

Meeting summary for OHCA AL Member Call (05/29/2024)

Quick recap

Erin discussed updates to the assisted living Waiver certification rule, including the critical access rate for newly certified providers and changes to the definition of memory care units. Debbie covered various federal rules affecting assisted living services, such as the Medicaid access rule, non-discrimination requirements, and the Department of Labor's new overtime rule. Updates were provided on the Governor's task force on nursing home quality, the upcoming Navigator resource, and the transition of MyCare to the Fidelis Snip program.

Next steps

- Assisted living providers should review their policies and procedures to ensure compliance with the upcoming requirements of Section 1557 of the Affordable Care Act and Section 504 of the Rehabilitation Act regarding non-discrimination.
 - Assisted living providers should monitor the legal challenges and potential implementation of the Department of Labor's overtime rule that updates salary thresholds for overtime exemptions.
 - Assisted living providers should stay informed about the potential impact of the "Never Alone" act and advocate for revisions to address concerns regarding visitation rights and potential conflicts with resident decision-making authority.
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Summary

Ohca Assisted Living Program Updates

Erin and Mandy from Ohca assisted living program discussed recent updates to the assisted living Waiver certification rule. Erin detailed the changes, particularly around the critical access rate, which now applies to newly certified waiver providers and requires 50% Medicaid occupancy for the fiscal year in which they start participating. The rule also includes measures to maintain the critical access rate for the entire fiscal year and allows providers to re-qualify for it annually. A survey for providers to qualify for critical access was also mentioned, expected to be available soon, but was not yet distributed.

Memory Care Units and NACAP Program

Erin discussed the ongoing changes to the definition of a unit for memory care, highlighting the current ambiguity and potential future implications. She noted that according to the most recent rule, memory care units must be designated, but there was an interpretation that allowed for interspersed units, which is currently under review. Erin also mentioned an upcoming informational session about the Nursing Assistant

Career Advancement (NACAP) program developed by the Ohio Health Care Association (OHCA) to create a career ladder for resident care assistance. Lastly, she brought up the Medicaid access rule released since their last discussion, emphasizing the uncertainty of its interpretation and its potential impact on assisted living waiver providers.

Medicaid Access Rules and Upcoming Changes

Erin discussed the Medicaid access rules, specifically the 80-20 provision, which states that 80% of reimbursement for specific services must be spent on compensation. This provision applies to various Medicaid waivers, including the assisted living labor program in Ohio. Erin noted a delay in implementation and potential legal struggles, making it uncertain how the provision will affect Ohio's assisted living waiver services. She advised operators to check with their respective states regarding categorization of assisted living waiver services. Erin also mentioned upcoming changes related to Hcbs quality measures, incident management systems, and rate transparency, emphasizing the need for providers to prepare for these changes.

Assisted Living Costs and Medicaid Updates

Erin underscored the need to figure out daily living costs for assisted living and suggested creating a stakeholder work group to determine the least administratively burdensome way to collect this information. She also offered to provide more information on the Medicaid access rule, which she described as unlikely to change soon. Debbie then broke the news about potential changes to the Medicaid access rule in Ohio, including the possibility of including habilitation. Mandy provided an update on the 5-year review of the licensure of residential care facilities in Ohio, noting that no substantial changes were expected. Debbie introduced herself as a newcomer to the assisted living member call and promised to cover various federal rules affecting their services.

Preparing for New Overtime Rule and FTC Rule

Debbie discussed the Department of Labor's new overtime rule, set to take effect in July 2024, which would raise the current salary threshold for executive, administrative, and professional employees. She advised employers to prepare for this change by reviewing their affected employees and considering salary adjustments or transitioning them to be eligible for overtime. Debbie also touched on a new rule from the Federal Trade Commission that would prohibit non-compete clauses for employees, with certain exceptions, and mentioned a pending lawsuit filed by the US Chamber of Commerce and Business Round Table against this rule.

Legal Actions and Rule Changes Discussed

Debbie discussed potential legal actions and proposed rule changes related to non-competes and the rescheduling of marijuana. She highlighted that while there's been no discernible action on the legal matters, they will keep the team updated as any

developments arise. She also touched upon a notice of proposed rule-making by the DEA regarding the reclassification of marijuana from a schedule 1 to a schedule 3 drug. This move would allow for the prescription and use of medical marijuana, but it would require changes to Ohio's current rules and approval by the FDA. Finally, she noted two non-discrimination final rules issued under Section 1557 of the Affordable Care Act.

Federal Non-Discrimination Rules and Compliance

Debbie discussed several non-discrimination rules that apply to entities receiving federal financial assistance. She highlighted the need to appoint a Section 1557 coordinator to handle grievances, record keeping, language assistance, and effective communication procedures. Debbie emphasized the importance of updating policies and procedures and training employees by May 1, 2025. She also mentioned Section 504 of the Rehabilitation Act, which prohibits disability-based discrimination in health programs receiving federal financial assistance. Debbie encouraged the team to review the provided links and summaries to ensure compliance with these rules.

Governor's Task Force on Nursing Home Updates

Debbie and Pete discussed updates on the Governor's task force on nursing home quality and accountability. Pete mentioned that while the task force primarily focused on skilled nursing, it did address memory care and the need for improved information on assisted living. He shared that the long-awaited Navigator, a replacement for the outdated Consumer Guide, is set to launch soon, with the initial version excluding assistive living. However, he assured that this will change in the future, with a planned version 2.0 incorporating assisted living. Pete also addressed concerns about facility-supplied information being locked in on the Navigator, stating that this issue will be fixed in version 1.1.

MyCare Program Changes and Legislation

Pete discussed concerns about the forthcoming changes to the MyCare program, which is transitioning to a new model called Fidelis Snip. The new program is expected to launch on January 1, 2026, but many details regarding its structure, beneficiaries, and coverage remain unclear. Pete expressed that the Association is tracking the situation closely and is available to answer any questions. Additionally, the Never Alone Act, which would add provisions for visitation to congregate settings like assisted living, was also mentioned as having reached an interesting point in the legislative process.

Nursing Home Legislation and Advocacy Complexities

Pete discussed a significant piece of legislation that would limit the role of advocates in nursing homes. He highlighted the multiple revisions this bill has undergone and the various interest groups campaigning for or against it. Pete also discussed the complexities of advocacy, the potential conflicts between advocates and other stakeholders in care, and the recent move to bring in an external survey organization to

improve the survey process for skilled nursing in Ohio. Additionally, concerns about Ursula Mcelroy's dual roles at Pfizer and in the term of aging were raised by Kristin.

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