Risk Insights: Senior Living & LTC

Episode 11

Uniting voices to address the workforce crisis

Welcome to the *Risk Insights: Senior Living & LTC* podcast, hosted by Tara Clayton with Marsh's Senior Living & Long-term Care Industry Practice. Each month, Tara, a former litigator and in-house attorney, speaks with industry experts about a variety of challenges and emerging risks facing the industry.

Tara Clayton:

Hi, and welcome to Risk Insights Senior Living and Long-Term Care. I'm your host, Tara Clayton. Today, I have the honor of sitting down with an industry expert to discuss really some ongoing, as well as new challenges that we're seeing related to the workforce crisis that we're experiencing in the industry, but as well as talk about some solutions and maybe some advocacy opportunities to help protect seniors access to services, housing, and care.

So I'm going to jump right in and introduce the expert that's joining me today. Scott Tittle, the Managing Director and Head of Government Relations and External Affairs at VIUM Capital. Hey Scott, thanks so much for joining.

Scott Tittle:

Hey Tara, it's great to be with you and good to be on your podcast. Thanks for having me.

Tara Clayton:

Absolutely. So I think before we kind of get into the topic, Scott, can you t- you know, talk to our listeners a little bit more about VIUM Capital, as well as, you know, your role at VIUM as well as, you know, a little bit of background about your history in the, the industry.

Scott Tittle:

Yeah. Thanks. Really appreciate it. So, VIUM Capital is a relatively new national lender in the long-term care and senior housing space. We launched April 1st, 2020. Why not start a company on April 1st during the beginning of pandemic? Our six starting original partners from VIUM Capital all came from Lancaster Pollard.

And it had multiple years of experience in the lending space prior to launching the company. And we've been up running for three years. Our specialty are kind of bridge financing, bridge to some kind of agency takeout, HUD, Fannie, and Freddie. And so we work with skilled and AL operators in every state across the country.

We've done about three and a half billion dollars in finance in just three years, which has been really tremendous growth for us. And we're really excited about where we're going in the future. And really any questions that your listeners have about capital needs or debt financing or looking at HUD or Fannie Freddie, we're happy to answer any questions, so thanks for the opportunity.

I've been with the company about a year and a half. Prior to that, we met in my prior role at the National Center for Assisted Living. I was the executive director for NCAL for six years. NCAL is the assisted living association arm of AHCA/NCAL, the American Healthcare Association of National Center for Assisted Living.

Had the honor of working with Governor Mark Parkinson, who's the president of AHCA/NCAL for six years. And prior to that I ran the Indiana Healthcare Association, which is the AHCA/NCAL state affiliate chapter here in Indiana, My home state. I'm a proud Hoosier, and I'm actually out of my home office here in, on the north side Indianapolis.

I'm a lawyer lobbyist, from Indianapolis originally, and the most important thing is I'm a proud father of two children. My daughter Holland is going to the eighth grade. She's 13. For those of you have 13 year olds out there, you know what my summer's like. And I also

have a 10-year-old son about to turn 11. So I'm a proud father of two children Holland and Will.

Tara Clayton:

I know how precious the time with your kids are. We've talked about some of your vacations and things like that, so really, really excited to have you join. Jumping off of your background with the lobbyist and your role with NCAL as well as the Indiana Healthcare, and you briefly mentioned, maybe we can talk a little bit more here in a moment about how we first connected and, and interacted there very closely during the pandemic.

But I know recently in your role you were just up at The Hill in DC doing a lot of advocacy work. So first, thank you for that, but that leads me to the first question. What I really wanted to hit on today around staffing challenges, but new challenges that we're seeing both from a federal side as well as the state side.

So on the federal piece of it, I know the new administration has been talking about a federal staffing mandate. What can you tell us about where that is? What's going on? You know, what are, what are you hearing around that piece?

Scott Tittle:

Yeah. And thanks. You know, the opportunity you're referencing is every year, AHCA/NCAL, like a lot of the national trade associations do, have an annual member fly in or congressional briefing.

And so for AHCA/NCAL, that experience was just, just occurred about two, three weeks ago where every state affiliate chapter brings a number of their members from the state to come hit Capitol Hill and really meet with every member of Congress and their staff for about, in about a day and a half.

It's pretty powerful and pretty impressive, and I always come away from that meeting — I, of course, I think this is my 13th year in a row going to DC as a part of that congressional briefing, either as a state affiliate chapter president at NCAL, or now as an associate member of AHCA/NCAL and as a sponsor.

And of course, many of our clients were there to help support. So really a great opportunity to get in front of congressional staff and members of Congress and really talk to them about what's happening out there in the sector right now, and why, why it's just not the right time to be thinking about a national minimum staffing ratio for skilled nursing facilities across the country.

And maybe, I think it, maybe for the listeners, Tara, it might give a little perspective of why it's such a difficult time to be considering something like this.

Tara Clayton:

Yeah.

Scott Tittle:

You know, if you look, if you look at even pre-COVID levels, pre-COVID days, there were a number of skilled nursing facilities that had closed. And really the five years leading up to COVID, almost 780 nursing homes across the country in just five years closed. If you look at then the three years of COVID, if we counted three years, about 500, excuse me, 465 facilities closed in three years. So really accelerated the rate of closures just over a period of three years compared to the prior five.

And the worst parts of the country were hit were the rural parts of the country, right? Montana alone lost 19% of its skilled nursing facilities. Now, Montana's not a huge state. But when you're losing 19% of a market share of any industry, then really who's hurt is really the ultimate consumer, right?

We're talking about an access to care issue for seniors and families in rural parts of the country. Kansas alone, 52 nursing homes in Kansas closed in just three years during the pandemic. And so we're seeing a lot of closures and stress in rural parts of the country in particular, and a lot of it is tied to workforce.

I was talking to one of our clients recently and he said, you know, before COVID, census drove staffing... Well now staffing is driving census. What that means is there, there are seniors out there that need skilled nursing facility level of care, but facilities are unable to accept or admit those seniors because they don't have the staff. And so what's that senior, that family to do? There just aren't any other options in local, rural communities for them to receive that level of care. So it's really dangerous. It's really dangerous. If you look at where we are from a census perspective, before COVID skilled nursing facilities had about an 80.2% census nationwide. During COVID, the census dropped to 67%. Now, we're back up to almost 77%, so we're about three and a half percentage points below we were pre-

COVID, but that's been holding for at least 5, 6, 7 months, and we're not sure how much higher it's going to go. So we're not sure when the census levels will recover ultimately, maybe the end of 2024, maybe into 2025.

The reason why the census is important, of course, is that then that's a huge revenue loss for skilled nursing facilities that they can be put back into quality of care and operations. Every 1% of national census means a billion more dollars into the sector.

So I give you that background because here we have President Biden during the State of Union address last year in 2022, during what we call the longest 19 seconds in long-term care history, when he renounced several initiatives from the podium at the State of Union address. As you indicated, one of them was to announce a national minimum staffing ratio for skilled nursing facilities within one year.

Well, of course, we now know that year has since passed, and we're waiting to hear what CMS is going to be proposing next. A couple more data points on the workforce component. By the way, just to give further context. Skilled nursing facilities are almost at a 30-year low in terms of total employment in long-term care.

Every other major healthcare vertical has not only recovered since pre-COVID levels, but actually are higher levels than before COVID. Hospitals, physician practices, LTACHs centers, home health hospice…everyone else is above pre-COVID levels. Skilled nursing facility, the sector is about 190,000 employees below where we need to be, lost almost 250,000 total employees in just three years. It's a very difficult time to be considering a national minimum staffing ratio because the workforce just isn't there. Census has not recovered and really rural facilities are really suffering right now.

Tara Clayton:

I appreciate the background and, thank you for sharing some of those stats because it does drive home just how challenging this type of federal staffing ratio mandate is. I know you said we were supposed to see it in a year; the year's passed. Have you heard any kind of updates on maybe where, what's happening, why it's being delayed? Is anything resonating when you guys were there with AHCA/NCAL meetings were any of the Congress members listening to the statements you guys were advocating about.

Scott Tittle:

Yeah. And, back to the talking points that were carried on Capitol Hill, and again, I know a lot of national trade associations have been hitting the Hill hard, recently, but certainly what we heard is that the advocacy efforts have been, have been helping significantly. The original thought was again, that CMS might be releasing the rule within a year of the President's announcement.

Well, again, we know that didn't happen. Then, we were hearing that it probably would be released maybe in conjunction with or in accordance with the Medicare payment rule that came out about six or eight weeks ago, maybe two months ago or so. And that didn't happen. And then it was sort of heard that maybe sometime in the spring. Well, I can't remember the exact end date of spring, but I think it's June 20th or June 19th, I can't remember exactly, but spring has now passed.

So there was some thought that maybe sometime in July we may see the rule. Of course when the rules drop, then there's a 60-day comment period. And so I'll talk a little bit about that advocacy in a minute, which we'll really need everyone's help. But I think to your point, the advocacy effort to date has really helped shine the light on the difficult contextual workforce challenges out there.

Not only with CMS and the White House, but members of Capitol Hill, in particular with very senior democrat Senate members. Senator Tester from Montana, and Senator King from Maine, even though he's an independent, but he caucuses with the Democrats. They've been very active in sending messages into the White House, into CMS to kind of say, "Well, this is not the right time, you're considering something like this."

So I would say the messages have been heard. One area I know that's been really effective was there was an email campaign to message into CMS, before we thought the rule might drop, you know, a month and a half ago or so, and several thousand, I think 6,000 or 7,000 emails were sent into CMS.

And they think that's unprecedented pre-rule drop. You know, normally you see some kind of level activity when a formal rule has been announced and there's a formal six-day comment period. Well, all these thousands and

thousands of comments came in from the sector and the front lines before the rule has even been proposed.

So again, I think your, to your question, the advocacy efforts have helped to date, but we're going to need a lot of help once we see the rule. And I can talk about what I think some of the components could be in the rule here in a minute. But again, when the rules drop, there will be a 60-day open comment period. And we're really going to need a lot, everyone's help at that time..

Tara Clayton:

Scott, talk to us about the request and where industry partners can step in once that rule's dropped because, to your point, we don't traditionally see that this level of activity in advance of the proposed rule being released. It's great to hear. It sounds like there is, people are listening and they're understanding the predicament that they're causing with this type of mandate. But talk to our listeners about what would be beneficial and how they can help and how can they can step in once that rule is released.

Scott Tittle:

Well, a big part of it is going to be, we need to see what the rule proposes, right? All we know right now, and we're hearing from some advocates, that the proposal at its core could include at the very least, a national minimum staffing ratio of 4.1 nursing hours per resident, per day. Just to give you some context, I think nationally we're hovering somewhere close to a 3.6 or under, and that includes everybody. That includes rural and urban. So, just ticking up a national ratio up to about 5%. Also, the mandating has some really difficult and concerning consequences. AHCA/NCAL put out some numbers that is the 4.1 standard, we'd need about 150,000 additional nurses into the sector.

That's in addition to the 190,000 short we're already in total staff. So we need to make up 190,000 people and then 150,000 additional new nurses into the industry to meet that standard. That would add about $11 billion in cost to the sector every year going forward to try and comply with that.

So again, we need to see the rule to kind of understand how to give some guidance and direction to everybody's how to comment. But there are a couple variables that will really tell just how bad or concerning the rule could be. Certainly one is, “What is the ratio going to be?”

Is it going to be 4.1? Or we're hearing some whispers that it could be, it could be an aspirational standard, but there could be kind of a minimum floor of like 3.6 or somewhere closer to that. The second is, “What's the definition of the employee that can be eligible be counted?” Is it just a nurse or is it an LN, or a front with CNA, or anyone else in the building that works and provides direct care to a resident? “What's the effective date of the rule?”

Is it going to be immediate or it can be some kind of delay when there's some recognition that the workforce sector has recovered, so that there are actually individuals that can go out and be hired and selected. “Are there going to be waivers?” Is there going to be recognition that despite best efforts to comply with the rule, that operators shouldn't be held accountable under the rules for certain penalties despite best efforts?

Of course, “What are the penalties?” And is there going to be kind, any kind of phase in or any kind of relaxation of expected penalties. Again, going back to if despite best efforts to actually hire people. So, you know, there are going to be a lot of variables that are going to be at play to determine just how concerning the rule will be.

But at the core of your question, there will be a portal available for comments. And it'll be critical for everyone to provide as many comments as possible, unique comments from your facility, from your vendor partners, from your r- referral partners, from your associate members, because CMS is required by law to reply to every single unique comment during this period.

That's why the form letters are just not sent out and just say, you know, "Sign your name, a hundred names in your building, and just push it out." We need a hundred individual comments per building, not just one lead that's signed by a hundred people. It's not like a petition per se. So there will be a lot of direction provided from VIUM Capital, from Marsh, from all kinds of affiliate partners to all of our clients as to how they can engage and make sure they're encouraging everyone that they work with to provide comments at the time. A lot will be said once we see the rule, and then we'll provide, be able to provide some guidance as to how to provide comments appropriately.

Tara Clayton:

Yeah, that makes sense, Scott. You know, we really need to know what the rule is going to say and it

sounds like, I think some of the advocacy that's already happened is maybe changing what the rule would have looked like, and maybe that's part of the delay in what we're seeing.

And to your point, absolutely. I know VIUM, Marsh, AHCA/NCAL, other groups will be providing guidance to different members as well as you said, vendors, other industry partners, who are connected to the industry to provide those unique comments.

Scott Tittle:

And if I could add just one thing also. Providers that are not related directly to a skilled nursing provider need to be concerned about this rule too. We're seeing, especially at the state level, some assisted living providers are understanding that even though certain state nursing home requirements for staffing don't apply to them directly, it does indirectly affect other employers in the sector, because of course, employees need to come from somewhere and they're going to be hiring from other sectors. That's why we saw a letter that went into the White House recently that was co-signed by AHCA/NCAL, and the American Hospital Association.

The hospitals see this coming too. Everyone's going to be vying for the same staff, and then other components of the healthcare continuum could likely be next.

So, again, for the listeners out there that maybe don't have a skilled nursing facility in their portfolio or don't work with skilled nursing facilities directly, if you're an assisted living operator or a vendor partner, assisted living operator, independent living, home health, hospital partners, everyone needs to be very concerned about this rule and everybody should be providing comments at the time.

Tara Clayton:

Thanks, Scott. You completely anticipated my next question of, is this just applicable to skilled nursing? Great example with the, the American Hospital Association is making their voice heard because, like you said, stat- the, the workforce has to come from somewhere and we know our assisted living communities, hospitals, they're all having challenges currently as well.

If we're having to pull from one place without actually replacing it, it's going to be extremely problematic. Scott, you mentioned too, I think kind of along that same question, is this just a skilled nursing problem? You mentioned on a state level — and when I think of when we we're talking about assisted living providers, usually we're talking about state-level regulation because that's primarily private pay, that's where most of the licensure and regulatory activity comes in — are you seeing anything around staffing mandates that's playing out in some of the states that really drives home this importance of this is not just a federal skilled nursing issue that we need to worry about?

Scott Tittle:

Yeah, you know, I'm glad you asked the question because there is a lot of activity happening at state level, both on skilled and AL and other healthcare providers. But I think if you look at kind of as best you can, apples to apples of what maybe President Biden and CMS are proposing at the national level, they should look at certain states and certain state experiences to date. New York has had a mandatory staffing ratio for skilled nursing facilities on the burner for many years now.

And they keep delaying it by executive order because they recognize in with the state as big as New York and as rural as New York is, the workforce just isn't there. So I think that's really telling, you've got a big blue state that has been very aggressive in the sector, during COVID for sure, even they have recognized that just, it's just not the time, and as the staff isn't there. You look at what some other states have done on a pretty creative approach though, to really understand that there is maybe an interest in providing a staffing ratio at the statewide level, but to put in some type of realistic components so that it's workable for both the industry and the workforce sector at large.

Virginia is the most recent state who just passed a statewide staffing ratio. And by the way, they just added... I think now the total is about 36 or 37 states have some staffing ratio mandate at the state level. So it's not like nothing's happening at the state level. There's a lot of activity at the state.

But Virginia provided a staffing ratio that seemed workable, certainly considering how rural Virginia is, at about 3.08 nursing hours per day, present per day. And they also broaden the definition of, it's not just RNs; LPNs can be included in that as well. There's also a waiver for operators that can show best case efforts to hire. And if they can't meet the standard, then at least

they can demonstrate that there's a waiver for that. In the Virginia Medicaid program, there's a value-based purchasing add-on for skilled nursing facilities on their Medicaid rate for hitting certain metrics.

And they tethered the staffing requirement into that value-based purchasing incentive. So then there is some funding available for workforce challenges. That was the other variable. I know I missed one earlier on the national, the national CMS, proposed regulation. You know, “Will there be any funding tied to it?” That's the big question too, right? But back at the state level, Virginia tied the requirement to their VBP program, which provides an incentive to go out and hire people. And then the rule is delayed to 2025. So I think that you look at the Virginia experience and see there's someone, there's something that's happened at state level that could, that can be workable, but the industry and the state came together to find a common solution.

Florida last year also looked at a statewide staffing ratio for skilled nursing facilities. And they broadened the definition of who could be included. And it was just the definition was brought to direct care staff. So, of course, that's not just nurses, right? That's a recognition that everybody in the building adds to quality of life for the resident. That's a pharmacist, a dietary nurse, therapist, a dentist, podiatrist. I mean, anyone in the building that's writing direct care can be included in accounts. So I think if you look at certain state experiences, hopefully CMS and the White House are trying to find a way if they do propose the rule ultimately here shortly, that there is some flexibility that's also recognized, looking at state experiences to see what's worked at the state level as well.

Tara Clayton:

So, Scott, obviously this CMS-proposed mandate, I think probably the number one or one of the biggest concerns, especially for skilled nursing providers right now. But as we said, it's something that the entire broader healthcare industry needs to, to be concerned about as a whole. But, you know, were there other areas where you all met with Congress during The Hill visits and focusing on other areas of advocacy, just thinking of other places that the industry needs to be making sure their voice is being heard because it does have an impact.

Scott Tittle:

Yeah. And workforce generally was the number one topic. You know, in addition, just even outside of what President Biden is proposing, but there are a couple pending bills that we pointed to, to make sure staff and members of Congress were aware that there are some things that on the fringes that can be of least some assistance or a release valve in the short term.

When the public health emergency ended, that also ended a certain waiver that allowed for TNAs to advance careers and do work inside facilities without certain prior COVID training requirements. And that certainly in terms of providing some recognition of the important role that direct care staff provide on the front lines. There's a bill, Building America's Healthcare Workforce Act, HR 468.

Representatives Guthrie from Kentucky and Dean from Pennsylvania co-sponsor that bill. And that's a bill that I think we should have your listeners really know about. And that's something that you can talk to your members of Congress about because there's a recognition that frontline staff and TNAs really need to be there and be plentiful inside the buildings to make sure that there's enough direct care for our nation's residents.

And so what that bill would do is essentially extend out that TNA program for another 24 months after the public health emergency has now expired. So that's pending right now. Another one is what we call the CNA lockout bill. And the bill has been sponsored by Senator Warner from Virginia and Senator Scott from South Carolina.

And that's also called the Ensuring Seniors Access to Quality Care Act. And essentially what that does is that asks Congress to kind of remove a restriction — when skilled nursing facilities get certain tags, they no longer can train CNAs inside their building. And so the recognition is that if certain tags that didn't provide an immediate concern for resident care were recited, that then the CNA training program can still continue inside that specific facility. So again, those are two examples of just, you know, it doesn't seem like it's, you know, certainly that old adage, it’s not silver bullet, per se, but there's some things that can certainly help along the fringes before we get from here to there.

And lastly, of course, immigration. Discussion about comprehensive immigration reform, recognizing how

long-term care providers sometimes cannot access the same Visa processing pathways that other industries can, like finance and IT, you know, these EB-3 waivers.

Healthcare providers have to, have to kind of fight with everybody else in the same sort of 40,000 approvals every year. And earlier this year, the State Department put a freeze on processing those applications that were put in after February of 2022. And so there is a bill out there by Senator Tillis to kind of say, "Hey, let's go back in their prior years, even before COVID, where some of those slots were unused. Let's go back and reclaim those slots and sort of bring them back into fold right now so everybody can have access to some quality, foreign workforce, through this process."

There's also a bill called the Dignity Act, which just kind of requests that the State Department improve their processing overall generally. But I think there's been this discussion about is there a way we can sort of look at finding a specific healthcare Visa for long-term care direct staff? And so I think that's kind of a general topic and a general conversation. Hard to know in this Congress with this makeup right now if some kind of comprehensive immigration reform is possible.

But I think everyone recognizes when you look at the numbers I shared before, you know, the sector is already under several hundred thousand workers. If this proposal goes through, the regulation goes through as is, that's another 150,000 nurses that will be needed. The workforce has to come from somewhere. And so why not look at some comprehensive immigration reform to help supply the need to workers for our, for our future seniors.

Tara Clayton:

This is a multifaceted, multi-angle approach, it sounds like really all hands on deck looking for either funding opportunities, direct immigration opportunities. One of the questions I was going to ask you earlier, let's say the staffing mandate on the federal side does go through, we're pulling workforce from whatever sections we can to meet those numbers. That doesn't mean that the census is going to go up still, right?

Because now, we're still having to meet a specified number. So just an access to services for seniors. I think understanding that this is a broader impact, especially knowing that we have a large population that's going to be turning the age that needs senior housing, long-term care services over the next several years. We are not in a position to be prepared and ready for that.

Scott Tittle:

Yeah. And certainly, you know, I don't want to end our conversation on all bad news. (laughs) Certainly there's a light at the end of the tunnel in some respects with respect to census you hinted at there. You know, if you look at the average age of someone in a skilled nursing facility, it's about 82. Assisted living's about 83. Well, the boomers hit that number in 2025, right? And I remember, I was at a conference a couple years ago, I think it was a NIC conference. And NIC had some data that showed on the assisted living side, after 2025, we're going to need several 10,000, like 30,000 or 40,000 additional assisted living beds every year for the next 10 years to meet up with the demand on the AL side.

Now, we'll certainly spill over on the skilled side too, so there's some good news coming on the census side. The tough news on the workforce side though certainly is if you look at the demographics in the United States, I think it was this year or last year, it was the first year in our nation's history where our population did not increase from year to year.

And I also saw a scary stat that, I think it was last year, for the first year, fewer people turned 18 than the prior year. And that will happen every year for the next 10 years. So as we think about a needed workforce, especially for folks that are early in their careers and fulfilling frontline needed staff positions in long-term care, we're going to need to think very creatively in the future, as how to meet the needs and demands for all these seniors who are coming through our collective doors, skilled, AL, IL, 55 and over campuses, going forward. So good news and challenges on both sides there, for sure.

Tara Clayton:

Yeah, absolutely. And I think that really just drives home, Scott, the important work you guys are doing through VIUM, as well as your past relationships and connections. And to me the big takeaway is our industry partners really need to understand how important their voice is collectively, but as well individually on both the state and federal side. So Scott, I really appreciate you joining today, and thank you for all of the work that you've been doing to help advocate.

Scott Tittle:

Well, Tara, thanks for the work you and John, and your whole team at Marsh do. I'm so impressed with everybody I meet at your company, and you guys are doing amazing work for our collective clients as well. So thanks for all you guys do as well.

Tara Clayton:

Thanks, Scott. For our listeners, you can learn more about VIUM Capital and the financial solutions they have for skilled nursing and senior living providers by visiting their website listed in our show notes.

And be sure to subscribe so you don't miss any future episodes. You can find us on your favorite podcast platforms, including Apple and Spotify. As always, I would love to hear from you. If you have any topics you'd like to have addressed on the podcast, please email me your ideas at the email address provided in the show notes. Thank you all so much for tuning in, and I hope you'll join us for our next Risk Insight.