

## Meeting summary for OHCA NF Member Call (05/28/2024)

### Quick recap

The meeting focused on immediate jeopardies, facility issues like elopements and fire risks, legal updates like the lawsuit against minimum staffing rules and the overtime rule, and training for new processes. Updates were provided on Medicaid responses, nursing assistant programs, occupancy measures, and the Ohio risk-based survey pilot. Discussions also covered the calculation of the 4-quarter average, the dashboard, and the technical assistance program.

### Next steps

- Pete will share the link to the complaint filed by Aka against the minimum staffing rule with the team.
  - Debbie will provide the link to the training slides for the new provider network data entry process to the team.
  - The Department of Aging will provide an update on the Ohio Quality Strategy and the development of the command center dashboard.
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### Summary

#### Discussing Immediate Jeopardies for 2024

pete, Mandy, and Debbie convened with members to discuss the immediate jeopardies for the first quarter of 2024. Mandy compiled a list of 26 immediate jeopardies, most of which were at the J level, with one at the K level and three at the L level. The team decided to wait until the end of the second quarter to release the full immediate jeopardy bulletin.

#### Facility Issues and Risk Mitigation Strategies

Mandy discussed several issues related to the facility, including incidents of elopements, abuse, neglect, and accidents. She emphasized the need for better staffing and highlighted the risks associated with smoking residents on oxygen. Mandy also shared information about a fire fuse that could help minimize risks in such situations. She further discussed the need for proper documentation and supervision during resident outings to prevent accidents. pete then took over the discussion, indicating he had several updates to share.

#### Convention Certificates and Lawsuit Update

pete announced that convention certificates would be available around June 25th, with recipients receiving an email. He also informed that a lawsuit, filed by the American Healthcare Association against the minimum staffing rule, was ongoing and that the

case, which was expected to last 6 to 8 months, was deliberately filed in Texas, a conservative district known for ruling against the government. Lastly, he mentioned that leading age, a previous non-participant, had agreed to become a plaintiff in the lawsuit.

### **Upcoming Compliance Deadline and Facility Assessments**

pete discussed the upcoming compliance deadline on August 8th for facility assessments. He emphasized that the focus is on process orientation and ensuring compliance with new requirements, rather than specific numerical staffing standards. He also reported on a statement made by David Wright, the head of CMS's Survey and Enforcement section, who clarified that CMS does not write the rules but does write the sub-regulatory guidance. pete further conveyed that OHCA is working on a template for the facility assessment, and encouraged everyone to review their assessments in light of the upcoming changes. He also noted that the final procedural requirements, based on the sub-regulatory guidance, are expected to be available within a month.

### **Department of Labor Overtime Rule Update**

Debbie provided an update on the Department of Labor's overtime rule, which was the subject of a lawsuit filed by various labor groups and represented by the law firm, Littler Mendelson. The lawsuit argued that the rule's salary increase, set to take effect on January 1st, was a significant overreach of the Department of Labor's authority and would eliminate other parts of the exemption rule. Debbie pointed out that the lawsuit requested the court to vacate the final rule, prevent the Department of Labor from implementing or enforcing the regulations, and issue a preliminary injunction to postpone the effective date of the rule. The outcome of the lawsuit, which was filed in the Eastern District of Texas, is still pending and could potentially impact employers across various industries.

### **New Process Training and Concerns**

Debbie shared that training slides for the new process of direct data entry of claims, set to begin on June 30th, and for Medicaid recipient eligibility were updated with new examples and links. The team had concerns about the availability of patient liability information for those in managed care plans, but the department clarified that this information would indeed be available. Erin reiterated the importance of the team taking the training as the previous method of entering claims, Mittens, would be discontinued. pete asked about the 'blackout date' but no clarification was given.

### **Medicaid Response, Webinars, and Rates Update**

Debbie anticipated a response from the Department of Medicaid, which prompted a discussion. Erin announced the upcoming informational webinars about the nursing assistant career advancement program developed by Ohca members, nurses, administrators, and operations folks. pete discussed the July 1 rates, clarifying that case mix scores will be based on the fourth quarter of 2023 and the first quarter of 2024, with

the freeze option running through June 30, 2025. He also mentioned the uncertainty surrounding the transition to Pdpm, which will be determined by the Budget Bill.

### **Occupancy Measures and Staffing Uncertainty**

pete discussed the occupancy and quality measures, noting that the process remains the same as last year and that beds can be de-licensed if occupancy is below certain thresholds. He clarified that if beds are de-licensed before the end of the fiscal year, they are counted as if they were taken out for the entire year. However, he mentioned that there's uncertainty regarding staffing due to the lack of a 4-quarter average in CMS data, despite the statute requiring Medicaid to use such an average. Debbie and Heidi had some technical issues during the meeting, but they were resolved.

### **Department's 4 Quarter Average and Staffing Complaint**

pete discussed the department's lack of decision on the calculation of their 4 quarter average, which is crucial for determining the 25th percentile and value per point. He expressed hope but not optimism about getting an indication soon. He mentioned that the accounting firms had provided rough estimates for the 25th percentile to be between 28 and 28.5 points, and the value per point between \$1.20 and \$1.30. pete also noted a complaint filed by Aka against minimum staffing and briefly touched on the discussion of a task force, including contracted surveys and the first one conducted in Ohio the previous week.

### **Ohio's Risk-Based Survey Pilot and Quality Strategy**

pete discussed the participation of Ohio in the risk-based survey pilot, noting that the pilot had already taken place in the state the previous week. He mentioned that both providers and CMS were optimistic about the survey, highlighting that it was less time-consuming and intrusive than the full annual survey. pete also discussed the Ohio Quality Strategy, an initiative to create a set of metrics to define quality, although the specific metrics have not yet been identified. Finally, he touched on a technical assistance program set to pilot in six nursing facilities, focusing on medication optimization and deficiencies related to antipsychotics and schizophrenia diagnosis.

### **Technical Assistance Program Limitations and Dashboard Updates**

pete discussed the limitations of the technical assistance program for providers, expressing disappointment that it would be voluntary and only available to a select few. He also highlighted the role of the task force and the need for more provider involvement, particularly in workforce-related discussions. He provided updates on the dashboard, including plans to fix issues with updating facility information and the addition of assisted living information in version 2.0. Lastly, he informed the group that the next meeting would likely not take place the following week due to a Congressional briefing.

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