

# IN THE NEWS

News for LTC Professionals  
in 100 Words-or-Less

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## THEY SAID IT:

***"The FCA is not 'a vehicle for punishing garden-variety breaches of contract or regulatory violations'"***

Chad F. Kenney, US District Court Judge for the Eastern District of Pennsylvania in throwing out a 2015 False Claims Act charge last week against Golden LivingCenters

***"Workplace violence is my number one requested training from healthcare organizations across the country. It is so prevalent"***

Gigi Acevedo-Parker, clinical risk consultant at HUB International

***"What we really need is a good view of what's happening in the world, so we're prepared for the next thing"***

CDC's Allison Taylor Walker after the agency expanded the voluntary airport nasal swabbing program to Chicago O'Hare and Miami International

## **Worthless Evidence in Worthless Care Claim**

A federal judge has tossed out a nearly decade-old False Claims case that targeted what was once the nation's largest nursing home chain.

Philip Hunter, a registered nurse who worked at a Golden LivingCenter in Alabama for just over two months, brought a case nine years after his employment ended.

In throwing out the suit, Chad F. Kenney, US District Court Judge for the Eastern District of Pennsylvania, wrote the lawsuit was grossly short on evidence.

Hunter's suit targets Fillmore Capital that bought Golden Living in 2006 and GGNSC Holdings, Beverly Enterprises and other companies once affiliated with Golden Living.

McKnight's, 03/13/2024

## **Staffing Rule Discussed in Senate Budget Hearing**

Sen. John Barrasso (R-Wyo.) pointed to a CMS proposal which includes a requirement for an RN to be present 24 hours a day, as opposed to 8, the current standard.

Four out of five nursing homes have said they aren't going to be able to comply with these rules, Barrasso noted.

The Senator was especially concerned that rural facilities would be unable to staff RNs, saying "If you're going to call yourself a nursing home, you should have a nurse that's present to provide care."

A Republican-controlled committee passed a bill last week in an effort to block the rule.

MedPage Today, 03/15/2024

## **Shuttered SNF Blames Cyberattack and DOH**

Jefferson Hills Healthcare and Rehabilitation, (Pennsylvania) which shut down abruptly this month, is blaming both a cyberattack and strict enforcement by the state for what went wrong.

Meanwhile, nearby Southwestern Nursing and Rehabilitation confirms it's hired more than 20 former employees of Jefferson Hills. Many had stopped working when Jefferson Hills stopped paying them. Forty-five residents have been relocated to the other local nursing homes.

Jefferson Hills blamed a cyberattack on a claim and payment clearinghouse owned by United Healthcare for worsening cash flow as well as "fines and threats" from the Pennsylvania Department of Health.

WTAE-TV, 03/04/2024

## **OIG: State Could Improve LSC, EP and IC Inspections**

The HHS OIG conducted life safety, emergency preparedness and infection control inspections in 20 mostly underperforming SNFs in Colorado.

It identified 556 deficiencies (165 LSC, 210 EP, 181 IC) in the roughly 10% of all facilities in the state.

OIG said the deficiencies were due to inadequate oversight and staff turnover at

Colorado's state survey agency and frequent management and staff turnover at the facilities.

Colorado agreed with the OIG recommendation for follow-up surveys at those facilities but disagreed that it should develop a "risk-based" approach system in which those types of facilities would be surveyed more often.

HHS-OIG news release, 02/02/2024

## **ALF Nurses Would Have Certain Skilled Tasks**

Massachusetts state law historically prohibited nurses in assisted living communities from providing skilled care to residents, but now the Legislature is considering an act that would make the availability of a handful of basic health services permanent in assisted living.

Those basic services include injections, the application or replacement of non-sterile dressings, oxygen management, sample collection and home diagnostic testing, and the application of ointment or drops.

A COVID-19 executive order allowing assisted living residents to receive those services is set to expire March 31.

Senior Living, 03/07/2024

## **Drug-dispensing Workarounds, the Top Safety Concern for 2024**

ECRI, a national patient safety organization, identified workarounds with barcode medication administration systems as one of its most urgent safety concerns for 2024.

ECRI said the systems, in which nurses use an electronic scanner to sync packaged drugs with patient and electronic MARs are designed to put more safeguards around medication delivery.

The report pointed out staff may develop workarounds when scanning or labeling errors occur.

Use of an electronic medication cart and failure to scan a medication when delivered to the patient were concerns broached by prosecutors who convicted Tennessee nurse RaDonda Vaught of criminally negligent homicide in 2022.

McKnight's, 03/14/2024

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

**THE WORLD:** Last Monday marked the 4-year anniversary of the WHO declaring the COVID global outbreak to be a pandemic. Since the pandemic began, more than 1.18 million Americans have died from COVID-19, according to CDC data. Worldwide over seven million people have died from the disease. The U.S. crossed the 1 million mark on May 12, 2022 (**ABC NEWS**).

**AMERICA:** Yale School of Medicine researchers analyzed 987 hospitalized adults with COVID-associated acute kidney injury (AKI) 276 with influenza-associated AKI, and 8,361 with AKI linked to other illnesses who survived their hospital stay. They were followed for two years after hospital discharge. They discovered those with COVID-associated AKI had a significantly lower risk of major adverse kidney events and mortality over the longer term compared to those with AKI related to other causes (**JAMA Internal Medicine**).

**WASHINGTON, DC:** U.S. Sen. Elizabeth Warren, D-Massachusetts, renewed calls for a national day to honor the lives taken by COVID-19. In a post on X, formerly known as Twitter, Warren urged Congress to pass a resolution to designate the first Monday of March as "COVID-19 Victims Memorial Day." "Over a million Americans have died due to COVID-19—including many family members & loved ones," she wrote. "We must honor & remember the lives lost (**Fox News**).

**AMERICA:** Among female adolescents aged 12 to 17 years, the antidepressant dispensing rate increased 130% faster after March 2020 than beforehand. That compares with 57% faster among female young adults aged 18 to 25 years. However, among young males, antidepressant prescriptions decreased or changed very little, despite studies suggesting that the mental health of male adolescents worsened during the pandemic (**FOX News**).

**GERMANY:** No needle phobia here: a 62-year-old hyper-vaccinated German man from Magdeburg, Germany, reportedly received 217 COVID-19

vaccinations "deliberately and for private reasons" within a period of 29 months. The man had no signs of a past SARS-CoV-2 infection, as indicated by repeatedly negative SARS-CoV-2 antigen tests, PCRs and nucleocapsid serology (**Lancet Infectious Diseases**).

**AMERICA:** A study of about 3 million US adults and 675,000 US children reveals that hospitalized adults and children with a positive COVID-19 test had 17% and 18% increased odds, respectively, of being diagnosed as having one or more long-COVID symptoms 31 to 150 days after their positive test. Hospitalized adults with positive COVID tests were also at increased risk for being newly diagnosed with having type 1 or type 2 diabetes (**BMC Infectious Diseases**).

**GENEVA, SWITZERLAND:** After 18 months of debate, the World Trade Organization failed to adopt a controversial proposal to waive intellectual property protection for COVID-19 diagnostics and treatments, ending a furious attempt by civil society groups to bolster global access to needed medical products (**STAT**).

**AMERICA:** University of Kentucky researchers analyzed data from 1,297,874 cancer cases reported between March and December 2020 and found that the rate of all-sites cancer cases was 13% lower than projected during the first 10 months of the pandemic, which equates to 134,395 undiagnosed cancers. Prostate, breast and lung cancers were the most prevalent comprising about 42% of all undiagnosed cancers during that period (**JAMA Oncology**).

**AMERICA:** Americans should expect yet another update of the COVID-19 vaccine this fall at about the same time as flu shots are available, the top US public health official said Monday. Researchers are working on selecting a strain for the upcoming version and will probably wait until May to pick one to target with vaccines, Centers for Disease Control and Prevention Director Mandy Cohen said in an interview at Bloomberg's offices in Washington. (**Bloomberg**).

**THE WORLD:** Scientists examining SARS-CoV-2 wastewater samples in Southeast Asia have detected a few samples containing the BA.2.87.1 variant, the first known detection outside of South Africa. In mid-February, the CDC said it is closely monitoring BA.2.87.1 because it has more than 30 changes in the spike protein compared to XBB.1.5, the variant covered by the current monovalent (single strain) vaccines (**CIDRAP**).

**CAPITOL HILL:** Rep. Chip Roy, R-Texas, is unveiling a new bill that would allow Americans to sue COVID-19 vaccine makers over adverse health effects allegedly caused by the shot. The "Let Injured Americans Be Legally Empowered" (LIABLE) Act is aimed at wiping away COVID-19 vaccine manufacturers' statutory protections, opening them up to civil lawsuits (**Fox News**).

**AMERICA:** Thousands of cancers may have gone undiagnosed during the first 10 months of the COVID-19 pandemic. Annual cancer incidence fell almost 30% short of the expected rate from March through December 2020, that's potentially 134,395 undiagnosed cancers during that period. Prostate, breast, and lung cancers accounted for the most potential missed cases (**JAMA Oncology**).

**AMERICA:** Free COVID tests are over, for now. So are guidelines for infected people to isolate. Half of the country thinks the pandemic is finished. But, in reality, COVID-19 is still with us. Though the official trappings of the crisis keep fading away and it's increasingly being treated like the flu, the virus remains an ever-present threat that's killing hundreds of Americans every week and consuming health care dollars and resources (**Axios**).

<p><b>COVID-19, 03/15/2024</b></p> <p><b>Global Cases – Deaths</b> 774,7834,251 – 7,037,007</p> <p><b>U.S. Hospitalizations – Deaths</b> 6,880,585 – 1,184,376</p> <p><b>CDC, WHO</b></p>
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## **The Pandemic Saw Nurses Shunning Hospitals**

A Census Bureau study noted that the workforce of RNs fell by about 100,000 employees in 2021 - the largest drop in a single year in the past 40 years.

In 2022, hiring started to go back up. In 2022 and 2023, there were 3.35 million full-time RNs, which is 6% higher than in 2019 when there were 3.16 million nurses.

The report also indicated many nurses did not return to hospitals and moved into setting such as LTC.

By 2035, the report indicated the workforce of RNs will grow by 1.2 million to 4.5 million full-time nurses.

*JAMA Health Forum, 02/22/2024*

## **Medicaid Unwinding Costs Montana's SNFs**

Montana's redetermination process, underway since April, has left 150 residents of 18 nursing homes without the coverage they once enjoyed, and shorted those facilities about \$2.3 million, according to the Montana Health Care Association.

During the COVID-era, federal regulators suspended the need to verify certain individuals' Medicaid eligibility, but that relaxation of rules expired last year.

Montana has disenrolled 57% of its prior Medicaid recipients during redeterminations — the second highest rate in the nation.. The same report showed that 77% of disenrollments were due to procedural reasons, with only the remaining 23% deemed ineligible for coverage.

*McKnight's, 02/29/2024*

## **R.I. Nursing Homes Targeted for More Oversight**

Raise the Bar on Resident Care, a consumer advocacy organization that partners with state labor unions, is backing two bills in the Rhode Island legislature.

The measures would create a workforce standards board to oversee labor conditions at facilities in the state and require annual audited financial transparency statements.

The board could set minimum wages and working conditions for nursing home workers and enforce the standards it sets by conducting investigations, enforcing back pay and job reinstatements, and fining repeatedly offending facilities up to \$1,000 per violation, plus administrative and legal fees.

*McKnight's, 03/05/2024*

## **Veterans' Care New Front in Staffing War**

Two senators have introduced a bill to determine exactly what "unintended circumstances" could result for elderly veterans if a federal rule mandating staffing levels at all US nursing homes is allowed to proceed.

The bill would require the VA to study potential risks associated with the proposed CMS rule — especially as they pertain to rural providers. The senators said the proposal would "unsustainably change staffing ratios at nursing homes."

S. 3841 was referred to the Veterans Affairs Committee, on which co-sponsors Angus King (I-ME) and Kevin Cramer (R-ND) both serve.

*McKnight's, 03/05/2024*

## **Iowa Dems Propose \$20/hour by 2030**

Iowa Senate Democrats are calling for a state minimum wage of \$15 per hour just for direct care workers in nursing homes by July of next year then ratcheting up to \$20/hour by 2030.

Average pay for Iowa's direct care workers in nursing homes was 13 dollars an hour in 2022.

It's unlikely these proposals will be considered by Republican-led committees in the senate, but the proposals could be introduced during Senate debate of bills that outline state spending.

*KIWA Radio, 02/25/2024*

## **ONE COLUMN**

### **Report Highlights Pandemic Lessons for Nursing Homes**

Federal nursing home regulators must do more to prevent staffing shortages in nursing homes and strengthen infection controls to better protect residents after the COVID-19 pandemic, which resulted in more than 185,000 residents' deaths.

A recent report from HHS-OIG, was aimed CMS.

Investigators found that training and certification requirements for nursing home aides should be reassessed, updated guidance should be given to nursing homes on how to improve infection control and a system should be created to share information on best practices among nursing homes.

"Just because the public health emergency ended doesn't mean we can go back to business as usual. There were long-standing problems in nursing homes that COVID exacerbated and rightfully brought to the fore," said Rachel Bryan, the team leader for the study who is a social science analyst in the inspector general's office, in an interview with AARP.

Bryan noted that now is the time to move from "emergency mode" to "a more reflective mode, think about what happened, face those challenges and try to implement lasting change."

Nursing homes were not prepared for the pandemic and the report found "monumental and persistent staffing challenges," as well as issues with infection control, she said.

Nursing homes struggled during the pandemic with staffing shortages because of high rates of turnover and burnout, the report said. They saw low worker morale, high costs of using outside staffing agencies to fill gaps, ineffective infection control practices, noncompliance on the use of personal protective equipment and low vaccination booster rates among staff, the report said.

On a positive note, the report found that nursing homes reported the initial vaccine rollout for residents and staff worked well.

*AARP, 03/04/2024*

## **Mgt Firm Off Hook, but SNF Still on Racial Bias Hot Seat**

Legal discrimination claims brought by nine black nursing home workers against an Alabama nursing home management company have been dismissed.

The plaintiffs are current and former employees of Florala Health and Rehabilitation in Florala, AL, for which NHS Management provided consulting services. They charged a toxic culture of racial slurs, epithets and work assignments existed at the facility.

The federal judge in dismissing the charges noted the contract between the two companies plainly absolves the management firm of responsibility for day-to-day supervision.

The majority of the claims of racial discrimination against Florala Health were allowed to advance.

*McKnight's, 03/14/2024*

## **Massachusetts Program To Fund 10 CNAs in SNF**

A partnership with a local workforce board has helped Liberty Commons of North Chatham (MA) secure a \$125,000 grant to bolster its workforce pipeline. The grant will directly fund the hiring of 10 new certified nursing assistants.

The funding will be provided through a grant from the Cape and Islands Workforce Board and is part of a larger, \$16.3 million effort to create nearly 2,000 healthcare jobs across the state.

Liberty Commons of North Chatham, MA, is the only nursing home in the state to receive funding thus far.

*McKnight's, 03/13/2024*

## **Six injured in Pennsylvania SNF Fire**

Multiple fire departments were called to the scene of a fire at the Richland Healthcare and Rehabilitation Center in Cambria County, PA. Tuesday night.

The building was evacuated and six people (4 employees and 2 residents)

were transported to a hospital with smoke inhalation.

The fire was contained to one room. It's believed the fire was caused by an HVAC unit.

*WTAJ-TV, 03/12/2024*

## **Iowa Bill Would Cap Agency Wages**

A bill capping wages for workers with temporary-staffing agencies in Iowa nursing homes and hospitals was approved by the Iowa House in an 80-17 vote.

The legislation would establish a maximum allowable charge of no more than 150% of the statewide average wage paid by specific types of health care facilities to nursing services workers working through a staffing agency.

Agencies also would be required to register with the state before being able to work with Iowa health care entities. The bill would add new civil penalties for employment agencies that do not comply with Iowa law.

*McKnight's, 02/27/2024*

## **Conn. Threatens Possible State Admissions Freeze**

Connecticut lawmakers are threatening a two-week admissions freeze for facilities that fail to meet the state's staffing requirements.

Connecticut's 2021 staffing mandate requires that facilities maintain enough care workers to provide 3.0 hours of care PPD.

Matthew Barrett, of the Connecticut Association of Health Care Facilities pointed out that the proposed freeze would not only affect SNF, but would also back up discharges from hospitals.

Connecticut providers often have voiced a willingness to accept higher mandates, but also have repeated complaints about low and slow-to-adjust Medicaid reimbursement rates.

*McKnight's, 01/24/2024*

## **Briefly IN THE NEWS**

Ratings for 10% of the country's not-for-profit continuing care retirement / life plan communities could be affected by changes being proposed by Fitch Ratings, the agency. The company released a draft of the proposal on Monday, saying it wanted to make the changes to better reflect the risk profile of the communities it rates. Fitch said, "We anticipate most rating changes, if any, would be downgrades limited to one notch" (*Senior Living*).

Department of Veterans Affairs announced it will cover in vitro fertilization treatment for qualifying veterans who are single or in same-sex marriages, after it faced legal challenges last year that said its policies were discriminatory. VA had for years covered IVF costs for veterans with injuries and health conditions from their military service that affected their fertility, but only for those who were legally married and able to produce their own eggs and sperm from that relationship (*The Washington Post*).

Most physicians have negative views of private equity involvement in healthcare, according to a survey of internal medicine physicians. Among the 525 physicians who responded, 60.8% viewed private equity involvement negatively. Only 10.5% viewed private equity involvement in healthcare as positive, and 28.8% were neutral (*JAMA Internal Medicine*).

The results of a clinical trial, published Wednesday, in *The New England Journal of Medicine*, show that the blood-based screening test detects 83% of people with colorectal cancer. If the FDA approves it, the blood test would be another screening tool to detect cancer at an early stage (*NPR*).

NewYork-Presbyterian/Brooklyn Methodist Hospital has agreed to pay more than \$17 million to settle claims that it paid unlawful kickbacks to doctors at the hospital's chemotherapy infusion center, according to federal prosecutors. The payments were made as part of a contract that linked doctors' compensation to the number of referrals they made to the center (*MedPage Today*).