

Nursing Home Advisory Committee Meeting

July 10, 2019

Department of Social Services

55 Farmington Avenue, Hartford, CT

Minutes

Members in attendance: : Co-Chair, Barbara Cass, Department of Public Health (DPH); Co-Chair, Kathy Shaughnessy Department of Social Services (DSS); Matthew Barrett, Connecticut Association of Health Care Facilities (CAHCF); Anne Foley, Office of Policy and Management (OPM); Mag Morelli, LeadingAge Connecticut; Mairead Painter, Office of the Long-term Care Ombudsman Program, Department of Rehabilitation Services (LTOP); David Wasch, Connecticut Health and Educational Facilities Authority (CHEFA)

Members absent: None

Legislators Present: Senator George S. Logan; Representative Jonathan Steinberg; Representative Toni E. Walker; Representative William A. Petit Jr.

Others present: Deputy Commissioner Health Aaron, DPH; Commissioner Renée Coleman-Mitchell, DPH; Susan Eccleston, OPM; Nicole Godburn, DSS; Kate McEvoy, DSS; Melissa Morton, OPM; Joel Norwood, DSS; Marnie Talamona, Genesis HealthCare; George Thomas, Blum Shapiro

Meeting called to order at 9:10 A.M.

Introductions

- Members introduced themselves.

Approval of Minutes from April 23, 2019 Meeting

- Motion to approve the April 23, 2019 meeting minutes made by Anne Foley and seconded by Mairead Painter. No discussion on the minutes. All in favor. Minutes accepted and approved as final.

DSS Report on Pending Nursing Home Requests for Interim Rate Increases

- Kathy Shaughnessy reported that since the April meeting one facility applied for a hardship rate increase. DSS reviewed the prior year's audit and sought additional clarifying information from the facility. Based upon the additional information, DSS was able to revise the facility's rates retroactively and thereby resolved the issue and negated the need to implement a hardship rate. Kathy informed members that it is DSS' practice to resolve hardship matters in other ways if possible.
- Representative William Petit asked if this type of action by DSS prompts other homes to take similar action. Kathy Shaughnessy answered that in the past that has happened, but not in this particular case as it was a wage and benefit issue specific to that facility.

Survey Activities/Quality Issues

- Barbara Cass explained the survey process and the database used by DPH to compare Connecticut facilities to national findings. She shared that the top ten issues found through the survey process have remained the same for over a decade with falls always being in the top two cited deficiencies. DPH staff has been meeting with Matthew Barrett, Mag Morelli and staff from the Department of Rehabilitation Services (DORS) to plan a state education training on fall prevention in the late fall/early winter, through the utilization of Civil Monetary Penalty (CMP) dollars. Members engaged in a discussion regarding falls in nursing facilities. Below are the highlights of that discussion:
 - Representative Steinberg inquired about the use of technology in fall prevention and noted that several bills centered on the use of technology have been presented to the legislature. He encouraged the Committee to focus on the use of technology.
 - Representative Petit asked the Committee to keep the legislature informed of any findings that come out of the fall prevention training or the Nursing Home Financial Advisory Committee's work and to highlight areas where a legislative remedy may be helpful.
 - Matthew Barrett shared his experience that many recent legislative remedies to fall prevention have focused on the utilization of bells and alarms and the utilization of such devices have been found to have a negative impact and create anxiety. Reinstating the utilization of such devices would move the state back to a history of restraint-focused care that DPH moved away from twenty years ago. Though well meaning, he cautioned about taking legislative action that moves Connecticut backwards.
 - Representative Steinberg suggested that it may be helpful for the Committee to hold a legislative forum on fall prevention. Kate McEvoy agreed, noting that there is fall prevention curriculum in statute and it may be helpful to cue people back to that and established best practices. She indicated that Money Follows the Person may have funding that can be used to bring in federal leaders and national experts on this topic.
 - Representative Walker asked if there are mandated staff to patient ratios at nursing facilities. Barbara Cass responded that staff to patient ratios are set in regulation but that the focus should be on adequate staffing not specific ratios. Representative Walker asked Barbara to send her that regulation and Barbara agreed to do so, however, she added that the Centers for Medicare and Medicaid Services (CMS) provides DPH latitude with regard to making appropriate staffing level determinations when surveying. CMS' opinion is that even if staffing meets the requirement of law but is still too low to meet the needs of the patients residing at the nursing facility, states may cite a staffing deficiency. Matthew Barrett noted that ratios have not been updated since the 1980s and stressed that adequate staff to patient ratios are more dependent on resident acuity than a prescribed number in regulation. Mairead Painter shared that staffing, particularly on weekends, is always a top resident and family concern. She went on to share her appreciation that legislation was passed this session clarifying the definition of "staff" for the purposes of meeting staff to resident ratios as being those staff that provide hands-on care. It allows for a more accurate depiction of staff available to provide care.

- Mag Morelli suggested the group consider offering a future fall prevention education conference, similar to the one they are holding for nursing facilities, for community-based providers.
- Barbara Cass presented on quality of care issues that have arisen since the April meeting. She clarified that quality of care is not related to a specific issue, rather it is a bundled category that encompasses many issues such as: following the wrong diet, pressure sores and falls. Highlights of the ensuing quality of care discussion are as follows:
 - Representative Petit asked if quality of care deficiencies are based on “perceived” quality issues or substantiated claims of quality lapses. Barbara Cass clarified that data is based on substantiated claims. She further noted that all falls resulting in injury are reported to DPH and DPH investigates each report.
 - Senator Logan inquired as to DPH procedure for ensuring corrective action is taken after a reported and substantiated quality of care issue is found. Barbara Cass provided an explanation of the DPH review and inspection process.
- Barbara Cass reported the following four cases of “immediate jeopardy” and explained the DPH protocol for addressing such cases: (1) Related to inadequate supervision of a resident with dementia; (2) Related to a five minute delay in the start of CPR and the subsequent passing of the resident; (3) Related to incorrect medication dosage, resident fully recovered; and (4) Related to supervision in which two patients with dementia were allowed to leave the facility for a walk together, both were found and returned safely. She concluded her presentation by noting that facilities with a citing of “immediate jeopardy” have 23 days to rectify the issue or a termination of license track begins. In all four cases above, the facilities resolved the immediate jeopardy within the 23 day requirement.
- Barbara Cass shared other issues that DPH has encountered: (a) education is required regarding the difference between advance directives and code status – DPH is considering doing an educational blast fax to nursing facilities and asking Mag Morelli and Matthew Barrett to share with their membership as well; (b) Temperature control – one home recently had a cooling issue and DPH intervened, brought in portable cooling units and stayed on-site 24 hours per day to monitor the situation until it was corrected; (c) On Sunday 7/7/19 a nursing home had a fire in one area and 49 residents were evacuated to eight different nursing homes; the state implemented its long-term mutual aid plan immediately and all went seamlessly; 33 residents will begin moving back to the facility today (7/10/19); (d) A recent report of the Office of the Inspector General (OIG) found that nursing homes are not always reporting or investigating cases of abuse and neglect and made several recommendations for improving the handling of such cases; CMS is currently reviewing the report and DPH expects CMS to make several changes to the requirements for reporting cases of abuse and neglect as a result, especially in the area of timeframes.

Receiverships/Closures/Bankruptcies

- Kathy Shaughnessy provided the following report on receiverships/closures/bankruptcies:
 - **Bankruptcy:** There is one outstanding bankruptcy involving Bridgeport Health Care Center. The Court held an open bidding process for the home and received three bids. The court has requested more information from bidders on matters related to the purchase price. DSS has not become involved in the bankruptcy at this stage.

- **Receiverships:** There are no pending receiverships at this time.
- **Closures:** One facility in Westport has filed a letter of intent to close with DSS. A public hearing has been held and the home has 180 days from filing the letter of intent to submit a Certificate of Need (CON) to close. Mairead Painter noted that the transcript from the public hearing is not available yet but the Office of the Long-Term Care Ombudsman has been holding monthly meetings for residents and their family members. Representative Steinberg shared that he met with the owner of the Westport facility who feels that his facility is being penalized for their number of beds. Representative Steinberg further shared that the owner is concerned about the viability of his other homes due to the low reimbursement rates. The current rate does not allow Westport to afford needed facility improvements.
- Members engaged in a discussion on nursing facility reimbursement rates. The following are highlights:
 - Representative Steinberg shared that he is in attendance at today's Committee meeting to explore whether the reimbursement rate issue experienced by the facility in Westport is causing a broader trend that is leaving many homes on the verge of closure.
 - Kathy Shaughnessy and Kate McEvoy noted the data tracked by DSS demonstrates Connecticut is over-bedded. DSS tracks bed census across the state and looks at level of need and geography when making closure determinations. Additionally, there is a provision in the statewide long-term services and supports plan that requires a town-by-town analysis of need for nursing facility beds. Kate McEvoy informed the group that the general consumer-driven in long-term services and supports is towards a preference for home and community-based care. She also noted that DSS recognizes that there will always be a need for high quality nursing home beds.
 - Matthew Barrett said that rate setting needs to be addressed as there is a daily shortfall to homes for each Medicaid consumer served and the number of private pay patients to make up this shortfall is dwindling due to the utilization of assisted living facilities first. Mag Morelli added that payer-mix is a huge issue. Not only are facilities not seeing as many private-pay patients but the lengths of stay for both private pay and Medicare patients have gotten shorter. There is a new business reality that needs to be acknowledged when setting nursing facility rates.
 - Matthew Barrett shared his position that rebalancing does not need to mean closing nursing facilities, it can be achieved by reducing beds within facilities. Kate McEvoy stated agreement that the current trend of bankruptcies is not in anyone's best interest and that there is a commitment to ensuring quality beds are available. Kate continued that DSS supports diversification in nursing homes and believes that many changes are needed on the federal level to support such transitions. Connecticut has been working with federal agencies, such as the Department of Housing and Urban Development, to highlight opportunities for change. Mairead Painter shared that residents and family members have expressed interest in bed reduction versus facility closure. Anne Foley reminded members that there is a process in place at DSS for nursing facilities to request bed reductions. This is an allowable practice.

- Marnie Talamona from Genesis HealthCare shared her experience taking 30 beds offline to create a dialysis center that she purported saves the state transportation costs. Low bed occupancy was supplemented by removing beds and diversifying. She shared the opinion that she should not be penalized for decreased occupancy because of this. When asked about filing a CON for the bed reduction she noted that her facility is still working on the CON.
- Matthew Barrett said that some facilities choose to retain licensed beds because owners believe they have some value.
- Kate McEvoy said that DSS will be releasing a refreshed report on the demand and need for beds by town in the near future. DSS can also share the most recent projections, which are on target with earlier projections.
- Representative Steinberg would like the legislature to receive a presentation on this report.
- Senator Logan said based on firsthand experience in his region, there is a need for homes that provide quality care to remain open in various geographical areas and to take measures to limit effects on residents and family members. Anne Foley noted that legislation passed this session specifically requires that geography be considered in the review of nursing facility closures.

Long-Term Care Mutual Aid Plan Update

- Barbara Cass reviewed the key provisions of the Long-Term Care Mutual Aid Plan. She noted that two evacuations have occurred in the past 18 months and the Mutual Aid Plan worked very well. DSS successfully aligned Medicare reimbursement rules for evacuated residents. DSS agreed this is a promising practice and Kate McEvoy stated that DSS would like to memorialize this practice through a State Plan Amendment (SPA) that is currently under internal review at DSS. She agreed that DSS can provide an update on this SPA at the next meeting.

Patient Driven Payment Model (PDPM) – Acuity-Based Medicaid Rate System

- Kathy Shaughnessy briefly explained the definition of “acuity-based” and reported that consultants Meyers and Stauffer have taken the lead on the transition to a Medicaid acuity-based reimbursement methodology. They will be presenting at the next Committee meeting on the kick-off to transition. She also noted that DSS has a dedicated [web page](#) where people can follow the transition and obtain information. Kate McEvoy noted that this is part of DSS’ commitment to providers and dedication to transparency. Kate agreed the web [link](#) can be shared with members.

Legislative/Budget Update

- Anne Foley reviewed the following key budget provisions that affect nursing facilities:
 - 2% increase in Medicaid rates across the board for nursing facilities to provide wage and benefit enhancements. DSS noted that they have a [web page dedicated to this provision that includes answers to frequently asked questions](#);
 - Rebasing – This process is conducted every 2-4 years and examines the rate versus actual allowable cost in order to determine if a facility’s rate requires adjustment up or down. A stop-loss of 2% is built-in, therefore, the most a home can be adjusted down

for the new rate is 2%. The two exemptions to the stop loss provision are: (1) homes with a 1 star rating as issued by CMS; and (2) low-occupancy facilities.

- Anne noted that the majority of homes whose issued rate exceeds their calculated rate will qualify for the 2% stop loss. She explained that many changes were made to what the Governor originally proposed in February, 2019 in direct response to the industry's feedback, and those revisions are reflected in the final language included in the budget. Examples of these changes include a hold harmless provision for new nursing facilities, a rate appeals process, and a lengthening from one period to three periods the length of time that a facility has one star before the stop-loss is removed. Kathy Shaughnessy reported that DSS is currently running numbers to see what the rebasing will look like. She explained DSS' proposed methodology for using the star rating and how DSS is defining a "period". Members discussed the pros and cons of using monthly versus quarterly periods. Anne Foley said that OPM can work with DSS on different methodologies for using the star ratings based on the feedback from the Committee's discussion today. Matthew Barrett shared the view that it is unfair to use star ratings and occupancy levels from prior periods because homes have no opportunity to make changes. He said that a 7/1/20 transition date would be more reasonable and would allow the industry time to take beds offline. Anne Foley reminded members that the State has been encouraging bed reduction for years. This is not new. Kathy Shaughnessy added that CMS does not allow the State to pay for empty space and that Massachusetts' calculates at a 98% occupancy rate and Rhode Island a 95% occupancy rate compared to Connecticut that uses a 90% threshold. Representative Walker requested someone contact her and set-up a meeting to discuss the current rate setting system and how stars will be used in the new rate methodology.

Other Business

- Next meeting is Thursday, October 24, 2019 -- 9:00 - 11:00 at DSS -- Room 9003

Adjournment

Motion to adjourn made by Anne Foley, seconded by Matthew Barrett. Motion adopted by unanimous vote.

Meeting adjourned at 12:17 P.M.