



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Office of Health Care Quality

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55 Wade Avenue • Catonsville, Maryland 21228-4663

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.

Senator Middleton and Delegate Hammen

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

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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,

A handwritten signature in black ink, appearing to be 'Wendy Kronmiller', with a long, sweeping horizontal line extending to the right.

Wendy Kronmiller
Director

Enclosure

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



DEPARTMENT OF HEALTH & MENTAL HYGIENE

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
John M. Colmers, Secretary
Wendy Kronmiller, Director

Review of Maryland State Nursing Home Regulations

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

November 2007



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 OHCCQ'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 institutions² 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 overarching 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

¹The Electronic Monitoring Guidelines can be found in Appendix One of this report and on-line at: <http://dhmh.md.gov/ohccq/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.

³HB 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.