

# ABC'S OF ADVOCACY & KEY LEGISLATIVE/ REGULATORY ISSUES

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# TODAY'S AGENDA

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- Advocacy - What is it? How to do it?
- New Mexico Overview
  - Political Landscape
  - Key Legislation for 2023
- Washington DC Overview
  - Political Landscape
  - Key Legislation/Regulation for 2023

# ADVOCACY

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## **What is it?**

Grassroots advocacy is the act of a constituent communicating ideas and opinions to their government officials

# ADVOCACY

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## **Why is it Important?**

There is nothing more valuable than the perspective of an experienced clinician/provider on the impact of a law or regulation on the clinician and the patient.

**We are the experts!**

# ADVOCACY

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- Effective Advocacy
- Raise awareness – Employees, State Association
- Legislative Priorities = Constituent Priorities
- Leveraging State and National Associations
- Involvement in Association Committees

# ADVOCACY – WHY?

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- Participation is critical!
- Build a critical mass – Don't go it alone!
- Use power of Associations
- Influence the outcome of the political process by:
  - Building a relationship
  - Effectively communicating the message
- Benefits for our employees in our facilities include: the facility, the company, and the residents.

# ADVOCACY TOOLS

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- Relationship Building
  - Establish and foster relationships with elected officials and staff.
  - Go Beyond Developing A Need Based Relationship
  - Relationships take time
  - Every contact strengthens the relationship
- How?
  - Inviting legislators to your facility to meet with staff/residents
  - Attending legislative events to show support
  - Participating in legislative advocacy day

# ADVOCACY TOOLS

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- Be a resource
- Goal is to become an essential resource
- Two way relationship – provide information and guidance to elected official and staff
- Acknowledge when the legislator supports an initiative that is helpful to our residents
- Keep the legislator informed
- Help the Legislator Help Us



# ADVOCACY INFLUENCE

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- Face to Face meetings –  
At home & Santa Fe
- Letter writing
- Emails
- Phone calls – Cell Phone
- Social Media – Facebook,  
Twitter, etc

Other methods to engage  
include:

- Financial Support
- Relationships
- Voting

# ADVOCACY MEETING TIPS

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- Be prepared to put it in writing
- Visit the district office
- Be brief
- Know what your “ask” is
- Localize your message
- Always say “thank you”
- Remind them of previous conversations
- Follow up with a handwritten note – not email

# NEW MEXICO STATE GOVERNMENT

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- Governor Michelle Lujan Grisham (D) won re-election by 7%.
- Leadership changes in key state agencies. Second term reality.
  - Dr. Scrase oversaw both the Health Dept and HSD. He has left those positions and retired (2/24).
  - Health - Patrick Allen is the new New Mexico Department of Health Secretary. Mr.Allen has led the Oregon Health Authority since 2017
  - Human Services Department – Carrie Armijo is acting Secretary. She was most recently Deputy Secretary for the Department.
  - State Medicaid Director – Nicole Comeaux has left.
    - Lorelei Kellogg is acting Medicaid Director. She is currently a Deputy Director at Medicaid.
  - Aging and Long Term Services Department Secretary Katrina Hotrum-Lopez
  - Carmen Bliss as the State Ombudsman

# NEW MEXICO STATE GOVERNMENT

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- Democrats maintained control of State House, lost 1 seat.
- 60 day session for 2023
- **IMPORTANT 2023 DATES**
  - Jan. 17: Opening day (noon)
  - Feb. 16: Deadline for bill introduction
  - March 18: Session ends (noon)
  - April 7: Bill signing deadline
  - June 16: Effective date of bills without emergency clause or other specified date

# KEY LEGISLATIVE ISSUES FOR 2023 – STATE BUDGET

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- State funding to replace the 6.2% loss of federally funded Medicaid rate enhancements
  - Conversations with stakeholders, legislators, legislative staff, and HSD staff indicate that the executive and legislature included full funding to replace the loss of the federally funded 6.2% Medicaid enhancement.
  - To maximize Medicaid reimbursements and prevent the loss of such funding, HSD has encouraged LTC providers to work with all Medicaid-eligible residents to ensure those residents have up-to-date Medicaid enrollment.
- \$7 million added to the NFVBP Program
  - While the House of Representatives works on crafting the state budget, NMHCA/NMCALs focus is to ensure the loss of federally funded Medicaid enhancements is funded by the state.
  - Once there is a level of comfort that the state will fully fund the 6.2%, NMHCA/NMCAL will push more intently for \$7 million in enhanced NFVBP.
  - NMHCA/NMCAL has to ensure that the \$7 million NFVBP funding request does not threaten fully funding the 6.2%.
- NMHCA/NMCAL has also been advocating that Medicaid-enhanced rates that are related to HSD's recent Medicaid rate study be decoupled and considered separately from the state-funded replacement of 6.2% loss of federally funded Medicaid enhancements. The executive and legislature have expressed agreement with the approach and are proposing to enhance LTC provider Medicaid rates to a level equal to 100% of Medicare rates.

# STATE LEGISLATIVE EFFORTS – SENATE BILL 163

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- Legislative Status – Senate Public Health Committee
- Senate Bill 163 amends the information that a provider must make available on the request of residents and prospective residents.
- Providers would be required to disclose financial statements with respect to the provider or community, or its branches, subsidiaries or affiliates.
- SBI 63 would remove the requirement the request must be reasonably necessary for the resident to determine the financial status of the provider.
- Attorney General has raised some concerns. The Dept of Aging and Long Term Supports also has suggested changes to the existing legislation.

# STATE LEGISLATIVE EFFORTS – SENATE BILL 168

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- Legislative Status – has moved forward to the Senate Judiciary committee after a unanimous do pass motion in the Senate Health and Public Affairs committee.
- Senate Bill 168 adds a registered nurse within a hospice agency to those who can pronounce a patient's death. The bill delineates death pronouncement from death certification. Death certification is only performed by a provider.
- Expanding the types of nurses who may make death pronouncements in nursing homes will provide nursing homes additional options to ensure pronouncements are performed in a swift and dignified manner without unnecessary delay or disruption to families of deceased residents and other residents of the facility.
- Under existing law, only registered nurses employed by the nursing home are permitted to make death pronouncements

# KEY LEGISLATIVE ISSUES – DEMENTIA TRAINING

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- The Act, effective on January 1, 2022, requires all direct care service staff members working in long-term care facilities to receive a minimum of 4 hours of dementia care training.
- Due to its overly broad language, the Act is difficult to enforce. With staffing issues already affecting facilities, the training, as currently mandated, creates additional barriers for recruiting and retaining staff to provide care to our most vulnerable population.
- **Proposal:** In partnership with The New Mexico Medical Society, Alzheimer's Association New Mexico Chapter and New Mexico Nurses Association, NMHCA/NMCAL is proposing amendments to accomplish the following:
  - Require 4 hours of dementia care training in long-term care facilities that don't already provide at least 4 hours of this specialized training.
  - Require state review of long-term care facility dementia care programs.
  - Add specific learning objectives of the training, including:
    - Alzheimer's disease and dementia; person-centered care; activities of daily living; a foundational overview of the different types of dementia; behavioral management strategies; and, effective communication.



# KEY LEGISLATIVE EFFORTS – DEMENTIA TRAINING

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- **Desired Outcome:** Require 4 hours of dementia care training in long-term care facilities that don't already provide four or more hours of dementia care training to their front-line caregivers.
  - Require the use of evidence-based training.
  - Specify the standards for approved dementia care training.
- NMHCA/NMCAL and stakeholders met with Representative Linda Serrato, the sponsor of the original legislation, and discussed NMHCA/NMCAL's proposed amendments.
- She expressed support for most of the proposed changes, but she was not entirely on board with the training requirements for contractors.

# ONGOING ADVOCACY EFFORTS – MANAGED CARE

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- The New Mexico Human Services Department announced that it canceled the procurement process for the selection of managed care organizations in its soon-to-be revamped Medicaid program next year.
- HSD said in a news release that the decision was made after their departures “so that the agency’s new leadership ... can assess the design of the procurement.”
- The contracts for the Medicaid program’s current MCOs – which includes Blue Cross Blue Shield of New Mexico, Presbyterian Health Plan and Western Sky Community Care – are set to expire at the end of the year.
- Medicaid covers nearly half of the state’s population, with some 970,000 people enrolled in the program – the highest percentage of Medicaid beneficiaries in the country.

# FEDERAL POLITICAL LANDSCAPE

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- Republicans take control of US House; Democrats add to majority in US Senate
  - Republicans have 222 seats; 218 is needed for the majority
  - Democrats have 213
  - Speaker's race – Impact on Governing
  - Democrats hold 51 Senate seats; 2024 map favors Republicans
- Debt ceiling fight

# ONGOING ADVOCACY EFFORTS - FEDERAL

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- Our actions will be more administrative than legislative
  - Key Bills
  - OSHA Rule
  - Payment Rule
  - Minimum Staffing
  - Medicaid Adequacy
  - Public Health Emergency

# KEY LEGISLATIVE ISSUES FOR 2023 - FEDERAL

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- Federal Minimum Staffing Regulation
  - Expected late April or early May
  - Biggest issue facing the sector in a very long time.
  - Details unknown.
- Advocacy will be in two phases:
  - Phase 1 - Every facility will send a letter or email to CMS before March 1<sup>st</sup>.
  - Phase 2 – Every facility will send a letter or email to CMS after the rule is published, likely sometime in May. Will need to see what is in the rule to determine response.
- The purpose of Phase 1 is to attempt to influence the rule prior to its publication. And for Phase 2, similar to our efforts last year on the payment rule, it will be to respond to the rule as proposed and highlight any concerns as well as suggest changes.
- Final Rule could happen as early as August.

# ONGOING ADVOCACY EFFORTS – FED’L MIN STAFFING

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- Senator John Tester (D – Montana) Letter vs Sen Bob Casey (D-Pennsylvania) rebuttal
- The basic tenets of advocacy will revolve around the following key points:
  - Any staffing mandate must be fully funded.
  - The staffing mandate cannot go into effect until our workforce has been rebuilt.
  - There must be a broad definition of worker to allow for the greatest flexibility.
  - There must be a reasonable waiver if staff aren’t available; also rural considerations.
  - It must be demonstrated and then phased in to allow for a glide path to compliance.
- NMHCA has communicated with Senators Lujan and Heinrich; also working on op-ed
- Last option – LITIGATION
  - Affected by the design of the rule and potential for overreach

# ONGOING ADVOCACY EFFORTS – END OF PHE

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- Federal Public Health Emergency to end May 11<sup>th</sup>
- Several waivers connected to the PHE are scheduled to end at varying times.
- Huge impact to states on Medicaid redeterminations
- Enhanced FMAP was disconnected from the PHE and will be phased down according to the following schedule:

FMAP Phase Down Period	Federal FMAP Percentage Points	CHIP Matching Rate Percentage Points
January 1 – March 31, 2023	6.2	4.34
April 1 – June 30, 2023	5.0	3.5
July 1 – September 30, 2023	2.5	1.75
October 1 – December 31, 2023	1.5	1.05
<b>January 1, 2024</b>	<b>Return to Standard FMAP Levels</b>	

# ONGOING ADVOCACY EFFORTS – END OF PHE

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- AHCA/NCAL is requesting CMS end requirements that were implemented during the PHE that are no longer necessary and to end this no later than the conclusion of the PHE. This includes widespread notifications on COVID cases per F885, enhanced enforcement for F880, and end or scale back NHSN COVID reporting.
- The end of the PHE also marks the end of Section 1135 National Blanket Waiver. The two substantive SNF waiver provisions left in Section 1135 are the Medicare fee-for-service 3-Day Stay and Spell of Illness waivers. These waivers technically fall under Section 1812(f) but are tied to the Section 1135 waiver.
  - **As of May 11, SNFs may no longer use the 3-Day Waiver or the Spell of Illness waiver.** In terms of Medicare Advantage plans, PHE waiver provisions were rolled back in 2022.
- **Temporary Nurse Aide** statewide waivers could be extended by CMS to May 11 if the state requests and there is evidence of need. Currently, the state waivers for 18 states end between March 20 and April 7.



# ONGOING ADVOCACY EFFORTS – END OF PHE - MEDICAID

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- State Eligibility for 2023 FMAP Phase Down Funds Tied to Meeting “Unwinding Requirements”
  - Creates Powerful Incentive for States to Meet CMS Expectations
  - Phase Down Offers Medicaid Budget Predictability
  - Unknown –State Failure to Meet Targets
- Provider Impacts
  - Managing and Addressing Redetermination Notice Mailings to Beneficiaries in February, March or April in Large Numbers
  - Liaison with States and Local Eligibility Offices to Prevent Lapses in Coverage and Payment Interruptions

# ONGOING ADVOCACY EFFORTS – END OF PHE WAIVERS

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- **Three-Day Prior Hospitalization Waiver | End Date: May 11, 2023**
  - Using the statutory flexibility under Section 1812(f) of the Social Security Act, CMS temporarily waived the requirement for a three-day prior hospitalization for coverage of a skilled nursing facility (SNF) stay.
- **What this waiver provides:** The three-day prior hospitalization waiver provides temporary emergency coverage of SNF services without a qualifying hospital stay. In addition, for certain beneficiaries who exhausted their SNF benefits, it authorizes a one-time renewed SNF coverage without first having to start and complete a 60-day “wellness period” (that is, the 60-day period of non-inpatient status that is normally required in order to end the current benefit period and renew SNF benefits). This waiver will apply only for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the 60-day “wellness period” that would have occurred under normal circumstances. By contrast, if the patient has a continued skilled care need (such as a feeding tube) that is unrelated to the COVID-19 emergency, then the beneficiary cannot renew his or her SNF benefits under the Section 1812(f) waiver, as it is this continued skilled care in the SNF rather than the emergency that is preventing the beneficiary from beginning the 60-day “wellness period.”
- **How to prepare for the end of this waiver:** Nursing facility providers should review pre-admission policies and procedures in preparation of the waiver expiration. This is also a good time to review policies and procedures with any recent hires in admission or business office roles.

# ONGOING ADVOCACY EFFORTS – END OF PHE WAIVERS

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- **Pre-Admission Screening and Annual Resident Review Waiver | End Date: May 11, 2023**
  - CMS has been allowing states and nursing homes to suspend PASARR assessments for new residents for 30 days.
- **What this waiver provides:** After 30 days, new patients admitted to nursing homes with a mental illness (MI) or intellectual disability (ID) should receive the assessment as soon as resources become available.
- **How to prepare for the end of this waiver:** Nursing facility providers should review pre-admission policies and procedures to ensure assessments are included. This is also a good time to review policies and procedures with any recent hires in admission or business office roles.

# ONGOING ADVOCACY EFFORTS – END OF PHE WAIVERS

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- **Required Facility Reporting | End Date: December 31, 2024**
  - Under §483.80(g), long-term care facilities are required to report COVID-19 cases in their facility to the CDC National Health Safety Network (NHSN) on a weekly basis.
- **Why this requirement is in place:** The CDC and CMS uses information collected through the new NHSN Long-term Care COVID-19 Module to strengthen COVID-19 surveillance locally and nationally; monitor trends in infection rates; and help local, state, and federal health authorities get help to nursing homes faster. Nursing home reporting to the CDC is a critical component of the national COVID-19 surveillance system and to efforts to reopen America. The information is also posted online for the public to be aware of how the COVID-19 pandemic is affecting nursing homes. In COVID-19 Public Health Emergency Interim Final Rule #3 (CMS-3401-IFC), CMS is codifying enforcement actions for facilities noncompliance with this requirement. Failure to report results in the imposition of a civil money penalty for each occurrence of non-reporting as defined under § 488.447.
- Facilities are also required to notify residents, their representatives, and families of residents in facilities of the status of COVID-19 in the facility, which includes any new cases of COVID-19 as they are identified. This action supports CMS' commitment to transparency so that individuals know important information about their environment, or the environment of a loved one.
- **Why is this requirement continuing through the end of the PHE:** The 2022 CY Home Health PPS Rule extended this mandatory COVID-19 reporting requirements beyond the current COVID-19 PHE until December 31, 2024. **NOTE:** *Testing requirements end (outlined below), but reporting requirements and penalties for not reporting will continue.*

# ONGOING ADVOCACY EFFORTS – END OF PHE WAIVERS

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- **Specific Life Safety Code (LSC) for Multiple Providers Waivers**

- CMS has been waiving and modifying particular waivers under 42 CFR §483.470(j) for ICF/IIDs and §483.90(a) for SNF/NFs. Specifically, CMS modified these requirements as follows:

- **Alcohol-based Hand-Rub (ABHR) Dispensers**

- **What this waiver provides:** CMS waived the prescriptive requirements for the placement of alcohol-based hand rub (ABHR) dispensers for use by staff and others due to the need for the increased use of ABHR in infection control. However, ABHRs contain ethyl alcohol, which is considered a flammable liquid, and there are restrictions on the storage and location of the containers. This includes restricting access by certain patient/resident population to prevent accidental ingestion. Due to the increased fire risk for bulk containers (over five gallons) those will still need to be stored in a protected hazardous materials area. Refer to: 2012 LSC, sections 18/19.3.2.6. In addition, facilities should continue to protect ABHR dispensers against inappropriate use as required by 42 CFR §483.470(j)(5)(ii) for ICF/IIDs and §483.90(a)(4) for SNF/NFs.
- **How to prepare for the end of this waiver:** Providers should evaluate and update any pertinent facility policies to ensure resident and staff safety. If unable to accommodate, they should request a waiver from state Dept of Health.
- **End Date: May 11, 2023**

- **Established new requirements for Long Term Care Facilities to Conduct SARS-CoV-2 Testing for Staff and Residents**

- Why this requirement is in place: Under the new 483.80(h) CMS is requiring Long-Term Care (LTC) Facilities to test Staff and Residents. Specifically, facilities are required to test residents and staff, including individuals providing services under arrangement and volunteers, for COVID-19 based on parameters set forth by the Secretary. This rule will enhance efforts to keep COVID-19 from entering and spreading through nursing homes. These regulations are effective on September 2, 2020. Applicability date:
- **End Date: May 11, 2023**, but reporting will continue until December 31, 2024.

# HR 468 – TEMP NURSE AIDE

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- Building America's Health Care Workforce Act (H.R. 468), introduced by Brett Guthrie (R -2-KY) and Madeleine Dean (D-4-PA), that provides a reasonable grace period of 24 months to continue the emergency waivers after the public health emergency ends to enable all TNAs who wish to, the ability to transition to long-term roles (to accommodate training and testing capacities to meet demand).
- In nursing homes, the 1135 waiver on training and certification of nurse aides allows vital support to critical staffing needs for care of residents during the pandemic.
- Based on this waiver, in spring 2020, the American Health Care Association/National Center for Assisted Living (AHCA/NCAL) created a TNA training course.
- This 1135 waiver ended on June 6, 2022, and only four months (until October 7, 2022) were given in statute for TNAs to become CNAs or they would not be able to continue working in long term care communities. Some states (18 states as of January 2023) received a state waiver to extend the period through the federal Public Health Emergency, but this is only a short, temporary fix.

# CNA LOCKOUT LEGISLATION

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- Plan is to introduce again this session.
  - S. 4381/H.R. 8805, the Ensuring Seniors' Access to Quality Care Act
- Will help address the shortage of CNAs by ensuring that nurse aides have the access to the quality training they need to provide care to residents.
- Will specifically allow nursing facilities to resume their in-house education programs if:
  - The facility has corrected the deficiency for which the CMP was assessed;
  - The deficiency for which the CMP was assessed did not result in an immediate risk to patient safety and is not the result of patient harm resulting from abuse or neglect; and
  - The facility has not received a repeat deficiency related to direct patient harm in the preceding two-year period.
- Also gives Medicare and Medicaid providers access to the National Practitioner Data Bank to conduct background checks

# ONGOING ADVOCACY EFFORTS - OTHER

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- Preliminary Employee Retention Tax Credit (ERTC) Guidance and Possible Medicaid Rate Impacts
- Medicare Payment Rule
- OSHA Rule
  - Permanent standard for occupational exposure to COVID-19 in healthcare settings is under review at OIRA/OMB
  - Key messages: Nothing inconsistent or beyond CDC/CMS, No unfunded mandates



# QUESTIONS?

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- Thank you for listening and participating today.
- Please make advocacy a priority for you and your facility in 2023.
- Should you have any questions or need any assistance, please reach out to the Association or myself:
  - Michael Jacobs, (717) 599-2078 or [michael.jacobs@fundltc.com](mailto:michael.jacobs@fundltc.com)