New England
ADMINISTRATOR

March
2021

"I have never let my schooling interfere with my education.."
-Mark Twain

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THE TECHNOLOGY ISSUE

PLUS: Pioneer Bob "Mr. Maine" Armstrong
Loneliness and aging • Everyone I know is dead
The C.A.R.E. Expert • The Marketing Guru
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The TB12 Method: Top 12 Most Important Things to Know

by Kris Mastrangelo, OTR/L, MBA, LNHA and Savannah James

The majority of New England Patriots fans rooted for Tom Brady in Super Bowl LV between the Tampa Bay Buccaneers and Kansas City Chiefs. I certainly did while wearing a TB12 T-shirt and displaying a cardboard cutout of the former Patriots' quarterback. Brady's success is impressive, unfathomable, and piques everyone's curiosity about his methodology.

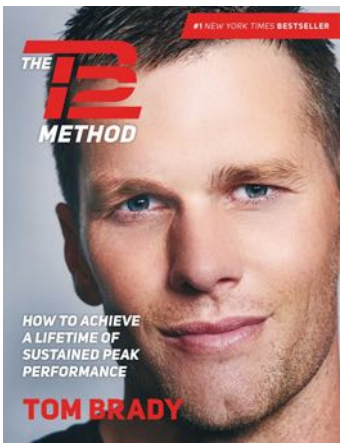
Back in 2017, Savannah James outlined the 12 points on being healthy from Tom Brady's book. While the readers are interested in his secrets to athletic success, many healthcare providers may want to apply his methodology to increase the quality of life of nursing home residents.

The mantra of Harmony Healthcare International (HHI)–It's not ok to decline in function once a patient is admitted to a nursing home–reinforces that it is the responsibility of the nursing home to: "Maintain each resident's practical state of physical, mental, and emotional well-being… (OBRA 87')"

Savannah's article demonstrates that aging does not need to correlate to functional decline. There are methods that can help our senior population live healthier longer lives.

Fun fact: This applies to all of us!

Below is the article written by Savannah James:



If you are a football fan, odds are you have a strong opinion about the newly crowned Super Bowl LV champion, Tampa Bay's starting quarterback Tom Brady. Many Jets fans and Colts fans hate Brady, citing the infamous incidents of "spygate" and "deflategate." Other fan bases share this hatred for similar or different reasons. If you are from New England, Brady is most likely your hero, your G.O.A.T. (Greatest of All Time), or your favorite athlete of all time.

Regardless of where you come from or what team you root for, some small part of you must be a little curious as to how Brady continues to succeed despite his advanced football age. At the old age of 43, Brady holds the record for the most Super Bowl wins (seven), the most Super Bowl appearances (10), and the most division titles (17). He currently just finished playing in his 20th season with aspirations to play until he is 45. If he accomplishes this, he will top the current record holder for the oldest quarterback to play in the NFL, Steve Deberg, who played until the age of 44. Quarterback and kicker George Blanda technically holds the record for the longest NFL career, although he spent a large portion of his career as a kicker. Brady could potentially top both players to clinch the record.

In his book, "The TB12 Method," Brady shares the training and eating regimen that allows him to maintain his peak performance. He debunks many training methods in the athletic sphere and recommends his regimen to athletes and people of all levels and ages. Many rumors surrounding Brady's neurotic methods are also confirmed or denied.

Does Brady eat strawberries or other nightshades? No. Does he sleep in bioceramic pajamas that release far infrared rays? Yes. Is Tom Brady as neurotic and disciplined as people say he is? Absolutely.

Here are 12 things you need to know about the TB12 Method developed by Brady and body coach and former teammate Alex Guerrero.

Pliability

The TB12 Method is centered on muscle pliability, which is something that is not included in most performance training routines. As defined by Brady, "pliable muscles are long, soft, and capable of full muscle pump function."

The TB12 Method focuses on "prehab" instead of "rehab," so injury prevention is of the utmost importance: Keeping muscles long and soft increases blood and lymph circulation, preventing injury.

When muscles are denser and harder, the majority of heavy lifting is transferred to bones and joints, which cause injury.

Brady endorses pliability training, which is deep-force muscle work combined with contracting and relaxing the muscles. If your muscles are trained to be loose and stretched, you are much less likely to suffer an injury upon impact.

Many athletes–especially at the professional level–cannot compete for the full length of their season because of injury. If athletes are constantly struggling with injuries, how are they supposed to maintain peak performance? According to Brady, without pliability, it is not possible to have a level of performance that endures over time.

Kris Mastrangelo

Holistic and integrative training

This one is simpler and less news-breaking. Brady outlines these 12 methods and claims they must be practiced in conjunction to be effective. Is this a marketing ploy? Maybe. Brady also emphasizes the importance of detail: Every single aspect from your sleepwear to how much water you drink must be analyzed and optimized for the needs of your body.

Balance and moderation in all things

Again, this is a concept many are already aware of. Balance and moderation are important in everything you do, especially eating and athletic training.

Conditioning for endurance and vitality

The TB12 Method is not just for optimizing athletic performance, but also overall energy and health. If applied properly, this method could increase your overall quality of life.

Continued on page 17

How digitization leads to democratization

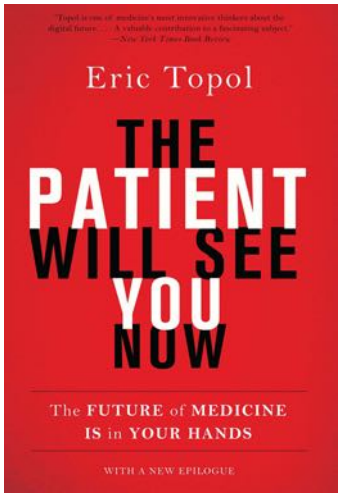
Book review: "The Patient Will See You Now" by Eric Topol

by Irving L. Stackpole, RRT, MEd

It's hard to conceive of a book about healthcare, which features the actress, Angelina Jolie, and besieged entrepreneur, Elizabeth Holmes. Yet the autonomy with which Jolie evaluated the information about her risk for cancer, made the decision to have surgery, and went public with that decision define a new type of healthcare consumer. In publishing her story, Topol says, Jolie "symbolized the new era of medicine, whereby access to critical information about oneself–in this case genomic information–leads to the individual's empowerment to make a pivotal choice that determines one's fate."

Holmes, the founder of Theranos, which sought to revolutionize the technology of blood tests, is another kind of hero–the technological visionary who finds new, digitally based ways to surmount traditional roadblocks to medical testing and get patients their results

Irving L. Stackpole



swiftly. In 2019 Holmes was ousted as CEO, and faces significant jail time for "massive fraud." In 2015, Topol described the experience of having a droplet of blood taken painlessly from his finger: "Over fifty tests were analyzed...and I got the results back in just a matter of minutes."

Topol, a cardiologist and a pioneer in genetics and technology, builds on the arguments of his earlier book "." He argues that it is critical for people to know as much as possible about their bodies and their health, from their genetic codes to the moment-by-moment information that implanted sensors might transmit about their bloodstreams, their airways and their hearts. While some find the prospect of fully empowered consumers thrilling, most of my colleagues who practice medicine are wary. A few even see it as a dystopian future, auguring badly for medicine.

The book is written in an exhortative, urgent voice; as the subtitle suggests, "The Future of Medicine Is in Your Hands." Topol urges readers to make use of technology, digital know-how and entrepreneurial creativity to learn as much as they can about their health, to know it all, own it all, and manage it on their personal devices. "For just as Gutenberg democratized reading, so there is the chance that smartphones will democratize medicine. That will ultimately be achieved when each individual has unfettered, direct access to all of their own health data and information."

And the obstacle? What stands most in the way, according to Topol, is an entrenched culture of medical paternalism, which goes back to the original Hippocratic Oath. And for the most part, it is this paternalism that he blames for problems large and small, from the long waits for medical appointments, to the barriers that divide people from their own lab results and medical records, to the medical errors that endanger patients in hospitals. The more that patients control their data, the author argues, the safer and more individualized medical care can become. This is the premise underlying the vital importance of technology for quick and accurate access to patients' own information and place it–literally–in the hands (or handhelds) of those seeking medical care, and not just in computers of the doctors and others in long white lab coats.

"The Patient Will See You Now" is full of innovative thinking. Readers learn about devices that can measure body chemistry, organ function, or medical risk; integrate that information instantly into a profile of their health; and offer answers to questions they didn't even realize they ought to be asking. Topol's argument is that these devices and this kind of patient involvement have the potential to revolutionize the practice of medicine, eliminating many of the abuses of medical paternalism

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The land that technology forgot

by Al Terego

When the Editor-in-Chief of *The New England Administrator* assigned an article to me about the use of technology in long-term care, I thought, this is going to be the shortest article ever, because long-term care is the land that technology forgot.

There's a dearth of useful technology within long-term care, and it has been that way right from the beginning.

Keep in mind, after Medicare passed in 1965, people started creating their own paths in the operation of care homes, which eventually led to Mary Adelaide Mendelson's seminal book, "Tender Loving Greed." It exposed the practices of numerous unsavory owners and operators in the unregulated cottage industry, which led to legislative hearings, which led to laws and regulations, which led to ongoing pain for all operators.

One of the most significant, and confining sets of regulations imposed by the government was the decision to use the JCAH (the O was added later) standards for hospitals, and retrofit them into nursing homes. Thus was born the long corridors, double (or triple or quadruple) rooms, and nursing stations at the hub. The trappings were laid for the institutionalization of our elders.

Nursing homes were built to resemble hospitals, but with one big difference: They were funded more like poor houses, i.e., part of the state welfare system. Administrators have evolved to be the most resourceful, creative, inventive, and frugal business leaders on the planet, but don't let our MacGyver-like qualities confuse you. We're also caring and compassionate underneath.

We had to get by without purchasing new equipment for many years, long past the point where our systems were obsolete. We were one of the last bastions of paper records in health care. It wasn't because we didn't want to move forward, we simply couldn't afford it. We could barely afford to put up the shed in the back of the parking lot, where we keep 10 years' worth of written records.

We were slow to adopt pagers, electric beds, defibrillators, and crash carts–not because we lacked vision, but because we had to pay our bills and make payroll. Our business model has been broken for decades. We've just learned to keep surviving.

For many of us, this is how we existed, right up through the 1980s at least. Since then, we have done what we can to embrace technology. Slowly, we began to find value in call bell systems that help track a lost resident, or that can tell you if an elder is trying to get out of bed by themselves.

Our software systems finally interface with each other, so that rehab treatments can be billed for without manual calculations being made by the business office staff. Our pharmacy systems reduce errors, waste, phone calls, and repetitive documentation.

But there's so much more that we need. Chronic staffing shortages and increased clinical challenges are forcing us to be even more creative in trying to be everywhere simultaneously, to reduce falls, to become less reliant on pharmaceutical interventions, to increase consumer satisfaction. The care and service our staff members provide can never be replaced by robots, and that's a good thing. But we all need more people. Technology needs to augment care, streamline the flow of information, reduce duplicative work, and eliminate inefficiencies.

There are solutions out there, but it will cost you.

Al Terego is the pen name of a fellow-administrator who wishes to protect his identity from lurking surveyors and would-be assassins.

Telehealth for mental health services

by K.R. Kaffenberger, Ph.D., M.P.H.

According to the Morbidity and Mortality Weekly Report, a publication of the Centers for Disease Control and Prevention, more than a third of the U.S. adult population suffers from identified mental illness. Depression, suicidal ideation, and substance abuse are prominent, measurable disorders contributing to these statistics. They are also among the most common disorders in older adults. Older adults suffer from these disorders in the community, in hospitals, in nursing homes, in assisted living residences, and in prisons.

The availability of services to help with these disorders is often limited. The scarcity of available services, especially psychotherapy, leaves many people with untreated conditions. Others, especially in nursing homes, have their conditions managed with psycho active medications that in many instances have proven to be inappropriate and/or harmful.

The most common and expected means of providing psychotherapy has been in-person sessions with a clinician interviewing individual patients or coordinating group sessions in person. While telemedicine has been used to treat acute physical disease in recent years, most psychothera-

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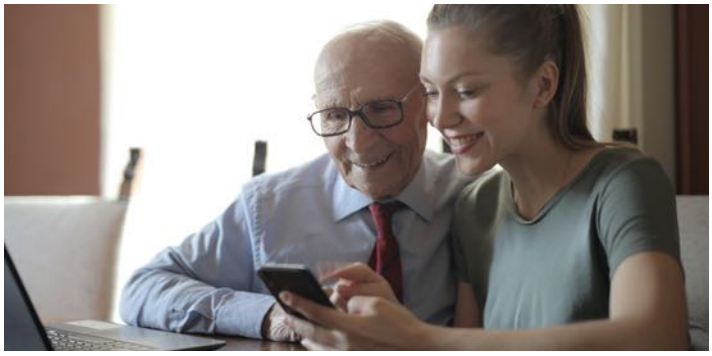


The future of medicine is in your hands

Continued from page 4

by returning information (and the power that it brings) into the hands of patients. And he presents many intriguing scenarios in which technological creativity offers everything from telehealth–"My (Smartphone) Doctor"–to cheap, fast skin tests for diagnosing malaria.

While Topol's enthusiasm and clear expertise are exciting, it's important to keep in mind that devices, tests, and therapies are all tools, with no inherent moral code, and that one of the recurring lessons of medical science is that discoveries and promising therapies can carry dangers and unexpected physical, ethical, and social outcomes. In addition to the very real issues of entrenched paternalism, many problems that inhibit good patient care reflect the uneasy intersection of market forces and medical practice, from productivity pressures applied to doctors by their institutions (see more patients, spend less time with each one) to paperwork overload (if you want to prescribe a drug that will cost us more, we're going to make you spend a lot of time filling in forms and waiting on hold on the phone). The market plays a complicated role here, and new products and technologies are not guaranteed to make life easier or more convenient for patients or doctors.

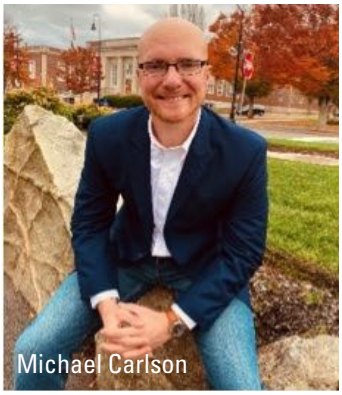
Any discussion of increasing, accumulating and analyzing personal medical data raises important questions about privacy and confidentiality. Topol acknowledges this issue, exploring the problems of identity theft and hacking and the question of whether your insurer should have access to all possible medical data. He believes that keeping patient records secure is possible, noting in particular that "anything that will better protect the genomic privacy of an individual should be pursued." But the questions are huge and complicated, and if the changes that Topol describes are coming as quickly as he hopes, they're going to require development of new technical and legal protections so that we keep ourselves safe and healthy in every sense. Notably absent is discussion of the potential applications of block chain for just this purpose.

Topol sees a future in which "your smartphone will become central to labs, physical exams, and even medical imaging; and...you can have ICU-like [intensive-care unit] monitoring in the safety, reduced expense, and convenience of your home." This is a book full of technical wizardry and intriguing questions about the nature–and the future–of diagnosing, monitoring, and healing.

Irving Stackpole RRT, MEd is the President of Stackpole & Associates, marketing, market research and training firm at www.StackpoleAssociates.com. He can be reached directly at: istackpole@stackpoleassociates.com.

Eldercare and the adoption of technology

by Michael R. Carlson


Michael Carlson

With more than 20 years working within ALF & SNF communities, Radius Executive IT Solutions truly understand the challenges that these communities incur. As the account manager, my focus is on increasing technology and productivity for the staff, leadership, and the residents. For this article, I partnered up with Strategic Care Solutions, LLC, which offer results-driven management solutions for organizations throughout the elder care continuum. I cannot stress enough the importance of having an experienced consulting company and/or IT vendor that can help guide your facility in the right direction, as well as help with projects whether that be adding locations, consolidating locations, staffing, or just clinical reimbursement.

Now that you know who I am, let's talk about some of the challenges within the skilled nursing world that technology has been able to overcome. Let us start with some words directly from an individual who has climbed through the ranks as a skilled nurse!

I had a brief interview with Matt Ryan, a registered nurse consultant, which was very enlightening for me as he is well immersed in the SNF world. He said,"Mike, we are all about efficiencies. Slow response times while navigating through different applications like Point Click Care, Optima Health, Labs, and X-ray website can take up the very valuable time the nursing professionals already don't have!" This is also evident within the facility operators, whether it is financials, building metrics, staffing, and tracking trends of the building. Having multiple applications to gather data, with downtime between applications can create a very unproductive environment.

As we have already learned, it can be very cumbersome and time consuming having to juggle between many applications, especially regarding information for the residents, the facility, and leadership. Implementing web-based dashboards for facility data has proven to increase productivity. There are a few options currently available, including Microsoft Power BI and Tableau. Refer to your current IT vendor to see which application would work best with your network. SCS and Radius IT are currently in the process of designing a single dashboard solution as well. It will be a

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The New England Alliance Conference Calendar

Spring Regional Conference
May 26 to 28, 2021
Newport Harbor Hotel & Marina
9 CEUs

Fall Regional Conference
September 22 to 24, 2021
Portland Regency Hotel

For more details: thenealliance.org

Loneliness and aging

by Sheldon Ornstein Ed.D, RN, LNHA

My father-in-law, of blessed memory, often said, "Loneliness is a fatal disease." A friend of mine once described loneliness as "a devastating illness…more so than physical illness." Some can overcome a little, but the older an individual is, the more hazardous the loneliness becomes. A hug or a touch from another becomes extremely important. Loneliness, according to Louise Hawkley, Ph.D, a senior research scientist at the University of Chicago, "is a universal human experience and being the social animal that we are, there must be implications when those social connections are not satisfied."

There is, and will always be, a human need to be connected and integrated into a social network. Hawkley further states, "When social networking is absent, the consequences are all too real in terms of one's mental and physical health." Most of us are intimately familiar with only one kind of loneliness–our own. The research has shown that unrelieved loneliness is often accompanied by frequent mood swings that send an older individual to prescriptive medications for relief.

There are others who define loneliness based on statistical studies. Still others lend credence to the issue based on brain scans, suggesting a decline in brain functioning as a reason for that loneliness. And there are still others who believe that the individual who suffers fatigue from loneliness is based on observable behavioral patterns.

Julianne Holt Lunstad, a psychologist at Brigham Young University, questions whether

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PIONEERS & ROGUES: Bob Armstrong – "Mr. Maine"

Every issue we feature a New England individual whose accomplishments–good or bad–have helped to shape our profession. Today we journey north to Maine to recognize an outstanding leader from DownEast.

by Bruce Glass, FACHCA,CNHA, CALA,

For those of us who bear the title of "veteran sloggers," it was too often the story at district meetings that the Maine Chapter was moribund. Year after year the report was: "Sorry, nothing to report."

Fortunately, more than a decade ago that changed dramatically. A group of College members not only revived the Maine Chapter, but also built it into a powerhouse. Prominent among them was Bob Armstrong.

But that is just one of a long list of accomplishments in his illustrious career.

Bob has been a true leader in the industry–and in many other aspects of senior care. Starting in, of all places, distant rural Aroostook County.

After graduation from UMaine Presque Isle, he became planner for the Aroostook County Area on Aging. He then went on to become the executive director for the Western Maine Area Agency on Aging. In that position he worked closely with Congressman (later Senator) Bill Cohen to sponsor important legislation to benefit Maine's seniors.

Next it was a short step into the burgeoning field of assisted living, where he became executive director of the Clover Living Center, Maine's first assisted living connected to a nursing home.

He then became administrator of a nursing home in Norway, Maine. His close connection to Governor John R, McKernan led to his appointment as a member of Maine's Committee on Aging and Chair of Maine Nursing Home Administrator Licensing Board.

In the latter capacity, Bob worked closely with John Pratt, director and professor of LTC at St. Joseph's College of Maine to rewrite and update the licensing rules for all levels of senior care. An important part of this was establishing a code of conduct.

In 1991, Bob received the Secretary of Defense Medal for Outstanding Public Service in recognition of his service on the Armed Service Retirement Board, which oversees the U.S. Soldiers Home in Washington, D.C. and the U.S. Naval Home in Gulfport, MS. At the same time he served on the faculty of St. Joseph's and as vice president, then president of the Maine chapter, all while continuing his full-time role as an administrator.

It was at this time he received the nickname of "Mr. Maine." His next venture was as Director of Rural Health Planning and LTC for Central Maine.

Between 2001-2013 he turned around numerous properties, assisted in the creation of two rural health networks, and upgraded two rural hospitals.

Following early "retirement," Bob formed Bob Arm-

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THE LIGHTER TOUCH

by Ralph Peterson

Recently I was going through an old file box that I have been lugging around for years. It is full of articles, ideas, and musings. As a writer, I keep everything. For a long time, I had a practice of writing every idea or thought I had on a sticky note. Then I would place the sticky note on the wall of my office, or on my computer monitor.

Of course, as my sticky note collection grew, I would have to take some down, and consolidate them. Sometimes, if I was lucky, an idea or phrase I wrote down would turn into a story idea or an article. Most of them, however, would end up in a box.

"Everyone I know is dead."

This phrase is written on a yellow sticky note, stuffed in a Ziploc bag full of sticky notes. For some reason, this one is on top and visible, and reading it again makes me think of the person who said it to me, Mr. Reynolds

He was 92 when I met him, and one of the first things he said to me was, "Everyone I know is dead."

He wasn't complaining. In fact, he was bragging. He had just moved into the nursing home I was working in, and he was counting his blessings. Not only had he outlived everyone he knew, but up to that point, he had also remained independent. He was still driving, shopping, bathing,


Ralph Peterson

cooking, and paying bills, all by himself… until he fell.

Still, his biggest accomplishment was being alive.

I think my favorite part of meeting Mr. Reynolds, and indeed, the reason I am sharing this story, is because of what he did for me. He changed my perspective.

I used to think people came to nursing homes to die. I thought it was the last stop. The place everyone goes–like a waiting room–before they move on.

Mr. Reynolds, however, had no intention of moving on. In fact, all he wanted to do was keep living. He was always up early and ate his meals in the dining room. He always insisted on being fully dressed, even though getting dressed was both exhausting and painful. He chatted up everyone who came to his room. He joined in activities and volunteered to help with anything and everything.

In short, he did not come to the nursing home to die. For him, it was simply a new place to live.

It was such an important lesson for me, and one that I am always reminding my managers to consider. Most of our residents do not move into our homes because they have given in or given up. They move in to live.

Our job is to make sure they do.

Ralph Peterson is a three-time best-selling author and a leading expert in management development in the long-term care industry. Ralph@ralphpeterson.com

Adopting technology at SNFs

Continued from page 7

web-based app that will give a snapshot of financial info, staffing information, and trends in the facility, i.e., common ailments, new residents coming in, as well as the loss of current residents. This will be a truly catered application for skilled nursing staff, which is what they have been asking for.

A new concern that the pandemic has brought to our attention is getting communications out to residents that cannot leave their rooms. With a lack of access to Wi-Fi or an internet connection in general, residents and staff must rely on physical flyers, communication from nurses, or conference calls. This takes a lot of time for skilled nursing staff to facilitate. We have developed a less intrusive process of bringing in a wireless solution to these facilities. It opens the ability to bring in more forms of communication to our residents, such as a tablet solution or smart TV with digital signage for events and alerts in the facility. We have also found that having a robust internet connection readily available greatly increases productivity with the staff. Faster communication translates directly to more productivity.

The last and most important piece is looking at the overall IT infrastructure, including the components that are currently in place and the Internet connection. We also look at the transport type: fiber, broadband, DSL, or T1. Having the right transport type for the right applications is imperative.

Radius IT recently took over a new facility, and during my discover walk through, I kept hearing common concerns: slow response times; my email takes forever; our system crashes all the time; I have to restart my system multiple times a day. The entire facility was being run of a 100MBPS/20MBPS broadband connection. To put this into perspective, most households nowadays run off of a 300-600MBPS broadband connection. They had 100MBPS running an entire facility. This is a very easy fix that can be cost effective and make a huge difference in overall facility performance.

In conclusion, a facility is only as good as its people. The skilled nurses, executive directors, administration staff, and the facility managers all must work together in harmony to keep the show alive. Technology and management companies are there to compliment the staff. When the technology starts working against the facility, it is time to contact your IT vendor or start looking for a new one.

Thank you for taking the time to listen to my story. I hope if anything, this provides you with a reference for common questions or even a solution to a problem that has been avoided for some time now.

CONTINUING CARE RETIREMENT CENTERS IN NEW ENGLAND

State	Facilities
CT	17
ME	3
MA	27
NH	10
VT	1

BOOK REVIEW
"Hallowed Ground: Stories of Succesful Aging"

by Julian Rich, FACHCA, CNHA

When I finished reading "Hallowed Ground," I called Larry Minnix to congratulate him on writing the ultimate reference for professionals and non- professionals–if not anyone and everyone who chooses a career in aging services. Maybe senior care organizations should give out the book to every new employee as required reading. Granted, it's a plug for Minnix, but there is truth in that statement. The author is kind enough to want to convey the wisdom, knowledge, and understanding that he gained from his rich and rewarding personal and professional life to our benefit.

Minnix was the CEO of Leading Age, formerly the American Association of Homes and Services for the Aging, where he served for close to 20 years and profoundly influenced the quality of life of thousands of patients, residents, family members, and staff members, as well as health leaders, legislators, and others who were fortunate enough to meet him.

Like few before him, he captures that aging services, senior care, or however one references our field, is an emotionally charged environment, and that emotion impacts the mission and the day-to-day operations and management of any senior care organization in ways that are hardly scientific but require sensitivity, empathy, and, of course, a sense of humor and wisdom. These are the major lessons of "Hallowed Ground."

Continued on page 15

TRUST

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Legal risks of health care technology: Learning from the $18.25M Athenahealth, Inc. settlement

by Lawrence W. Vernaglia and Stephanie J. Schwartz

UPSET YOU DIDN'T GET TAKEN TO THE SUPER BOWL BY YOUR VENDORS THIS WINTER? MAYBE YOU SHOULD BE GLAD YOU DIDN'T.

Long term care facilities and their owners and managers face risks when accepting gifts, trips, benefits, or other perks from current or potential vendors.

The January 2021 settlement of $18.25 million paid to the federal government by Athenahealth, Inc. (the "Vendor"), a Massachusetts-based electronic health records ("EHR") developer, is one of the more recent examples of how sales and marketing arrangements can be viewed negatively by enforcement authorities. While this case was brought against a health care information technology vendor (thus coming within the scope of this issue of *New England Administrator)*, the case offers a broader cautionary tale for providers entering into business arrangements with third-party vendors and of when sales strategies can get parties in trouble.

The allegations against the Vendor involved three marketing arrangements in which the company allegedly engaged between January 2014 and September 2020.[1] These schemes, detailed below, allegedly involved illegal kickbacks paid to potential clients, existing clients, and competitors in exchange for referrals to and/or continued business with the Vendor. These allegedly illegal kickbacks were alleged to have resulted in false or fraudulent claims (because they were tainted by the kickbacks) that were ultimately submitted by the Vendor's clients to federal health care programs—specifically, the EHR incentive programs provided under Medicare and Medicaid.

EHR incentive programs were first established under the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and, with the passage of the Medicare Access and CHIP Reauthorization Act of 2015 ("MACRA"), were replaced by the Merit-based Incentive Payment System ("MIPS"), which analyzes several quality measures in determining Medicare payment adjustments.[2] Health care providers attest to using certified EHRs to satisfy these programs' requirements, in order to receive incentive payments and/or avoid payment reductions as part of the programs.

With more financial arrangements between providers and third parties comes greater risk of conduct that potentially violates federal law, including the Anti-Kickback Statute ("AKS") and the False Claims Act ("FCA"), the violation of which could result in significant fines, civil monetary penalties ("CMPs"), and exclusion from participating in the federal health care programs (among other consequences).

The AKS, 42 U.S.C. § 1320a-7b(b), prohibits the knowing and willful solicitation or receipt of any remuneration, in cash or in kind, in exchange for referrals or the purchase of items or services for which payment may be made in whole or in part under a federal health care program. An AKS violation results in a felony conviction that brings with it a maximum fine of $100,000 or a maximum prison sentence of 10 years (or both), as well as the potential imposition of a CMP of up to $104,330 (as adjusted for inflation, effective January 17, 2020, see 45 C.F.R. § 102.3 (2019) (citing 42 C.F.R. § 1003.310(a)(3) (2019))). The FCA, 31 U.S.C. §§ 3729-33, imposes liability where a person "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" (among other types of conduct). Significantly, the standard to establish intent (i.e., "knowingly") under the FCA includes "reckless disregard" for the truth or falsity of the claim, which has proven to be a rather low bar. Each claim that violates the FCA results in a civil penalty between $11,665 and $23,331 per claim (as adjusted for inflation, effective June 19, 2020, see 28 C.F.R. § 85.5 (2020)), plus three times the amount of damages the federal programs sustain. Providers may also be excluded from participation in the federal health care programs, for a period of time or permanently, and may face CMPs of up to $20,866 (as adjusted for inflation, effective January 17, 2020, see 45 C.F.R. § 102.3 (2019) (citing 42 C.F.R. § 1003.210(a)(1))).

It is often alleged that it is a violation of the civil FCA to submit a claim that has been rendered illegal because it resulted from an AKS violation, even when the underlying conduct is not charged criminally. Here, the government alleged that by engaging in conduct under its three marketing

arrangements that allegedly violated the AKS, the Vendor and its clients would have submitted (or caused to be submitted) claims to a federal health care program (i.e., claims for enhanced payments under the EHR incentive programs and MIPS) in violation of the FCA.[3] Below, we will discuss these alleged marketing programs and the conduct that was argued to have rendered them illegal, to provide a view of the key risks to consider when entering into arrangements with third-party vendors, including health care technology companies.

The first program that the government alleged violated the AKS was the Vendor's "Concierge Event" program. Through this incentive program, the Vendor "provided existing potential clients with all-expense-paid trips to sporting, entertainment, and recreational events."[4] The Vendor allegedly provided these gifts to executives, providers, and other stakeholders in order to induce them to purchase the Vendor's EHR products. The exchange of in-kind remuneration (with no demonstrated educational component) for the purchase of a product that would be used to attest for EHR incentive programs was argued to be a violation of the AKS.

The second Vendor program that allegedly violated the AKS was the Vendor's "Client Lead Generation" program, which was in place from January 2014 to September 2020. Under this program, the Vendor allegedly induced its existing clients to refer new clients by offering and making payments for each referral. The payments included (but were not limited to) $200 for meetings with prospective clients that arose from a referral, $3,000 per doctor referred after a successful referral of an ambulatory practice, and $10,000 for each referred inpatient hospital program.

The third program addressed in the com-

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Older individuals can combat loneliness

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loneliness may be due to people becoming socially disconnected in a variety of ways. She describes loneliness as "a subjective feeling or sensation that tests one's health risks."

Simply living alone or in a state of isolation can also be as harmful to one's health as just plain feeling lonely.

Hawkley asks, "At what point do you say that somebody is lonely? A teenage boy, alone on a Saturday night may experience a very different kind of loneliness than does an elderly man without a spouse or partner to communicate with, nor hasn't spoken to anyone for days." Loneliness can mean different things to different people, whether young or old.

Scientists need to measure the condition known as loneliness in an encompassing way where they can define it as either slightly, moderately, or extremely lonely and as a way of clarifying its treatment plan. The researcher Sheldon, offers several correlates on loneliness that can be identified as psychologic, economic, and physiologic, and that contributes heavily to loneliness in the adult population. He further clarifies how "the infirmed, the widow, and the single man over eighty and living alone are highly prone to experiencing loneliness."

Those who are well enough to live without assistance for performing their activities of daily living were, surprisingly, most lonely. Others who may be bedfast and who have a caregiver to help tamp down the sense of isolation may do better.

A reprint letter dated 1859 and written by Florence Nightingale, said that "pets are excellent companions for those who are confined with long term illness."

In several studies on the value of animals as pets, especially with older individuals, it was suggested that the most common reasons why people love having a pet was to combat feeling lonely and to add quality to family life. For the isolated, pets hold an even greater importance for the elder's mental state. One can always rely on a pet to always be available and non-judgmental. Pets are considered, by many owners, as members of a family and can play a major part in an older person's existence.

A final thought: I realize that feeling good may be the last thing on our minds as the pandemic grinds on in America. Countless researchers say pursuing happiness and a happy outlook can give us the resilience to get through it.

According to the researcher Laura Santos, professor of psychology at Yale University, "We need to focus on happiness, more now, not less." Therefore, when you are feeling sad and lonely, try singing my favorite Beatles song, "Here Comes the Sun."

Bob Armstrong

Continued from page 8

strong Consulting, and assumed receivership of six failing assisted housing facilities. Three years of that and Bob was truly ready for retirement.

Now Mr. Maine lives in Georgia, but certainly has left his mark in the Pine Tree State and in New England. Bob is a Certified Fellow of ACHCA, and has been a proud College member for over 30 years.

W. Bruce Glass, FACHCA, CNHA, CALA is licensed for both nursing homes and assisted living in several New England states. He is currently principal of Bru-Jan Management, an independent consulting firm. He can be reached at bruceglass@rocketmail.com.

Health care technology's legal risks

Continued from preceding page

plaint as a potential AKS violation was the Vendor's "Conversion Deals" program. Conversion Deals were alleged arrangements entered into by the Vendor and competitor enterprises that were terminating their EHR offerings. In exchange for payments from the Vendor, these competitors would allegedly refer its clients to convert to the Vendor's products.

The United States' allegations toward the Vendor led to negotiations that ultimately resulted in the $18.25 million (plus interest) settlement announced on January 28, 2021. In the settlement, the Vendor neither denied the United States' claims nor admitted wrongdoing. In the Department of Justice ("DOJ")'s press release announcing the settlement, Acting Assistant Attorney General Brian Boynton for the DOJ's Civil Division declared that "[t]his resolution demonstrates the department's continued commitment to holding EHR companies accountable for the payment of unlawful kickbacks in any form."

New technology is increasingly important in the delivery of health care services. However, as this settlement demonstrates, it is just as important to know the legal risks of engaging with third-party technology vendors and to recognize aspects of these arrangements that should be avoided. Payments in cash or in kind that are offered in exchange for referrals or purchases present severe risk of being viewed by the government as in violation of the AKS, and senior care providers should conduct careful analyses before entering arrangements to avoid the significant consequences associated with such violations.

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Minnix book chronicles stories of successful aging

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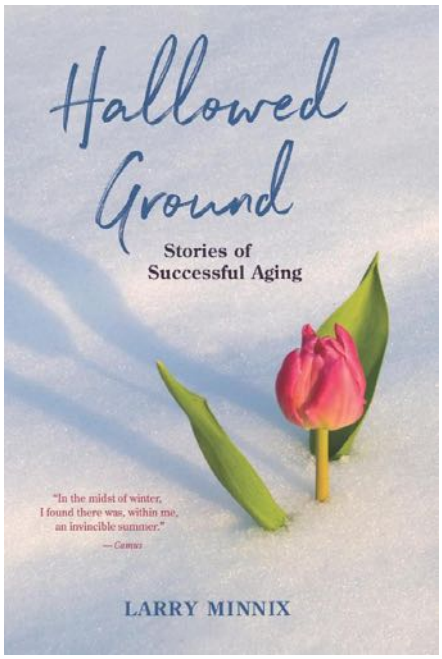
Examples of his lesson plans:

- He is a master storyteller, which not only adds an element of readability but evokes experiences that we know and understand.
- Personal experiences mold us, and Minnix is able to present the good, bad, and ugly of his own life to the benefit of his readers. His relationships and experiences with his aging parents, relatives, and friends translate into principles and secrets of the aging experience that enlighten, teach, and entertain.
- One of his favorite expressions, "organ recitals" (now one of mine!), refers to the banter that requires our undivided/divided attention and tests our patience but reflects the necessary component of senior care, i.e., emotion, which distinguishes our field from any other.
- The titles of his chapters, including "Attitude," "Intimacy," "Whether to Laugh or Cry," "Dying and Death," and "Retirement," suggest that he has injected a sense of reality that impacts and can override the all-too-essential regulatory, financial, and other management issues. Over and over, he writes that we cannot forget that we are dealing with the quality of the lives of those we serve, which challenges us but also creates rare opportunities for self-actualization.
- He reminds us that humor adds a dimension to wisdom. For example, he notes that when Johnny Carson was discussing aging with George Burns and asked him about the last time he had sex, Burns looked at his watch–a classic.

Bless you Larry, for taking the time and making the effort to write this book, which I enthusiastically recommend. You will smile, laugh, cry, and have an enlightened appreciation of our world. Check out "Hallowed Ground" (available on Amazon)–please!



Julian Rich, FACHCA, CNHA, is a long-term member of ACHCA and has been active since 1978. He is the founder of J RICH SOLUTIONS and continues to be involved in the field as a consultant, interim executive, and expert witness. He can be reached at 508-361-4799 or Juliangrich@gmail.com

Telehealth is a viable way to deliver mental health services

Continued from page 6

pists have been reluctant to use distance treatment techniques. Until quite recently, reimbursement was also a serious barrier to the use of telehealth for the provision of psychotherapy services.

Mental health providers have begun to provide some telehealth services in recent years, including substance abuse support services. Some reimbursement paths also opened for these services. Much more recently the limitations on personal contact created by the COVID-19 public health emergency have led to dramatically increased availability of reimbursement and services for psychotherapy and other mental and behavioral health services to be provided by telehealth.

Notably, Medicare has altered its reimbursement practices for more than three dozen psychiatric, psychological, and behavioral health billing codes. They now accept audio-only encounters as a means of service delivery. Some of these are said to be only for the duration of the public health emergency. Others are longer lasting.

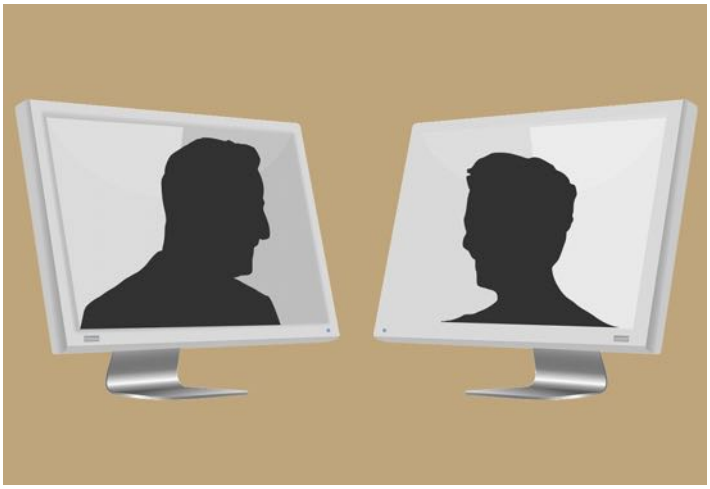
All New England states' Medicaid programs cover telehealth services for mental health and/or behavioral services. All but Massachusetts have parity laws, which equate distance services with in-person services. All but Massachusetts have private payers who reimburse for some or all such services. The Northern New England states of Vermont, New Hampshire, and Maine are party to the interstate medical licensing compact which makes it easier for physicians such as psychiatrists to practice across state lines through telehealth techniques.

Many years ago, I helped support an effort between Beth Israel Hospital in Boston and Danvers State Hospital to use telehealth to provide psychotherapy to serious felons housed at Danvers. A link was established between the two hospitals and the psychiatrists conducted their individual psychotherapy sessions over slow-scan TV. Though this early pilot was not a full research effort, the psychiatrists involved declared the experiment a success. The subjects were more at ease and more responsive through the cool TV medium than they were during in-person sessions.

Setting up the technology to conduct this pilot project was expensive and complex. The medium was intrusive, the screens only put up a new image every 10 seconds or so, and you could see the image emerging. Sound was only fair. Today, much better technology through cell phones and/or conventional computers is easily available in most settings. These tools produce images and sound of high quality in real time.

Martha Seagrave, associate professor in the Department of Family Medicine of the University of Vermont's Larner School of Medicine, is the director of its medical education programs. Students from the department fan out across much of New England for some aspects of their training, so distance training, services, and communication are not new to them.

Seagrave reports that telehealth is an excellent way to receive mental health support. The clinician providing services needs to be licensed in the state where the client is sitting when services are provided. Classes of clinicians eligible to provide services can vary from state to state. Most states accept psychiatrists and psychologists as appropriate clinicians. Other states include advanced practice nurses and



licensed clinical social workers. Insurance coverage varies.

Cathy Pemberton is a consulting social worker based in Cambridge MA. She feels that telehealth can be a useful and powerful tool for extending mental health and behavioral services but warns about overextending. Some people and some kinds of treatment may work very well as distance services. However, there are clinicians, patients, diagnoses, and services that may not work as well as others. She does expect to see telehealth expand as a service tool for some behavioral and mental health issues. In her conversation, she highlighted the availability for reimbursement that is becoming much more common.

As a decades-long mental health care manager and licensed nursing home administrator, it was interesting for me to see a blog post by a commercial company called MediTelecare. It provides mental health and behavioral support services in skilled nursing facilities and other settings. Their psychiatrists, psychologists, and nurse practitioners provide distance services in many high-risk elder care communities. They emphasize their success in not only caring for their patients but in doing so while reducing the use of high risk, often psychoactive, medications.

The Joint Commission has recognized telehealth as a source of mental health and behavioral services. Its Behavioral Health Care Standards Sampler is easily available online. While these standards are applied to in-person service providers the Joint Commission has accredited distance services providers using the tools outlined in this document.

Telehealth or distance provision of mental and behavioral health services has been going on for some time. The public health emergency has vastly extended reimbursement for and use of these services. While the end of the public health emergency may end some provisions that have made these services more available, we will not return to the past. The efficiency and effectiveness of telehealth services guarantee that they will continue and expand as time goes on.

This is the 21st century and we can now provide a much broader range of psychotherapeutic services to our older customers than we have in the past by using telehealth.

K.R. Kaffenberger, PhD is a lecturer in aging aervices and fellow of the Gerontology Institute.

Bioceramic sleepwear, hydration, and other Brady recommendations

Continued from page 3

No-load strength training

Here is where it gets interesting: Brady doesn't lift weights. 90 percent of his training is with resistance bands. One of the greatest quarterbacks, statistically, of all time, doesn't lift weights. Brady disagrees with many standard practices in athletic training. Typically, athletes train with strength and conditioning.

Strength training involves weightlifting with machines, free weights, and body weight. The lifting changes and increases in volume and intensity, while rest periods between repetitions decrease. Conditioning involves aerobic exercise and movements that imitate real-life motions with the purpose of elevating heart rate and breaking a sweat.

Brady cites a common misconception in the athletic sphere: that when athletes get injured, it is because they are not strong enough. After rehab, they continue with the strength and conditioning model, once again leaving out pliability and continuing to damage their bodies. This is a vicious cycle that leads to the further unbalancing of muscles and more and more injuries.

Promote anti-inflammatory responses in the body

Brady stresses avoiding inflammation of the mind, body, and spirit. Muscle dehydration decreases muscle pliability, as inflamed muscles are less able to lengthen and soften. Dehydration, inadequate nutrition, and inadequate recovery contribute to inflammation or stiff muscles.

Promote oxygen-rich blood flow

Younger athletes naturally have muscle pliability. It decreases as they grow older, and older athletes must work harder to maintain it. According to Brady, cell oxygenation is a key component to maintaining pliability and decreasing inflammation. How does he do this? With his pajamas. No, really. Brady and the TB12 Method team have developed a line of functional bioceramic sleepwear.

Bioceramic is a material created by heating a combination of 20 different ceramics and mineral oxides to three degrees. The material is then inserted into the sleepwear. Far infrared rays from the vibration frequency of the bioceramics penetrate the skin 1.5 inches. The infrared rays then stimulate the bones, muscles, and tendons to increase cell oxygenation and muscle repair while decreasing inflammation and pain.

Proper hydration

The TB12 Method also talks about the importance of hydration, something all athletes are aware of. Everyone in the athletic sphere knows how important it is to drink water. A nuance in the TB12 Method, however, is when to drink or not to drink water. The method has analyzed all aspects of digestion as well, and it claims that drinking water and eating meals simultaneously is not good for optimal digestion.

One of the greatest quarterbacks of all time doesn't lift weights.

The recommended procedure is to drink water exactly half an hour before eating a meal and an hour afterwards. If eating and drinking simultaneously cannot be avoided, Brady suggests only drinking minimal amounts during the meal.

Healthy nutrition

Again, the TB12 Method goes over better-known nutritional practices such as eating as local as you can, eating vegetables and avoiding refined carbohydrates, dairy, salt, caffeine, and alcohol.

The method also has some nutritional caveats. Brady does not eat nightshades for undisclosed reasons. Nightshades are darker plants or foods including mushrooms, eggplant, potatoes, and bell peppers. The method also emphasizes a balance between alkaline or anti-inflammatory foods and acidic or inflammatory foods.

These foods balance pH in the body and the ratio between these foods should be 80/20 alkaline to acidic. This aids digestion by neutralizing acids in the body. Many vegetables are alkaline while many fruits, nuts, and some fish and meats are acidic.

Kris Mastrangelo's game day accessories.

Supplementation

This principle of the TB12 Method talks about supplementing your diet with proteins and vitamins. He promotes his line of TB12 protein powders, probiotics, and electrolytes.

Brain Exercises

This principle stresses the importance of neuroplasticity and mindset. The brain must be trained as much as the muscles and body. Brady is an advocate of mental toughness, a positive mindset, and meditation. Meditation is important and a great way to center the mind and body.

Brain rest, re-centering, and recovery

Recovery is the final principle of the TB12 Method, where sleep and diet are emphasized again. Brady has a rigid sleep schedule, from 9 p.m. to 6 a.m. In addition to his fancy paja-

Continued on next page

Be aware of health care technology's legal risks

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Under the statute, AKS violations may be asserted against recipients, as well as offerors, of improper remuneration. Providers should be cautious about accepting benefits from vendors or potential vendors in connection with sales and marketing activities. This case stands for the proposition that the DOJ is willing to proceed in a case where the alleged kickbacks related to the purchase of an "overhead" technology. Would the government have proceeded against the vendor in the absence of the EHR Incentive that provided enhanced government compensation when the vendor's technology was utilized? The technology in question was not separately reimbursable by a federal healthcare program, but there were special governmental payment incentives to using such technology.

The broad language in the complaint and settlement suggests that flashy sales strategies may be targeted for enforcement activity in other scenarios as well. Providers who may be on the receiving end of offers of entertainment, travel, or cash from vendors should carefully consider the potential reach of these laws in prohibiting such activities. Many providers have established policies prohibiting acceptance of gifts or trips from vendors. Others have established more nuanced rules, allowing limited meals and business courtesies, including allowing participation in sporting or recreational activities, where meaningful business discussions and relationship-building take place. Such encounters are not inherently unlawful, but settlements such as this one show that the government takes a hard line when it believes that the sales techniques may influence health care purchasing decisions.

So if you watched the Super Bowl from your living rooms (like we did), don't feel bad. It might have saved you a lot of trouble!

Lawrence W. Vernaglia is a partner in the Health Care Industry Team at Foley & Lardner. He has represented providers and vendors in the long term care industry for more than 25 years.

Stephanie J. Schwartz is a health care regulatory and business lawyer with Foley & Lardner LLP and counsels clients in the health care, telehealth, and medical device industries with respect to a wide range of regulatory compliance and transactional matters.

Endnotes

[1]Complaint at 2, United States v. athenahealth, Inc., Nos. 17-cv-12125-ADB, 17-cv-12543-ADB (2021).

[2]Complaint at 3, athenahealth, Inc., Nos. 17-cv-12125-ADB, 17-cv-12543-ADB; Quality Payment Program Overview, Quality Payment Program, https://qpp.cms.gov/about/qpp-overview (last visited Feb. 21, 2021).

[3]It is important to note that arrangements that violate the AKS and result in significant fines, penalties, and other consequences do not necessitate that a given vendor's products be separately reimbursable or separately covered. That is, an arrangement involving kickbacks for a product that relates only to overhead costs for the provider (rather than claims for reimbursement submitted to the federal health care programs) may violate the AKS just as the arrangement discussed in this Article allegedly did.

In a 1999 Advisory Opinion written by the Office of Inspector General ("OIG"), the OIG stated that in deciding whether to prosecute arrangements that potentially violate the AKS, it considers a variety of factors, including whether the items purchased are separately reimbursable under the federal health care programs. Advisory Op. No. 99-3 (U.S. Dep't of Health & Human Servs., Office of the Inspector Gen. (1999)). There is greater risk of a kickback violation when separately reimbursable items are involved in an arrangement, but the risk of violation and enforcement is not forgone when the product involved solely contributes to providers' overhead costs rather than toward claims for reimbursement. See id. For example, in a case concerning an arrangement involving syringes, the District Court for the District of Connecticut found that although "syringes are typically not separately reimbursable by a federal health care program and… hospitals are reimbursed for providing a service, not for the equipment included in doing so," this "does not foreclose a showing that 'payment may be made' under a federal health care program" and that the OIG could seek enforcement action under the AKS. MedPricer.com, Inc. v. Becton, Dickinson & Co., 240 F. Supp. 3d 263, 273-74 (D. Conn. 2017).

Common examples of arrangements involving products that contribute to a provider's overhead costs and are not separately reimbursable concern medical devices used during procedures. While the purchase and sale of these products do not involve separate reimbursement under the federal health care programs, improper remuneration may still result in severe consequences. One case, concerning conduct in 2017, involved the sale of implantable devices to be used in surgeries; although the claims resulted in a settlement of the allegations and no admission of liability, the settlement agreement recognized that where the purchase or use of the devices themselves is not submitted for reimbursement, the arrangement may nonetheless be considered a violation of the AKS that could also contribute to various false claims. Settlement Agreement at 2, United States v. Asfora, No. 4:16-cv-04115-LLP (D.S.D. 2019).

[4] Complaint at 2, athenahealth, Inc., Nos. 17-cv-12125-ADB, 17-cv-12543-ADB.

Brady's TB12

Continued from page 18

mas, Brady sleeps with the room temperature at exactly 65 degrees Fahrenheit to promote recovery.

The book also contains photos and explanations of pliability exercises and an extensive collection of recipes. While "The TB12 Method" was written in a vernacular, conversational style with some blatant promotion of other related TB12 products, the actual method itself holds a considerable amount of useful information about overall health and performance.

Kris Mastrangelo, OTR, MBA, NHA, is president and CEO of Harmony Healthcare International and is a nationally-recognized authority of Medicare issues. She is a regular contributer to the New England Administrator. *Contact Kris : 800-530-4413. harmony-healthcare.com*

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