor

Boyd K. Rutherford | Lt. Governor

Rona E. Kramer | Secretary

January 10, 2020

The Honorable Larry Hogan
State House
100 State Circle
Annapolis, Maryland 21401

The Honorable Bill Ferguson
President
Senate of Maryland
State House, H-107
Annapolis, Maryland 21401

The Honorable Adrienne A. Jones
Speaker
Maryland House of Delegates
State House, H-101
Annapolis, Maryland 21401

RE: Report required by HG §19-1409(j), SB4/Ch. 473, 2018 (MSAR #11716) 2019 Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities

Dear Governor Hogan, President Ferguson, and Speaker Jones:

In compliance with Health General Article §19-1409(j), MSAR #11716, the following is the required annual report of the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities for activity from January to December 2019. The committee met twice during this period. Meeting minutes of each meeting are attached.

Please do not hesitate to contact Grace Fielhauer, Legislative Liaison, at grace.fielhauer@maryland.gov or (410) 767-5953 with any questions.

Very truly yours,

Rona E. Kramer
Secretary

cc: Sarah Albert, Department of Legislative Services

Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities
Maryland Department of Aging
October 4, 2019
1:00 pm – 3:00 pm
Minutes

Members Present

Brock-Cancellieri, Jen, Representing 1199 SEIU, United Health Workers East
Brunetto, Odile, AAA Representative
Burton, Kim, Mental Health Association of Maryland
Colchamiro, Eric, Alzheimer's Association, Greater MD Chapter
Ellis, Stevanne, State Long-Term Care Ombudsman
Graning, Kathy, Representing Mid-Atlantic Lifespan
Heald, Margie, Deputy Director – Federal Programs, OHCQ, MDH
Leeds, Mark, MDH-Medicaid, Director, Long Term Services and Support Administration
Lasser, Caryn, Deputy Secretary of Aging, Maryland Department of Aging
Meyerson, Phyllis, Representing Maryland Chapter, AARP
Morris, Hope, Representing Health Facilities Association of Maryland (HFAM)
Richards, Evans, Aide for Klausmeier, Honorable Katherine, Member, Senate Finance Committee
Robb-McGrath, Kirsten, Director of Health and Behavioral Policy, Department of Disabilities
Rosenthal, Ilene, Program Manager, Alzheimer's Association, Greater MD Chapter
Sylvester, Karen, AAA representative
Van Akkeren, Lorrie, Voices for Quality Care
Weglein, Elizabeth for Crespo, Virginia, United Seniors of Maryland
Zeiss, Heather, Representing Assisted Living Industry

Members Absent:

Abedi, Afshin, Representing Maryland Association of Adult Day Services
Bloyd, Steven, Representing Assisted Living Industry
Brust, Mia, Frederick County Long-Term Care Ombudsman Program
Fenderson, Carol, Deputy Director – State Programs, Office of Health Care Quality (OHCQ)
Greenbeck, Lee, Maryland Hospital Association
Hamel, Catherine, Maryland Hospital Association
Nathan-Pulliam, Honorable Shirley, Member, Senate Education, Health and Environmental Affairs Committee
Nay, Patricia Tomsko, Director, Office of Health Care Quality
O'Dea, Stefani, Behavioral Health Administration
Smickle, Joanne L., Consumer Representative

Staff Present:

Colmore, Valarie, Department of Human Services
Hibler, Clarissa J., MDoA, Staff to Committee
McCurdy, Nathan, Department of Legislative Services

Staff Absent:

Celentano, Amanda

Guest:

Hutchinson, Marlana

Safi, Albert

Tarenyika, Mary

Tompsett, Tommy

Greetings: Deputy Secretary Lasser welcomed attendees and began the meeting by asking everyone to introduce themselves and to sign the attendance sheet, if not done so.

Approval of the Minutes from the November 28, 2018 Meeting:

Minutes from the previous Committee meeting were approved with the exception to add Kim Burton's name to the Members Absent list.

Annual Report of the Medicaid Nursing Home Reimbursement:

Mark Leeds, Director, Office of Long-Term Services and Supports, Maryland Department of Health, provided a PowerPoint Presentation on the Medicaid Nursing Home Reimbursement. FY 2020 nursing facility rates increased by 3%. The Department plans to rebase nursing facility rates in FY 2021; the 2- rebasing under the new reimbursement system, the first having taken effect in FY 2019. In 2019, the General Assembly adopted House Bill 166 – the minimum wage increase legislation – which includes a provision that the Governor's proposed budget shall include a 4% rate increase for each year, Fiscal Year 2021 through Fiscal Year 2026.

Mr. Leeds mentioned in 2019, the Department collaborated with nursing home representatives to realign geographic regions for FY 2020 for setting service rates which will more accurately reflect nursing costs in each region. The new regions are: Baltimore Metro, Washington Metro, Western Region, and Eastern Region.

Mr. Leeds discussed Harford, Cecil and Eastern Shore areas were concerned about nursing service rates for facilities as compared to other counties. A comparison with old reimbursement rates vs new reimbursement rates were discussed. In order to minimize the impact of realignment, especially for facilities that will not benefit, rate changes will be phased by 50% in FY 2020 and 100% in FY 2021.

Mr. Leeds exchanged views on the MDS Validation. In FY 2019, 5,877 MDS Validation audits were completed. Facilities with greater than 20% negative error rates were subject to penalty audits and possible financial penalties; 5 facilities received penalty audits, however now financial penalties were assessed for this period.

Mr. Leeds spoke about the Payroll Based Journal, which will be used instead of the annual wage survey conducted by the Medicaid program, to determine nurse staff hours provided by the facilities. This journal is more accurate than the previous method used to collect and analyze staffing hours. The nursing staff hours per resident increased to 4.20 hours in October 2018 and nurse aide average wages in the Baltimore region increased to \$15.54 in October 2018.

Lastly, Mr. Leeds referred to the 2007 legislation establishing assessments on nursing home non-Medicare patient days, The FY 19 assessment of 6% is the maximum allowable under federal law. The FY 19 Assessment Collected \$154.5 million which was used to reimburse providers and subsidize rates (on which federal matching funds are leveraged) and for State budget savings.

Other:

The Committee agreed to reconvene in either December 2019 or February 2020 after Legislation Session. Staffer will send a doodle with dates in December 2019 and February 2020.

Stevanne Ellis discussed Proclamation of Resident's Rights and displayed a copy of the Proclamation of Resident's Rights to the Committee. Each County AAA Director received or will receive a Proclamation of Resident's Rights signed by Governor Larry Hogan. It was further discussed that October is Resident's Rights Month.

Margie Heald discussed House Bill 592. This Bill focuses on nursing home discharge practices and aims to make them stronger. Ms. Heald also spoke of regulations regarding infection control in nursing homes over 200 beds large went into effect in 2019.

Ilene Rosenthal informed the Committee that she will be stepping down and Eric Colchamiro will be her replacement. Ilene proposed for our next meeting to have someone from the Alzheimer's Association to present at the next meeting. The Committee agreed with this statement.

Jen Brock-Cancellieri discussed SB 390.

The meeting was adjourned at 2:55 pm.

Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities
Maryland Department of Aging
December 17, 2019
1:00 – 3:00 pm

Members Present

Brunetto, Odile, AAA Representative
Burton, Kim, Mental Health Association of Maryland
Caplan, Jason, representing Office of Health Care Quality (OHCQ)
Ellis, Stevanne, State Long-Term Care Ombudsman
Graning, Kathy, representing Mid-Atlantic Lifespan
Hartzel, Samantha, representing OHCQ
Lasser, Caryn, Deputy Secretary, Maryland Department of Aging
Morris, Hope, representing Health Facilities Association of Maryland (HFAM)
Robb-McGrath, Kristen, Director of Health and Behavioral Policy, Department of Disabilities
Van Akkeren, Lorrie, Voices for Quality Care

Members Absent:

Abedi, Afshin, representing Maryland Association of Adult Day Services
Bloyd, Steven, representing Assisted Living Industry
Brust, Mia, Frederick County Long-Term Care Ombudsman Program
Colchamiro, Eric, Alzheimer's Association, Greater MD Chapter
Crespo, Virginia, United Seniors of Maryland
Federson, Carol, Deputy Director – State Programs, OHCQ
Greenbeck, Lee, Maryland Hospital Association
Hamel, Catherine, Maryland Hospital Association
Klausmeier, Honorable Katherine, Member, Senate Finance Committee
Kramer, Rona, Secretary, Maryland Department of Aging
Meyerson, Phyllis, Representing Maryland Chapter, AARP
Nathan-Pulliam, Honorable Shirley, Member, Senate Education, Health and Environmental Affairs Committee
Nay, Patricia Tomsko, Director, Office of Health Care Quality
O'Dea, Stefani, Behavioral Health Administration
Rosenthal, Ilene, Program Manager, Alzheimer's Association, Greater MD Chapter
Smickle, Joanne L., Consumer Representative
Sylvester, Karen, AAA representative
Zeiss, Heather, Representing Assisted Living Industry

Staff Present:

Colmore, Valarie, Department of Human Services
Hibler, Clarissa J., Maryland Department of Aging, Staff to Committee
Babich, Tyler, Department of Legislative Services

Staff Absent:

Celentano, Amanda, Maryland Department of Aging, Ombudsman Specialist

Guests:

Fielhauer, Grace, Legislative Liaison, Maryland Department of Aging
Toland, Lisa, Speaker, Supervisor, Quality of Compliance Review Unit Long Term Services and Supports at Maryland Department of Health

Greetings: Deputy Secretary Lasser welcomed attendees and said that Secretary Kramer sent her regrets for not being able to attend the meeting. Deputy Secretary Lasser asked everyone to introduce themselves before the meeting began.

Approval of the Minutes from the October 4, 2019 Meeting: The minutes were approved.

Medicaid Waiver Report – Home and Community-Based Settings (HCBS) Final Rule:

Lisa Toland, Supervisor, Quality and Compliance Review Unit Long Term Services and Supports at Maryland Department of Health provided a PowerPoint Presentation on the Home and Community-Based Settings (HCBS) Final Rule. Ms. Toland explained to the attendees that the Centers for Medicare & Medicaid (CMS) issued the HCBS final rule on January 16, 2014 and it became effective March 17, 2014. All providers will need to be in compliance with HCBS Final Rule by March 1, 2022. HCBS Final Rule describes requirements for home and community-based services provided under Medicaid authorities 1915(c) (CO Waiver), 1915(i), and 1915(k) (CFC).

The purpose of the rule is to enhance the quality of home and community-based service programs, to provide protection to participants, to ensure individuals are receiving long-term services and supports through HCBS programs and for individuals to have full access of benefits of community living. HCBS provided residential and facility day services to Medical Day Care, Senior Center Plus, Assisted Living (ALF), Autism Waiver Residential Habilitation (AW), Day Habilitation and Developmental Disabilities (DDA) Residential.

Ms. Toland explained the requirements for non-residential settings (Medical Day Care and Senior Center Plus) and residential settings (ALFs, Residential Habilitation, and Group Homes). HCBS are modified to individual-specific needs. It was noted that all states who provide HCBS are required to submit a Transition Plan outlining how they will ensure compliance. CMS requires a complete comprehensive site-specific assessments of all home and community-based settings by March 1, 2022. Maryland is required to submit evidence to CMS related to validation of compliance. HCBS compliance review process consists of:

- Reviewing provider's surveys, previous CAPS, and other documents
- Complete site visit and checklist
- Review results and send letter to provider

By February 2018, HCBS provided site visits to 117 Medical Day Care Providers, 97 sites were complaint, 4 sites received corrective action plans and 17 sites received heightened scrutiny and referred to CMS for review. All 3 Senior Center Plus Providers are currently complaint.

For the Autism Waiver Providers, all 22 received follow up letters on March 1, 2019; none are currently 100% complaint. A second round of site visits will take place before 2022. There are 528 ALFs in Maryland, 278 are non-compliant, 184 require a third visit and 175 are in compliance. Most frequent non-compliance issues: keys to the entrance of the facility, keys to their bedroom door, and lockable bedroom doors. It was further mentioned that call bells are not listed as regulation requirement for ALFs. All new providers or sites will need to be in compliance before a Medicaid Provider number is to be issued.

As of June 2018, the Developmental Disabilities Administration performed site visits to all Day Habilitation Providers (Central, Eastern Shore, Western and Southern Regions). Central Maryland Region – 63 site visits with 31 sites in compliance, Eastern Shore – 12 site visits with 12 sites in compliance, Western Maryland – 34 site visits with 19 sites in compliance and 1 site pending, and Southern Maryland – 82 site visits with 19 sites in compliance and 1 site pending, and Southern Maryland – 82 site visits with 71 sites in compliance and 5 sites awaiting decisions letters. In order for HCBS to be in compliance with the CMS deadline of March 2022, the State has implemented the following time periods for providers to be compliant:

Medical Day Care – January 1, 2022
Senior Center Plus – January 1, 2022
Assisted Living Facilities – March 17, 2022
Autism Waiver Residential Habilitation – January 1, 2022
DDA Residential Program – December 1, 2021

Federal Nursing Home Regulations:

State Ombudsman Stevanne Ellis reviewed Phase Three of the Federal Nursing Home Regulations (Requirement for Long-Term Care Facilities) issued by the Centers for Medicare & Medicaid Services (CMS) on September 28, 2016. The regulations have not been revised since 1991. Three phases: Phase 1 – November 28, 2016, Phase 1 – November 28, 2017, and Phase 3 – November 28, 2019.

State Nursing Home Regulations will stand if the Federal Regulations change. State Operational Manual gives detailed information on Federal Nursing Home Regulations and Federal Survey processes. OHCQ Surveyor's Guides will come out in 2020. Anyone who is interested in become a surveyor can take an online course.

ACL's Data Portal Website:

State Ombudsman Stevanne Ellis informed the attendees of an online query resource called Aging Independence and Disability (AGID) Program Data Portal. This provides Data-at-a-glance related data files and surveys from 56 State Agencies on Aging, 629 Area Agencies

on Aging, 246 Native American organizations, and over 29,000 local community service organizations.

Section 19-1409 of the Health- General Article of the Annotated Code of Maryland:

Deputy Secretary Lasser and attendees reviewed Section 19-1409 of the Health-General Article of the Annotated Code of Maryland. Deputy Secretary Lasser reiterated the purpose of the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities.

Future Meetings – Issues and Speakers:

Deputy Secretary Lasser invited the Committee to share suggested topics for future meetings and to address related issues. The Committee proposed the following topics for considerations:

- Supporting challenges in NH and ALF field, etc. where to find available resources, how to support overall quality goals, how to reduce language barriers and how to meet the need to take in a resident.
- Understanding the needs of NH and ALF residents and the standards of quality. What do providers need? What is the Maryland Health Commission and its responsibilities to NH and ALF?
- Issues with unlicensed ALF providers closing homes and reopening another unlicensed ALF; discussion with OHCQ and Inspector General with crossover cases.
- Inspector General addressing Medicare Fraud, Unlicensed ALFs around the State/Baltimore City/Surrounding Counties and relocation issues.
- Addressing Centers for Medicare & Medicaid (CMS) and other Federally Funded Resources.
- How to access training and understanding the curriculum for CNA and GNA.
- Understanding OHCQ's CMP funds and its purpose
- Need to focus on reality instead of theory.

Updates and Discussion from the Committee Members:

Attendees expressed concerns on protocols for individuals who cannot press a call bell, language barriers, etc. The individual's representatives should reach out to the State Ombudsman and/or OCHQ for assistance.

Deputy Secretary Lasser mentioned Census 2020 and how it is important to get an accurate count for the aging population.

State Ombudsman Stevanne Ellis will contact Administration for Community Living (ACL) to get information and resource for Census 2020 as it pertains to our senior communities.

Next meeting is scheduled February 3, 2020.

The meeting was adjourned at 2:30 pm.

Minutes prepared by Clarissa J. Hibler.