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Nursing Home Acquisition Workgroup

MEETING SUMMARY

Friday, September 15, 2023

12:00 pm – 2:00 pm

Recording Link: <https://www.youtube.com/watch?v=JGxZ4x8CsxQ>

Attendees

In Person

Ben Steffen
Jeanne-Marie Gawel
Julie Beard
Joe DiMattos

John Spadaro
LaWanda Edwards
Stacy Howes
Theresa Lee
Tracey DeShields

Virtual

Alexa Bertinelli
Amanda Celentano
Andrea Nunez
Ann MacKay
Anna Palmisano
Catherine Victorine
Claudia Balog
Commissioner Marcia Boyle
Daniel Shattuck
Danna Kaufman

Delegate Kenneth Kerr
Delegate Samuel Rosenberg
Dorinda Adams
Erin Davis
Heather Reed
Hope Morris
Howard Sollins
Isabella Shycoff
James Forsyth
Jane Sacco
Jennifer Crawley
Joshua Auerbach

Kevin Heffner
Linda Cole
Lisa Simpson
Loraine Arikat
Lou Grimmel
Paul Miller
Randi Ames
Regan Bailey
Shelly Martin
Teresa Brown
Wynee Hawk

Agenda Items 1 and 2: Welcome and Review of Minutes

Dr. Stacy Howes opened the meeting and reviewed the agenda and last meeting minutes. Mr. Ben Steffen also welcomed participants.

Agenda Item 3: Multi-Bed Rooms and Current Requirements

Dr. Howes started the section of the presentation on multi-bed rooms and current requirements. Next, she reviewed the number of nursing homes and beds in Maryland, with rooms containing more than two beds. Mr. Joe Demattos commented that most of these beds were in Somerset and Carroll Counties, which demonstrates there are access issues. He also commented that what is not present on the slide is how many of the beds are occupied in Maryland. Comments were read from an online submission by Mr. Lou Grimmel, making suggestions for the slide. Per Mr. Grimmel's recommendations, the slide was updated with the number of nursing homes in each county and the

total number of 3+ beds in each county. The slide deck sent to the workgroup members after the meeting reflects this change.

Next, Ms. Jeanne Marie Gawel discussed current laws surrounding multi - bed rooms in nursing homes. She stated that the slide references when and where the multi-bed rooms show up in current regulations. The first is the application of FGI guidelines for new construction and renovation. The second is for waiver beds. She also read comments by Lou Grimmel who had submitted them earlier in writing. He shared that there was another section to add from the state health plan that was in addition to FGI guidelines. Next, Ms. Gawel discussed multi -bed rooms benefits and drawbacks. Howard Sollins stated there is no research that shows the difference between two or three bedrooms when it relates to infection control. He added that this is a misconception because residents ambulate and go from room to room and hallway to hallway. There are also air handling techniques in facilities to help. Ms. Shycoff stated there are no benefits to multi- bed rooms and was alarmed to see the slide contain this information.

Next, Ms. Gawel discussed a slide on multi- bed room solutions to consider during within a three-year timeframe of the acquisition which included options for eliminating all multi -bed rooms, having multi -bed rooms removed to the extent possible, or making no changes. Mr. Demattos commented that if we require any elimination, the facilities will need some money back because these facilities have loans based on the number of beds. Then Mr. Stephens. commented that we should look at a graduated approach for a smooth transition with appropriate planning. Ms. Palmisano stated that there is solid evidence of infection control problems with multi- bed rooms. Mr. James Forsyth commented that we should get studies on infection control in facilities with multi-bed rooms. Ms. Shycoff stated that she supports phasing out three or more bedrooms. Mr. Stephen then stated that we might look at the facilities that closed in Massachusetts and questioned if we might be able to use the three and four beds only in a surge situation. Ms. Dana Coffman stated for Massachusetts, it took one or two years to phase in the beds. Mr. Sollins stated in Massachusetts, they lost so much revenue that several facilities had to close their doors. Ms. Theresa Lee stated that it appeared the workgroup consensus was on removing beds to the extent possible.

Agenda Item 4: Options for Robust Oversight

The next slide was on options for quality oversight and Ms. Gawel reviewed the bill requirements that will begin on October 1, 2023. Howard Sollins commented that this will be a lot of new information to complete. Ms. Gawel stated we may need 60 days. Ms. Wynne Hawk agreed and commented that the number of facilities being reviewed may take longer to review. Mr. Demattos commented that the transparency is good. Ms. Dana Coffman commented that there is too much focus on five stars and questioned if it would be possible to focus on other quality measures. She stated that because of the pandemic, the nursing facility surveys will be looking back four years. Mr. Demattos agreed that this is an essential point. Ms. McKay questioned if it would even out over time. Mr. Demattos stated that there is still a third of the facilities in the country that have not been surveyed. Mr. Steffen stated that 60 days was a long time and was not sure if we could push it out that far.

Next, Dr. Howes discussed additional possibilities for robust quality oversight. Commissioner Boyer said she favored aligning the CON quality standards with nursing home acquisitions. Mr. Demattos stated we should caution, based on what Bob Kramer shared with us in the prior meeting about 5-star ratings. Commissioner Boyle agreed that we should look beyond the five-star rating as well. Ms.

Shycoff stated she also supported aligning the CON and acquisition regulations. Howard Sollins stated if the current proposed staffing levels changes are enacted, there will be more deficiencies and lower scores. Mr. Steffen stated we should remain hopeful, but realistic, and we need more nuanced rules. Ms. Balog stated we should be looking at staffing stability data. Ms. Theresa Lee also stated we should align the principles with the CON. Ms. Erin Davis questioned if the survey component was the only measure out of date. Mr. Steffen stated yes but the survey star rating is the most heavily weighted. Ms. Davis commented that she agrees that if the rating is not accurate it is not helpful. Mr. Sollins stated all turnover is not bad and there can be good turnover too. Dr. Howes reviewed the next slide on possibilities for quality oversight through financial requirements. Ms. McKay asked if the nursing home family satisfaction survey is public. Dr. Howes replied that it was. Mr. Demattos asked if the Commission would look at other settings other than just nursing homes. Mr. Steffen replied that sometimes regulations come out of a crisis. Mr. Steffen commented we may need additional pins to complete the work. Mr. Sollins commented that requiring letters of credit or bonds runs the risk of taking assets away from resident care. Ms. Baylog commented that we should explore the percentage of revenue spent on patient care. Mr. Demattos commented that the most significant cost center is direct care, which is mostly nursing care, and that it would be easy to access, and we could look at trends. Mr. John Spadaro stated people also look at RAC audits for this type of information. Mr. Sollins added regarding Propco/Opco if you own real estate, then you could be in trouble and in healthcare and nursing homes Propco/Opco division is normal and we should focus on the Opco. Ms. McKay asked how we see false claims. Ms. Gawel replied that we are able to see them on the sites we are looking at now such as PACER and the OIG exclusions.

Dr. Howes presented the slide on possibilities for quality oversight through staffing and legislative requirements. Mr. Demattos questioned if there are laws around layoffs. Mr. Spadaro stated there are federal laws and Mr. Sollins stated there are state laws. Ms. Davis stated we have to use caution, and we must be innovative. Ms. Balog stated in California, the law is 60 days where an owner cannot make material changes to staffing. Mr. Steffens questioned how widespread the nondisclosure agreements with residents are. Mr. Sollins stated he had not seen one and Ms. McKay stated she had also not heard of one.

Agenda Item 5: Possible Pathway to Recommendations

Ms. Gawel presented the last section on possible pathways to recommendations. She proposed 60 days to complete the work. Mr. Demattos stated we should assess cost, impact, and value. Next, Lou Grimmel spoke to the workgroup and presented figures on the nursing home industry and shared his opinion that three and four bedrooms in nursing homes are not appropriate living situations for nursing home residents. His suggestions and comments follow.

- There are 224 total NHs in Maryland operating 27,905 beds. Of that number, 2,571 are in 3 or 4 bed rooms according to MHCC's 2020 public use data.
- Those 2,571 Triples and Quads are operated by only 61 of 224 Maryland Nursing Homes (includes 2 Facilities operated by the State of Maryland: Deer's Head with 27 Triples and 44 Quads and Western MD Hospital Center with 12 Triples and 48 Quads).
- Of those 61 NHs, 45 are operated by only 6 Chain Operators counting those which operate 3 or more facilities each. 5 of the 6 are Out of State operators, only 1 is local. (Communicare@12NHs; Complete Care @4 NHs; Future Care @ 5NHs; Autumn Lake @ 17NHs; Peak Health Care @ 3NHs; and Vita Health Care @ 4NHs)

- Per MHCC 2020 data, those 6 Chain Operators account for a total of 2,035 triple and quad beds scattered among the 45 facilities they operate. This amounts to 79% of the State's 2,571 Triple and Quads bed total.
- There's also a racial equity aspect to this distribution of Triples & Quads since 1,627 beds, or 63.3% are located in jurisdictions with a large population of African Americans - Baltimore County, Baltimore City and PG County per MHCC 2020 data.
- Triple & Quad bed configurations are inappropriate living environments because the State Health Plan says so. See COMAR 10.24.20.05.A.(4)(a)(i) and (b)(i) standards.

Agenda Item 6: Tentative Next Steps

Finally, Dr. Howes reviewed the tentative next steps, which include draft recommendations, feedback to the workgroup, presentation to the commission, and another meeting if necessary. She also stated that a report is due to the general assembly on December 1, 2023. Then Mr. Steffen thanked everyone and closed the meeting.

After the workgroup, Ms. Shelly Martin, OAG sent an email communication we could require nursing homes to disclose any settlements that resolved allegations of violating the False Claims Act, and a lot of False Claims issues are resolved without filing suit and would not appear in court records.

After the workgroup meeting, Anna Palmisano sent an email with additional considerations for the group. Dr. Palmisano supports phasing out triple and quad nursing home rooms from an infection control perspective. She also shared concerns about which agency will be responsible for overseeing the oversight we are proposing. Past laws have not been diligently monitored for compliance, even when they are simple and low-cost. Dr. Palmisano stated that it will be critical to have oversight by a responsible party and transparency to the public.