Nursing Home and Assisted Living Oversight Working Group (NHALOWG)

Staffing Levels Subcommittee

Meeting Summary

Monday, December 21, 2020, 3:00 PM via Zoom

1.Opening Remarks

- Rep. Cook, Co-Chair, convened the meeting. Kate McEvoy, Co-Chair, asked for a motion to approve the summary from the December 14th meeting. The motion was made, seconded, and approved unanimously.

2. Discuss OLR report

- Kate McEvoy summarized the OLR report on Nursing Home staffing. It includes regulatory staffing minimums, the history of related legislation and proposed legislation. Mag Morelli of LeadingAge pointed out the section of the report regarding the DPH requirement to provide an appropriate level of care, adding that each resident's care plan is developed by the care team. Matt Barrett of CAHCF/CCAL said he believes that DPH has issued citations to facilities for not providing staffing sufficient to meet residents' needs, as opposed to not meeting the staffing minimums. Heather Berchem of CALA noted that recent federal regulations, starting in 2017, require rigorous regular assessments of facilities. When asked, she added that facilities have been cited for staffing concerns within the last two years. Rep. Cook summarized the past legislative proposals, and she shared that people can review them on the CGA website.

3. Continued discussion of the five main topics for consideration:

  - Ensure that facilities adopt appropriate staffing policies to minimize spread of infectious disease (SR 17)
  - Increase minimum required staffing ratios; support increases in workers' pay and benefits (LR 14)
  - Ensure that staff have access to guaranteed sick time under state's existing paid sick leave regulations (LR 15)
  - Workforce retention and recruitment
  - Increase transparency and identify staffing necessary for improved communication

- Kate McEvoy highlighted the efforts for increasing transparency regarding staffing levels, with the primary purpose of providing information to consumers and families. Ms. McEvoy asked if there are other topics on which people would like OLR reports, including wanting information about paid sick leave. Katie Traber of 1199 expressed interest in learning more about how staffing and funding are intertwined. Matt Barrett

responded that 72-74% of residents are funded by Medicaid. He added that the minimum staffing ratio of 1.9 is outdated and ridiculous, and that he does not believe any facilities are staffing below that level. He stated that the CT Public Health Code needs to be updated, although he opposes any artificial minimums, and that the more important standard is that of meeting residents' needs. Mr. Barrett pointed out that if new staffing requirements significantly exceed what is already occurring in practice, that additional appropriations will be necessary. Mag Morelli encouraged people to look up testimony that she and Matt have submitted on past bills, sharing that they favor the approach of looking at staffing over a 24-hour period, and they also address the nuances of including licensed and unlicensed staff in calculations. She pointed out that in the reimbursement process, staffing isn't capped, and that some facilities are spending more on staff than they are reimbursed for. She feels they should be reimbursed appropriately. Ms. McEvoy highlighted what had been shared in Nicole Godburn's presentation, that DSS reimburses based on cost reports. Ms. McEvoy reviewed the five components of the rate:

  - Direct care (nurses and nurse aides) - 51%
  - Indirect Care (recreation staff, social workers, dietary, housekeeping and laundry) - 22%
  - Administration & General Costs (including physical plant costs) - 14%
  - Fair Rent (depreciation of real property) - 9%
  - Capital Expenditures (including insurance and taxes) - 4%

She pointed out that sister states are looking at these levers, and are mandating that a higher percentage of reimbursement be spent on direct care. Ms. McEvoy reiterated that Connecticut will be moving to an acuity-based methodology of reimbursement (which is based on residents' care needs) starting July 1, 2021, using the MDS (Minimum Data Sets). She suggested that the issue may not just be about more resources, but the re-ordering of resources.

- Lindsay Jesshop, ADS, agreed that the staffing ratio of 1.9 is archaic, but some facilities are only on the cusp of maintaining that. She added that staffing should be included as a quality indicator. She shared that the Ombudsman's office hears from families, sometimes reporting ratios of only one staff per 30 or 45 residents, which is worrisome. She voiced her support for the New Jersey legislation which mandates 1 CNA per 8 residents. Rep. Cook echoed what Ms. Jesshop said, and talked about the importance of the perceptions families have about the care residents receive. She pointed out that residents' needs can change instantaneously, and staffing ratios need to account for that. Rep. Cook also raised the issue of staff vacation time possibly being included in staffing ratios.
- Jean Aranha of CT Legal Services said that the fact that facilities are staffing above the 1.9 ratio is meaningless, and that all indicators point to there simply not being enough

staff. She added that more transparency is needed about how nursing homes are structured and where the funding goes, including having any related entities disclosed. Ms. Aranha stated that more information is needed about how CON and licenses are granted in Connecticut. She added that New Jersey has a proposed bill on this topic, regarding information needed prior to transfer of ownership. Mag Morelli shared that Connecticut has also put conditions on change of ownership recently, and Rep. Cook stated that information on this could be requested from OLR. Matt Barrett clarified that facilities cannot double-bill when there are any related entities, and that legislation regarding transparency was indeed passed: 17B-340 of the Connecticut General Statutes. Kate McEvoy summarized that it would be helpful to learn more about the CON process and to obtain information from OLR regarding legislation on requirements for paid sick leave.

- Rep. Hughes emphasized the importance of looking at meeting person-centered needs, and of attracting a qualified workforce. She acknowledged that this is long-term work, and that it will require an investment in the care infrastructure. Rep. Cook added her interest in exploring making CNAs a licensed position.
- Liz Stern shared her concern about the burden of proof being on consumers regarding the provision of adequate care, and about how to empower and inform consumers while moving to the acuity-based methodology. Kate McEvoy replied that care would be informed by the MDS, which is a standardized tool from CMS. Matt Barrett added that additional funds are needed to ensure the success of the new system, as the neutral funding would be equivalent to rearranging deck chairs on the Titanic. Ms. Stern expressed concern that the person who submits the MDS is not a member of the clinical staff. Mag Morelli clarified that one person is translating the information from the care plan into billing language. The MDS was not information that was needed by DSS before, but the new acuity-based system will require it. She added that the acuity levels will be reassessed quarterly.
- Katie Traber expressed a concern that if CNAs were to become licensed, the possibility of access to these jobs may become more limited for the people who need them. She highlighted the issues of access to training and of uplifting communities. She also shared her worry about the acuity-based system, and that it amounts to reorganizing the money, which would mean taking funds away from some facilities. She stated that an across-the-board funding increase is needed. Additionally, she wondered how quarterly assessments would affect contract negotiations for workers. Matt Barrett agreed that there could be challenges in collective bargaining, and he said that he hopes that the type of residents' needs in each facility will level off over time; he does not believe there will be wild fluctuations. He added that he hoped staffing would be adequate to meet residents' needs regarding behavioral health and substance abuse as well, as these issues do not result in high MDS scores. Kate McEvoy shared that many sister states have already implemented acuity-based approaches which will inform how

implementation is carried out in Connecticut. She added that the lack of emphasis on behavioral health and substance abuse in the MDS is a reasonable criticism of the tool. As an aside, she said that DSS will be implementing the CHESS program for supportive housing starting in February, as part of the continuum of services. Jean Aranha asked if the acuity-based model is a reallocation of existing resources, and Ms. McEvoy replied that it is required to be implemented within available appropriations.

- Kate McEvoy summarized that she would like a refresher from OLR on the paid sick leave requirements, and also expressed an interest in an overview of the statute cited by Matt Barrett, including the CON process and administrative and general costs. She is also interested in more detail about the proposed New Jersey legislation. Ms. McEvoy stated she would like the subcommittee to take a first pass at preliminary recommendations at the next meeting. She said she believes it would be useful to update standards on direct care staffing and to look at the levers related to reimbursement, DPH infection control standards, and the types of practices and standards to mitigate transmission of communicable diseases. She added that information was needed as to whether transparency standards need to be augmented. Rep. Cook mentioned that the holiday might affect ability to get information for the next meeting, but she offered to look for information about the New Jersey legislation on NCSL website.
- Katie Traber shared that New Jersey's legislation is actually a package of legislation, which she offered to forward to the subcommittee. Rep. Cook adjourned the meeting.

4. Next Meeting – Monday, December 28, 3:00 PM via Zoom