

# IN THE NEWS

News for LTC Professionals  
in 100 Words-or-Less

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## THEY SAID IT:

*"Nothing worse than, say, plugging a Friday evening shift with an agency worker and finding out Friday morning, in a sort of hostage situation, that this same worker has been double-booked, and the only way to have her show is to pay a ransom"* Brendan W. Williams, president of the New Hampshire Health Care Association

*"All adults aged ≥65 years, should reduce their risk for severe COVID-19 by receiving recommended COVID-19 vaccinations, adopting measures to reduce risk for contracting COVID-19, and seeking prompt outpatient antiviral treatment"* from a recent CDC study

*"Nursing homes must not be made the scapegoats for logistical, supply chain or other bureaucratic problems"* Ruth Katz, LeadingAge's senior vice president for Policy and Advocacy on the unavailability of vaccines to nursing home residents

## **Nursing Home Must Reinstate Employee Who Posted Grips**

The National Labor Relations Board ordered Atlas Healthcare at Maywood (NJ) to rehire Latoya Carter and to compensate her for about two years of lost wages, and cover any tax liabilities she might incur from the lump sum of backpay.

The decision states that after Carter and other employees confronted administrator Eli Finklestein regarding wages, hours and working conditions, and specifically "about the shortage of clean linens and towels," she made similar complaints on Facebook for which she was terminated.

The NLRB said Finklestein carried out that action "to discourage employees from engaging in these or other concerted activities."

NLRB news release, 10/13/2023

## **Remember When Annual Surveys Were Sorta Annual**

Year-end data for fiscal year 2023 shows there has been little improvement in prompt recertification surveys for the nation's nursing homes.

In an analysis ProActive LTC Consulting, reported 29.9% have not had a recertification survey in more than 15 months; and 21.3% have gone more than 18 months. Among those, Kentucky had the greatest share not inspected for over 18 months at 84.4%.

The ProActive analysis also showed that 11.3% had not had recertification survey in over 24 months, with another 5.1%, or 757 facilities, not recertified in more than 36 months. Kentucky also led the last group with 63.3%.

ProActive LTC Consulting, 2023

## **The top 10 cited deficiencies this year:**

1. F812 Food Procurement, Storage/Prepare/Serve Sanitary
2. F880 Infection Control
3. F689 Free of Accident Hazards/Supervision/Devices
4. F656 Develop/Implement Comprehensive Care Plan
5. F761 Label/Storage Drugs & Biologicals
6. F684 Quality of Care
7. F695 Respiratory/Tracheostomy Care & Suctioning
8. F677 ADL Care Provided for Dependent Residents
9. F657 Care Plan Timing and Revision
10. F758 Free from Unnecessary Psychotropic Meds/PRN Use

Proactive LTC Consulting, 2023

## **Extending DC Notices May Have Negative Consequences**

A bill in the Wisconsin legislature would extend the discharge notice period for nursing home residents from 30 days to 90 days is catching some flak from long-term care advocates.

Providers say the longer period could force facilities to cut off negotiations with MCOs - managed care organizations sooner to meet the proposed deadline.

The Wisconsin Health Care Association is lobbying for an amendment that that would preserve certain discharge exceptions.

The legislation is currently pending in the Wisconsin state Senate's Committee on Health, which held a hearing on it last month.

McKnight's, 10/23/2023

## **Another South Dakota SNF Closes Its Doors**

The Bennett County Nursing Home has close, bringing the total to three lost statewide this year, and more than 15 since 2017. Over 30 residents were relocated, with the closest nursing homes to Martin 50 to 75 miles away.

Officials said the facility operated at a loss of over \$1.3 million in the first six months of the year. The staff turnover rate was 94.4%, causing heavy reliance on travel nurses, spiking costs 1,064% since the pandemic began.

The nursing home was serving the community near the Pine Ridge Reservation.

The Argus Leader, 10/20/2023

## **Staffing – S.D. Looking at Requiring SNF Mergers**

The South Dakota Legislature is looking for ways to deal with LTC staffing shortages in the future. One of the more intriguing proposals involves offering cash to nursing homes within 60 miles of one another that merge.

A future panel might consider mandating certain facilities merge under certain circumstances.

In the meantime, the Legislature may be asked to consider changing what may designate a regional nursing facility and its appropriate reimbursement levels.

Potential changes in this regard could lead to the state reimbursing full capital costs of equipment, furniture and other remodeling or construction costs.

McKnight's, 10/20/2023

**Free COVID Test Kits**

**COVIDTests.gov**

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

**ATLANTA:** In a new study, the CDC labeled COVID-19 a “continued public health threat,” especially for those aged 65 and older. 1.14 million Americans have died from COVID-19 since the onset of the pandemic including 52,000 during this year. Additionally, millions of individuals continue to suffer from the long-term debilitating effects of the disease referred to as long COVID (*San Francisco Chronicle*).

**AMERICA:** HHS statistics indicate about 4 million Americans received updated COVID vaccines in September. The uptake came amid reports of limited vaccine supplies at pharmacies and glitches with insurance coverage. A recent survey from the Kaiser Family Foundation found that nearly half of US adults will definitely or probably get the updated vaccine, higher than previous booster campaigns but lower than that of the primary series rollout (*Reuters*).

**AMERICA:** Pfizer CEO Albert Bourla said on he expects about 17% of the U.S. population to get updated COVID-19 vaccines during the current vaccination campaign. That’s about the same as last year (*Reuters*).

**SPAIN:** Researchers found COVID vaccination or SARS-CoV-2 infection may play a small role in migraine worsening. “Our preliminary data point to a negligible role of the infection and vaccination on migraine worsening and to the possible presence of a nocebo effect,” i.e., a situation where a negative outcome occurs due to a belief that the intervention will cause harm. Migraine patients often report anxiety and worry about COVID-19 and/or vaccination and the possibility of headaches worsening during a COVID incidence (*European Journal of Neurology*).

**THE WORLD:** A meta-analysis estimates a vaccine effectiveness (VE) of 69% for three doses of COVID-19 vaccine against long COVID, while two doses offer 37% efficacy. Led by researchers at the University of Iowa, the meta-analysis involved 24 studies on COVID-19 VE against long COVID among recipients of at least two doses of a vaccine before or after infection from December 2019 to

June 2023 (*Antimicrobial Stewardship & Healthcare Epidemiology*).

**ATLANTA:** Hospitalizations for respiratory syncytial virus (RSV) infections were less frequent than those due to influenza or COVID-19 in adults 60 and up, but they were associated with more severe disease. A report from CDC’s National Center for Immunization and Respiratory Diseases indicated among hospitalized cases, the likelihood for invasive mechanical ventilation or death with RSV was double that of the flu and similar to COVID-19 (*Morbidity and Mortality Weekly Report*).

**AMERICA:** States in the Central, Northern and Pacific regions remain among those with the highest number of COVID-19 infections in the country despite a general drop at a national level. During the week ending on October 14, the latest data made available by the CDC, the number of COVID-19 infections across the country was on average 9.5 percent—a 0.7 percent drop compared to the previous week (*Newsweek*).

**COLLEGE STATION, PA:** Researchers at the University of Pennsylvania reported viral vestiges in the gastrointestinal tracts of a subset of long-Covid patients may drive chronic inflammation that interferes with a key chemical messenger involved in nerve activity, brain function and memory. The findings provide an explanation for poor concentration, memory problems and other neurocognitive symptoms in long Covid, they said. Importantly, their experiments identified Prozac and other drugs that boost levels of the chemical messenger — serotonin — as promising targets for future study (*Cell*).

**AMERICA:** Long COVID cases now account for 6% of all workers’ compensation claims. But many who have filed those claims have been unable to collect, in part because of variations in how states administer the program. Among the workers who are struggling to receive benefits are essential workers — hospital staff, medics, teachers, and others who were unable to work remotely during the early days of the pandemic, often putting themselves at higher risk for

infection (*Workers Compensation Research Institute*).

**THE WORLD:** An imbalance of fungi in the gut could contribute to excessive inflammation in people with severe COVID-19 or long COVID. A study found that individuals with severe disease had elevated levels of a fungus that can activate the immune system and induce long-lasting changes. The work, published on 23 October in *Nature Immunology*<sup>1</sup>, raises the possibility that antifungal treatment could provide some relief to people who are critically ill with COVID-19 (*Nature*).

**FLORIDA:** On June 4, 2021, Florida stopped delivering daily information on COVID-19 testing, infections and deaths. At the time, the spokesperson for Gov. Ron DeSantis said COVID cases had dropped significantly, and Florida was “returning to normal.” Today, the information comes out every two weeks. At the time the state stopped its daily update, nearly 37,000 Floridians had died from COVID-19. Recently the state agreed to hand over the statistics it originally said it did not have (*WUSF*).

**ITALY:** An observational study following the rollout of the Novavax’s protein-based adjuvanted COVID vaccine in Italy found that protection against symptomatic disease was 50% in fully vaccinated people, with an estimated effectiveness of 31% in all notified cases. Over a 4-month period, effectiveness waned against infection but was stable against symptomatic disease. The study encompassed more than 20,000 adults between February and September 2022, a time when the Omicron variant was dominant (*Jama Network Open*).

### **COVID-19, 10/27/2023**

**Global Cases – Deaths**  
771,549,718 – 6,974,473

**U.S. Hospitalizations – Deaths**  
6,438,882 – 1,150,119

**U.S. % Positive Tests Last Week**  
8.7% Down -0.07

## **Vaccines For SNFs? HHS Says It's Working on It**

The Health and Human Services Department said Monday it is working to ensure the new COVID-19 vaccine gets to long-term care facilities.

There have been complaints that some nursing homes are struggling to obtain doses for their residents.

Trade groups representing long-term care providers and the pharmacies that serve them lay much of the blame on the transition from government distribution of the vaccine to the commercial marketplace, a change that did not give those pharmacies and nursing homes priority access to the vaccine.

*Modern Healthcare, 10/24/2023*

## **Congress Can Make Staffing Rule Go Away**

Speaking during the week at the NIC conference in Chicago, former House Speaker Paul Ryan explained Congress has a clear ability to block a federal nursing home staffing mandate if it has the collective will to do so.

The Congressional Review Act gives Congress the authority to pass a law that "says that the minimum staffing rule is repealed because it was a bad rule."

He said, "It can't be filibustered in the Senate. If it passes in the Senate, it happens and it goes away, no matter who the president is. That kind of stuff can happen."

*McKnight's, 10/25/2023*

## **CNA Group Pitches 40% Increase in Staffing Rule**

The National Association of Health Care Assistants says the proposed 3.0 hours PPD of direct care does not go far enough. It advocates 4.2 PPD, but says it "enthusiastically" supports the Biden-proposed rule overall.

The NAHCA proposal was certain to outrage providers, who have called for clicking down the staffing proposal demands, if not eliminating them altogether.

The group also wants CMS to automate fines and payment denials for daily staffing violations that are reported on facilities payroll-based journal systems.

NAHCA also wants to see any discussion of waivers eliminated from the rule and shorter implementation timelines.

*McKnight's, 10/16/2023*

## **Pennsylvania New Rule Empty Beds, Vacant Jobs**

In Pennsylvania a LeadingAge PA survey found 18% of the respondents said staffing has gotten worse in the past six months and 52% are limiting admissions.

That's despite increased state funding that has allowed nursing homes to provide raises for existing staff and increase starting salaries.

"What this means is that, on average — and this is really the shocker — on average, that's one of four available beds that are out of use," said Garry Pezzano president and CEO of LeadingAge PA.

New rules upped the staffing ratios and requires facilities to spend 70% of Medicaid revenues on direct care.

*McKnight's, 10/24/2023*

## **Shortages – Meds, Supplies, Equipment – Harm Patients**

A survey by patient safety organization ECRI and its affiliate, the Institute for Safe Medication Practices found that supply shortages have compromised patient care.

In fact, the respondents said providing appropriate care has become increasingly difficult, leading to instances of unsafe practices, compromised care and harmful, otherwise avoidable patient safety incidents.

Half said shortages have delayed patient treatments, while a third said they were unable to provide patients with optimally recommended drugs or treatments.

*Fierce Healthcare, 10/23/2023*

## **ONE COLUMN The Airline-Nursing Home Mutual Challenge**

Excerpt from a column by Gert Tetz

At airports across America, big planes are nearly crashing into each other in the skies and on the ground.

And not just once in a while, nearly all the time. A recent report by the *New York Times* identified 46 incidents involving major airlines in July of 2023 alone.

The margin on some of these incidents is adorably described by the Federal Aviation Administration as "skin-to-skin," which sounds more like a Tinder request than a near-catastrophic collision.

Frightening as all this is, here's the part long-term care leaders might find... interesting? Frustrating? Hypocritical? Maybe a little bit absurd?

Turns out, it's largely a staffing problem.

I'll quote directly from the report: "But the most acute challenge," *The Times* found, "is that the nation's air traffic control facilities are chronically understaffed. While the lack of controllers is no secret — the Biden administration is seeking funding to hire and train more — the shortages are more severe and are leading to more dangerous situations than previously known."

It's truly disorienting to see regulators and politicians attempt to solve a different staffing crisis by actually investing resources in recruiting and education, rather than reflexively legislating.

What happened to their tried and true long-term care model — ignore a crippling nationwide labor shortage, stoke public outrage and simply roll out a magical unfunded mandate that could, in the long run, reduce available service?

Why take the time to wrestle with inconvenient truths, when they could just impose a rule, disregard all external factors and likely consequences, and serenely walk away whistling.

*McKnight's, 10/19/2023*

## **House GOP Defends Providers Against Biden Mandate**

House Republicans Wednesday, during a hearing of the House Committee on Energy and Commerce Subcommittee on Health, zeroed in on the Biden administration's proposed federal staffing rule, saying it would threaten access to and disrupt care in nursing homes.

Republicans also objected to a proposed home-and-community-based services rule that would force 80% of payments to be spent on direct care,

That's a change, the GOP said, that could devastate state Medicaid systems that also would be tasked with paying skilled nursing providers for increased staffing.

*McKnight's, 10/26/2023*

## **Nursing Home Fined Nearly \$200,000 For Understaffing**

New Jersey regulators fined the 120-bed ProMedica Skilled Nursing & Rehab in Sewell, NJ – southeast of Philadelphia – \$196,000 for not having enough staff on 196 days, mostly this year.

Surveyors found evidence of understaffing during inspections on three separate days this year and one in July 2022.

New Jersey requires nursing homes to have one certified nurse aide for every eight residents during the day shift, one direct care staffer for every 10 residents during the evening shift, and one direct care staffer for every 14 residents overnight.

*The Philadelphia Inquirer, 10/24/2023*

## **"Ponzi Scheme" Nursing School Case Expanded**

Connecticut is expanding its case against Stone Academy eight months after the school's abrupt closure in February. An amended complaint alleges the owners of Stone Academy siphoned millions of dollars through unfair and deceptive practices. It's not certain students will get their \$30,000 tuition back.

AG William Tong said the owners paid themselves nearly \$5 million in distributions during over two years despite

exam pass rates faltering and students not receiving the proper tools and materials they would need.

"The owners committed a massive fraud," Tong said, "feels like and looks like a huge Ponzi scheme to line their pockets."

*WTNH-TV, 10/24/2023*

## **6 Entrapments, 3 Deaths In Minnesota ALFs**

The Minnesota Department of Health has opened investigations into six separate assisted living facilities this year due to adverse patient events with bed rails.

In three out of the six investigations, patients died as a result of entanglement or entrapment caused by bed rails. In two of the cases of deaths the facilities had failed to assess or reassess a resident.

In the third case, a resident was found entrapped by the bedrail, taken to the emergency room, then returned to the facility. Approximately 11 hours later, the resident became entrapped in the bed rail a second time and died."

*Becker's Hospital Review, 10/23/2023*

## **Ohio High Court Says Yes To 65-year Prison Sentence**

In 2016, Susan Gwynne, a CNA in Ohio, was charged with 86 felony counts for stealing from residents in facilities where she worked over a nine-year period.

She ultimately pled guilty to 46 theft-related charges.

The trial court imposed consecutive sentences, ranging from six months to three years per charge – altogether it amounted to 65 years in prison. She was 55 years old at the time of sentencing.

After a series of appeals, the Ohio Supreme Court ruled in December 2022 that the sentencing was erroneous.

This week, however, the Court reconsidered its decision and upheld Gwynne's 65-year sentence.

*Court News Ohio, 10/25/2023*

## **Briefly IN THE NEWS**

A scientist named Heman Bekele has invented a soap that treats skin cancer. Herman is 14 years old and a ninth grader from Annandale, Virginia. He just won a prestigious award – "America's Top Young Scientist" from 3M and Discovery Education, considered one of the country's top middle school science competitions (*USA Today*).

The bar for taking a sick day is getting lower. U.S. workers have long viewed an unwillingness to take sick days as a badge of honor. That's a laurel workers care much less about these days. The number of sick days Americans take annually has soared since the pandemic. Human-resources executives also attribute the jump to a shift in the way many Americans relate to their jobs (*The Wall Street Journal*).

Despite recent efforts to address the issue, medical-related websites continue to be mined for data including personal medical information, in an apparent violation of patients' privacy rights. In a report by the cybersecurity company Feroot some of the most common tracking pixels were from Alphabet Inc.'s Google, Microsoft Corp., Meta Platforms Inc. and ByteDance, the parent company of TikTok, Security (*Bloomberg*).

The FDA is reviewing an application for the nasal spray flu vaccine FluMist to be able to be self-administered at home. The vaccine has been on the market in the U.S. since 2003. AstraZeneca has asked the FDA to allow adults ages 18 to 49 to be able to give themselves the vaccine, or to give it to children as young as age 2, citing a "usability study" showing people can do it properly without a health care provider present. If approved, it would be the first flu vaccine cleared for self-administration (*CNN*).

Health insurance premiums jumped this year amid a post-pandemic spike in costs of care, adding to the burden on employers and workers as inflation erodes broader buying power. The average employer-sponsored health insurance premium for US families rose 7% to almost \$24,000 this year, Premiums for individual employer coverage rose at the same rate (*Bloomberg*).