

# **IN THE NEWS**

News for LTC Professionals  
in 100 Words-or-Less

05/29/2022

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Vol 6

No 22

## **They said it**

*"The combination of poor policies, lack of funding, and a workforce that is in short supply have resulted in a perfect storm of circumstances that leaves us with no other remedy than to seek the intercession of the courts"* James Clyne Jr., president and CEO of LeadingAge New York after filing suit to stop a new staffing law

*"Sadly, elements of our society have grown increasingly inured to a cacophony of falsehoods and lies that often stand largely unchallenged"* Dr. Anthony Fauci speaking to graduates of Princeton University

## **If Password is "password" You May be in Deep Do-Do**

Independent researchers analyzed more than 290 million data breaches worldwide and found that healthcare executives are increasingly exposing their companies to more breaches due to weak passwords.

The most common passwords used by C-level executives, managers and business owners included "123455," "password" and "qwerty."

Corporate data breaches are mostly caused by weak or reused passwords, password sharing, phishing, human error and poor cybersecurity infrastructure.

in 2021 the average global cost of a data breach was \$4.24 million —10% higher than in 2020. The attacks that happen due to compromised credentials cost even more at \$4.37 million.

NordPass, McKnight's, 05/26/22

## **Costs Rising - 3X Residents At Risk of Displacement**

New findings from CliftonLarsenAllen show that general inflation for nursing home goods and services increased 8.5% between March 2021 and March 2022. Food costs rose 8.8% during the same period.

CLA said that the number of residents living in facilities at financial risk of closing will triple to 47% (417,000 residents). By comparison, just 16% of nursing home residents lived in at-risk facilities in 2019.

Overall hourly nursing pay rates jumped at least 28%. CNA's average hour pay increased 32% from 2020 to 2022 (\$19.10 to \$25.13); LPNs 33.5% (\$34.01 to \$45.40); RNs bounced up 28.4% (\$42.21 to \$54.3).

CLA, May 2022

## **Nursing Home Closures - A Grim Report from AHCA**

AHCA/NCAL issued a report highlighting federal data that shows the growing number of nursing home closures since 2015 and projected closings this year.

Key findings include:

More than 1,100 nursing homes have closed since 2015 - 776 closures before the pandemic and 327 closures during the pandemic, displacing nearly 45,000 residents.

Over 400 nursing homes are projected to close in 2022 based on current financials.

Nursing homes that closed tend to be smaller Medicaid-heavy facilities.

Nearly half of nursing homes were in rural communities, and an increasing proportion were not-for-profit.

AHCA/NCAL, May 2022

## **Rural Nebraska SNF Closing Its Doors**

Golden Ours Convalescent Home in Grant in Southwestern Nebraska is closing.

Staffing challenges and impacts related to the COVID pandemic, lack of adequate reimbursement from government

assistance programs, and an increase in cost to hire temporary workers, and declining resident numbers were cited as the reasons for shuttering the facility.

The official date of closing for the 50+ years-old facility is July 15, 2022. However, the 50-bed facility only had 13 residents when the decision to close was made and eight of them have plans to move to another nursing home.

KNOP-TV, 05/21/22

## **Providers Leaving Beaucoup Bucks Behind**

Skilled nursing providers are leaving millions of reimbursement dollars on the table due to avoidable and costly billing errors.

A study showed that 80% of denials actually happen because of the intake and admissions process. Common reasons include information not being gathered correctly or an incorrect health plan being entered into the billing system.

Claim denials by Medicare Advantage plans averaged from 8% to 10%.

Providers were able to get that down to 3% to 5% but then after several unsuccessful attempts to appeal denials, let the rest go.

McKnight's, 05/23/22

## **CLARIFICATION**

CMS nursing home vaccine mandate is not impacted at this time by CDC's recent recommendation for a second booster. The rule states that staff must be "fully vaccinated", meaning that staff must complete a primary vaccination series to be compliant with the rule. CMS has not yet updated the rule to require a first or second booster dose. This rule could be updated in the future to require staff to be up to date with COVID-19 vaccination, but this would require a change to the regulation. Note, however, that this rule requires nursing homes to track and securely document the status of individuals receiving any boosters. This requirement would extend to second boosters.

LeadingAge, 05/23/22

## **IN THE TRENCHES – COVID-19 in the States, the SNFs, the World**

**NEW YORK CITY:** Over the next month, the city plans to send out 16.5 million at-home COVID test kits and 1 million masks, and city health officials are recommending that people who test positive and show symptoms reach out to a city hotline to have anti-viral medications delivered for free to their doorsteps. The city's COVID alert status has not yet been upgraded from medium risk to high, but health officials suggested Monday that such an upgrade could come soon (*New York Daily News*).

**AFRICA:** Only 17% of the continent's 1.3 billion population is fully vaccinated against COVID-19 - versus above 70% in some countries - in part because richer nations hoarded supply last year, when global demand was greatest, to the chagrin of African nations desperate for international supplies. The doses have finally arrived, but the number of shots given dropped 35% in March. People are less fearful of the virus now (*Reuters*).

**CONNECTICUT:** A report just released shows that 21 nursing home workers died from COVID-19-related illness since March 2020 – quadruple the number previously on record. State Department of Public Health spokesman Christopher Boyle said the data now includes some of the pandemic's earliest worker deaths, ones that occurred in the first three months of local outbreak, before automated reporting systems were in place (*Connecticut Public Radio*).

**NEW YORK:** More than 35,600 nursing home complaints flooded into New York during the COVID-19 pandemic's first two years, as people raised concerns of neglect and other safety violations inside the facilities. About 4% were substantiated. The USA TODAY Network is publishing the complaint data allowing people to search for complaints by facility, date, category and outcome. The information sheds new light on systemic failures of nursing home oversight and accountability during the pandemic (*Lohud*).

**NORTH KOREA:** The country reported 2.24 million people "sickened with fever" last week, a big jump from the previous week when the secretive nation acknowledged its first suspected cases of COVID-19. The state-run Korean Central News Agency is still not referring to the outbreak as COVID-19, likely because there are no test kits to diagnose patients (*CNN*).

**SOUTH KOREA:** A study reported in JAMA Network Open shows significantly less antibody waning 6 months after two doses of the Pfizer-BioNTech COVID-19 vaccine in people with low body weight, suggesting that those adults could wait longer than 6 months for a booster dose. The small study involved 50 South Korean young adult healthcare workers (80% women) who received the standard series of Pfizer vaccine and had not had a previous infection with COVID-19 (*CIDRAP*).

**WASHINGTON, DC:** The Biden administration is planning for a likely wave of COVID-19 infections this fall and winter by ensuring both a "new generation" of vaccines and access to treatment and testing, White House COVID-19 Response Coordinator Dr. Ashish Jha stressed that plan depended on congressional the \$22.5 billion funding the Administration has requested (*ABC News*).

**NEW JERSEY:** Dr. Anthony Fauci told Princeton University graduates that the COVID-19 pandemic has spawned a "cacophony of falsehoods and lies that often stand largely unchallenged ..... from certain elected officials in positions of power." Fauci did not mention former President Trump or his MAGA movement by name. But he left little doubt that he was talking about the right-wing rejection of public health measures like vaccines and masking to prevent the spread of COVID-19 (*NY Daily News*).

**ARGENTINA:** President Alberto Fernandez and the first lady on Monday paid a fine of three million pesos (about \$24,000), in the form of a charitable donation, in return for legal proceedings

against them being dropped over a birthday dinner during the pandemic lockdown that caused a scandal. Prosecutors opened an investigation last year after leaked photos showed a birthday dinner for the first lady being hosted in July 2020 in the Buenos Aires suburbs. At that time, the capital was subject to a strict Covid-19 lockdown, with a ban on all gatherings -- even for funerals (*AFN, MSN.com*).

**MASSACHUSETTS:** Omicron caused more than 3 times as many deaths as Delta in Massachusetts: More excess deaths occurred in the 8-week Omicron period (2,294) than in the 23-week Delta surge (1,975). The statistics suggest that Omicron—despite it generally causing milder infections—was deadlier overall. The per-week incidence rate ratio of Omicron to Delta for excess death was 3.34 (*CIDRAP*).

**THE WORLD:** The U.S. Army reports that active forces have recorded a 97% completion of vaccination regimen, with that number to hit 98% after additional troops complete their current booster regimen. Army officials claimed the service separated 669 soldiers of 3,411 official reprimands for refusing vaccine mandate. Only 8 (of 4365) religious exemptions were approved - and 22 medical exemptions (of 729) were approved. (*Fox News*).

**PHILADELPHIA:** When students and teachers in Philadelphia return to school tomorrow (Monday), they will have to wear masks once again, as coronavirus cases continue to rise — the latest twist in the city's evolving approach to masking. Everyone will have to wear masks also while on the school bus (*The New York Times*).

### **COVID-19, 05/29/2022**

**Global Cases – Deaths**  
528,028,190 – 6,287,004

**U.S. Cases – Deaths**  
83,979,980 – 1,004,719

212.1– 67% of the country's population

Johns Hopkins University

## **Arizona Surveyors Skipped Serious Complaint Investigations**

A report released by the Arizona auditor general says the Department of Health Services improperly classified some high-priority complaints which should have been investigated within 10-days, as low or medium priority, "which artificially extended the time frame for responding."

The report said regulators had 132 open and uninvestigated high priority complaints as of April 21, 2021, including allegations such as sexual assault or neglectful care resulting in death. But 130 of those 132 complaints were changed to medium or low priority.

The auditor general issued five recommendations in 2019 for improving the state's response to complaints. None were implemented.

Arizona Public Media, 05/24/22

## **Arizona Allocates \$6.5 Million To Train LTC Caregivers**

Arizona is dedicating \$6.5 million from the American Rescue Plan Act to train 1,500 caregivers to work in long-term care.

The Arizona Health Care Association will use the funds to help recruit, train and retain certified nursing assistants and assisted living caregivers.

the program will be open to all licensed skilled nursing facilities and assisted living communities statewide.

Senior Living, 05/10/22

## **COVID-19 Surge in U.S. Drastically Undercounted**

Federal health officials this week warned Americans that coronavirus cases are at a high level, but with a caveat: Estimates are sure to be a significant undercount of the true infections.

White House COVID-19 response coordinator Ashish Jha said the number is higher than 100,000, but how many is hard to determine because of the use of home tests.

The Biden administration this week started offering a third round of free rapid tests. But the rise in at-home testing

comes with a downside – possibly hundreds of thousands of cases are going unreported.

US News & World Report, 05/20/22

## **N.J. Seeks to Take Over Its Most Troubled SNF**

New Jersey is seeking to take over Woodland Behavioral and Nursing Center at Andover, saying the operators are putting residents in jeopardy.

The sprawling long-term care facility with over 360 residents will not be shut down. Instead, the state is asking a judge to appoint someone who will oversee operations, or hire a team to do so, presumably until the property is sold.

The state also revealed that Woodland had a negative cash flow, was teetering on the edge of bankruptcy, limited borrowing capacity, and a possibility it might lose its federal funding.

NJ.com, 05/26/22

## **NY Gov. Pledges Probe of COVID-19 SNF Deaths**

Gov. Kathy Hochul said she expects to soon launch an independent analysis to examine the state's decisions made during the COVID-19 pandemic.

The investigation may include what contributed to the thousands of coronavirus deaths attributed to the spread of the disease in nursing homes.

Although she had previously spoken of a plan to review the response to the pandemic, Hochul for the first time made it clear her office is compiling a team with that sole purpose.

Outside consultants are expected to work with the state to "examine every aspect of the pandemic," Hochul said.

The Times Union, 05/24/22

## **Private Equity Deals Have Slowed in 2022**

Analysts at KPMG Advisory Service attribute the current PE slowdown to inflation, other economic concerns and the Russia-Ukraine war. As of the end of March, there had been 171 deals this year, down from 255 in the first quarter of 2021 and from 216 in the same period in 2020.

McKnight's, 05/23/22

## **ONE COLUMN May Be Many More Deaths Caused by COVID**

Scientists tasked by WHO with calculating the actual number of COVID-19 deaths between January 2020 and the end of last year estimated there were between 13.3 million and 16.6 million deaths that were either caused directly by the coronavirus or were somehow attributed to the pandemic's impact on health systems, like people with cancer unable to seek treatment when hospitals were full of COVID patients.

WHO's estimate is more than double the official death toll of six million.

The figures are based on country-reported data and statistical modeling. WHO did not immediately break down the figures to distinguish between direct deaths from COVID-19 and others caused by the pandemic.

Accurate numbers on COVID-19 deaths have been problematic throughout the pandemic, as the figures are only a fraction of the devastation wrought by the virus, largely because of limited testing and differences in how countries count COVID-19 deaths.

Scientists at the Institute of Health Metrics and Evaluation at the University of Washington guessed there were more than 18 million COVID deaths from January 2020 to December 2021 in a recent study published in *The Lancet*. A team led by Canadian researchers estimated there were more than 3 million uncounted coronavirus deaths in India alone.

Albert Ko, an infectious diseases specialist at the Yale School of Public Health who was not linked to the WHO research, said better figures from WHO might also explain some lingering mysteries about the pandemic, like why Africa appears to have been one of the least affected by the virus, despite its low vaccination rates.

He added the crush of deaths in rich countries like Britain and the U.S. proved that resources alone were insufficient to contain a global outbreak.

WLWT-TV, 05/05/22

## **Louisiana Owner Excluded From Federal Programs**

HHS has excluded Bob G. Dean, Jr., from participation in Federal health care programs due to his ownership interest in seven Louisiana nursing homes that OIG previously excluded.

The Louisiana Department of Health revoked the facilities' licenses to operate as nursing homes due to multiple violations of state law that left seven residents dead and hundreds of others neglected and vulnerable following Hurricane Ida in August 2021.

Seven nursing homes owned by Dean evacuated over 800 residents to a warehouse that was unequipped to handle the residents – seven died in deplorable conditions.

HHS-OIG news release, 05/23/22

## **Ombudsmen Stayed Away From Michigan SNFs**

In Michigan an Ombudsman is required to visit each nursing home at least once each quarter, but even before the pandemic most facilities did not receive an in-person visit.

The report completed by Auditor General's office found Ombudsmen failed to conduct all four required quarterly visits at 241 (53.8%) skilled nursing facilities during fiscal year 2019 or at any of the 448 skilled nursing facilities during fiscal years 2020 and 2021.

The state shuttered access to nursing homes from March through June in 2020, however, the order excluded Ombudsmen.

KPVI-TV, 05/11/22

## **Are COVID Pills Getting To Patients? Who Knows?**

As the nation largely abandons mask mandates, physical distancing, and other covid-19 prevention strategies, elected officials and health departments alike are now championing antiviral pills.

Pfizer's *Paxlovid* pill and Merck's *molnupiravir*, are aimed at preventing vulnerable patients with mild or moderate COVID from becoming sicker or dying.

Recent federal changes designed to let large pharmacy chains efficiently manage

their supplies have had an unintended consequence: many public health workers are unable to see how many doses have been shipped to their communities or used. And whether the most vulnerable residents are filling prescriptions as often as their wealthier neighbors.

The Los Angeles Times, 05/12/22

## **NY Nonprofits Sue Over Staffing Mandate**

LeadingAge New York, and 80 nonprofit and public nursing homes, filed a lawsuit against the state last week to overturn "illegal and unconstitutional" policies that establish a minimum staffing requirement and spending mandates for providers.

The staffing regulation requires facilities to provide a daily average of 3.5 hours of resident care with at least 2.2 hours provided by a CNA, and 1.1 hours by a licensed nurse.

The state's spending mandate requires providers to spend a minimum of 70% of revenue on direct patient care – at least 40% of that going to direct-care staffing.

McKnight's, 05/25/22

## **COVID on the Rise in Conn. Nursing Homes**

Coronavirus infections among Connecticut nursing home residents are on the rise again, increasing almost six-fold over one month.

For the two-week period ending April 12, 85 infections were recorded. For the two-week period ending May 10, 478 infections were reported.

Staff infections also rose, to 346 for the two-week period ending May 10, up from 115 during the two-week stretch that ended April 12.

Nursing home infections and deaths are made public every two weeks in Connecticut.

The state's daily positivity rate recently was 14% compared to 2%-to-3% at the end of February when the omicron wave subsided.

CT Mirror, 05/20/22

## **Briefly in the News**

National health spending is increasing but at a more sluggish rate than the gross domestic product. In March 2022 (\$44 trillion) it expanded by 4.8%, year-over-year, compared to a 9.7% increase in the GDP. Limited spending in the healthcare sector may be attributed to several factors, especially the decline in federal support that was prevalent at the height of the pandemic (***Altarum Health Sector Economic Indicators***).

From the time the CMS mandate for healthcare workers was first announced in August 2021 until after the compliance deadlines passed in March 2022, vaccination rates among nursing home staff increased from 63% to 88% - a net 40% increase from the 63% starting point (***Kaiser Family Foundation***).

U.S. Department of Labor Wage and Hour Division had collected \$39,410 for 28 employees of Open Heart Senior Home Care – a Mississippi home health agency. Investigators found Open Heart paid straight-time rates to employees for hours over 40 in a workweek, not time-and-a-half as required by federal law. The employer coded these hours under different categories such as training and employee appreciation (***DOL news release***).

Researchers looked at Medicare spending for people newly diagnosed with Alzheimer's disease. They used the 1998–2018 Health and Retirement Study and linked Medicare claims from older (≥65) adults to assess incremental quarterly spending changes just before versus just after a clinical diagnosis. In adjusted analyses, spending increased 156%, from \$5394 in the quarter prior to \$13,794 in the quarter that included the diagnosis (***Journal of the American Geriatrics Society***).

The White House said Japan, Vietnam, the Philippines, and Hong Kong have all placed orders for treatments and vaccine doses that the U.S. can't yet commit to. Biden administration officials are expressing increasing alarm that the U.S. is also losing out on critical opportunities to secure booster doses and new antiviral pills that could help the country maintain its reemerging sense of normalcy (***The Seattle Times***).

# The Chilling Effect of the RaDonda Vaught Prosecution

by Aron Solomon, JD  
Med Page Today  
May 17, 2022

RaDonda Vaught, a nurse sentenced for her involvement in a patient's death had been on trial earlier this year for administering the wrong medication to a 75-year-old patient before their MRI. She was found guilty of criminally negligent homicide and abuse of an impaired adult for having administered vecuronium, a paralyzing drug, instead of versed, a pre-MRI sedative. The result of this "criminal medical malpractice" left the patient brain-dead before the error was discovered.

The case was particularly fraught because there has been a general agreement that Vaught was free from malice, which was part of the focus in Friday's sentencing. Even the most vocal critics of Vaught's actions conceded that at the time of this medical mistake, there truly was no malice.

So, why was this case criminally prosecuted rather than taking the normal route of being heard at an administrative board?

Political factors may have been at play. The district attorney, Glenn Funk, JD, who decided to prosecute the case is up for re-election this summer. Failing to prosecute could have been perceived as the same kind of weakness against crime that is subjecting many prosecutors to primary challenges and even recall campaigns.

The broader medical issue coming to light now is one simple question: How do other nurses feel about what happened to Vaught following her tragic mistake?

In the time between Vaught's conviction and sentencing, a groundswell of support has risen among other nurses and medical professionals. Their concerns are critically important to the practice of medicine, and many were addressed by the judge during the sentencing. Davidson County Criminal Court Judge Jennifer Smith, JD, offered a long, clear, and detailed explanation of the reason behind

Vaught's sentencing, first explaining that given an absence of a criminal history, she was a range one standard offender.

Tennessee has four ranges of offenders: one, two, multiple, and career, and range one is someone with no criminal record. This is important because they are eligible for release after serving 30% of their sentence.

Judge Smith acknowledged that Vaught "abused a position of public trust," but clarified that she had no "sustained intent" to violate the law. Further, the court acknowledged that Vaught tried to remedy the situation and was forthright in bringing all the facts of the case to light.

Once the judge announced that the sentences on the two guilty verdicts could be served concurrently, the focus quickly shifted to whether Vaught could be eligible for diversion -- a sentence that would not involve serving time in prison. The judge spent considerable time explaining that a change in Tennessee statutes meant that Vaught could now be eligible for diversion, which the defendant had requested on both counts.

Ultimately, Judge Smith acknowledged during sentencing that although Vaught's medical error was a serious mistake, she had already endured professional, personal, criminal, and public consequences. This motivated the judge to grant diversion, sentencing Vaught to 3 years of supervised probation.

## Consequences for the Medical Profession

During a conversation with my colleague Jason Matzus, JD, a Pittsburgh medical malpractice lawyer, he argued that while the sentencing was a good result under the guidelines, Vaught's conviction itself was fundamentally unfair and resulted from practical as well as system design flaws:

"While there may be certain circumstances that warrant criminal charges, I could make a better argument that the primary cause of the fatal outcome was systemic error more than individual error."

Matzus added, "RaDonda Vaught told the truth, which is an incredibly hard thing to do since doing so necessarily means you accept responsibility for killing a person. I take depositions all the time where doctors and nurses lie and defend the indefensible when the potential for jail isn't hanging over their heads. Do you think that the prospect of jail time will increase or decrease the medical providers' willingness to report preventable errors or increase the incentive to cover them up? Ultimately, will the incentive to lie increase or decrease safety?"

The Vaught case will absolutely have a chilling effect on acknowledging mistakes and reporting them. A 2020 report in the *AMA Journal of Ethics* argues that fundamental to the creation of a just medical culture is that "human errors should be regarded as expected events, health care organizations should routinize processes aimed at human error prevention, limit negative consequences when human errors do occur, and support and educate those who have erred."

Fundamentally, doctors, nurses, and all medical professionals are held to the same reasonable standard. We want medical professionals such as Vaught to exercise their best judgment when that judgment is educated, sound, and aligned with industry standards.

While Vaught's sentencing was far more reasonable than her prosecution, the case will ultimately lead other nurses and medical professionals to fear the prospect of criminal prosecution and jail time in situations where medical boards should be reviewing questions about their conduct. The omnipresence of criminal prosecution will not create better medical practitioners or better patient outcomes.

Instead, it will likely create a healthcare workforce that is overly tentative in their patient care, while leading many more professionals to leave the medical field.

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