

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

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Edited by Drew Vogel

drewvogel5255@msn.com

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They said it

"A whole of the nation response, in this and other national emergencies, is stronger when healthcare providers have a clear understanding of potential liability" Drew Graham, attorney with Hall, Booth, Smith, commenting on SCOTUS potential ruling on COVID liability cases

"There are numerous nonimmigrant visa categories for people traveling and working in the US, but none of them are suited for the caregiver, dietary aid, medical technician and other critical positions in the long-term care industry" American Seniors Housing Association President and CEO David Schless in a statement submitted to the Senate Judiciary Committee

I believe it's a lot of noise about a tiny mouse" – Melissa Brown COO Gravity Healthcare Consulting responding to CMS warning about SNF illegal debt-collections

Residents Racially Slurring Staff? You Better Intervene

The EEOC has filed a lawsuit against Elderwood at Burlington (Vermont), alleging it failed to protect its employees from racial bias from residents, in violation of the Civil Rights Act.

The lawsuit states white residents at Elderwood have repeatedly called black nurses and CNAs racial slurs since 2020, with the facility doing nothing to stop the verbal abuse.

The lawsuit claims Elderwood management told employees "It was the resident's right" to use racial slurs.

EEOC is asking the court to order Elderwood to compensate the six employees who filed charges for financial loss, emotional pain and humiliation, and attorney fees.

VT Digger, 09/06/22

Providers, Congress Push CMS to Extend TNA Program

A group of 14 legislators asked CMS in a letter to encourage passage of The Building America's Healthcare Workforce Act that would extend the 1135 waiver flexibilities for a period of 24 months upon the end of the COVID-19 public health emergency declaration.

The current statute gives nurse-aide applicants only four months to complete training once the PHE ends.

The legislation also would allow TNAs to apply their on-the-job experience and training toward the 75-hour federal training requirement to become CNAs. An AHCA survey of TNAs found that more than 80% are interested in becoming CNAs.

McKnight's, 09/14/22

Sen. Casey Pressures State Survey Agencies for Staffing Info

In a letter sent to all state survey agencies, Pennsylvania Senator Bob Casey demanded they report information on extensive delays and staffing shortages impacting the inspection process.

Casey noted the survey workforce is down as much as 50% in some states and that 4500 SNFs are overdue for annual surveys.

Maryland is the worst at 1,021 days, between standard surveys.

Casey is seeking specifics on surveyor turnover – and why, as well as how the nationwide nursing shortage factors in; also pay increases and how surveyor salaries compare to those for RNs in other positions in each state.

McKnight's, 09/13/22

Private-Equity SNFs' 'Spotty' Database Slammed

The consumer advocacy group Public Citizen reported that a nursing home ownership database run by CMS is riddled with incomplete information on private equity links to SNF owners.

Public Citizen cited several instances of known private equity ownership misidentified or missing and said that

nearly half of the private equity groups known to own US nursing homes aren't mentioned by name in the database.

As a part of the 2010 Affordable Care Act, Congress called for better reporting of private equity involvement in nursing homes. The new report, however, noted that HHS did not establish regulations to require it.

Public Citizen, 09/06/22

Pennsylvania Nursing Home Strikes Have Ended

Hundreds of striking nurses paused picketing last week as their union reached a tentative contract agreement 14 nursing homes across Pennsylvania.

SEIU Healthcare Pennsylvania came to terms with Comprehensive Healthcare, Priority Healthcare, and Shenandoah Heights Healthcare.

A total of about 700 unionized workers at 14 nursing homes statewide went on strike Sept. 2 in a dispute over pay, benefits and staffing levels.

Among the new benefits are pay raises averaging 24%, adjustments to health insurance and better staffing.

The new contracts also contain successorship language to maintain union contracts if the nursing homes are sold.

AP, 09/09/22

Iowa Chain Close to Debt Resolution, Then a Sale

A once-thriving chain of Iowa nursing homes now knee-deep in bankruptcy is getting closer to a settlement with the federal government over millions in unpaid fines, which would allow a sale of the troubled owner's eight facilities to proceed.

QHC Properties, its state and federal government creditors, and interested potential buyers learned in bankruptcy court this week that efforts to lower federal fines of more than \$2 million are nearing a resolution.

QHC filed for bankruptcy in December 2021 amid several wrongful death lawsuits.

McKnight's, 08/26/22

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

AMERICA: U.S. known cases of COVID now stand at their lowest level since early May, although the numbers need to be viewed gently, given the number of people testing at home, where the data are not being collected. The daily average for new cases stood at 68,312 on Monday, according to a New York Times tracker, down 24% from two weeks ago. Cases are now rising in just five states — Kentucky, South Carolina, Texas, New York and Missouri (*MarketWatch*).

CAPITOL HILL: The Supreme Court will allow members of the public to hear arguments in person for the first time in more than two years after closures due to the coronavirus pandemic. Justices on the nine-member high court are slated to meet back for the Supreme Court's opening conference on Sept. 28 before oral arguments over cases begin on Oct. 3. The building has been closed to members of the public since March 2020 despite locations such as the U.S. Capitol and White House relaxing certain pandemic restrictions (*The Washington Examiner*).

EUROPE: The European Medicines Agency has recommended the authorization of a tweaked booster dose of the Pfizer-BioNTech coronavirus vaccine that includes protection against two of the latest versions of omicron. The EU regulator said that laboratory studies suggest the combination vaccine – which targets both the original COVID-19 virus as well as the omicron subvariants BA.4 and BA.5 – should trigger an effective immune response (*MSN*).

BROADWAY: Lea Michele will miss several performances of *Funny Girl* on Broadway after testing positive for COVID-19 a few days into her run. The *Glee* star took over the lead role in the revival on Sept. 6 and will resume her roll Sept 20. On Sept. 10, Michele had posted on Instagram that she was showing “early signs” of COVID-19, after receiving an inconclusive test result, and would miss both Saturday performances. A later test confirmed her diagnosis (*The Hollywood Reporter*).

NEW ZEALAND: The country has now removed most of its remaining COVID-19

restrictions including the lifting of mask requirements in supermarkets, stores, buses and airplanes (*USA Today*).

ALABAMA: Four former employees have sued a Spanish Fort not-for-profit CCRC claiming the facility granted religious exemptions allowing workers to forego a requirement that they get vaccinated against COVID-19 and then rescinded it. The Equal Employment Opportunity Commission recently gave the former employees letters allowing them to move forward with a federal lawsuit after Westminster Village declined an offer of mediation (*WALA-TV*).

CHINA: As a key Communist Party meeting looms, China is intensifying lockdowns and restrictions. Students at China Communication University in Chengdu, the country's sixth-largest city with 21 million people, have been confined to their dorm rooms, while another university and a high school implemented partial lockdowns. A government spokesman said the outbreaks stemmed from students returning from the holidays (*Bloomberg*).

CHINA: Residents of a city in China's far western Xinjiang region say they are experiencing hunger, forced quarantines and dwindling supplies of medicine and daily necessities after more than 40 days in a virus lockdown (*MSN, AP*).

THE SEVEN SEAS: Figuring out the rules for boarding a cruise ship requires serious navigation these days. Travel advisers say the policies are moving closer to pre-pandemic norms. The biggest change is that more cruise lines are allowing greater numbers of unvaccinated travelers. Norwegian Cruise Line Holdings Ltd., Carnival Corp. and Royal Caribbean Group are among those that permit unvaccinated travelers to board (*The Wall Street Journal*).

AMERICA: The total size of the labor force reached 164.7 million people in August, exceeding the February 2020 pre-pandemic level for the first time. But researchers at Stanford and MIT say the labor force would have 500,000 more

members if not for the people sickened by COVID-19 (*The Wall Street Journal*).

WEST VIRGINIA: The Department of Health and Human Resources (DHHR) reports as of September 12, 2022, there are currently 2,932 active COVID-19 cases statewide. There have been 12 deaths reported since the last report, with a total of 7,334 deaths attributed to COVID-19 (*dhr.wv.gov*).

GERMANY: A court in the western German state of Rhineland-Palatinate sentenced a 50-year-old man to life imprisonment over the killing of a gas station worker. According to authorities, the defendant became angry with the attendant who would not sell him beer and demanded that he wear a face mask. At the time, a face mask was a requirement across Germany to curb the spread of the coronavirus (*DW.com*).

THE WORLD: Does OTC mouthwash kill the virus? While mouthwashes may help create an inhospitable environment for the virus, there's no evidence to suggest it's effective at controlling the spread of the virus. There's also no evidence that it's effective at treating active infections. In fact, even the makers of Listerine offered up a statement confirming that there was no evidence-based research in favor of mouthwashes as a COVID control or prevention tool (*Healthline*).

AMERICA: Wyoming is the state with the lowest share of residents fully vaccinated against COVID-19 at 51.9%. Of the others in the "bottom ten" six – Alabama, Arkansas, Georgia, Louisiana, Mississippi, and Tennessee – are in the South; two are in the west – Idaho and North Dakota; and Indiana is in the Midwest. Rhode Island with 84.9% of its residents fully vaccinated is the highest (*ABC News*).

COVID-19, 09/16/2022

Global Cases – Deaths
611,647,467 – 6,525,605

U.S. Cases – Deaths
95,648,258 – 1,053,396

224.4 - 68% of the country's population is fully vaccinated

Johns Hopkins University

Get Boosted - This Thing Is Far from Over

The U.S. is currently averaging just under 400 daily COVID-19 related deaths. Although the daily number of fatalities is far lower than it was at the nation's peak, in January 2021, 3,400 Americans died of COVID-19 each day, The U.S. is still averaging just under 400 daily COVID-19 related deaths.

Over the last seven days, 2,500 COVID deaths were recorded. Since the beginning of this year, more than 221,000 Americans have died because of COVID-19.

The U.S. is currently reporting about 70,000 new cases a day. Which comes as testing levels have plummeted.

ABC News, 09/15/22

Like the Flu Shot, The COVID Jab Will Be an Annual Ritual

With omicron-specific boosters hitting pharmacy shelves this week, White House COVID-19 coordinator Dr. Ashish Jha said the latest vaccine rollout may be the first of what will become an annual shot for Americans – like the flu shot.

HHS Xavier Becerra said doses began shipping immediately after authorization and pledged that by this week more than 90% of Americans will have access to the new boosters within 5 miles of where they live.

The FDA gave emergency use authorization to a new bivalent vaccine that targets both the original virus and the BA.4 and BA.5 variants that now dominate the world.

USA Today, 09/13/22

Hospital Closes SNF to Make Way for Hospital Patients

The Northside Hospital System is closing Northside Gwinnett Extended Care Center near Atlanta, Georgia.

Why? Simply to make room for beds for hospital patients.

The irony is that the hospital system's LTC unit is a high-performing 5-star facility according to U.S. News and World

Report's 2021-2022 Best Nursing Homes ratings.

Northside termed the move "a well-planned transition of the center's 21 current residents" and is providing the families at least two months to find new housing for their loved ones.

the center's 70 employees are being offered training opportunities and transfers to other jobs within the Northside Gwinnett system.

Atlanta Journal-Constitution, 09/06/22

Deadly Legionnaires' Disease in NYC Nursing Home

Between June and September, New York State health officials investigated eight cases of Legionnaires' disease at the Amsterdam Nursing Home, in Morningside Heights in Manhattan.

Four of those people died, including two who state health officials confirmed had the disease. A third person, who didn't die, also tested positive for the lung disease. The other five cases involved people who had preliminary evidence of the disease.

Legionnaires' disease is typically carried in water.

The New York Times, 09/15/22

Clearing Immigration Blockades Will Help LTC Worker Shortages

American Seniors Housing Association President and CEO David Schless in a statement submitted to the Senate Judiciary Committee said immigrants should be given the opportunity "to make a career, a good living and a difference in their own lives and the lives of others."

Schless told lawmakers that it is critical for them to include "senior living front line, caregiver, in-demand and other essential workers" when considering proposals to address healthcare workforce shortages.

Schless said ASHA supports options including a visa category for frontline long-term care workers and improving the employment authorization process for migrants seeking asylum.

McKnight's, 09/15/22

ONE COLUMN

Investigation Reveals Unbelievably Bad Record

San Diego public radio station KPBS has done a series on nursing homes which uncovered the disturbing record of Avocado Post-Acute in El Cajon, California.

The reports revealed the 256-bed home has received 628 complaints since 2019 – four times the state average for facilities with 100 or more beds and 124 survey deficiencies – twice the state average.

"It is quite straightforward," said Scott Fikes, an attorney who has filed multiple lawsuits against Avocado, referring to the findings of investigators. "There's a long evidentiary record that shows they are unable or unwilling, whatever it may be, to provide the level and quality of care that Medicare and Medicaid demands."

The California Department of Public Health findings are buttressed by multiple lawsuits, police investigations and autopsy reports. Among the most egregious examples in the past three years:

** A 90-year-old man was strangled to death, allegedly by his roommate who, according to a lawsuit, has a "severe psychiatric illness." and a history of violence against other residents.

** A 71-year-old woman was sexually assaulted by a caregiver. The facility waited eight days before reporting the assault to police. There have been three sexual assaults this year.

** A resident with strict swallowing precautions choked to death after she was left to eat her lunch alone. Another resident died in 2020 after choking on donuts.

** A CNA reportedly slammed a resident into a wall after the resident had a bout of diarrhea.

** A resident with documented substance abuse problems, allegedly shot himself up with heroin at the facility.

"It is an unsafe place for residents to be," said Tony Chicotel of California Advocates for Nursing Home Reform. "It's a dangerous nursing home and one that I would be reluctant to send anybody, let alone friends or family."

KPBS Radio, 09/08/22

SCOTUS May Decide COVID-19 Immunity for SNFs

The U.S. Supreme Court may determine once and for all whether COVID-19 liability cases related to the Public Readiness and Emergency Preparedness (PREP) Act belong in state or federal court.

If SCOTUS grants the petition from Glenhaven Healthcare, it could decide whether all such cases covered by PREP will be decided at the federal or state level.

States can currently consider cases based on federal law, but Glenhaven maintains public health emergency law decisions should be kept exclusively in federal courts.

McKnight's, 09/12/22

SNFs Fire Back at CMS Debt-Collection Warning

A warning letter sent late last week by federal regulators about nursing home debt collection practices was overblown and obscured another significant problem, operations experts said over the weekend.

CMS prodded by letter co-signer Consumer Financial Protection Bureau, reminded providers that they cannot require family members to agree to assume debt as an admissions condition. The letter also warned debt-collection agencies that pursuing such debt could be illegal.

Provider resented what they saw as an unnecessary spotlight on a relatively small faction of bad actors.

McKnight's, 09/12/22

More Positive Information About Telemedicine

Telemedicine and in-person diagnoses of new clinical complaints yield high diagnostic similarity.

The researchers at the Mayo Clinic in Phoenix found that the provisional diagnosis established over video telemedicine visit was concordant with the in-person reference standard diagnosis in 86.9% of cases.

The analysis included 2,393 patients seen at multiple sites (December 2020 to June 2021) within a single health care system.

The concordance of diagnostic codes ranged from 64.7% for diseases of the ear and mastoid process to 96.8% for neoplasms and 96% for psychiatry.

JAMA Network Open, 09/02/22

Nurses Settle 'Pro-Filipino' Discrimination Suit

Four caregivers have settled a nearly 3-year-old class action race discrimination lawsuit against a now-shuttered New Jersey nursing home plagued by a host of problems, including COVID-19 outbreaks and loss of residents to other facilities.

The lawsuit filed by four non-Filipino nurses claimed Violetta Arcilla, then-director of the county-owned Bergen County Health Care Center, unfairly favored Filipino nurses.

Arcilla, a Filipina, also was accused of forcing out non-Filipino nurses, docking pay, wielding discipline unfairly, and offering Filipino nurses better schedules at the 100-bed home.

Details of the settlement were not immediately disclosed.

McKnight's, 08/11/22

SNFs Generally Just Don't Want Druggies

A federal push to have skilled nursing providers care for more patients with substance use and opioid use disorders faces major hurdles.

Researchers at Vanderbilt University report nursing home staff feel unprepared to handle patients with SUD and OUD, have critical perceptions of addiction and complain of an overall lack of resources for addiction care.

Although admissions denials based on drug-addiction are prohibited by the ADA a study earlier this year put the rejection rate for one hospital's referrals at 40%.

Residents with substance abuse histories were widely perceived as having overall "bad behaviors," were time-intensive, manipulative, aggressive or violent.

Journal of Addiction Medicine, 09/02/22

Briefly in the News

Joining several other California cities, Monterey Park and Long Beach have passed identical ordinances establishing a \$25 hourly minimum wage for healthcare workers. Monterey Park's ordinance went into effective Aug. 31. Long Beach's ordinance will go into effect Sept. 26 (*Bloomberg Law*).

Elderwood, a Buffalo, NY based chain of senior care companies, has agreed to pay \$950,000 to settle a civil suit that accuses the chain of filing fraudulent claims for Medicare and Medicaid payments over a six-year period (*The Buffalo News*).

Flu is surging in Australia for the first time since the pandemic began. Flu season in Australia can be an indication of what's to come in the U.S. Flu season in Australia began earlier than usual, which can be an indicator of a severe season. Up to 41 million people in the U.S. catch the flu every year, on average, resulting in about 52,000 deaths (*NBC News*).

Philips RS North America – formerly Respironics, Inc., a manufacturer of durable medical equipment has agreed to pay 24 million to resolve allegations that it violated the False Claims Act by paying kickbacks to DME suppliers. The programs affected were Medicare, Medicaid and TRICARE (*DOJ news release*).

Annual flu shots were tied to lower ischemic stroke risk, a case-control study in Spain showed. Older adults who received an influenza vaccine were 12% less likely to have an ischemic stroke versus people who weren't vaccinated according to Francisco Jose de Abajo, MD, MPH, PhD, of the University of Alcalá in Madrid, and colleagues (*MedPage Today*).

New York Gov. Kathy Hochul has declared a state emergency after finding evidence of continued community spread of poliovirus. Public health officials have detected the virus in a fourth county, Nassau in Long Island, which follows cases detected in Rockland, Orange and Sullivan counties (*HealthDay News*).