

# IN THE NEWS

News for LTC Professionals  
in 100 Words-or-Less

Edited by Drew Vogel

[drewvogel5255@msn.com](mailto:drewvogel5255@msn.com)

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## THEY SAID IT:

***"I suspect there will be a race to the courthouse"***

Attorney Varu Chilakamari, commenting on the Supreme Court ruling on federal agencies rule-making authority.

***"The Wicked Witch of Chevron is finally dead. Courts will independently decide cases involving ambiguous statutes without deference"***

LTC attorney Mark Reagan, of Hooper, Lundy & Bookman after SCOTUS ruling in the so-called Chevron deference case

***"Our position has always been that this staffing mandate should have never been finalized"***

AHCA's Mark Parkinson, following SCOTUS ruling that diminished federal agency rule-making powers.

***"Achieving this final step in the recertification process means Laguna Honda will be here to care for San Franciscans for generations to come"***

Attorney David Chiu in a report released by the city of San Francisco on the 769-bed Laguna Honda regaining its Medicare certification.

## **SCOTUS Edict Will Spawn Lawsuits in the Future**

The trio of high-profile Supreme Court decisions will likely lead to an "avalanche" of new cases challenging the authority of federal health regulators and other agencies, testing judges' expertise and court bandwidth in what one Justice warned could be "chaos."

The Court's combined rulings undercut the power of administrative agencies in such varied ways that it's almost certain lower courts will see a sharp increase in lawsuits.

On the rulemaking side, increasingly I think there will be activity in questioning the agency's interpretation or whether it has the authority to implement the policies that they are proposing or finalizing.

*McKnight's 07/02/2024*

## **SCOTUS Ruling May Bolster Challenge to Staffing Mandate**

A lawsuit challenging the final staffing rule makes a forceful argument that CMS overstepped its bounds, usurping a responsibility on staffing that Congress has historically reserved for itself.

Last week's ruling by the Supreme Court revoked broad deference to federal agencies thereby reversing a long-standing doctrine that has given regulatory agencies broad discretion to set rules for the entities they cover.

The Court wrote "Perhaps most fundamentally, Chevron's presumption is misguided because agencies have no special competence in resolving statutory ambiguities."

Providers are urging the Biden Administration to rescind the rule and develop more meaningful solutions.

*McKnight's, 07/01/2024*

## **HHS: CNAs Not RNs Of The Most Concern**

The HHS Office of the Assistant Secretary for Planning and Evaluation (ASPE) said in a recent report that as of May 2024, 50% of nursing homes already staffed at or above the rule's RN minimum staffing requirement (0.55/PPD); 59% staffed at or above the rule's 3.48 total nurse staffing minimum requirement; and 78% of nursing homes provided at least 24 hours of total RN staffing per day.

The report conceded "The data do not allow us to assess whether facilities provided 24/7 "around the clock" RN coverage" required in the final rule.

Only 30% met the requirement for CNA hours.

*ASPE report, 06/28/2024*

## **More Ownership & Resident Info This Month from CMS**

CMS for the first time this month will begin posting certain nursing home ownership information, as well as aggregated MDS data for all residents at a facility.

It will also issue new guides for consumers, on the Nursing Home Compare website.

The agency also said it will unfreeze staffing level ratings to implement a previously announced new staffing level case-mix adjustment methodology and tweak the way it calculates nursing home staffing turnover.

All of the changes will become live July 31.

*McKnight's, 07/01/2024*

## **A Proposal to Make NHSN Reporting Permanent**

CMS would expand the National Healthcare Safety Network (NHSN) COVID-era respiratory illness reporting requirements under a provision of the recently proposed rule for 2025.

In May 2020, CMS began requiring nursing homes to report data on COVID-19 CMS.

Those reporting requirements were set to expire at the end of this year, but the newly proposed rule would extend them indefinitely and further expand them to include reporting on the flu and RSV.

Some providers have argued that the requirements are both too frequent and potentially redundant — requiring extra work for staff and increased potential for fines for providers.

*McKnight's, 07/01/2024*

## **115 Elopements May Result in New Maine Regs**

A recent newspaper investigation found that residents of Maine's assisted living facilities unsafely wandered away at least 115 times from 2020 to 2022.

In most of those cases, the state never inspected the facilities, conducting only a desk review or no investigation at all. Only two cases — one resulting in a death — led to sanctions.

Recently, the Maine's division of licensing and certification, which provides regulatory oversight of the state's medical and long-term care facilities, contacted the ombudsman's office to seek input on assisted housing regulations, indicating new rules may be in the future for Maine's ALFs.

*The Maine Monitor, 06/30/2024*

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

**AMERICA:** For the week ending June 22, COVID-related emergency department visits rose 23% from the previous week. Hawaii and Florida had the highest percentage of ED visits diagnosed as COVID-19 at 5.1% and 1.8%, respectively. Hospitalizations appear to be increasing slightly, though the trends are based on a subset of hospitals that continue to report data to the agency. Requirements for hospitals to report COVID-19 and flu admissions data ended May 1 (**Becker's Hospital Review**).

**WASHINGTON, DC:** The partisan politics that have surrounded the federal and local responses to the COVID-19 pandemic continue to overshadow the committee aimed at examining – and learning from – the government's response to the disease since the investigation's start last year. Rep. Brad Wenstrup, a doctor who chairs the committee looking into the COVID response, told CNN he wants his probe to be nonpartisan, but the Ohio Republican struggles against the polarizing political climate (**CNN**).

**ROCHESTER, NY:** Heath Gauthier, 48, was sentenced to over 12 years (145 months) in federal prison for his role in a scheme to defraud COVID-19 pandemic relief programs and for possessing child sexual abuse material. The U.S. Attorney emphasized the severity of Gauthier's crimes, highlighting that he had more than a thousand images of child sexual abuse and exploited the identities of others to fraudulently obtain pandemic relief funds meant for struggling individuals and businesses (**Newport Dispatch**).

**THE PHILIPPINES:** A foreign ministry official said The Philippines is still seeking clarification from the Pentagon about a secret U.S. propaganda operation that aimed to cast doubt among Filipinos about Chinese vaccines at the height of the COVID pandemic. A Reuters investigation on June 14 detailed how the Pentagon ran a clandestine influence campaign in 2020 and 2021 to denigrate the Sinovac vaccine and other pandemic aid from China across the developing world (**Reuters**).

**AMERICA:** There are no signs so far that the new LB.1 variant is causing more severe disease in COVID-19 patients, the Centers for Disease Control and Prevention says, as infections have begun to accelerate in this summer's wave around the country. The LB.1 variant currently makes up 17.5% of new COVID cases, the CDC projected Friday, and could be on track to overtake its sibling, the KP.3 variant, which has also been growing in recent weeks (**CBS News**).

**CAPITOL HILL:** When Congress sent tens of billions of dollars to schools — an unprecedented sum — to battle the pandemic, it seemed like reopening campuses was going to be the toughest thing. Or maybe keeping teachers and students COVID-free. But it turns out the hardest thing was helping students recover from severe academic losses sustained during the depths of the pandemic. Schools reopened. Students and teachers were, for the most part, kept safe from COVID and two separate reports indicate the money helped the kids recover academically, as well (**The Washington Post**).

**AMERICA:** A Tulane University-led research comparison study based on two large, open-label studies links the antiviral drug *remdesivir* (Veklury) to a 54% lower risk of all-cause death and shorter hospital stays compared with standard of care alone in hospitalized COVID-19 patients requiring supplemental oxygen in 2020. By the 28<sup>th</sup> day 247 of 1,074 remdesivir recipients (13%) and 377 of 1,426 (26%) given only SOC had died and 70% of patients who received remdesivir plus SOC and 53% who received SOC alone had been released from the hospital (**Clinical Infectious Diseases**).

**UNITED KINGDOM:** There has been a very small increase in the number of people being admitted to hospital with COVID in the UK. The number went up to 3.31 admissions per 100,000 in the week ending 16 June, compared with 2.67 per 100,000 in the previous week. The largest group of people hospitalized with Covid were those over age 85. How many people have Covid and stay at home, it is difficult to say. The UK no longer collects national data the way it did

during the pandemic and far less testing takes place now (**The BBC**).

**NEW YORK CITY:** In a departure from penalty guidelines, NYPD Commissioner Edward Caban has ruled that a police officer in Brooklyn, who lied to the department's Internal Affairs Bureau while under investigation for submitting two fake COVID vaccination cards, can keep her job. Caban did rule that officer Kimberly Lucas would receive a year's probation and lose 85 vacation days. His decision is final (**The City**).

**TENNESSEE:** Tanja Benton a Chattanooga woman who sued BlueCross BlueShield after she was fired for refusing the COVID-19 vaccine has been awarded \$687,240 by a Federal Court jury. The jury found that BlueCross "did not prove by a preponderance of the evidence either that it had offered a reasonable accommodation to Plaintiff or that it could not reasonably accommodate the Plaintiff's religious beliefs without undue hardship." (**Chattanooga.com**).

**ATLANTA:** The CDC's Advisory Committee on Immunization Practices (ACIP) in a unanimous 11-0 vote, recommend that everyone 6 months of age and older should receive an updated COVID-19 vaccine and the influenza vaccine, similar to last year's recommendation (**MedPage Today**).

**AMERICA:** Heat wave causing COVID? Not exactly, but ..... Infectious disease experts say it's relatively unusual to see surges in the summer months, but due to the heat wave more people are congregating indoors to savor air conditioning and seek respite from soaring temperatures and humidity. There are currently 39 states with growing or likely growing surges of COVID-19 and no decline is in sight (**Parade**).

### **COVID-19, 07/05/2024**

**Global Cases – Deaths**  
775,645,882 – 7,051,876

**Vaccine Doses Globally**  
5.47 billion

**U.S. Cases – Deaths**  
103,436,829 – 1,189,343

CDC, WHO

## **The Driver Picked Up The Wrong ‘Body’**

A driver tasked with picking up a dead body from Shadyside Skilled Nursing and Rehabilitation, a Pittsburgh-area nursing home, instead took the wrong person.

It was a live person.

Sources say the woman was wrapped in a sheet, not a body bag. She made a noise in the back of the van, alerting the driver that she was alive.

Shadyside issues a statement: "Once we became aware, we contacted the Department of Health and family emergency contact, and also took necessary steps internally to address."

The state said it does not regulate the transport process.

KDKA-TV, 06/22/2024

## **R.I. Creates Nursing Home Advisory Board**

The Rhode Island General Assembly has approved the establishment of an advisory board to keep state leaders informed on current market conditions, wages, benefits and working conditions in Rhode Island's nursing home industry.

The legislation, which sunsets July 1, 2027, is designed to help state leaders understand the challenges facing nursing home staff, and craft solutions that ensure safety for them and patients alike.

The 13-member board will include members from employers, workers, community organizations, various state departments and the state Ombudsman.

The bill now goes to the governor to be signed,

R.I. General Assembly  
news release, 06/13/2024

## **CMS Coverage Decision Could Increase Amputations**

Legacy Medical Consultants (LMC), a supplier of wound coverings, is urging CMS' Medicare Administrative Contractors to reconsider a proposed Local Coverage Determination (LCD) that could lead to a two-to-five-fold increase in preventable amputations for patients with diabetic foot ulcers.

The proposal would limit Medicare coverage to products that have demonstrated efficacy through randomized controlled trials which are not required by the FDA or the Tissue Reference Group, nor have they historically been required by CMS.

Based on LMC's analysis, this would eliminate patient access to 93% of currently allowed products, increasing risk of hospitalization, amputation, and death for vulnerable patients.

PRNewswire, 06/06/2024

## **Gov't Agencies Oppose SNF Bankruptcy Sale**

When four agencies of the federal government oppose a business's reorganization plan in bankruptcy court, things can get messy.

In a unified objection, the U.S. government on behalf of Medicare, HHS and the U.S. of Labor and Veterans Affairs opposed the sale of four nursing homes owned by LME Family Holdings and New York City-based nursing home operator Ephram "Mordy" Lahasky.

The owners say if the bankruptcy is not approved the facilities, which are losing money, will have to close.

The four facilities have a combined 464 beds.

Pittsburgh Post-Gazette, 06/28/2024

## **Fights SNF Sale - Cites Potential Broken Agreements**

Cigna has filed a legal motion objecting to the sale of a group of nursing homes as part of Chapter 11 bankruptcy proceedings, claiming it would give the providers "carte blanche" to end payor agreements without proper notice.

South Hills Operations and affiliates filed for bankruptcy on May 17 and later asked for approval from the US Bankruptcy Court to sell those properties.

Cigna requested that the court halt the bankruptcy sale unless its concerns were addressed, including having South Hills fully pay any debts to Cigna.

McKnight's, 06/27/2024

## **ONE COLUMN SCOTUS Ruling May Weaken CMS's Powers**

The Supreme Court's decision to discard the long-standing so-called Chevron doctrine is a "game changer," when it comes to upholding the federal staffing mandate against litigation, legal sources told Skilled Nursing News. It further opens the door for AHCA to challenge the rule, among other possible challenges to CMS authority.

"This decision amplifies and justifies our concern that government agencies are overextending their authority by implementing sweeping staffing mandates over the entire nursing home profession," said Mark Parkinson, president and CEO of AHCA and the National Centers for Assisted Living in an emailed statement.

In light of the decision, AHCA /NCAL urged the Biden administration to rescind the minimum staffing rule and work in partnership with providers and stakeholders to develop more meaningful solutions.

There will likely be additional litigation by parties seeking to challenge certain federal regulations governing health care and statutes that underlie those rules, he said in an email. The decision could also influence how Congressional lawmakers draft bills.

With the latest ruling, courts' decades-long deference to government agencies in interpreting federal statutes was discarded as well. Such deference has been misguided, since "agencies have no special competence in resolving statutory ambiguities," Chief Justice John Roberts wrote in the decision.

As for how the Chevron decision will weigh on CMS' staffing mandate, it essentially directs the District Court to review CMS' actions and curtail them based solely on its own interpretation of the statutory authority granted by Congress, rather than deferring to the agency.

In other words, courts reviewing AHCA's lawsuit will no longer need to defer to CMS' sole interpretation as a result of the decision.

Skilled Nursing News, 07/01/2024

## **D.C. Lawmakers Hammer LTC Associations re: Mandate**

Two Democratic members of Congress sharply criticized AHCA, LeadingAge and others' opposition to new minimum staffing requirements at virtually every nursing home in the United States.

Sen. Elizabeth Warren (D-Mass.) and Rep. Jan Schakowsky (D-Ill.) in a letter to the associations called the effort to overturn the staffing mandate, shameless attempts to sabotage a long-overdue CMS rule that would help millions of seniors living in nursing homes receive better quality care."

AHCA/NCAL, the Texas Health Care Association and several Texas care facilities sued HHS in May arguing it exceeded the agency's statutory authority in established in the mandate.

*The Hill, 07/01/2024*

## **Court Denies Reopening Of Billion Dollar Suit**

A federal appeals court won't reopen a nearly \$1 billion lawsuit against a Florida nursing home operator accused of racketeering-like behavior in a lengthy civil case.

Three residents had accused marketing company Marcus & Millichap and Michael Bokor owner of the facilities management company, of a of omitting key details from their nursing home licensing applications rendering them invalid.

But the court found the plaintiffs, had failed to refute the court's finding that the plaintiffs had already filed other lawsuits in state courts in Florida, meaning they then waived their right to refute those arguments at a later time.

*McKnight's, 07/02/2024*

## **LTC Coalition Tell CMS to Reconsider CMP Expansion**

A coalition of 12 key long-term care associations, including AHCA, LeadingAge and the American Association of Post-Acute Care Nursing, is arguing CMS should withdraw a planned civil monetary penalty expansion.

In March CMS proposed powers to implement more CMPs "per instance and per day" in FY25.

The joint letter to Administrator, Chiquita Brooks-LaSure, warned CMS that the new, layered CMPs would counterproductively divert funds away from staffing and care quality at nursing homes.

*McKnight's, 07/02/2024*

## **Arizona A.G. Invalidates Arb. Secrecy Clauses**

Arizona Attorney General Kris Mayes has received court approval of a consent judgment terminating illegal secrecy clauses in arbitration agreements used by dozens of Arizona assisted living facilities.

The consent judgment applies to all facilities operated by Bandera Healthcare, the Arizona subsidiary of The Ensign Group.

For any future arbitrations involving those facilities, residents and their families will be free to notify the Attorney General if they discover evidence of abusive practices.

This is the second such consent agreement in recent months.

Arizona had a similar consent judgment with Senita Ridge Memory Care of Peoria, Arizona in February.

*Arizona Republic, 06/28/2024*

## **Genesis Home in Pittsburgh Locking the Doors Soon**

Pittsburgh Skilled Nursing and Rehabilitation Center will close Aug. 12.

The nursing home, owned by Genesis Healthcare, blamed declining reimbursement rates, delays in receiving Medicaid funding, inflation and regulatory requirements for the closure.

Genesis, who acquired the nursing home 15 months ago, said 140 patients and residents and 137 employees will be impacted. Employees will be offered other positions at Genesis's other facilities in the area and the facility plans to work with residents to identify other affiliated locations that can accommodate them.

*The Tribune-Review, 05/29/2024*

## **Briefly in the News**

For this upcoming respiratory virus season, CDC recommending that everyone ages 75 and older receive the RSV vaccine. People ages 60–74 who are at increased risk of severe RSV, meaning they have certain chronic medical conditions, such as lung or heart disease, or they live in nursing homes, also should receive the RSV vaccine. The recommendation is for adults who did not get an RSV vaccine last year (CDC Updates).

In a Harvard T.H. Chan School Of Public Health study of loneliness and stroke risk over time among adults ages 50+, those who experienced chronic loneliness had a 56% higher risk of stroke than those who consistently reported not being lonely. Those who experienced situational loneliness did not have an elevated risk of stroke—suggesting that the impact of loneliness on stroke risk occurs over the longer term (*eClinicalMedicine*).

Federal law says nursing homes are supposed to be inspected by state health authorities at least once every 15 months. But in New York City, a severe shortage of inspectors has delayed most inspections beyond the legal limit. As of June 1, 120 of the 163 nursing facilities in the five boroughs (73%) have not been surveyed within the required time and 33 have not had an inspection since 2021 (*THE CITY*).

Rishi Shah, co-founder and former CEO of healthcare technology startup Outcome Health, has been sentenced to seven and a half years in prison for his role in a scheme involving about \$1 billion in fraudulently obtained funds (*Chicago Tribune*).

The US Department of Health and Human Services (HHS), through its Biomedical Advanced Research and Development Authority (BARDA), today announced that it has awarded Moderna \$176 million to develop a pre-pandemic vaccine against H5 avian influenza (*HHS news release*).