

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

Edited by Drew Vogel

drewvogel5255@msn.com

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THEY SAID IT:

"Just because I'm a building owner doesn't mean I can run a nursing home" NJ State Sen. Andrew Zwicker commenting on a landlord who is seeking the license of an operator that abruptly shut down a facility in September

"The higher these costs are, the more likely people are to forego treatment" Dr. Paul Sax, clinical director of the Infectious Disease Clinic at Boston's Brigham and Women's Hospital on the prospects that the price of Paxlovis will drastically increase

"We need an NIH director who is prepared to take on the greed of the pharmaceutical industry and use every tool at his or her disposal to substantially lower the outrageous cost of prescription drugs" Sen. Bernie Sanders at hearing for NIH Director nominee Monica Bertagnoli, MD

Ghost Employees? Well, It is Halloween, You Know

In a case investigated by the FBI and HHS-OIG, a federal grand jury returned an indictment charging Alisha Richardson, a former Chicago nursing home employee, with creating fake CNAs to steal from her former employer.

The indictment alleges that Richardson created false records to generate payments to individuals who never worked at the facility – a/k/a “ghost” employees. Some of the checks were cashed by the ghost employees, the proceeds shared with Richardson. The Indictment also states Richardson forged signatures and cashed some of the checks herself.

The nursing home paid out over \$100,000 for work that was never performed.

DOJ news release, 10/13/2023

CMS Not Backing Down on Staffing Mandate

More than a month after the announcement of the federal minimum staffing proposal, an official with Centers for Medicare & Medicaid Services (CMS) reinforced the agency's commitment to the rule and urged providers and other stakeholders to continue submitting comments on the matter by Nov. 6.

Dr. Dora Hughes, acting CMS Chief Medical Officer said during a quarterly stakeholder call on Tuesday that the agency took a multifaceted approach to help inform its proposal, and that it reflects “all the available evidence.”

“We believe that our staffing proposals are balanced and achievable,” Hughes said.

Skilled Nursing News, 10/17/2023

CNAs – Demand Will Outpace the Availability

Demand for direct care workers – CNAs and the like – in various LTC settings is on the rise.

In a report from direct care workforce specialty group PHI, the need will outpace the number of available workers.

Between 2021 and 2031 the direct care workforce is projected to add more than 1 million new jobs, which represents the largest growth of any job sector in the country. However, during the same timeframe nearly 9.3 million direct care jobs will need to be filled.

Turnover among CNAs of almost 100% is the biggest concern.

PHI, Senior Living, 09/13/2023

Senators Warn of Closed Vets Homes if Mandate Advances

Two US Senators have asked CMS to stop the proposed federal staffing rule for nursing homes, saying that “unintended consequences” of the mandate could force the closure of veterans' facilities.

US Sens. Kevin Cramer (R-ND) and Angus King, pictured, (I-ME) voiced their concerns in a letter to CMS Administrator Chiquita Brooks-LaSure.

The two senators sit on the Senate Veterans Affairs Committee and represent states with significant rural areas.

In addition, Cramer and King said they were “disappointed” that CMS did not include hours from LPNs in the agency's required care times.

McKnight's, 10/20/2023

AARP Blames Nursing Home HQs for Staffing Problems

Nursing homes could find themselves open to civil rights and consumer protection lawsuits if the AARP Foundation Litigation unit is successful in three cases it is currently pursuing against operators.

Staff attorneys from the litigation unit explained details and strategies of cases in Illinois, Tennessee and West Virginia in which the seniors' advocacy group has sued a skilled nursing chain and two assisted living operators.

In the Illinois case, for example, the AARP Foundation is suing Alden nursing homes, claiming that the company is intentionally understaffing its facilities. A company representative “vigorously” denied the allegations.

McKnight's, 10/18/2023

Facility Goes from Good to Bad, to Good, to Bad, to Bad

Buffalo Center for Rehabilitation and Nursing had problems enough that it became a Special Focus Facility (SFF) but it improved and graduated from that program.

Things were looking up – then last summer the NY Attorney General filed a lawsuit alleging the operator misused taxpayer money intended for resident care.

And now the latest blow: Buffalo Center in September was named a candidate for re-entrance back into the Special Focus Facility program, from which it just graduated six months earlier.

The parent company – Center Health Care will only say the latest problem pertains to a “staff-related issue.”

The Buffalo News, 10/18/2023

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

AMERICA: Among a total of 3.46 million deaths in the year 2021 (the most recent year for which data is available) COVID-19 was the third leading cause of deaths of adults in the U.S. behind heart disease and cancer. COVID-19 accounted for 12% of all deaths that year (**CDC**).

THE WORLD: Moderna plans to begin a late-stage trial on a combination COVID-flu vaccine later this year in adults over 50. It's looking for regulatory approval in 2025 (**Axios**).

WASHINGTON, DC: As the nation reeled from COVID-19, the federal government sent many Americans a financial lifeline. But some recipients say the COVID relief payments have triggered financial distress by jeopardizing their Social Security benefits. The government has demanded they repay much larger amounts — thousands of dollars in benefits for the poor and disabled distributed by the Social Security Administration. Head of the SSA told Senators at a hearing last week that she would investigate (**KFF Health News, Cox Media Group**).

AMERICA: Pfizer told the pharmacies and clinics that will dispense Paxlovid, in a letter dated Wednesday that was viewed by The Wall Street Journal, that a five-day course of the antiviral will list for \$1,390. The U.S. government had paid \$529. Health plans will probably pay much less than the list price for the pills, and most patients will have a small or no out-of-pocket cost because Pfizer is expected to offer price discounts and help patients with their out-of-pocket charges. (**The Wall Street Journal**).

SAN DIEGO: Pfizer, BioNTech and biotech firm Promosome told a federal judge in San Diego, California that they have agreed to end Promosome's lawsuit accusing the COVID-19 vaccine makers of infringing a patent related to messenger RNA technology. The companies said in a court filing that Promosome would dismiss its case with prejudice, which means it cannot be refiled, and that Promosome had agreed not to bring future claims over the patent against Pfizer and its partner BioNTech. No financial terms were disclosed (**Reuters**).

ARKANSAS: A federal lawsuit claiming detainees at the Washington County Jail were given *ivermectin* to treat COVID-19 without their knowledge nor consent was settled for \$10,000, according to the American Civil Liberties Union of Arkansas. Ivermectin is an FDA-approved drug to address parasitic infestations such as intestinal worms and head lice. It isn't approved to treat COVID-19 (**Arkansas Democrat Gazette**).

SEATTLE: The incidence of out-of-hospital cardiac arrest increased in King County, Washington during the pandemic, and survival decreased. However, rather than being directly linked to acute COVID-19 infections, the authors said the changes were linked to emergency medical services (EMS) use during the pandemic. Of the cases that occurred during the pandemic years ending December 31, 2021 there was a 10.8% increase in EMT-treated cases and a 27.2% increase in EMS-attended patients who were DOA at the hospital (**JAMA Network Open**).

AMERICA: Questions about whether COVID leaked from a Chinese laboratory have cast a chill over American virus research, drying up funding for scientists who collect or alter dangerous pathogens and intensifying a debate over those practices. The pullback has transformed one of the most highly charged fields of medical science. While some believe such experiments could fend off the next pandemic, others worry that they are more likely to start one (**The New York Times**).

FLORIDA: The COVID-19 death toll continues to climb in Florida, while new COVID-19 cases have dropped in recent weeks. The state's Department of Health reported 412 COVID deaths in the two-week period ending 10/13/2023. However, data showed yet another decrease in cases over the past month with 6380 positives during the week that started October 6 (**Health News Florida**).

TEXAS: A sweeping ban on COVID-19 vaccine mandates for employees of private Texas businesses has passed the Texas Senate, although medical facilities would be allowed to enact other policies to help lower the risks to vulnerable patients. Senate Bill 7, by Galveston Republican

Sen. Mayes Middleton, would subject private employers to state fines and other actions if they fire or punish employees or contractors who refuse the shot (**The Texas Tribune**).

AMERICA: After a small rise from very low levels over the summer months, US COVID numbers in the week ending 10/13 registered declines. Of the main severity indicators, hospitalizations declined 8.2% from the previous week, and deaths were down 3.8%. Early indicators also fell, with emergency department visits for COVID-19 down 17.7% from the past week and test positivity down 0.8%. The national test positivity rate is at 10.1%, but is a bit lower in the South and Southeast than in the rest of the country (**CIDRAP**).

THE WHITE HOUSE: The Biden administration is investing in three potential vaccines and a range of new technologies aimed at staying ahead of Covid-19. The \$500 million investment across 13 projects is the latest installment in the federal government's Project NextGen, a \$5 billion plan to develop new Covid-19 treatments, vaccines, and ways of delivering them. The Health and Human Services Department this summer channeled \$1.4 billion to similar goals (**STAT**).

AMERICA: As the nation reeled from COVID-19, the federal government sent many Americans a financial lifeline. But some recipients say the covid relief payments have triggered financial distress by jeopardizing their Social Security benefits. The government has demanded they repay much larger amounts — thousands of dollars in benefits for the poor and disabled distributed by the Social Security Administration (**KFF Health News**).

COVID-19, 10/20/2023

Global Cases – Deaths
771,407,825 – 6,972,152

U.S. Hospitalizations – Deaths
6,422,520 – 1,148,961

U.S. % Positive Tests Last Week
Down -0.07

R.I. SNF Paying Employees Back Pay for Pandemic

A Rhode Island nursing home that was designated a COVID-19 specialty facility will pay more than \$288,000 in back wages to employees who were shorted overtime pay during the pandemic.

The agreement between Oak Hill Center in Pawtucket and the Department of Labor to pay the back wages and damages affects more than 400 employees are owed amounts ranging from \$22 to \$44,998.

The agreement, in which Oak Hill does not admit or deny any wrongdoing, must still be approved by a federal judge. It notes that Oak Hill has been in compliance with federal wage laws since November 2022.

Yahoo News, 10/18/2023

PA Legislature Helping Nursing Homes Survive

The Pennsylvania Senate has unanimously passed a bill that freezes the reimbursement rate for nursing homes at last year's level.

The bill will help reduce volatility and level the playing field so facilities can meet the needs of vulnerable patients. Every day that these rates persist, more and more nursing facilities risk closure.

For the current fiscal year, Medicaid reimbursement rates for nursing homes are calculated partially based on costs incurred to meet COVID-19 mandates. This has created a circumstance in which approximately 70 nursing homes are losing an average of \$19 a day for more than 4,000 patients statewide.

*News Release Sens. Ward, Pittman and Martin,
10/17/2023*

Michigan's New Elder Abuse Training Program

A new law enforcement program will train officers and prosecutors to identify and investigate allegations of abuse, neglect or misconduct, increasing the scrutiny of Michigan's nursing homes.

State Attorney General Dana Nessel announced last week that her office will oversee a series of training sessions to help law enforcement officers

understand the regulatory framework under which long-term care facilities operate and differentiate between complaints that are regulatory matters and those that are criminal.

The training is part of the Sentinel Project, which Nessel launched two years ago to use specially trained teams to make surprise visits to nursing homes.

Michigan AG news Release, 10/12/2023

What a Mess! – SNF Closes, Landlord Wants the License

When Princeton Care Center, a SNF with a long history of financial struggles suddenly closed Labor Day weekend and forced the emergency evacuation of 72 frail and elderly residents, state regulators quickly voided the facility's license.

The landlord is suing to obtain the license in hopes of reopening the facility.

The building owner – Princeton LLC – claims it is entitled to the facility's license because PCC defaulted on its lease which indicates that the "health care assets" revert to the landlord if the operator defaults.

The State of New Jersey is not in favor of giving anyone the license.

NJ Spotlight News, 10/16/2023

Respiratory Screwed Up in Some New MDS Submissions

Three weeks into dealing with the updated to the MDS, providers continue to grapple with a range of coding concerns, including an inability of some software systems to capture respiratory therapy services.

Software conflicts are leading to errors regarding HIPPS codes when facility staff attempt to submit a completed MDS form.

Some providers receive error messages that their HIPPS code is improperly calculated, and a verification message provides a new code. But providers have said the "correct" code sent to them is actually inaccurate.

The HIPPS code is a five-digit code that determines payment rates under PDPM.

McKnight's, 10/17/2023

ONE COLUMN

Surprise! Mandate Could Shift Big Costs to the States

A federal staffing mandate would likely leave states struggling with how to afford increased costs among their operators, a threat that could force wide scale changes in how state Medicaid systems pay providers for skilled nursing care.

It might also convert some state budget officials into opponents of the mandate once they see more clearly the financial implications.

So warned Martin Allen, senior vice president of reimbursement policy for the American Health Care Association during the AHCA Convention & Expo in Denver.

State leaders can't wait to make changes until the proposed regulations kick in at least two years from now, depending on when the rule is finalized, Allen added. They need some way to "ramp up" so that providers have some funding in their pockets as mandated nurse hiring begins happening in earnest.

No two states would approach the increased expense the same way, considering that among the 50 different Medicaid systems, some already pay prospectively, and others pay retrospectively, while still others have state caps on annual spending increases.

Even divided across 50 states, the staffing rule's \$4 billion annual cost estimated by the Centers for Medicare & Medicaid Services would add up significantly for states that base provider payments on cost reporting. Other analyses have projected the costs at \$6 billion (AHCA) or \$7.1 billion annually (LeadingAge).

In fact, given a true picture of the costs that could be shifting to states, state budget officials and Medicaid directors may find themselves compelled to join with the associations in arguing against the staffing mandate's unfunded hiring requirements.

Do they know this? "Probably not," Allen said.

McKnight's, 10/10/2023

California Healthcare Minimum Wage - \$25/hour

California Gov. Gavin Newsom has signed a law raising the minimum wage for thousands of healthcare workers in the state from \$15.50 an hour to \$25 per hour.

Although wage increases will begin rolling out next year, the timeline for implementation depends on facility type.

Large health systems with more than 10,000 workers and dialysis clinics must implement the law fully by 2026, while rural independent hospitals and those with a high mix of Medi-Cal and Medicare patients have until 2033 to implement the new wage minimums.

Healthcare Dive, 10/16/2023

Unions Get Tentative Deal With Kaiser Permanente

Kaiser Permanente reached a tentative deal with the unions representing 75,000 employees, following the largest-ever health care strike in US history.

The strike lasted only three days, the length of time it had been scheduled to run. The unions were threatening an eight-day strike next month if a new deal was not reached by October 31.

Kaiser Permanente management agreed to raise wages by 21% over four years in all Kaiser locations and establish a new health care worker minimum wage: \$25 per hour in California and \$23 per hour in other states where Kaiser operates.

CNN Business, 10/13/2023

Court Asked to Revive \$900M SNF Lawsuit

Three plaintiffs claim they suffered financial harm because the three nursing homes they had stayed in had all been licensed by the state of Florida under false pretenses. They claim omission of details on licensing applications rise to racketeering-level behavior.

The plaintiff's attorney pointed to complicated ownership structures and related parties that made it hard for the residents — and the state licensing body

— to know who was really in charge of the three facilities and 19 others in the state.

One judge doubted that any individual had suffered financial harm because the government was paying for the plaintiff's care.

McKnight's, 10/13/2023

Feds: Georgia Agencies Should Do More Surveys

The HHS-OIG looked at 20 of the 358 facilities in Georgia and found life safety, emergency preparedness or infection control issues totaling 155 deficiencies in 19 of them.

The facilities were selected because they had previous issues.

Among the issues found were doors that could not close or latch, blocked sprinkler heads, improperly stored oxygen tanks, out of date emergency plans, gaps in infectious disease plans or issues with their vaccination policies around COVID.

The issues resulted from rapid turnover of staff and a lack of resources on the part of the Georgia agency to carry out inspections.

Augusta Chronicle, 10/09/2023

Judge Won't Stop Sale of Seven Nursing Homes

In a \$40 million wage and hour case, a judge has denied the request of the Department of Labor to halt the potential \$56 million sale of seven Western Pennsylvania nursing homes belonging to a company about to go on trial for violating federal law.

The judge found the government did not prove Comprehensive Healthcare was attempting to offload assets to thwart the department's ability to recover if it wins a judgment at trial.

The complaint, filed in 2018, alleges that the facilities failed to pay thousands of employees appropriately under the Fair Labor Stands Act.

Tribune Review, 10/05/2023

Free COVID Test Kits

COVIDTests.gov

Briefly IN THE NEWS

A complaint filed in state court in Honolulu by the office of Hawaii Attorney General, alleges CVS Health's Caremark, Cigna Group's Express Scripts and UnitedHealth Group's OptumRx violated state laws against unfair competition and deceptive business practices by illegally driving up prices. The three companies account for about 80% of the pharmacy benefit manager (PBM) market (**Reuters**).

Hundreds of Allina Health physicians have voted to be represented by a union, becoming what's believed to be the largest group of unionized private-sector physicians in the country. According to the National Labor Relations Board, the initial tally was 385-200 in favor of joining the Doctors Council SEIU Local 10MD. (**Minnesota Public Radio**).

This is the first year that four vaccines are being recommended during pregnancy. Yet, there are already signs that fewer pregnant women are getting vaccinated — putting themselves and their newborns at increased risk of severe illness or death. Last year, a CDC study found, 47.2% of expectant mothers got their flu shots, down from 57.5% who got their flu shots during the pre-Covid 2019-20 season (**NBC NEWS**).

The Joint Commission has issued guidance on pressure injuries which can raise the risk for people to have worse outcomes including amputation and infection. The recommendations aim to equip healthcare staff, such as those at nursing homes, to recognize and treat these ailments (**Senior Living**).

A mobile clinic adorned with cartoon depictions of sperm is on a Missouri road trip offering free vasectomies this week. The trailer, which on Thursday was posted in the parking lot of Planned Parenthood in St. Louis, also will stop at clinics in Springfield and Rolla. This is the third trip the mobile clinic and its owner, Dr. Esgar Guarín, have made to the region since 2021. For Guarín, who operates Iowa clinics in Des Moines and Cedar Rapids, the trip helps highlight an underutilized form of birth control (**St. Louis Public Radio**).