

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

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Vol 7

10/08/2023

THEY SAID IT:

"A single misplaced dash is all it will take to lose 2% off next year's market basket update" Joel VanEaton Executive VP of PAC Regulatory Affairs and Education for Broad River Rehab on the new MDS

"Federal action on staffing mandates must be realistic to achieve its intended effect" LeadingAge CEO Katie Smith Sloan in letter to Congressional leaders

"Now is the worst possible time for the United States to establish the nation's first federal staffing mandate for long-term care facilities" letter from bipartisan group of U.S. Senators to CMS

The proposed staffing rule is an overreaction — a poor reaction to a horrible crisis that we all experienced" Mark Parkinson, CEO AHCA/NCAL

Just Tell 'em What They Want to Hear

HHS Secretary Xavier Becerra, at a live national event supporting the proposed nursing home staffing rule, gave the labor audience credit for advancing the controversial measure.

Becerra praised President Biden's advocacy for union workers, especially those in nursing homes., noting this is the first attempt more stringent staffing.

The proposed rule includes the possibility of allowing labor unions to help dictate how many workers are needed at each site.

Becerra acknowledged that some nursing homes "are doing fairly well" and offering high-quality care. But he said others continue to drop the ball because they're understaffed.

McKnight's, 10/06/2023

Bill Introduced to Stop the Staffing Mandate

Saying she was deeply disappointed CMS continued to move forward with this rule given the public knows their reservations regarding its efficacy," Minnesota Congresswoman Michelle Fischbach has introduced legislation that could stop the implementation of the proposed nursing home staffing requirements.

Fishbach was referencing a CMS-backed study looking for ideal staffing standards that ultimately found there was "no single staffing level that would guarantee quality care."

She said the propose law will keep CMS from implementing this rule until it can prove it will not result in closing SNFs, harming residents or making workforce shortages worse than the current situation.

Rep. Fischbach news release, 09/29/2023

Staffing: Providers Will Fight Pressure Grows in D.C

Leaders of AHCA/NCAL, the nation's largest nursing home association, said they would continue to fight against and eventually "triumph" over a proposed federal staffing mandate that would cost providers as much as \$6.8 billion annually, require facilities to hire 100,000 new workers and result in the loss of nearly 300,00 residents.

Meanwhile lawmakers in Washington delivered their own battle cry on the CMS proposed rule.

Nearly one-third of the Senate signed on to a letter Friday asking CMS to withdraw the mandatory staffing rule, saying this is the "worst possible time" for the mandate.

McKnight's, 10/03/2023

CMS Said \$4 B. AHCA \$6.8B. LeadingAge Projects \$7.1B

Shortly after AHCA/NCAL found the new staffing mandate would cost an additional \$6.8 billion annually, LeadingAge upped the ante.

Saying the proposed government staffing mandate will be "impossible to implement" CEO Katie Smith Sloan announced LeadingAge believes the

mandate will cost operators an addition \$7.1 billion the first year alone.

In a letter to congressional leaders, Sloan sharply criticized the government's "highly fragmented approach to long-term care financing."

LeadingAge said that the differences in estimates from AHCA/NCAL are due to differences in methodology, such as the inclusion of contract wages and outlier hourly rates, and medians versus average hourly wages.

LeadingAge news release 09/29/2023

MedPAC Rips Staffing Mandate, Ponders Consequences

MedPAC, a key Congressional advisory panel, expressed deep skepticism Thursday over the proposed federal nursing home staffing mandate and whether it would address ongoing quality concerns in the post-acute care sector.

Members questioned the goal of the regulations and how they would work to drive quality. Some even called for a separate funding mechanism to support hiring round-the-clock RNs.

The feedback came as commissioners reviewed a new staffing data analysis by MedPAC staff. They asked for more details on metrics that could help clarify whether the rule might help or hurt patients.

McKnight's, 10/06/2023

Wrongful Death, Family Gets \$5.5 Million

A jury has awarded the family of Bettye Patterson, a deceased nursing home resident, \$5.5 million after her oxygen machine stopped working in a Chicago-area facility.

Patterson entered Providence Palos Heights in 2016 with an estimated three-to-six months to live. She was receiving 24/7 oxygen.

During a visit the family noticed the power was out in Patterson's room and the oxygen machine was not working. She struggled to breath for about 20 minutes before passing away.

McKnight's, 10/03/2023

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

AMERICA: Consumers who've ordered free home COVID-19 tests through a federal website could be in for a surprise: they might get kits with expiration dates that passed months ago. But experts say you shouldn't immediately discard those tests. Even though you might not see it on the packaging, the federal government has extended expiration dates on many of these home tests. Consumers can check this Food and Drug Administration website to find extended expiration dates for home coronavirus tests (*USA Today*).

AMERICA: Vaccination rates for COVID-19 and the flu have declined, and a significant portion of the U.S. population indicated they are not interested in getting either this year, according to a new survey. The survey from the National Foundation for Infectious Diseases found that only about 20 percent of Americans are worried about themselves or someone in their family getting infected with the flu, COVID-19 or (RSV) respiratory syncytial virus (*The Hill*).

WASHINGTON, DC: Last week, as the updated Covid vaccines rolled out to pharmacies across the U.S., some people eager to get their doses were met with unexpected insurance issues. Department of Health and Human Services said the issue has been "largely, if not completely," resolved. The insurance companies made it clear that they are "fully covering the new vaccine shots," according to a rundown of the meeting shared by HHS. They described the problem of some people being denied coverage as "systemic technical issues" (*NBC News*).

MINNESOTA: A Sept. 25 Instagram post shows a screenshot of a blog post with a supposed guideline change at one of the country's top hospitals. The headline read "Mayo Clinic updates guidance, now states hydroxychloroquine is effective against COVID-19." It was liked more than 300 times in two days. But there was no such update. The hospital's doctors say they do not recommend the drug as a COVID-19 treatment (*USA Today*).

LOS ANGELES: Two years ago, the L.A. Unified School District set a high bar for COVID safety, telling employees: Get vaccinated or lose your job. That vaccine mandate — which achieved a 99% compliance rate among teachers — ended in September on a 6-1 vote by the Board of Education. Officials stressed that their actions were based on evolving science. And no one made any apologies during a board meeting (*Los Angeles Times*).

THE WORLD: In a Phase 1/2 clinical trial, Moderna's combination vaccine appeared to elicit "strong" immune responses against both influenza and Covid-19 and was found to be safe. The investigational vaccine, named mRNA-1083, was developed to offer some protection against both flu and Covid in a single shot in Wednesday's announcement, the company said that it plans to begin a Phase 3 trial among adults 50 and older this year (*CNN*).

AMERICA: Novavax has received Emergency Use Authorization (EUA) from the FDA to sell its COVID-19 Vaccine in the U.S. Novavax's vaccine was also included in recommendations issued by the CDC last month. Novavax's vaccine the only protein-based non-mRNA COVID vaccine available in the U.S. It will be nearly immediately available at thousands of locations in the country including drug stores such as Rite Aid and CVS (*Novavax news release*).

ATLANTA: Maternal COVID vaccination in pregnancy protected young infants against Omicron-associated hospitalization, but few women due to vaccine hesitancy actually received the vaccine during pregnancy. At least one maternal vaccine dose had an effectiveness of 54% against COVID-related hospitalization among infants younger than 3 months of age, and an effectiveness of 35% for infants younger than 6 months (*CDC Morbidity and Mortality Report*).

ARIZONA: An immunity shield law that offered skilled nursing and other healthcare providers liability protection during the pandemic has been ruled

unconstitutional by a state court in Arizona. The Arizona Court of Appeals ruled that a 2021 law shielding the providers from COVID liability claims violated a provision in the state constitution that prohibits lawmakers from revoking citizen's right to recover damages for injuries (*McKnight's*).

AMERICA: A new study shows that since the start of the pandemic the treatment time during acute heart attacks has increased dramatically. The average time from entrance in the emergency department to the cath lab for insertion of a catheter balloon increased about 18% from 60 to 73 minutes. Testing patients for COVID-19, the wait for results, enhanced cleaning procedures, and worker shortages all contribute to longer times (*American College of Cardiology*).

AMERICA: Around 4 million Americans received the updated COVID-19 shots in September. The updated shots from Pfizer and BioNTech or Moderna are single-target vaccines aimed at the XBB.1.5 Omicron subvariant of the coronavirus. Another updated COVID shot, made by Novavax was authorized during the week but is not yet widely available (*Reuters*).

AMERICA: The CDC announced on its website Tuesday that it no longer distributes COVID-19 vaccination cards. Instead, it recommends individuals contact the state health department's immunization information system, or IIS, to record new vaccinations. "Your state's IIS cannot issue you a vaccination card, but they can provide a digital or paper copy of your full vaccination record, including your COVID-19 vaccinations" (*San Francisco Chronicle*).

COVID-19, 10/06/2023

Global Cases – Deaths
771,151,224 – 6,960,783

U.S. Hospitalizations – Deaths
6,388,647 – 1,145,958

Vaccinations Global
13.5 billion

CDC & WHO

Do I or Don't I? What Rapid Antigen Tests Tell Us?

With Uncle Sugar again sending out the free quickies – the rapid COVID tests – there are a few things you should know.

First – a positive rapid antigen COVID test means you have COVID, *and* you're likely to be contagious at the time of the test.

A negative test means different things at different times: 1. You have COVID, but it's **too soon** for a rapid test to detect; 2. You have COVID, but it's **too late** for a rapid test to detect, i.e., you actually have had COVID for a week or two; or 3. You don't have COVID.

MedPage Today, 09/28/2023

CLA: No Surprise, SNF Expenses Have Spiraled

Nationally, PPD expenses have risen by approximately 15% during the pandemic. Illinois experienced the highest PPD expenses with three-year median change of 26%. Colorado had the lowest at 7%.

Wage inflation is a real challenge for SNFs across the country.

Total nursing average hourly wages increased 14.7% in 2022, compared to 8.8% in 2021 and 7.4% in 2020. Nursing average hourly wages increased 14.7% in 2022; 8.8% in 2021 and 7.4% in 2020.

Nursing agency hours as a percentage of total nursing hours increased to 10.2% in 2022; 5.3% in 2021, and only 2.9% in 2020.

CliftonLarsonAllen, SNF Cost Comparison and Industry Trends Report, Sept. 2023

TB and Legionella in New York and Wisconsin

Friendly Village, a Rhinelander, Wisconsin nursing home, has found Legionella bacteria in water samples. The facility is treating the water. No residents have gotten sick.

New York city has not been so lucky. About 500 cases of active tuberculosis have been detected this year. A 20% increase from last year. That rate would make it the worst in a decade.

Experts predicted an uptick in TB after the pandemic hindered efforts to diagnose and treat cases.

Since the spring of 2022 over 100,000 migrants, many living in congregate settings, have come to NYC.

WJFW-TV & Politico, 10/04/2023

Lawsuit Claims Nurse Killed 3rd Victim with Insulin

A woman charged with killing two Pennsylvania nursing home patients with insulin, faces new allegations that she caused a third such death at another facility.

The claims are part of a wrongful death lawsuit filed against Belair Healthcare and Rehabilitation Center accusing Heather Pressdee of killing Marianne Bower, a 68-year-old grandmother of seven with MS.

The Lawsuit claims Pressdee administered the lethal dose insulin, then sent a sympathy card and gift to the family.

This is a civil case, Pressdee has not been charged in connection with Bower's death, although prosecutors are now wonder whether there are more victims.

TribLIVE, 10/03/2023

DOJ Sues Colorado For Violating ADA

The U.S. Department of Justice has sued the state of Colorado for unnecessarily segregating adults with physical disabilities in nursing facilities in violation of the Americans with Disabilities Act (ADA) and the Supreme Court's decision in *Olmstead v. L.C.*

The ADA and *Olmstead* decision require state and local governments to make their services for people with disabilities available in the most integrated setting appropriate to each person's needs, regardless of their age or type of disability.

DOJ said services are available to Coloradans that would allow nursing home residents to live at home, but few are aware of those services.

DOJ news release, 09/29/2023

Free COVID Test Kits

[COVIDTests.gov](https://www.COVIDTests.gov)

ONE COLUMN

COVID Bad Information Transcends Politics

An internet-based survey study of more than 13,000 U.S. adults showed that endorsing COVID-19 vaccine misinformation, lack of trust in physicians or scientists, and conspiracy-mindedness were linked to the use of non-evidence-based treatments for COVID-19.

Survey respondents who reported prior COVID infection, those who endorsed at least one item of COVID-19 vaccine misinformation were more likely to have received the drugs ivermectin or hydroxychloroquine reported Roy H. Perlis, MD, MSc, of Massachusetts General Hospital and Harvard Medical School in Boston.

Those individuals were also more likely to trust social media, Donald Trump and score higher on the American Conspiracy Thinking Scale.

The team reported, "In aggregate, our survey results suggest that the potential harms of misinformation may extend to prescription of ineffective and potentially toxic treatments, rather than simply avoiding health-promoting behaviors, such as vaccination."

Conversely, people who reported trusting physicians and hospitals and scientists were less likely to seek non-evidence-based treatments.

About 6% of adults had taken either *ivermectin* or *hydroxychloroquine* -- and sometimes both. By comparison, 7.3% of adults had taken an FDA-approved antiviral medication.

Many aspects of the pandemic were politicized; however the surveyors found little difference between Democrats or Republicans in using non-evidence-based medications.

That distinction may be important insofar as altering one's party identification may be an unrealistic measure.

The key point may be that misinformation matters, and trust matters, far more than political party affiliation.

MedPage Today, 09/29/2023

They Weren't Really Dying Doc Heads for Calaboose

Jesus Virlar-Cadena, a medical director in the Merida Group, a large health care company operating throughout Texas, has been sentenced to over four years in federal prison.

Merida Group marketers falsely told patients they had less than six months to live and even sent chaplains to the patients based on the false pretense they were near death.

In order to bill Medicare for these services, Merida Group hired Virlar and other doctors with Medical director fees contingent upon certifying unqualified patients for hospice.

Virlar certified over \$18 million in unnecessary hospice services as part of a \$150 million conspiracy.

DOJ news release, 09/28/2023

REITs a Good Place to Plunk Down Your Dough

REITs with portfolios heavy LTC assets are being called the "unsung heroes" among investments.

As Baby Boomers age, a higher number of seniors need LTC services that, asset manager Kate Stalter wrote online in *MarketBeat*, means "nursing home REITs could be lucrative investments for the long haul."

The article on the site for stock market news described Sabra Health Care REIT, Omega Healthcare Investors and LTC Properties as high-yield investments, with yields of 8.74%, 8.14% and 7.42%, respectively.

"REITs have built-in tax benefits," she added, "as they are required to distribute at least 90% of their taxable income to shareholders."

MarketBeat, 09/28/2023

States That Require Hospital Nurse/Patient PPD Ratios

Sure, nursing homes are going to be mandated on staff-to-resident ratios, but in some states hospitals will be, as well.

Ohio and Michigan have legislation in the works to establish legally enforceable minimum staffing standards.

Oregon Gov. Tina Kotek in August signed a minimum nurse staffing mandate for hospitals.

The Pennsylvania House passed and sent to the Senate a bill mandating staffing ratios.

And in Washington state a bill was passed that does not establish specific ratios, but if a hospital falls below 80% compliance with its staffing plan it is required to report that noncompliance to the state.

Becker's Hospital Review, 09/28/2023

Closed SNFist Practice To Face False Claims Trial

A once well-regarded but now-shuttered physician practice must face trial in a False Claims Act case alleging it overbilled for skilled nursing care.

Federal prosecutors last year filed suit against General Medicine and 17 related corporate entities owned by Thomas Prose, MD.

In a 96-page complaint, the government argued that the companies intentionally scheduled unnecessary visits with nursing home patients and sometimes duplicated services or up-coded to boost Medicare billing.

General Medicine had sought to have the entire case dismissed but a federal judge ruled the trial will go forward.

McKnight's, 09/28/2023

Racial Slurs Result in Big Payoff to Employees

In a racial harassment and retaliation lawsuit brought by EEOC, an LA-area nursing home has agreed to pay certain employees \$865,000.

EEOC's lawsuit alleged since at least 2018, Riverwalk Post-Acute, a skilled nursing facility in Riverside, California, allowed a class of Black employees to be subjected to racial harassment by residents, co-workers and a supervisor.

The harassment included repeated, frequent and offensive race-based remarks and slurs directed at African-American staff.

EEOC said operators failed to adequately respond to multiple complaints of harassment. Instead, employees were told to tolerate the abusive remarks.

EEOC news release, 09/28/2023

Briefly IN THE NEWS

Surgeons at the University of Maryland Medical Center in Baltimore transplanted the heart of a genetically altered pig into a man with terminal heart disease who had no other hope for treatment. It's the second such procedure performed by the surgeons. The first patient, David Bennett, 57, died two months after his transplant, but the pig heart functioned well and there were no signs of acute organ rejection, a major risk in such procedures (*New York Times*).

Workers in California, including healthcare workers, will soon receive a minimum of five days of paid sick leave annually, instead of three, under a new law Gov. Gavin Newsom signed Wednesday. The law, which takes effect in January, also increases the amount of sick leave workers can carry over into the following year (*AP*).

A Cambridge University study found that people who maintain a broad range of healthy habits - good sleep, physical activity and strong social connections, are significantly less likely to experience episodes of depression. In fact, researchers say those habits can reduce the risk of depression 57% (*NPR Shots*).

Benefit consultants from Mercer, Aon and Willis Towers Watson see employer healthcare costs jumping 5.4% to 8.5% in 2024 due to medical inflation, soaring demand for costly weight-loss drugs and wider availability of high-priced gene therapies. A survey conducted by Mercer found over two thirds of employers either do not plan to shift any cost increase to their staff or will pass on less than the expected rise in 2024 (*Reuters*).

A former Genesis HealthCare executive has launched a new national collaborative meant to educate long-term care professionals on all aspects of wound care and skin health. The Post Acute Wound Skin Integrity Council, or PAWSIC, a nonprofit, will primarily be an educational organization but plans to eventually work with federal officials to develop better national guidance around wound care and related topics (*McKnight's*).