STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
Office of Health Care Quality
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Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

December 4, 2007

The Honorable Thomas M. Middleton, Chair
Senate Finance Committee
3 East, Miller Senate Building
Annapolis, MD 21401

The Honorable Peter A. Hammen, Chair
House Health & Government Operations Committee
Lowe House Office Building, Room 241
Annapolis, MD 21401

RE: House Bill 837 - Department of Health and Mental Hygiene - Regulation of Nursing Homes – Review (2007)

Dear Senator Middleton and Delegate Hammen:

During the 2007 Legislative Session, the General Assembly passed House Bill 837, entitled "Department of Health and Mental Hygiene – Regulation of Nursing Homes – Review," which directed the Department of Health and Mental Hygiene, in consultation with various stakeholders, to review current State laws and regulations with regard to oversight of nursing homes in Maryland. The attached report is the end result of our review and evaluation.

The Office of Health Care Quality is in the process of drafting comprehensive revisions to the nursing home regulations. The regulations will be circulated in the spring for informal comment to all stakeholders prior to publication for formal comment in the Maryland Register. It is possible that specific regulatory changes will be addressed and published in advance of the larger package of regulatory changes. The Department will also develop a time table for implementation of all non-regulatory changes in this report.

Should you have any questions regarding the attached report, please do not hesitate to have your staff contact me at (410) 402-8001. Thank you very much for your continued support of the Office of Health Care Quality.

Very truly yours,

Wendy Kronmiller
Director

Enclosure

cc: Anne Hubbard, Director, Office of Governmental Affairs, DHMH
Kim Mayer, Director, Policy and Administration – OHCQ, DHMH

OHCQ
Office of Health Care Quality

DEPARTMENT OF HEALTH & MENTAL HYGIENE

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Review of Maryland State Nursing Home Regulations

Report Required by House Bill 837
of the 2007 General Assembly Session

November 2007

MARYLAND

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Background

The General Assembly, in House Bill 837, directed the Department of Health and Mental Hygiene (DHMH), in consultation with the Maryland Board of Nursing, the Maryland Board of Pharmacy, Mid-Atlantic LifeSpan, the Health Facilities Association of Maryland, the Oversight Committee on the Quality of Care in Nursing Homes and Assisted Living Facilities, the United Seniors of Maryland, Voices for Quality Care, the Maryland Long-Term Care Ombudsman Program, providers, advocates and other interested parties, to review current State laws and regulations, best practices, and experiences of other states with regard to the regulation of nursing homes. House Bill 837 also directed the Department to report to the Senate Finance and House Health and Government Operations Committees on the review and include discussions on specific issues including:

- The status of and demand for electronic monitoring, including the feasibility of and goals for electronic monitoring;
- Resident-directed care and whether specific State regulations may be barriers to culture change and patients' rights;
- The status and rights of family councils;
- Communication between residents or their legal representatives and nursing homes; and,
- Whether specific State regulations should be changed to provide nursing homes with greater flexibility while maintaining safety.

Action Plan. The Office of Health Care Quality (OHCQ) formed a workgroup of all stakeholders to review and evaluate COMAR 10.07.02 (Comprehensive Care Facilities and Extended Care Facilities) and COMAR 10.07.09 (Residents' Bill of Rights: Comprehensive Facilities and Extended Care Facilities) and relevant statutes. The workgroup did not focus on the availability of waiver funding for alternatives to nursing homes, the future of nursing homes or other issues that are outside of these regulations. Moreover, the regulation of nursing homes, for the most part, is driven by federal laws and regulations; the Department does not have the authority to modify these requirements and, therefore, those were also not included in review. The workgroup met several times over the 2007 Interim.

The workgroup utilized a ten page working document comprised of all regulations for nursing homes and suggestions submitted by stakeholders and advocates. The document was used to facilitate discussion of specific regulation changes suggested by workgroup participants. While the discussions were lively at times, the outcomes of the discussions were valuable for all parties involved.

Electronic Monitoring

Chapter 409 of the Acts of the 2003 General Assembly required DHMH to develop guidelines for nursing homes that elect to use electronic monitoring with the consent of a resident or legal representative of the resident. The Department developed Electronic Monitoring Guidelines, which continue to be posted on the OHCQ's website.[1] The guidelines are a general resource tool and were designed to assist facilities with implementing requests for electronic monitoring. The guidelines include mandatory elements, such as informed consent, notice and installation. The guidelines also address issues pertaining to cost and maintenance, custody of recordings and Departmental access to recordings.

During the 2007 Legislative Session, House Bill 972, was introduced, which would have required related institutions[2] that have 50 or more residents and a nursing assistant ratio of more than two to one to install electronic monitoring devices in all resident rooms where residents are at risk for falling and sustaining injuries. The related institution would have been required to post in a conspicuous location a notice that electronic monitoring was occurring and staff the monitor 24 hours per day. In addition, subject to the Maryland Rules of Evidence, a recording created through the monitoring would be admissible in either a civil or criminal action.[3]

Privacy issues are of great concern considering the very personal services that are provided to residents that may be subject to monitoring. Many advocates and stakeholders who attended the workgroup meeting on this issue expressed concerns about personal privacy. Round the clock electronic monitoring and constant surveillance by staff may be inconsistent with the idea that residents have a right to privacy in their homes. Moreover, electronic monitoring is not a substitute for direct patient care. Electronic monitoring cannot prevent falls or abuse, it can only document that these events have occurred and, perhaps, expedite follow-up or treatment. Creating tapes that may be viewed upon concern or request would be less intrusive on a day-to-day basis than constantly monitoring patients. That is the concept behind the electronic monitoring guidelines put forward by the Department in 2003.

The workgroup identified two over arching purposes for electronic monitoring, to: (1) aid and support staff by monitoring common areas and (2) document the origin of suspicious injuries. While it was also noted by representatives from the nursing home industry that some facilities

[1]The Electronic Monitoring Guidelines can be found in Appendix One of this report and on-line at: http://dhmh.md.gov/ohcq/reports/149report.pdf

[2] Related institution is defined in HG §19-301(O) as meaning "an organized institution, environment, or home that (i) Maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for 2 or more unrelated individuals who are dependent on the administrator, operator, or proprietor for nursing care or the substance of daily living in a safe, sanitary, and healthful environment; and (ii) Admits or retains the individuals for overnight care. This definition, therefore, includes assisted living facilities and state residential centers for individuals with developmental disabilities.

[3]HB 972 would have applied to approximately 324 facilities, including nursing homes, assisted living facilities, residential treatment centers, the State's two chronic hospitals, prison hospitals and state residential centers for individuals with developmental disabilities. The bill also mandated that these facilities fund the installation of equipment, as well as required parameters for monitoring. The estimated cost to the Department for the implementation of these provisions in state operated facilities would have exceeded $2 million.

are beginning to use some types of electronic monitoring in common areas, there have not been many requests from consumers or families for individualized electronic monitoring in nursing homes.

The workgroup also discussed other ways to accomplish the fundamental goals of electronic monitoring (preventing abuse, neglect and falls) which include:

- Abuse and neglect training;
- Annual training requirements for geriatric nursing assistants;
- Bathroom safety training;
- Personal pendants;
- Bed and chair alarms;
- Wireless call systems with data connectivity to track response times; and
- Use of other assistive devices, such as low rise beds.

There were concerns raised by advocates and stakeholders about who should be able to request and consent to electronic monitoring. The patient, him or herself, is of course the first source of consent. However, if he or she is incompetent to make that decision, the request for electronic monitoring should be handled in the same manner as a health care decision with the same provisions to advanced and surrogate decision making.

There was consensus from a majority of the workgroup members that electronic monitoring is an issue that should not be pursued further as a mandated requirement for nursing homes or related institutions pending resolution of privacy concerns and exploration of alternatives, such as those listed above. It was noted that grants from the Health Care Quality Account could be used to partially fund pilot projects on electronic monitoring or to prevent abuse, neglect or falls; however, no grant applications in this area have been received.

Implementation - A change will be needed in the existing Electronic Monitoring Guidelines to clarify that electronic monitoring is to be considered a health care/medical decision with the same provisions for advance and surrogate decision making as other health care decisions. The OHCQ will continue to encourage stakeholders to request pilot funding for electronic monitoring programs through the Health Care Quality Account.

Family Councils

Health-General Article §19-1416 establishes requirements for family councils. A common theme of discussion of the workgroup was that family members should be educated about the importance of family councils and nursing home administrators should appreciate the value of enhancing communication with residents and families.

Not all nursing homes have family councils. Some facilities have repeatedly tried to initiate a family council, but those efforts have failed because families were either unable or unwilling to provide support for the council to function. As an alternate means to communicate with family members of residents, some facilities are holding quarterly meetings with the Administrator which have reportedly been well received.

Some advocates expressed concern that family councils have not been able to access the general, overall operating policies and procedures for nursing homes. The Department agrees that residents, their family members or legal representatives of residents should be able to view a facility's general operating policies and procedures to the extent they are not proprietary in nature.

It was noted at various workgroup meetings that family councils at times receive complaints or questions from family members with regard to the care their loved ones are receiving and that some family councils work with family members to determine how the family should handle the complaint. The OHCQ expressed serious concern that family councils must encourage family members to communicate complaints about resident care to OHCQ or the Ombudsman program.

In lieu of making any regulatory or statutory changes with regard to family councils, the Department will develop a quick reference guide to reinforce the importance of family councils and where and how to file a complaint that can be given to residents and their family members. Additionally, over the past few months, OHCQ staff have made presentations to five nursing home family councils to introduce family members to OHCQ.

Implementation – The Department should develop a quick reference guide, such as a bookmark or refrigerator magnet, on the importance of family councils and how and where to file a complaint. The OHCQ representatives will continue to make presentations to facility family councils upon request.

Communication

The intent of House Bill 837 as introduced during the 2007 General Assembly Session was to improve communication between residents, families, and nursing homes. The workgroup reviewed the bill as introduced and COMAR 10.07.02.46(D) – Patient Complaints of the current regulations. Both the bill and regulation attempt to accomplish similar goals. There was consensus that the goals of House Bill 837, therefore, could be addressed by strengthening and expanding the current internal complaint processes for facilities.

Any process improvement should not replace communication between residents, families and nursing homes. In fact, communication should be encouraged between these parties. There are several categories of nursing home complaints and various means to attempt to resolve them. For example there are: quality of care complaints, which should be directed to the OHCQ; resident grievances for various issues, which may be best resolved by the Ombudsman Program; and suggestions, recommendations or feedback, which a nursing facility should be able to resolve internally.

There was consensus that the Department should develop a uniform form for use by nursing homes for resident grievances and suggestions, recommendations, or feedback. Because it would be intended to inform the public of these concerns, the form should be developed in such a way that identifiable, personal information can be detached so there is no need for staff time to redact information. The forms should be available for public review at a central

location within the nursing home. The forms and a notebook of the forms should be available 24-hours a day, 7 days a week and should not be removed from the nursing home. The form should also specify that individuals should contact the OHCQ when the complaint pertains to quality of care.

The process should also establish a timeframe for review and response by the facility. The communication loop needs to be closed and it was suggested that there be a requirement for some kind of response from the nursing home to indicate to the resident or family member that their issue was received, reviewed, and how the issue was resolved. The workgroup also discussed whether this process should be in paper or electronic format. Given the current State budget situation, it was determined that electronic formats would not be required but would be encouraged.

The workgroup also discussed the need to consolidate the complaint processes outlined in 10.07.02 (Comprehensive Care Facilities and Extended Care Facilities) and 10.07.09 (Patient Rights). The current bifurcation of these regulations is unnecessary and is confusing to consumers and facilities.

Implementation – Regulation change is required to consolidate the complaint sections in 10.07.02 and 10.07.09 and incorporate the changes noted in this section. The OHCQ will also need to develop a uniform form for tracking of resident grievances and suggestions.

Culture Change and Right to Be Informed

The workgroup discussed "culture change" and its impact on the regulation of nursing homes.[4] Most of the regulatory process for nursing homes is driven by federal rules and regulations. There are very few state regulations that may conflict with current culture change initiatives. However, every culture change initiative is unique and there may be future initiatives that conflict with current or proposed regulations. Therefore, the Department will incorporate a special section in the proposed regulations that pertains specifically to waiver requests for culture change initiatives. The Department wishes to encourage culture change activities and will be inclined to grant such a waiver, provided that quality of patient care is maintained.

House Bill 946/Senate Bill 620 of the 2004 General Assembly Session, placed new requirements on nursing facilities and requires the Department to reach out to nursing facility residents who have indicated a preference to return to the community. While the Maryland Medicaid Program requires nursing homes to provide information to residents about community placement alternatives, it is important that the revised regulations reference the requirements.

[4] Culture change is a process where nursing homes transition from traditional models of caring for residents in institutional, hospital-like settings to providing care in resident-centered, home-like environments. Nursing homes that have implemented culture change initiatives have experienced changes in the atmosphere for both resident and staff, making the facilities better places to work and to live.

Implementation – Regulation change is required to develop a specific section that pertains to waivers of regulations for culture change initiatives. The regulatory changes should also identify the requirements placed on nursing facilities with regard to the right of residents to be informed of home and community-based services.

Medications in Facilities

The workgroup discussed two aspects of medications in facilities: so-called take-home medications, or leave of absence medications, and the right to select a pharmacy provider. Current regulations for long term care facilities provide that patients have the right to select a pharmacy provider, but the right is diluted by requirements for alternate sources of medication, such as the packaging of medications and other safeguards typically found with a traditional institutional pharmacy.[5] Thus, there is actually only a very limited right to select pharmacy services. While this dichotomy generated much lively debate, workgroup members could agree on no solutions.

The workgroup also discussed current requirements for a resident to receive medications for short trips (e.g., to attend a dinner or go to the movies with family members). Current regulations do not allow nurses to package, repackage, bottle or label in whole or in part any medications, or alter in any way by tampering or defacing any labeled medications.[6] This is viewed by families as restricting a patient's ability to engage in normal activities. It would appear that nurses should be able to give patients or their families a limited number of medications to take during an afternoon or evening, as long as education is also provided and documented. Relaxing this requirement would improve quality of life for patients and their families.

Implementation – Regulatory changes are required to clarify requirements for leave of absence medications.

Next Steps

The Department is in the process of drafting comprehensive revisions to the nursing home regulations based upon workgroup discussions. The regulations will be circulated in the late Spring for informal comment to all stakeholders prior to publication for formal comment in the Maryland Register. It is possible that specific regulatory changes will be addressed and published in advance of the larger package of regulatory changes. The Department will develop a time table for implementation of all non-regulatory changes in this report.

[5] Pharmacy Requirements can be found in COMAR 10.07.02.15
[6] COMAR 10.07.02.15 C(1)(e)

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