

## Meeting summary for OHCA NF Member Call (04/23/2024)

### Quick recap

pete and Debbie led discussions on various updates including the final rule on overtime exemption and upcoming changes to nursing facility staffing requirements. The team also discussed the financial implications of a proposed rule by CMS, the need for additional staff, and the potential for legal challenges to overturn staffing ratio requirements. Lastly, they addressed concerns about unfunded mandates, the Chevron measure, and the classification differences between urban and rural areas for Medicare purposes.

### Next steps

- Debbie will provide a quick update on the final rule regarding overtime.
- Pete will provide updates on the Congressional efforts to pass legislation that would overturn the unfunded minimum staffing mandate.
- Debbie will find and share the specific definition of "urban" and "rural" used in the proposed rule to help facilities understand their compliance requirements.
- Eli will consider advocating for residents to have the option to decline EBP, recognizing the potential impact on dignity and psychosocial well-being, while also preparing for potential survey citations related to resident complaints.

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### Summary

#### Final Document Review and Participation Instructions

pete welcomed all attendees and gave Debbie a chance to provide an update. Mandy then gave instructions on how to participate in the call via Zoom and phone line. pete acknowledged Mandy's introduction and indicated that the session would focus on reviewing the final document, a process he expected wouldn't be a surprise to the attendees.

#### CMS and DOL Updates, Overtime Exemption Rule

pete and Debbie discussed several updates including the minimum staffing rule from CMS and the final rule on overtime exemption issued by the Department of Labor. Debbie explained the new overtime exemption rule, which gradually increases the salary threshold for exempt administrative staff. pete confirmed a follow-up on these updates in the next news bytes. Additionally, he addressed a question about a QSO related to Clea and Cleo, clarifying the application of intermediate sanctions to wave labs. He also discussed ongoing efforts to prevent a rule from being implemented, including legislative attempts at the federal level and a potential challenge to the statutory authority of CMS.

### **Nursing Facility Staffing Requirements Discussion**

pete discussed the upcoming changes to nursing facility staffing requirements, including a lawsuit challenging the current staffing demands and new mandatory assessments of resources, resident needs, and staffing decisions. Debbie emphasized the importance of stakeholder involvement in these assessments and raised concerns about potential unintended consequences, such as incentivizing providers to terminate their LPNS to hire STAs. She also raised questions about the new Medicaid reporting requirements and the possibility of exemptions in certain cases. Debbie encouraged further discussions about these new requirements and exemptions.

### **New Facilities Implementation and Compliance**

Debbie led a discussion on the implementation timelines for new facilities and staffing requirements. She clarified the different timelines for urban and rural facilities, with urban facilities requiring compliance two years after the final data publication and rural facilities three years after publication. Heidi asked about the criteria for determining rural and urban facilities, and Debbie promised to find and share the relevant information. Debbie also highlighted concerns about the enforcement actions that could be taken if facilities are not in compliance, and noted that the final rule did not include all the potential sanctions listed in the proposed rule.

### **CMS Rule and Staffing Implications Discussed**

The team discussed the financial implications of a proposed rule by the Centers for Medicare and Medicaid Services (CMS), with estimates suggesting a cost of \$43 billion over a decade. However, the participants disagreed, suggesting the true cost could be up to 80% higher due to non-compliance by 97% of skilled nursing facilities. The discussion also highlighted the need for additional staff, with estimates ranging from 630 to 3,452 nursing assistants or a combination of LPNs and CNAs. The participant expressed skepticism about the effectiveness of the \$75 million federal funding program for workforce development in healthcare, citing previous examples of insufficient funding. They were optimistic about potential legal challenges that could overturn the staffing ratio requirements, focusing efforts on compliance with facility assessment requirements for now. The staffing shortage numbers for Ohio were also mentioned, with a need for over 800 additional nurses and around 3,500 additional nurse aides.

### **Congressional Pursuit of Staffing Roles and Mandates**

Eli and the other participant discussed the Congressional pursuit of specific staffing roles and the unfunded mandates in the healthcare industry. Eli questioned whether this could be an opportunity to focus on the issue of unfunded mandates and to suggest a more sympathetic Congress. The other participant clarified that the focus is on the specific legislation related to minimum staffing due to its significant cost and the impossibility of compliance. They also mentioned that they would advocate for specific bills in an upcoming Congressional briefing and that the issue of unfunded mandates

would be addressed on a rule-by-rule basis, considering the authority of the administrative agency and the potential for Chevron deference to be dismissed.

### **Addressing EBP Mandate and Medicare Classifications**

pete addressed the team's concerns about the Chevron measure and the unfunded mandate of the EBP, which added to their costs and staffing issues. He informed that resources were provided to comply with the EBP and a free webinar was offered. On the State nursing home rules, pete mentioned that they were awaiting the third draft from the CSI. The team also discussed the classification differences between urban and rural areas for Medicare purposes and the potential impact on provider reimbursement. Lastly, the team was informed about an upcoming visit from Disability Rights Ohio to better understand their enforcement of federal authority to monitor non-compliant activities.

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