

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

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THEY SAID IT:

"The solution is not in more money for the nursing home industry, but more accountability for how current dollars are spent" National Consumer Voice Executive Director Lori Smetanka

"It seemed the Secretary either did not understand this issue or did not care" Rep. Michelle Fischbach (R-MN) following HHS Secretary Xavier Becerra's appearance before the House Ways and Means Committee to answer questions on minimum staffing

"This proposed rule has the potential to significantly restrict and even prevent patients from seeing their prescribing clinicians in a timely manner for palliative pain and symptom management by preventing the prescribing of controlled substances via telemedicine" - Katy Barnett, LeadingAge's director of Home Care and Hospice Operations and Policy challenging a DEA proposed rule

Slowly But Steadily Census is Creeping Up

Nationally, occupancy has continued its slow climb toward pre-pandemic levels.

From December to January census in the nation's nursing home rose almost one half of one percent to 81%, but that's based on a voluntary sample of less than a thousand of the country 15,000 facilities.

It reflects a two-year rise of almost 6.5% basis points since a low point of 74.5% in January of 2021.

However, based on CMS' NHCN figures which reflect virtually all SNFs January 2023 occupancy was 75.4%.

NIC, 03/30/2023

Without fanfare last week CMS tore up its old infection control guidance and installed a new one with much harsher enforcement actions and CMPs. See ONE COLUMN on Page 3 for details.

Advocates To DEA: Curbing Telehealth is Dumb

Warning that patients could otherwise be left in pain, LeadingAge has formally asked the US Drug Enforcement Agency to ensure nursing home, hospice and palliative care patients have continued access to certain controlled medications.

The DEA in late February proposed limiting the use of telehealth for prescribing certain pain and other controlled medications. LeadingAge has joined several other health organizations in asking for key exemptions.

In a letter on the final days of a comment period, LeadingAge's Katy Barnett said the organization does not believe prescribing controlled drugs via telemedicine to hospice or LTC residents poses much of a risk.

McKnight's, 04/05/2023

House Republicans Urge HHS to Cool It on Staffing

A group of Congressional Representatives, in a recent letter, encouraged HHS to reconsider a yet-to-be-issued administration minimum staffing proposal and instead "focus on working with stakeholders to develop innovative solutions that boost the recruitment and retention of qualified nursing professionals."

Parameters of the staffing mandate proposal are expected to come in CMS' proposed skilled nursing payment rule, which could be released in the next few weeks.

"The proposed staffing ratio requirement in nursing homes is a one-size-fits-all strategy that may make sense for urban areas," Minnesota Congresswoman Fischbach said, "but will hurt and potentially close rural nursing homes."

Congressional Letter to CMS, 03/10/2023

SNF Did Not Violate Labor Law in Firing Staff

The National Labor Relations Board upheld an administrative judge's ruling that Riverview Care Center, a St. Louis, Missouri a 130-bed nursing home that closed this year, didn't violate federal labor law when it fired five union supporters.

The board agreed with the previous ruling, which found no proof that the firing administrator knew of the potential union activity.

SEIU Healthcare MO and KS had alleged union-busting after firing a housekeeper who was allegedly attempting to organize staff as the facility battled COVID and significant staff and leadership turnover in mid-2020.

NLRB ruled the housekeeper was terminated for sleeping at work.

Law360, 04/05/2023

HHS Proposes 3.7% Part A Boost – Staffing Still a “?”

Providers reacted with cautious optimism last week to a proposed nursing home pay rule that offers operators a 3.7% Medicare Part A raise for fiscal 2024.

The CMS Prospective Payment System proposed rule outlines a higher-than-anticipated market basket increase reflecting the impacts of record inflation.

The 'elephant in the room' remains the impending staffing requirement that CMS also said during the week it "remains committed" to announcing a staffing minimum "later this spring."

The proposal also recommends vast changes to CMS' quality reporting and value-based purchasing programs.

McKnight's, 04/05/2023



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

AMERICA: This week the states will begin to sever an anticipated 15 million low-income Americans from Medicaid rolls that ballooned to record heights because of a pandemic-era promise that people with the health insurance could keep it — a federal promise that is going away. The end to the temporary guarantee that preserved the safety-net health coverage for the past three years saddles every state with an immense undertaking: sorting out which Medicaid beneficiaries actually belong (*Washington Post*).

THE WORLD: The WHO's vaccine experts have revised their global COVID-19 vaccination recommendations. The group recommends primary vaccinations and first booster doses for children and adolescents with health risks and healthy adults under the age of about 60. WHO recommends additional booster doses for high-priority groups such as older people, immunocompromised people of all ages, front-line health workers and pregnant women six or 12 months after their last booster dose; healthy kids and teenagers considered low priority may not need to get a shot (*CNN*).

AMERICA: There were rises in maternal mortality and late maternal deaths in 2021, the second year of the pandemic. Between January 2019 to March 2020, there were 29 maternal deaths per 100,000 live births. Over the course of the next nine months, this rate rose to almost 38 per 100,000, peaking at 45 in 2021. Rates were much higher among Native Americans and Alaska Natives suffering over 160 maternal deaths per 100,000 live births that year, more than doubling the previous year's rate (*News Medical*).

MASSACHUSETTS: As many as 33 residents of Sancta Maria Nursing Facility in Cambridge, Massachusetts have tested positive for Covid-19 in the past week. The Cambridge Covid-19 data center, based on numbers from a state Covid tracking system known as Maven, disclosed 27 new Cambridge cases in long-term care facilities over the last weekend, a strikingly large increase (*Cambridge Day*).

AMERICA: Last week marked the three-year anniversary of Capt. Douglas Hickok's death. Hickok, a physician assistant with the New Jersey Army National Guard, died after a week-long battle with the coronavirus, the first American service member to succumb to the illness. Since then, at least 450,000 troops have been formally diagnosed with the virus and about 100 have died (*Military.com*).

ENGLAND: Due to dwindling usage the COVID contact-tracing app for England and Wales, which was downloaded 31 million times during the course of the pandemic, has been shut down. The move is part of a drive in the UK to encourage people to "learn to live" with the virus. However, the NHS app will continue to allow people to request a certificate proving their Covid vaccination status as part of any requirements for international travel (*The Guardian*).

ARIZONA-HAWAII: With 581 deaths per 100,000 people. Arizona experienced the highest adjusted death rate in the United States during the COVID-19 pandemic. The District of Columbia – 526 per 100,000 – and New Mexico – 521 per 100,000 – were the second and third worst. Hawaii had the lowest rate 147 COVID deaths per 100,000 people, followed by New Hampshire – 215 per 100,000 – and Maine – 281 per 100,000 (*The Lancet*).

AMERICA: Researchers at the Centers for Disease Control and Prevention wrote about the infections. They said the COVID-19 pandemic is likely part of the reason for the spread. Candida auris, is a form of yeast that's not usually harmful to healthy people but can be a deadly risk of fragile hospital and nursing home patients. Some of the strains are even "superbugs" that are resistant to antibiotic drugs (*CNN*).

AMERICA: The researchers compared hospice aide visits during the first nine months of 2020 to the same months in 2019. They determined that more than half of long-stay nursing home residents enrolled in hospice did not receive any visits from hospice aides from April

through December 2020. The Brown University School of Public Health findings highlight one facet of the vast disruptions in care delivery during the pandemic (*JAMA*).

THE PENTAGON: Not a single service member has died of COVID-19 since early 2022., when more than 98% of the active duty force – about two million troops had been at least partially vaccinated. The Department of Defense made COVID-19 vaccination mandatory resulting in vaccines administered to over two million Service members and 96% of the force — Active and Reserve — being fully vaccinated. The mandate has since been repealed (*The Military Times*).

AMERICA: There's now a new class of subvariant on the rise in the U.S. It's called XBB or Gryphon. XBB is getting a lot of buzz because it spreads fast and seem to be able to evade immunity that people have built up from having a previous COVID-19 infection or getting the vaccine. It was first detected last August in India and has now turned up in 17 countries including the U.S. (*MSN Lifestyle*).

MASSACHUSETTS: Governor Maura Healey's administration is standing by its decision to lift the state's mask mandate for medical settings next month, despite calls from some health professionals to keep the COVID policy in place indefinitely. The requirement — which applies everywhere from big hospitals to small dentist offices — is set to expire with the state's COVID public health emergency on May 11. Last week, hundreds of local medical professionals signed a letter calling the decision "dangerous and unethical" (*WBUR*).

COVID-19, 04/09/2023

Global Cases – Deaths
762,201,169 – 6,893,190

U.S. Cases – Deaths
106,359,724 – 1,156,850

U.S Nursing Homes Residents
1,599,257 – 165,347

U.S Nursing Homes Staff
1,601,843 – 3067

Worldometer & WHO

Proposal Would Help Providers Reduce Civil Monetary Penalties

Providers who don't plan to appeal a civil monetary penalty but fail to file a hearing waiver would still be in line for a fee reduction under a new CMS proposal.

CMS outlined the CMP "constructive waiver" process as part of the FY 2024 SNF Prospective Payment System proposed rule released Tuesday.

If finalized, CMS would eliminate the requirement that facilities waive their right to a hearing in writing in order to have their CMP reduced by 35%.

Under the new process, CMS would assume a provider waived a hearing if no formal appeal request was made within 60 days.

McKnight's, 04/07/2023

Another Reporting Deadline Staff Flu Vaccines

Per the Fiscal Year (FY) 2023 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) final rule, nursing homes must now report influenza vaccination rates among healthcare personnel for the SNF Quality Reporting Program (QRP).

Nursing homes are required to submit at least one report to capture flu vaccination coverage among all staff working in the nursing home at least one day during the flu season, defined as October 1 – March 31.

Nursing homes have 45 days after the end of flu season to report data – that's May 15.

LeadingAge, 03/20/2023

SNF Loses - Not All Survey Teams Require an RN

A federal court has upheld an HHS rule that RNs need to be included only on certain survey teams.

The case dates back to 2013 when a resident at Rochester's Avon Nursing and Rehabilitation spilled a bowl of soup, burning herself. The state conducted an "abbreviated standard survey" using two dietitians but no RN and issued the facility a CMP.

A judge in 2016 ruled that the lack of a nurse on the survey team violated Medicaid requirements and invalidated the fine.

The latest federal ruling said the HHS rule clearing indicates only standard and extended surveys require a RN.

McKnight's, 04/05/2023

Large Long-time Connecticut SNF Saying Adiós

Hughes Health and Rehabilitation in West Hartford, Connecticut is closing after more than 50 years in the same location.

Hughes filed a Petition for Closure with the state Department of Social Services (DSS) that it "is not viable" due to low census and cost increases "not covered by Connecticut's reimbursement program and the growing trend towards the use of home and community-based services."

The 170-bed facility had a 57% occupancy rate last year and only 51% this year.

DDS has 30 days to review the petition and could hold a public hearing time to get further input on the closure.

WTIC-TV, 03/31/2023

Thomas Says 'No Way' A Retrial for Esformes

Federal prosecutors received the green light to retry Philip Esformes on pending \$1.3 billion healthcare fraud charges after US Supreme Court Justice Clarence Thomas rejected an emergency appeal from the assisted living community and nursing home mogul on Tuesday.

Esformes had sought to stay a decision from the 11th US Circuit Court of Appeals affirming his 2019 conviction.

In the filing, Esformes attorneys argued that the Supreme Court should intervene to stay the appellate court's ruling to prevent the government's "rush to retry Esformes on the hung counts — notwithstanding its acknowledged misconduct and the president's (Trump) grant of clemency."

McKnight's, 04/06/2023

ONE COLUMN

CMS Issues New, Tougher Infection Control Guidance

CMS has very quietly revoked its 2020 infection control deficiencies guidance, immediately replacing it with a revised guidance titled, "Strengthened Enhanced Enforcement for Infection Control Deficiencies."

The agency said its goal was to "target facilities with or at risk for the most significant negative resident health outcomes by taking more aggressive enforcement actions."

CMS said enhanced enforcement will be applied to higher-level infection control deficiencies that cause harm, serious harm or the likelihood of serious harm.

For survey dates starting March 30 or later, non-compliance with both F880 and F887 cited at scope and severity Level 2 (including D, E and F for no actual harm with potential for more than minimal harm) will lead to:

~A directed plan of correction that includes root cause analyses working with a Quality Improvement Organization or qualified consultant.

~Discretionary denial of payment for new admissions with a (shortened) 30-day notice period to achieve substantial compliance.

The steepest penalties are reserved for non-compliance for F880 at scope and severity Level 4 (including J, K and L for Immediate Jeopardy). Those cited face:

~A directed plan of correction that includes root cause analyses and working with a Quality Improvement Organization or hiring an Infection Control Consultant to develop and implement a corrective action plan.

~Discretionary denial of payment for new admissions with a 15-day notice period to achieve substantial compliance.

~Civil Money Penalty imposed with a 20% increase to the CMP Analytic Tool.

CMS also revealed it is deploying its Quality Improvement Organizations to provide targeted technical assistance for some 3,000 low-performing nursing homes "with a history of infection control challenges."

McKnight's, 04/04/2023

New RAI Manual Must Have Killed a Bunch of Trees

Federal regulators sent nursing home operators and their MDS personnel scurrying for favorite reading spots Monday after they released finalized item sets and 450 pages of heavily updated draft Resident Assessment Instrument (RAI) manual changes.

While experts said their initial checks did not reveal major surprises, they added that the enormity of what is changing represents an extremely serious undertaking to prepare for. Changes will take effect Oct. 1.

At almost 400 pages longer than the previous manual, Monday's release has not only new item coding instructions but additional definitional and coding instructions for current items.

McKnight's, 04/04/2023

CNA Posted Facebook Vid of Sleeping Nurse – Then Quits

The New York State Department of Health is investigating a video that shows a nurse appearing to be asleep while standing and working at the 92-bed Auburn Rehabilitation and Nursing Center.

Officials confirmed the investigation and stated that it is a top priority to hold nursing homes accountable for the quality of care they provide but provided no other information on the case.

The video was posted on Facebook by a CNA, who was told by the nursing home's HR department that sharing the video publicly violated the federal law restricting the release of medical information.

She quit.

Fingerlakes1.com, 03/31/2023

Tough 'Row to Hoe' for Government-Operated SNFs

Publicly owned nursing homes, often unable to increase revenue without the express consent of elected officials or taxpayer referendums, are finding themselves increasingly on the brink of collapse by the combined effects of the lingering pandemic and worker shortages.

It's a growing care-access issue that has caught the eye of providers and, to a lesser extent, policy makers nationwide.

Many of the 951 government-run long-term care facilities, which include state-run veterans homes, are "struggling to find workers and recover after unprecedented staffing losses that occurred during the pandemic," the American Health Care Association noted in a recent report.

AHCA, 03/15/2023

Group Calls for CMS to Come Down Hard on SNFs

The National Consumer Voice for Quality Long Term-Care has published a report accusing government overseers of not adequately tracking billions of dollars given to providers.

"Where Do the Billions of Dollars Go? A Look At Nursing Home Related Party Transactions" claims to document how nursing homes "funnel billions of dollars through related party companies — companies they own — with little to no oversight" by CMS.

The report calls for CMS to: audit cost reports more closely; demand broader disclosure of financial operations through consolidated cost reports; require specific minimum staffing; and impose profit caps on operators.

McKnight's, 04/03/2023

Team To Research Innovative Fall Prevention Methods

A team of University of Central Florida researchers is partnering with the City of Orlando on a \$2.3 million fall prevention project funded by the National Institutes of Health (NIH), National Institute on Minority Health and Health Disparities.

The CDC cites falls — and the fear of falling — as a leading cause of injury, disability, and hospitalization among racially diverse, low-income older adults.

The work supports the City Beautiful Livable Orlando: An Age-Friendly Initiative Action Plan 2022-2025, which prioritizes the development of affordable housing options and services to help older residents safely stay in their homes.

UCF Today, 03/31/2023

Briefly IN THE NEWS

Healthcare bankruptcies jumped 84% in 2022, returning to pre-COVID levels from 2019 to 2022. Senior care made up 26.3% of those filings, more than any other segment. That was among about 50 filings annually involving businesses with \$10 million or more in liabilities (*McKnight's*).

McLaren St. Luke's Hospital, a 300-bed facility in Maumee, (Toledo area) Ohio will lay off 743 workers when it permanently closes this Spring. Of the 743 employees who will lose their jobs, 239 at registered nurses (32%). No physicians are apparently going to be affected (*Becker's Healthcare*).

North Carolina Gov. Roy Cooper signed a Medicaid expansion law that was a decade in the making and gives the Democrat a legacy-setting victory. The law should provide government-funded health coverage to potentially 600,000 adults who earn too much to qualify for traditional Medicaid but too little to receive heavily subsidized private insurance. Also coming will be billions of dollars annually from Washington into the state. North Carolina has been among 11 states who haven't accepted expansion from the federal government (*AP*).

National spending on care in nursing homes and continuing care retirement communities is projected to increase by at least 5% annually this year and next, before falling back slightly for the rest of the 2020s. CMS predicts a 5% increase in spending on nursing home and CCRC care for 2023, slightly under the current 6.04% inflation rate, and a 5.2% spending increase in 2024 (*CMS Office of Actuary*).

A bill introduced in the California Assembly is designed to provide nurses with "equity in workers' comp." The presumptive eligibility bill would automatically provide workers' compensation to nurses and other health care workers for a variety of injuries and illnesses. Amidst a staffing crisis in the nursing profession, this legislation would help increase the retention of skilled nurses in California hospitals (*California Nurses Association news release*).