

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

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THEY SAID IT:

"It is appalling how many more overall citations have occurred as compared to pre-pandemic levels"

Melissa Brown, COO Gravity Healthcare Consulting on the difference between a more collaborative approach from surveyors before the pandemic to a more aggressive and punitive approach taken by the current administration

"Excellence in clinical quality and experience for our patients is at the forefront of our mission" From PACS

filing with SEC. the company averaged a 4.1 Five-Star rating across all of its 200+facilities, nearly half of which are 5-Star

"It's the hospital room of the future, today" James Doelling, Hines VA hospital director on in-room cameras to monitor residents

"We were watching patients die," and being told we didn't need a high level of protection from people who were not taking these risks" emergency physician Sonya Stokes, MD, on the early days of the pandemic in a NYC hospital

Probably Should Have Kept Voodoo Remarks to Himself

Nursing home operators Hobe Sound OPCO agreed to pay \$67,500 to settle a national origin discrimination lawsuit.

The EEOC said the companies failed to hire a Haitian applicant as nursing home administrator on the basis of her national origin.

The Haitian applicant's job offer was revoked shortly after meeting with the owner and manager of the nursing home who made discriminatory comments about "voodoo" and other "Haitian rituals."

He claimed the applicant would favor Haitian employees and relayed a story about a former administrator finding a voodoo doll outside her office after disciplining a Haitian employee.

EEOC news release, 03/15/2024

Becerra Takes Heat Over Staffing Mandate

For the second time in a week, HHS Secretary Xavier Becerra faced a grilling on Capitol Hill over minimum staffing for nursing homes.

Becerra appeared before the House Ways and Means Committee, which in February advanced legislation designed to block CMS from imposing such a rule.

Chairman Jason Smith (R-MO) opened the hearing by saying he had "serious concerns" about administration policies

To justify the rule, Becerra noted that one-in-five COVID deaths occurred in nursing homes, a point later challenged by Rep. Brad Wenstrup (R-OH), who pointed to admissions requirements for allowing COVID to spread through nursing homes.

McKnight's, 03/22/2024

Provider Sues Agency for Over-billing Practices

A multi-facility skilled nursing operator has filed a \$5 million lawsuit against the staffing agency Nursa, alleging the app-based agency routinely overbilled for staff that failed to show up for shifts and refused to investigate nursing homes' claims to that effect.

Oxford Valley Health, with three facilities in Arizona and Nevada. alleges Nursa broke its contract by significantly overbilling, refusing to reimburse the nursing home for unworked shifts and using a quick-turnaround review structure that limited billing challenges.

Oxford has also asked for "class" standing opening the lawsuit to Nursa's 1300-client base. Several facilities have already joined.

McKnight's, 03/21/2024

Nurse's Death Sparks Home Care Safety Law

Visiting nurse Joyce Grayson was found dead in a patient's Connecticut home in October. Police have named her mental health patient and convicted sex offender, as a suspect in the killing, though no charges have been filed.

Monday, the legislature's Public Health Committee held a public hearing on a bill that would require home health agencies to obtain each client's psychiatric history, and any history of violence, substance abuse and domestic abuse.

Additionally, each agency would be mandated to provide staff with a wearable GPS that allows staff to contact local police by pressing a button.

CT Examiner, 03/18/2024

Whistleblower Owes \$1.1M To SNF for Bogus False Claim

A judge has awarded a landmark \$1.1 million in attorney fees to a nursing home targeted in a False Claims case found "frivolous" for its reliance on publicly available and false information.

Federal Judge Glen Davidson ordered attorney-turned-whistleblower Cameron Jehl to pay for the work of attorneys defending Golden LivingCenter – Southaven in a 2019 case.

He characterized Jehl's allegations against the nursing home as "groundless, frivolous, and [with] no chance of success," triggering a provision of the False Claims Act that allows wronged providers to recoup costs for legal and other fees.

McKnight's, 03/20/2024

More Abuse? Or More Scrutiny from Surveyors?

A *SeniorLiving.org* report used last year's Medicare data to highlight that nursing homes received nearly 95,000 health citations in 2023. Approximately 8% (nearly 7,700) were citations for abuse, neglect or exploitation.

In 2019, however, CMS data shows the total number of citations was around 58,000 — or about 61% of last year's total — with only 2,500 (4%) being abuse incidents.

"While even one abuse citation is one citation too much," said Melissa Brown, COO of Gravity Healthcare Consulting, "it is difficult to determine if there is actually more abuse occurring, or if the surveyors are being more precise during surveys."

McKnight's, 03/20/2024

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

AMERICA: The nation's flu activity remains elevated with an increase in test positivity, as levels of two other respiratory viruses – COVID-19 and respiratory syncytial virus (RSV) – continued their steady declines. Sixteen jurisdictions reported high or very high activity, down from 22 the previous week (**CDC**).

AMERICA: More of America's sewage systems are tracking viral risks beyond the coronavirus, but unpredictable funding threatens the future of what's become an important surveillance tool for cash-strapped public health departments. Wastewater testing — supercharged by the creation of a national surveillance system in 2020 — has been one of the more reliable metrics for tracking COVID-19 spread since other data, like daily case counts and testing, became much more scarce last year. (**Axios**).

THE WORLD: SARS-CoV-2 viral fragments can remain in blood and tissue for more than a year after infection, which researchers at the University of California San Francisco (UCSF) say could contribute to long COVID. In two studies, the researchers found SARS-CoV-2 RNA in the blood for up to 14 months post-infection and for more than 2 years in connective-tissue samples from 171 COVID-19 survivors without evidence of reinfection (**CIDRAP**).

WASHINGTON, D.C.: Four years after COVID-19 forced widespread shutdowns of businesses and schools across the U.S., 59% of Americans believe the pandemic is over. At the same time, about as many, 57%, report that their lives have not returned to normal, and 43% expect they never will. The impact of the coronavirus on the public since emerging as a global threat in 2020 is evident in the finding that seven in 10 U.S. adults report having had COVID-19 at least once (**Gallup**).

BRAZIL: Former Brazilian President Jair Bolsonaro was indicted of falsifying his COVID-19 vaccination status, marking the first indictment for the embattled far-right leader, with more allegations potentially in store. The indictment released by the Supreme Court alleged that Bolsonaro and 16 others inserted false information

into a public health database to make it appear as though the then-president, his 12-year-old daughter and several others in his circle had received the COVID-19 vaccine (**AP**).

ATLANTA: The CDC is expanding a program that tests international travelers for COVID-19 and other infectious diseases. The program asks arriving international passengers to volunteer to have their noses swabbed and answer questions about their travel. The program operates at six airports – the CDC is now adding Miami and Chicago's O'Hare to the mix (**AP**).

THE WORLD: SARS-CoV-2 viral fragments can remain in blood and tissue for more than a year after infection, which researchers at the University of California San Francisco (UCSF) say could contribute to long COVID. In two studies, the researchers found SARS-CoV-2 RNA in the blood for up to 14 months post-infection and for more than 2 years in connective-tissue samples from 171 COVID-19 survivors without evidence of reinfection. (**CIDRAP**).

THE WORLD: In a stunning reversal of decades of progress, global life expectancy at birth fell 1.6 years from 2019 to 2021, with 16 million of 131 million total deaths in 2020 and 2021 directly or indirectly attributable to COVID-19. The study coordinated by the University of Washington encompassed 204 countries and territories (**The Lancet**).

NEW YORK: On Broadway, overall attendance is down about 17% from the pre-pandemic era: 9.3 million seats have been filled in the current season as of March 3, down from 11.1 million at the same point in 2020. Box office grosses are down, too: Broadway shows have grossed \$1.2 billion so far this season, 14% below the level in early March of 2020. The biggest pop concerts are up about 65% and the country lost about 4800 movie screens during the pandemic (**The New York Times**).

AMERICA: Public health advocates are watching in growing alarm as former President Trump increasingly embraces the anti-vaccine movement. "I will not give

one penny to any school that has a vaccine mandate or a mask mandate," Trump said in a recent campaign rally in Richmond, Va. It's a line Trump has repeated, and his campaign said he is only referring to school COVID-19 vaccine mandates — but that hasn't eased fears that the GOP leader could accelerate already worrying trends of declining child vaccination (**The Hill**).

AMERICA: U.S. life expectancy increased for the first time in two years, A report released Thursday by the CDC, marks a notable reversal: People born in the U.S. in 2022 can expect to live 77.5 years, an increase from 76.4 in 2021. Life expectancy had dropped in 2020 and 2021, which experts have said was driven by Covid-19 deaths and drug overdoses. The 2021 life expectancy report — a decline from 77 years to 76.4 years — marked the lowest U.S. life expectancy since 1996 (**Politico**).

UNITED NATIONS: Many countries are bouncing back from the COVID-19 pandemic, but Achim Steiner, head of the U.N. Development Program, said that after two decades during which rich and poor countries were coming closer in terms of development, the nations are now drifting apart. The poorest countries are not bouncing back from the pandemic and a significant number are seeing conditions deteriorating (**Huffington Post**).

THE WORLD: COVID-19 vaccines were found to cut the risk of heart failure by up to 55% and blood clots by up to 78% following COVID infection, according to a new study published in the *British Medical Journal*. The positive health effects lasted for up to a year and were more pronounced right after getting vaccinated (**ABC News**).

COVID-19, 03/22/2024

Global Cases – Deaths
774,783,251 – 7,037,007

U.S. Hospitalizations – Deaths
6,889,605 – 1,185,413

CDC, WHO

NJ ‘Confused’ Nursing Homes With Early COVID Directives

An independent analysis also called for better funding for providers – money that could be used money could be used to increase wages, staffing and to prepare for future emergencies.

The report highlighted a March 2020 directive from the NJ Department of Health requiring SNFs to admit residents even if they were sick with COVID.

The rapid progression of the pandemic forced the state to quickly reverse that directive two weeks later.

The report also confirmed that hospitals were given priority for masks and other protective gear — a policy that would leave nursing homes and their frail patients in short supply.

McKnight's, 03/15/2024

FBI Cracking Down On PPP Cheaters

The FBI and Justice Department are reportedly ramping up investigations and prosecutions of companies believed to have fraudulently obtained Paycheck Protection Program loans during the pandemic.

Companies were eligible for forgivable loans up to \$10 million.

The Small Business Administration inspector general, however, “estimates that 17% of PPP loans were distributed to businesses and individuals who committed fraud.

The federal government spent billions on the loan forgiveness program. It is estimated 130 senior living operators took advantage of the program.

Senior Living, 03/19/2024

Impossible to Meet – 3 States Pause Staffing Penalties

Three states with state staffing requirements – Illinois, Rhode Island and New York – have paused penalties for facilities not being able to meet the mandate.

The three states paused penalties for nursing homes that violated state staffing

mandates as the governors feared the cost of compliance could force nursing homes to limit patient access or close their doors completely.

Their experiences point to problems CMS could encounter carrying out a federal staffing mandate, but the agency is adamant its final rule will be workable for nursing homes.

Modern Healthcare, 03/20/2024

Providers Filing Class Actions in Change Cyberattack

On the heels of proposed class action lawsuits from patients, providers are also filing legal challenges against UnitedHealth Group in the wake of the cyberattack on Change Healthcare.

Several lawsuits have cropped up across the country. In California a proposed class action name both UHG and Change on behalf of a therapy group, alleging that the healthcare giant was negligent in its cybersecurity protocols, leading to massive financial disruptions for providers.

Similarly, a Mississippi ob-gyn practice filed suit saying that the financial struggles and payment delays could “bankrupt hundreds if not thousands of care providers, if it hasn’t done so already.”

Fierce Healthcare, 03/20/2024

Illinois Nursing Home Group No Longer Foreclosing

A Peoria-based nursing home chain said it will not foreclose or shut down amid financial struggles.

Petersen Health Care, which owns 19 facilities, entered a foreclosure agreement with X-Caliber Funding and Capital Funding in two separate federal cases in January.

The facilities were placed into receivership and returned to Petersen management, who hired David Campbell as a financial adviser to help it restructure.

“Petersen is going to reorganize. The Petersen nursing homes are not in foreclosure,” Campbell said. “We are not shutting down, we are not going out of business.”

Peoria Journal Star, 03/19/2024

ONE COLUMN

Providers Increasingly on the Hook For Drug Diversion

Violations of the Controlled Substance Act — including staff who divert patient medications for themselves — may open providers up to additional False Claims Act liability.

Drug diversion cases in nursing homes are typically an individual with access taking the drugs for personal use or resale.

But they aren’t rare, especially in the opioid era.

A study last year reviewed 107 reported diversions at long-term care facilities in Minnesota alone. The authors called the theft of controlled substances by staff members “a largely overlooked form of elder mistreatment” that needs more attention. Researchers found that an average of more than 30 pills per resident were stolen, most commonly oxycodone, hydrocodone, tramadol, hydromorphone and morphine.

“When controlled substance diversion is discovered at a healthcare organization, the federal government no longer takes the view that it should simply focus on the potential prosecution of a diverting employee,” said Lisa S. Rivera, co-chair of the Controlled Substances Enforcement & Diversion Practice and a member of the Healthcare Fraud & Abuse Task Force at Bass, Berry & Sims law firm.

“Instead, the government is demanding answers about how the diversion could have occurred, and when it should have been discovered, focusing on the organization’s record keeping, security and reporting practices,” Rivera said.

And prosecutors aren’t necessarily waiting to find out about diversions, she added. Regulators are focusing on pharmacy audits to pursue administrative resolutions or other types of enforcement. In the right circumstances, drug compliance failures also could be connected to False Claims allegations and become even more costly for providers.

McKnight's, 03/04/2024

PACS Going Public – Could Be Half Billion \$ Offering

PACS Group has filed with the SEC to become a publicly traded company. In its filing, Utah-based PACS stated it serves more than 20,000 residents daily, in more than 200 post-acute facilities, most of them nursing homes, in nine states.

The company, founded in 2013, had a total revenue of \$3.1 billion in 2023. The public offering could be worth as much as \$500 million.

The filing stated: "We believe our success is driven in significant part by our decentralized, local operating model, through which we empower local leaders at each facility to operate their facility autonomously."

McKnight's, 03/15/2024

Locals Push to Keep Boston SNF Open

Benjamin Healthcare Center, a Boston nursing home is set to close its doors in July 1st displacing 76 residents, but local leaders are publicly urging action on a receivership petition that would allow the state to take over management of the facility.

CEO Tony Francis blames surging labor and other costs as the reason for the planned closure.

Over the past year, staff have complained about going months without paychecks, or having their checks bounce, and lawmakers allege Francis gave himself a 300% raise since he came on as CEO in 2014.

WBTS-TV, 03/15/2024

Commissioners Oppose CMS Staffing Mandate

Mesa County Commissioners have formally voiced their opposition to the Biden proposed staffing rule for nursing homes.

The Commissioners said the rule could exacerbate existing workforce shortages in the long-term care sector and subsequently restrict senior citizens' access to essential care.

Commissioners sent a letter the state's Senators and a Congresswoman highlighting the impracticality of the mandate for Colorado, where 90 percent of nursing homes are unable to meet the proposed staffing criteria due to a lack of qualified personnel.

Commissioners warn that the "one-size-fits-all" approach could force nursing homes to limit admissions or, in extreme cases, shut down.

*Mesa County, Colorado
news release, 03/12/2024*

Bill Raising Reimbursement Pondered by Neb. Lawmakers

A Nebraska Senate bill was amended recently to increase the Medicaid quality assessment fee nursing homes pay from \$3.50 to \$9.00 PPD. Money collected through that provider tax is used as the state match to bring in more federal Medicaid dollars – in this case an additional \$23 million.

The bill would also increase the Medicaid rate so nursing homes can get those additional dollars.

"The legislature's decided not to invest additional state funds into nursing homes," said Jeremy Norquist of the Nebraska Hospital Association, "so this creates a way to get increased rates without taking more state dollars into it."

WOWT-TV 3/15/3204

VA Putting Cameras in Vets' Nursing Home Rooms

Edward Hines Jr. VA Hospital in Illinois has begun integrating a new patient monitoring system to improve Veteran health and assist medical staff.

The AvaSure© Continuous Video Monitoring System places portable cameras in patients' rooms who may need closer monitoring. Staff can observe up to 15 patients simultaneously through a virtual interface to monitor for issues such as a patient out of bed or patient-caused medical device interference.

The monitoring system will be used in Hines VA's Community Living Center (CLC), which includes short- and long-term nursing home care and hospice.

VA news release, 03/15/2024

Briefly IN THE NEWS

Senior living and health care services operator The Dover Companies has launched a home health and hospice business branded as Dover Health. The fledgling company pledges to offer patients a suite of wraparound services, including for the terminally ill, to support quality of life and aging in place. Its parent organization also operates senior living, pharmacy, development, independent living, personal care, assisted living and memory care businesses, among others (*Hospice News*).

The Long-Term Care Ombudsman Bed and Service Availability Dashboard developed by the Missouri Ombudsman office, provides voluntarily reported information from the state's long-term care facilities on the number and type of beds or units available at a facility for memory care, private-pay, COVID isolation, behavioral health, Medicare and Medicaid. Users also can filter by services available, including bariatric services, dialysis, IV medications and substance use, among others. At last count information for 132 facilities was listed on the dashboard (*Senior Living*).

UnitedHealth Group said Monday that it's paid out more than \$2 billion to help health-care providers who have been affected by the cyberattack on subsidiary Change Healthcare. "We continue to make significant progress in restoring the services impacted by this cyberattack," UnitedHealth CEO Andrew Witty said in a press release. "We know this has been an enormous challenge for health care providers and we encourage any in need to contact us" (*CNBC*).

Social activities such as interactions with others and participation in organized events can prevent cognitive decline in long-term care facilities. Research from Amsterdam University Medical Center, carried out among 3600 patients in 42 Dutch and Belgian care homes, shows that participation in social activities offers a protective effect for those with no, or little, cognitive impairment (*Journal of Alzheimer's Disease*).