

State Advisory Council on Quality Care at the End of Life

Minutes from the March 2, 2023 Meeting

Meeting time and place: March 2, 2023, 10:00 a.m., the Office of Health Care Quality, 7120 Samuel Morse Drive, Second Floor, Columbia, Maryland, and via video conference call.

Council members present: Christopher Kearney; Paul Ballard (Attorney General's designee); Jane Markley; Rabbi Steve Glazer; Carmel Roques (Secretary of the Maryland Department of Aging); Peggy Funk; Gail Mansell; Tiffany Callender Erbelding; Shahid Aziz; Nicole Lopez de Victoria; Stevanne Ellis (Maryland Department of Aging's designee); Susan Lyons.

Others present: Marian Grant; Jack Schwartz; Ted Meyerson; Dan Morhaim; Jeff Zucker; Alexandra Baldi; Steve Levenson; Hank Willner; Oscar Jerkins; Sandra Nettina; Kathy Ware; Stacy Howes; Stuart Nathan; Joseph Sedtal.

Chairman Christopher Kearney opened the meeting. The January 31, 2023 minutes were approved.

Marian Grant updated the Council regarding the end-of-life care in prisons workgroup she chairs that meets under the Council's auspices. She is a former Council member and a practicing palliative care and hospice nurse practitioner, both at the University of Maryland Medical Center and at Gilchrist Hospice. She is an adjunct faculty at Johns Hopkins University and the University of Maryland School of Nursing but mostly she is a health policy person in Washington D.C. working for national palliative care advocacy groups. Because of a very troubling clinical experience she had about two years ago involving a prisoner who came to the hospital, she, and then later the Council, started to look into the issue of end-of-life care for prisoners.

Marian Grant said that the Council and the workgroup were able to obtain a redacted copy of the health care services contract that the State had with Corizon Healthcare, now YesCare, to provide health care services to prisoners. After reviewing the contract, the workgroup found a number of very clear sections in it specifically addressing chronic illness and specialty care for terminally ill patients. She prepared a document that Paul Ballard sent out to potential meeting participants regarding the pertinent provisions of the contract. The words "palliative care" and "hospice" are highlighted on the document because of the word searching they did in the contract. When they read these sections, they were very encouraged to see all of these references to palliative care and hospice in the contract but they were a little curious as to what these words really meant, that is, whether these services were actually being delivered in the prison system. In the experience of the workgroup's clinician members and those persons working with prisoner clients seeking medical parole, it didn't seem like these services were widely available in the prison system. That led them to mail out a separate document to potential meeting participants containing the workgroup's questions about the contract. And the document begins with a link to the contract that they have uploaded to a shared drive. They also sent these documents to the Department of Public Safety and Correctional Services (DPSCS) Secretary Carolyn J. Scruggs and to Dr. Oscar Jerkins and Joseph Sedtal, DPSCS employees. They plan to follow up with Oscar Jerkins to talk about this issue.

Marian Grant also mentioned that she, Christopher Kearney, Peggy Funk, and Lila Meadows, law professor at the University of Maryland School of Law, met with Dr. Laura Herrera Scott, Secretary of the Maryland Department of Health, regarding this issue. Everyone they have been meeting with seems to be very interested in the quality of care at the end of life provided in prisons. Before their meeting, Secretary Scott had already been reviewing the contract. The contract expires at the end of 2023 and will have to go out for bidding at some point. In fact, the process to develop the Request for Proposals (RFP) is taking place currently. So, it is quite timely to meet with the DPSCS regarding this issue.

Marian Grant said that DPSCS Secretary Scruggs has been quite responsive to emails. Secretary Scott knows a great deal about hospice and palliative care from working for a payor and is a big believer in advance care planning. Secretary Scott is interested in seeing if the RFP could be modified to include more quality requirements in the future contract. Secretary Scott's sense was that the contract does not have a lot of quality requirements in it. So, even though there are a number of reports that the workgroup would be interested in seeing, such as a monthly report for hospice and palliative care, mortality reports, and utilization reports, the existence of these reports would not necessarily mean anyone is focused on quality requirements or able to do much about that. That is why Secretary Scott would like to see that any future contract includes quality requirements. The Council and the workgroup representatives offered their help and Secretary Scott was quite interested. Secretary Scott appreciated the Council using its leverage to focus on this issue and encouraged the Council to use this leverage with other State agencies if necessary. She asked the Council and the workgroup for input regarding the RFP in those areas that are within the Council's mission to advise State agencies. Marian Grant said that the workgroup is going to try to get back to Secretary Scott with some concrete suggestions.

Christopher Kearney thanked Carmel Roques, Secretary of the Maryland Department of Aging, for attending the Council meeting, noting that the Council may not have been well known to her but the Council is offering its help and expertise to State agencies regarding the issue of care for the seriously ill, including to the Maryland Department of Aging, to the Maryland Department of Health, and more particularly to the Department of Public Safety and Correctional Services for this issue involving the care provided to prisoners at the end of life. He acknowledged that although the care of prisoners by the DPSCS is not directly under the purview of the Maryland Department of Aging, it is nonetheless the case that the prison population is getting older and aging in prison is going to be an increasing problem.

Secretary Roques said she did not know about the Council, and said she was excited to get the opportunity to meet with the Council. She absolutely believed that end-of-life care for individuals who are incarcerated is part of what the Department of Aging will need to be considering as they look at a multisector plan for aging in Maryland. And one of the things that struck her was the aging of the incarcerated population and the fact that we don't have a really solid plan or approach to ensure quality of life for those individuals as they age in the prison system and begin to need complex medical care and palliative care. So, when the Department of Aging begins their work for multisector planning for an aging Maryland population, this is a

topic area that will get included in that multisector planning very specifically. So, she is happy to be having these conversations at the very beginning of this planning.

Secretary Roques said they are in the process of rebuilding the Department of Aging as there are many departments in the State government at the beginning of the new administration. They are beginning to recruit and hire people. One of the functions she believes the Department of Aging has been missing is a person who has worked very actively across governmental sectors and with external stakeholders. The Department has hired someone who will begin to lead that process and she will make this person aware of the Council's work and think about how to fold this work into an element of the master planning process for the State. Secretary Roques noted that Stevanne Ellis is the Department of Aging's State Long-term Care Ombudsman who is very actively engaged with the State's ombudsmen regarding these issues concerning medical and palliative care for the aging population.

Secretary Roques also found it very interesting that the Maryland Department of Health Secretary Laura Herrera Scott targeted the issue of quality outcome measures because Secretary Roques suspects that quality outcome measures don't get looked at very much for the prison population. Secretary Roques said she was happy the Department of Aging could be part of this discussion. She said one of the things she has been working on in her first 30 days are ways they can elevate awareness of the Department of Aging's work among their many constituents, not just the people that the ombudsmen serve, that is, patients, their families, and care providers. And this is an area where they can make family members of incarcerated individuals more aware of services and programs and advocacy work being done on behalf of their loved ones. She thanked the Council for inviting her to attend the meeting and said she and the Department are really looking forward to being engaged in this work. Peggy Funk agreed with both Secretary Roques and Secretary Scott that one of the things that seem to be missing in the contract are quality outcome measures.

Oscar Jerkins said he appreciated the Council's invitation and their interest in end-of-life care issues for prisoner detainees and patients who are in the incarcerated population long-term. He is three weeks into his current position as medical director with the Department of Public Safety and Correctional Services. After beginning his medical career in the Navy, he was a family physician by training with 25 years of family practice experience, the last 10 years of which he spent mostly with local government correctional institutions.

Oscar Jerkins said there are challenges in the correctional system in providing any care beyond acute care when there is a need to go outside the correctional system for care. Primary care is available within the facilities of both local detention centers and state correctional systems. There is a significant variability in skilled nursing facility level care, long term care, and custodial care. These issues are more of a problem where there is a lack of care at the county level. Attempts to acquire partnership with skilled nursing facilities must overcome a big barrier because of the security requirements of caring for this population of patients. There are higher levels of care available within many of the State facilities' infirmaries which provide a skilled nursing facility's level of care. These infirmaries provide a level of care for prisoners returning from the hospital. These infirmaries provide nursing care, primary care, physical therapy services, occupational therapy services, mental health services, etc. He welcomed the

opportunity to collaborate with the Council and get their advice on ways to expand the availability of end-of-life care options for incarcerated individuals in the DPSCS prison system. Christopher Kearney thanked him for talking with the Council.

Dan Morhaim, longtime emergency medicine physician and former State delegate who was the House of Delegates representative on the Council and who was very active in health and end-of-life care issues, commented that he continues to attend Council meetings and participates as a volunteer. He said the Council has a very open and generous process that allow participation by the public in addition to Council members. He appreciated all of Marian Grant's work regarding the health care issue for prisoners with serious illnesses but noted that all the same issues apply to everyone who is not in prison. He urged the Council to try to promote the upcoming National Health Care Decisions Day on April 16, 2023 with the new administration. He would urge the Governor and relevant Department Secretaries to have a ceremony in Thurgood Marshall Plaza signing their advance directives. He also noted the legislation to create an electronic advance directive system that the Maryland Health Care Commission is working on, which effort derived from legislation he sponsored when he was in the legislature.

Christopher Kearney thanked him for his comments.

Joseph Sedtal, Director of Procurement for the DPSCS, said they are currently in the Request for Proposals process, and would love to have any communications with outside stakeholders (keeping in mind certain associated procurement regulations) to discuss how the care ultimately provided by DPSCS is the best it can be. Marian Grant said that it had been pretty amazing how three Secretaries agreed to meet with the Council's prison end-of-life care workgroup about this issue. She is very appreciative of their interest. When they meet with Dr. Jerkins, they will be able to talk more specifically about the parts of the contract they have questions about.

Marian Grant discussed the grant offered by the National Academy for State Health Policy (NASHP) to applicant states to help them in their efforts to expand the availability of palliative care. Despite the Council's name, they are not just interested in issues regarding end-of-life care, but also in issues regarding palliative care and chronic care, the improvement of which would make the quality of life better for people in the last part of their lives. So, the Council has long advocated for more palliative care resources in Maryland. Some of the Council members had previously tried to start their own serious illness care coalition, something that some other states have been able to do, with groups that represented providers, health systems, and payors. But the efforts of the group in Maryland were not successful in finding the necessary funding. But Peggy Funk, who is the executive director of the Hospice and Palliative Care Network, an association of the provider groups that provide hospice and community-based palliative care, was able to help introduce legislation that passed that established a palliative care workgroup in Maryland.

Marian Grant said the palliative care workgroup is engaged in a two-year process with an interim report and the process is to study what is going on in Maryland regarding palliative care services. So, right now there is a survey going out, and then the workgroup will need to analyze the survey's results and come up with recommendations for the State of Maryland. Those recommendations could involve legislation, regulations, or something else. She, Peggy Funk, and

Christopher Kearney are all on the workgroup created by this legislation and they recently became aware of an opportunity through NASHP that has funding from an outside foundation for a palliative care policy institute. Because federal efforts have not been successful to expand palliative care service, the focus has shifted to promoting efforts in individual states. For example, several years ago California passed legislation to mandate a Medicaid palliative care benefit. That resulted in a palliative care infrastructure being established across the large state of California. Hawaii is in the process of submitting a state plan amendment to create a Medicaid plan benefit. She is aware that several other states are also in the process of passing legislation or looking at Medicaid waivers. This is an appealing idea because it: (1) gets these services to people who need them, and (2) creates a statewide infrastructure for palliative care services. Right now, most palliative care services in Maryland are concentrated around major cities, mostly in the Baltimore/Washington area, and less so in rural areas. But if Maryland had a palliative care Medicaid benefit, there would have to be services available in all of Maryland's counties serving patients on Medicaid.

Marian Grant said that NASHP's palliative care policy institute was just announced a few weeks ago and that they were taking applications. Five successful State applicants would work for two years with resources from NASHP. And those resources would help the State develop actuarial information, financial information, cost, utilization estimates, and help to identify the population in Maryland that would be covered by a potential statewide Medicaid benefit for palliative care. An application from a state requires two State government representatives. They were delighted when Ben Steffen, executive director of the Maryland Health Care Commission, who has been leading the palliative care workgroup, agreed to take leadership of that effort along with Tricia Roddy from the Maryland Department of Health's Medicaid program. Marian Grant and Peggy Funk are the other two members from Maryland. She shared the applications they submitted with the Council and invitees prior to the meeting. She said it was a very fast process and they will find out early in the week following the Council meeting whether Maryland's application will be accepted. She did hear that NASHP was delighted and surprised regarding how many states applied. While other states may be farther along in their efforts, Maryland was able to say that it had infrastructure in place to pursue this. She hopes the application will succeed because the palliative care workgroup is not really funded for anything other than to gather the survey information and then make recommendations. So, when the workgroup ends, the state of palliative care will be where it was before the workgroup was created. The Council does not have funding either. So, they were looking for ways to keep this effort going in Maryland so that more progress can be made.

Peggy Funk said that one of the great things about the palliative care workgroup is to help identify all the key stakeholders and get them at the same table to have these discussions. This will allow them to find out who is providing palliative care, how they are providing this care, and what the models of palliative care are. So, she thinks the workgroup's recommendations to the State will be very valuable. She thanked Marian Grant for leading this effort with NASHP and for all the support they have received. It was amazing that they could pull this application together in 2 and ½ weeks. Christopher Kearney noted that the palliative care workgroup is sending out a survey in the near future about palliative care in Maryland to see where the gaps are, and what financing is going to be needed to be able to expand palliative care across the State

of Maryland. The workgroup's preliminary report is due in July of 2023. The final report is due in November of 2023. Although we will then know more about the state of palliative care in Maryland, the very big question then is what happens. Peggy Funk said that the Maryland Health Care Commission had already sent out the survey and the survey responses are due back on March 24, 2023. Marian Grant said that Delegate Kerr is also very interested in this issue and continues to offer his assistance. Marian Grant will report back to the Council regarding whether Maryland's application to NASHP is accepted. Christopher Kearney said that Secretary Scott was also quite interested in this issue and had developed expertise in her previous work.

Paul Ballard gave a legislative update. He said that House Bill 157 regarding geriatric and medical parole had its committee hearing. The Council sent a letter in support of the bill. He had not heard anything further about the bill's status. The Council and proponents of HB 157 believe the bill would ease the ability of prisoners to get medical parole. This would be important in improving their quality of care at the end of life because the prisoners could get access to hospice care or palliative care that is available in the community. Marian Grant said Lila Meadows, their legal expert on this bill, stated that even though there seems to be general support for the bill, there are a lot of things on the legislative docket. Though the hope is that the bill will somehow still pass because it doesn't have a lot of opposition, there is still a lot of work yet to do. State's Attorneys' offices have expressed concerns that this bill may be too broad in terms of whom it might release with regard to geriatric or medical parole. So, they will be meeting with the committees again and Lila Meadows will be part of those conversations.

Paul Ballard talked about House 727 Bill that would expand the ability of physician assistants to make their scope of practice more comparable to nurse practitioners, and more particularly of interest to the Council, to enable them to provide the second certification of a patient's incapacity to make a health care decision and to provide the second certification of a patient's terminal condition or end-stage condition. Christopher Kearney noted that physician assistants already provide palliative care, and he believes they are quite careful and would take these added responsibilities very seriously. He would be supportive of them being permitted to issue these certifications, although he did not believe that the Council needed to take a position on the bill which concerns an issue regarding scope of practice. Secretary Roques agreed that she did not want to get into scope of practice issues, but she noted that allowing qualified health care providers to provide these services may be helpful to address existing critical staffing shortages and believed the Council should be supportive of that idea. Gail Mansell agreed that this would be helpful to allow physician assistants as part of the health care team to issue these certifications. Christopher agreed physician assistants could be helpful in this area as part of the team approach.

Dan Morhaim said that Med Chi had concerns with House Bill 727 because of its many other aspects besides certification of incapacity and condition. Dan Morhaim also did not have concerns about this aspect of the bill but agreed with Med Chi's concerns about other provisions in the bill. He believed that if the Council should take a position on the bill, its position should be limited to this particular area of the bill regarding certifications of incapacity and condition. He noted that in his time as a legislator that scope of practice issues were among the most contentious issues. Marian Grant supported the bill's provisions on incapacity and condition

because they could be helpful in filling this need. Dan Morhaim noted that Med Chi and physician assistants are negotiating regarding this particular bill, and he hoped they would be able to reach an agreement. Christopher Kearney said that while it useful for the Council to be aware of this issue, he did not think the Council would weigh in on the issue. He agreed with Dan that there are a lot of other aspects to the bill. His inclination was for the Council to not take a position on the bill.

Paul Ballard then updated the Council on cross-filed aid-in-dying bills, House Bill 933/Senate Bill 845, both titled as the “End-of-Life Option Act.” He noted the Council had an extensive discussion of this legislation at its January meeting prior to the introduction of these bills. He said the contents of these bills looked pretty much like they did in prior legislative sessions in which they had been introduced.

Kathy Ware discussed House Bill 611; an emergency bill introduced to sunset the Board of Nursing. She said it likely will pass and the Board will go under the authority of the Secretary of the Maryland Department of Health for a period of two years to improve efficiency to help license and certify more quickly nurses, including licensed practical nurses, registered nurses, and advanced practitioners.

Dan Morhaim forwarded an article to Paul Ballard to share with the group that was written in the Journal of the American Medical Association in late January, 2023, by Dr. Donald Berwick entitled *The Existential Threat of Greed in US Healthcare*. The thrust of the article is that a lot of money is being spent on health care in the United States, but the results don't reflect that. Christopher Kearney read the article and said it is daunting the task we have in front of us. Although Dr. Berwick did point out the recent victory with reducing the cost of insulin, Christopher Kearney said it was a little frightening when you read the article regarding where we might be headed.

Secretary Roques said that one of the deep concerns she has coming out of the long term care services sector is the impact of profit-taking being the highest goal of providers. She does not see that we have made much progress in being able to address the whole issue of our for-profit management system, profit-taking being the primary goal. She said this is a huge issue on the long term care side. The Maryland Department of Aging will do what they can to at least raise the concern and to work towards some possible guard rails around that problem. She also thinks sunset legislation for the Board of Nursing is a positive development because the provider world has struggled for years just to get qualified people. So, she is really hopeful that Secretary Scott and the Maryland Department of Health will be able to make some inroads into addressing that problem.

Christopher Kearney noted that more than 50% of Medicare recipients are in a Medicare Advantage program and that these programs are creating much greater costs than what Medicare would have cost without these Medicare Advantage programs. He said there is no real evidence that these patients are getting better care. Marian Grant said this issue is relevant to the Council because of the growth of for-profit hospices. She noted that a bill had been introduced earlier in the legislative session to eliminate Certificate of Need requirement (but was withdrawn) and that at least such a requirement, though a restraint of trade, helps to ensure that not just anyone can

open up a hospice regardless of their quality, as is happening in other states such as California where there are people who have no experience with hospice care that are operating hospice care programs. She acknowledged that there are some wonderful for-profit hospices but we have to be concerned when profit is the only interest for people seeking a license to operate a hospice care program.

Stevanne Ellis said that in her role as the State long-term care ombudsman for the Maryland Department of Aging, she is seeing a lot of nursing home and assisted living residents in Medicare Advantage programs, and she is noticing that patients are getting denied coverage for therapies and treatments that normally would have gotten approved under traditional Medicare. This is causing a lot of stress for residents, their families, and sometimes for providers. It does not seem to be accomplishing its purpose of providing good care for patients with chronic needs. It is great if you want dental care or the other benefits that Medicare Advantage plan has. But as far as getting basic care and rehab care and good medical care, at least in her limited experience, it appears to be backfiring. She is very concerned about that because the residents she deals with often are very stressed anyway and then to get a notice of coverage denial adds potential health problems and confusion from having therapy and treatment started prematurely.

Peggy Funk discussed the bill that was introduced regarding the certificate of need requirement for hospices. She and the Hospice and Palliative Care Network were extremely relieved to see that the bill was withdrawn. The Network continues to fight this bill every single year because many people would like to see the certificate of need requirement eliminated. Right now, across the country there are about 15 states that still have the certificate of need requirement. They have a national group that discusses strategies regarding how to keep this requirement in these states because they believe it does help to deter the kind of fraud and abuse that has been evident in California where there is no certificate of need requirement. The Network also supports a bill in New York that would prohibit for-profit hospice programs.

Dan Morhaim said he forwarded two articles about excessive overbilling to Paul Ballard to share with the group. He recounted a recent visit to a California hospice in a suburb of Los Angeles. When he walked down the street there were about five hospice stores, and he went into each one and they clearly didn't know what they were doing. From what he has learned, they get shut down as soon as they are regulated and then they pop up again with the same people and a different name. These are examples of incompetence and exploitation and so he completely supports the maintenance of the certificate of need requirement in Maryland. It was really frightening for him to see what was happening in California in the absence of sufficient regulation.

Marian Grant gave an update as to what is happening on the federal level. Members of the Ways and Means Committee in the House of Representatives are very interested in what can be done regarding hospice oversight. They are looking at what the Centers for Medicare and Medicaid Services (CMS) could do that is already under the scope of their authority that they are not doing or are not aware that they could do. At a roundtable meeting at Representative Earl Blumenauer's office she attended, Representative Blumenauer asked her organization, the

Coalition to Transform Advanced Care (C-TAC), and other leading hospice organizations in attendance to develop a list of recommendations to make to CMS.

Christopher Kearney hoped that the Council could discuss this topic of financing at a future Council meeting because of its impact of the quality of care that can be given at the end of life, which is the main focus of the Council's work as an advisory body. He said that the articles Dan Morhaim sent for the information of the group are well worth reading. He wondered who might help the Council understand these issues better and their impact in Maryland.

Jeff Zucker agreed with the alarming conclusions contained in Dr. Berwick's article that Dan Morhaim forwarded to Paul Ballard to share with the group. He thanked Secretary Roques for attending the meeting and expressed his optimism that under her leadership real differences can be made. He wanted her to know that the Council is available to help her in any way that it can. Secretary Roques thanked him and said this is one of her favorite conversations in her long career, having started her career as a social worker taking part in opening a hospice care program in Chicago. This is a lifelong and heartfelt commitment for her, and she found the conversation with the Council to be inspiring. She intends to continue to use the Council as a tremendous resource. Christopher Kearney expressed his great appreciation to her for attending the meeting and said the Council will be happy to continue to update her.

Finally, Christopher Kearney noted the article in the Baltimore Sun that revealed that the passage rate on social work exam scores for African American examinees were dismal compared to their white colleagues. He said there is a desperate need for palliative care social workers. He thought that this might be another issue for the Council to examine in future meetings.

There being no further business, Christopher Kearney adjourned the meeting.