

IN THE NEWS

News for LTC Professionals
in 100 Words-or-Less

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THEY SAID IT:

"The first laboratory-confirmed case of covid was not detected in the U.S. until Jan. 20, 2020. Rosendale's ad is inaccurate and ridiculous. We rate it *Pants on Fire!*" from a report by Politifact on a claim by U.S. Rep. Matt Rosendale that Dr Anthony Fauci shipped COVID-19 to Montana in 2018

"While RAC audits practically halted during the COVID-19 pandemic, activity has picked up substantially following the end of the public health emergency" attorney Amy Fouts in BakerHostetler's Healthcare Industry 2023 Year in Review

"This decision will serve as a reminder to relators (whistleblowers) that frivolous and vexatious matters could lead to being ultimately responsible for material attorney fees" Atty Scott Kiepen, commenting on a whistleblower case dismissed as frivolous in which the attorney was ordered to pay over \$1 million in fees

You Filed the BS Suit, You Pay the Bill

An attorney who brought a False Claims case against a Mississippi long-term care provider must pay the facility's legal fees which could exceed \$1 million.

The would-be whistleblower is an attorney who had previously deposed one of the facility's licensed NPs in another case and learned her multi-state license was temporarily revoked.

Cameron Jehl filed suit claiming Golden Living Center, had received "millions in reimbursement payments" to which it was not entitled.

A lower court last year found that Jehl's claim was frivolous and ruled in the facility's favor.

McKnight's, 02/07/2024

The RAC is Back And You May Pay

Audits of skilled nursing providers by Recovery Audit Contractors are likely to increase this year.

In 2023, regulators instituted audits of facilities using potentially inappropriate diagnoses of schizophrenia, as well as a new, five-claim audit of every US nursing home that was specifically meant to root out improper payments.

States that elect to use the federal RACs to review their managed care programs have reported collecting millions annually, including one state that recouped \$177 million.

States have more information at their fingertips now as they begin to convert their Medicaid rate systems to align with PDPM.

McKnight's, 02/05/2024

HUD Loans Expected To Spiral This Year

The landscape of healthcare financing, especially for skilled nursing facilities, has been undergoing significant shifts in recent times, but the growth outlook has improved, and approval of government-backed loans is expected to rise in the coming months.

One of the key indicators of the sector's financial health is HUD lending volumes – \$2.9 billion annually – which are expected to increase in 2024.

Last year there were actually more new HUD loans than the previous year because rising interest rates reduced the number of refinancings of existing HUD loans.

Skilled Nursing News, 01/30/2024

Granny Cams May Be Headed for Iowa SNF Rooms

Iowa's state legislature has advanced a bill to full committee that would allow residents and their families to install cameras in nursing home rooms.

The bill addresses privacy concerns by requiring written consent from residents or a family member acting on their

behalf, as well as from any roommates, although the proposed law also requires a facility to make a "reasonable" attempt to accommodate a resident whose roommate refuses to give consent.

The bill was unanimously reported out during the week by a subcommittee.

McKnight's, 01/25/2024

7 of 9 Vax Cases Cleared vs Life Care

A federal judge dismissed seven of nine recent workplace discrimination complaints against Life Care Centers of America, operator of more than 200 facilities nationally.

The nine employees alleged their constitutional and state rights had been violated and that they had been the victims of employment discrimination and assault when their applications for religious exemptions to a mandatory COVID vaccine policy were denied.

After refusing the vaccine, the nine were fired in October 2021

The judge ruled two plaintiffs had adequately stated a sincere religious belief that conflicted with Life Care's vaccine mandate policy.

McKnight's, 01/24/2024

Resident Pregnant, Shoddy Investigation, Eventual Cites

The only definite is that a resident got pregnant sometime last September.

Palm Valley Post Acute in Goodyear, Arizona said it investigated, even interviewed the former resident and found no "evidence of inappropriate behavior between the patient and the nursing assistant."

The state investigated in October and unsubstantiated the complaint then returned weeks later, after the former resident filed a report with police, and issued four citations.

The aide has voluntarily surrendered his license.

Goodyear police are investigating. The facility will likely be fined.

KNXV-TV, 02/05/2024

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

AMERICA: Gaps in U.S. laws and regulations that didn't consider the rapid spread of disease in workplaces led to the deaths of tens of thousands of frontline workers. Researchers from George Washington Univ; Harvard and Northwestern University concluded that to increase frontline worker protections, OSHA should beef up its standards, focusing both on preventing workplace exposure to airborne pathogens and on requiring pandemic preparedness plans from employers (*British Medical Journal*).

MICHIGAN: In a study of 3,375 employees and students of the University of Michigan, At 90-days post-infection, 8% of vaccinated cases were still reporting symptoms, compared with 27% of unvaccinated cases. Experiencing five more symptoms at 30- and 90-days post-infection was 63% and 66% less common for vaccinated participants (*Open Forum Infectious Diseases*).

THE WORLD: A study of 99 studies which attempted to standardize a method for categorizing the immunosuppressed as a clinical risk group, found that solid-organ transplant recipients and patients undergoing cancer treatment had a higher risk of mortality than COVID-19 patients with immunocompetent (healthy immune) systems. People with rheumatologic autoimmune diseases and HIV had an only slightly elevated mortality risk compared to immunocompetent patients (*Journal of Infection*).

CALIFORNIA: The winter respiratory virus season may have hit its peak in California. Coronavirus levels in wastewater and COVID-19 hospitalizations are all starting to decline following weeks of steady increases. If the trend continues, 2023-24 would be the mildest winter of the COVID era in terms of severe illness – free of anything even approximating the devastating and disruptive surges seen in prior years (*Los Angeles Times*).

CALIFORNIA: New, relaxed COVID isolation guidance marks a milestone in

public health messaging about the pandemic: Even newly infected people no

longer need to isolate if they have no symptoms, or they can leave home sooner if the illness starts improving quickly. California's stance is even looser than the CDC's, which advises isolating for at least five days after the onset of symptoms or, if asymptomatic, after the first positive test (*The Los Angeles Times*).

THE WORLD: WHO has approved another COVID-19 vaccine for emergency use listing (EUL): Corbevax, a recombinant protein-based vaccine developed by scientists at Texas Children's Hospital and Baylor College of Medicine. Corbevax is the 14th COVID vaccine to receive the WHO EUL (*CIDRAP*).

NEW JERSEY: A federal appeals court shot down claims that New Jersey residents' refusal to wear face masks at school board meetings in two separate school districts during the COVID-19 outbreak violated the First Amendment. The plaintiffs claimed they were retaliated against by school boards because they refused to wear masks during public meetings. In one of the suits, the court sent the case back to a lower court for consideration. In the other, it said the plaintiff failed to show she was retaliated against (*AP*).

AMERICA: Medicare patients who were at the highest risk for severe COVID-19—such as Black patients, patients older than 90, and patients living in nursing homes—received antiviral treatments less often than those who had the least risk. Harvard researchers found that if the high-risk patients in the study had been treated with Paxlovid, 16% of the deaths in the study would have been prevented, (*Fortune*).

THE WORLD: In a study involving 100 adult patients, half diagnosed with long COVID and half with fibromyalgia, researchers found a distinct chemical marker in the blood of fibromyalgia patients, which was absent in those with long COVID. This groundbreaking study,

done in collaboration with researchers at the Ohio State University, introduces a blood test that can differentiate between patients suffering from fibromyalgia versus long COVID with 100% accuracy where there had been none previously. Symptoms of the two conditions overlap making diagnosis previously difficult (*Biomedicines*).

WASHINGTON, D.C: Biden administration officials this week pushed executives from leading pharmacy chains to make sure frontline staff are providing patients with accurate information about costs of the effective COVID-19 treatment Paxlovid. Uptake of the Pfizer antiviral has remained stubbornly low since it transitioned to the commercial market in the fall, in part because of patients sometimes being charged up to the full list price of \$1,400 (*Axios*).

AMERICA: Boston University and the University of Pennsylvania shows that a substantial proportion of excess deaths counted as from natural causes during the COVID-19 pandemic were attributable to the novel coronavirus. A total of 162,886 of these excess natural-cause deaths were not reported as COVID-19. While other assessments of excess US mortality rates during the pandemic looked at interruptions in medical care and lockdowns, this study associated excess deaths temporally with local increases in COVID-19 activity (*Proceedings of the National Academy of Sciences*).

AMERICA: While telemedicine helped some groups seeking mental health care during the COVID-19 pandemic, Americans with serious mental health symptoms suffered from a decline in in-person outpatient mental health visits that has persisted. Moreover, this lack of outpatient care for those with significant mental illness was seen mostly in patients with lower incomes and education levels (*Annals of Internal Medicine*).

COVID-19, 02/09/2024

Global Cases – Deaths
774,469,939 – 7,026,465

U.S. Hospitalizations – Deaths
6,793,622 – 1,176,639

CDC, WHO

Ad Wrong in Claiming Fauci Shipped COVID to Montana

A fundraising ad for Montana Congressman Matt Rosendale claims that Dr. Anthony Fauci “brought COVID to Montana one year before COVID broke out in the U.S.”

The ad shows Fauci, former director of the National Institute of Allergy and Infectious Diseases, behind bars, swarmed by flying bats.

Politifact has given the AD its “Pants on Fire” designation, i.e. it’s not true.

Rosendale’s statements seem to stem from a Rocky Mountain Laboratories study from 2016 that looked into how a coronavirus, WIV1-CoV, acted in Egyptian fruit bats. That virus is not related to the virus that causes COVID.

Politifact, 02/05/2024

Sanders Making Drug Companies ‘Feel the Burn’

Sen. Bernie Sanders is once again taking the pharmaceutical industry to task. The Vermont Independent issued a report Tuesday in advance of Committee meeting Thursday, that highlights the cost of three blockbuster drugs that are far pricier in the US than in other countries.

The differences are striking.

Example: The annual list price of Bristol Myers Squibb’s Eliquis, a blood thinner that reduces the risk of stroke, is \$940 in Japan, in Canada, it’s \$900; in Germany, it’s \$770; in the United Kingdom, it’s \$760; and in France, it’s \$650.

But in the U.S. Eliquis is \$7,100.

CNN, 02/06/2024

HHS-OIG Reports FY23 Enforcement Actions

In the second half of fiscal 2023 HHS-OIG generated 65 audit reports and 22 evaluation reports identifying \$82.7 million in expected recoveries and \$1.2 billion in questioned costs.

OIG’s report also summarized work of the entire fiscal year 2023, projecting expected recoveries worth more than \$3.44 billion. OIG expects returns of more

than \$283 million from audit findings and \$3.16 billion based on investigations.

There were 707 criminal enforcement actions against people and organizations suspected of crimes against government programs, as well as 746 civil actions and exclusions of 2,112 people and organizations from participating in federal health care programs.

Medical Economics, 01/04/2024

Poorly Timed Raffle May Invalidate Union Vote

A raffle offering workers at Heartwood Extended Health Care in Tacoma, WA thousands of dollars in prizes will likely invalidate the results of a nursing home union election.

The regional NLRB board decided that the raffle — offering a laptop computer, several \$100 gift cards and televisions — unlawfully influenced the outcome of the election.

A three-member panel of the NLRB upheld that decision.

Both sides questioned ballots. At issue with most of the questioned ballots was whether they came from full-time employees or if the newly hired submitters were invalid “contract” nurses.

McKnight’s, 02/07/2024

4-State Association Merger Mirrors Sector Efficiency Trend

A new regional merger of four Gulf state nursing home associations promises to add scale and efficiency to existing resources.

The prominent nonprofit association, now rebranded as LeadingAge Southeast, will consist of associations from Florida, Mississippi, Louisiana and Alabama and represent more than 600 member skilled nursing facilities with 80,000 residents across the region.

Steve Bahmer, president and CEO of LeadingAge SE noted that this is not the first merger between LeadingAge state branches. The state associations of Maine and New Hampshire and those of New Jersey and Delaware also operate as single entities.

McKnight’s, 01/18/2024

ONE COLUMN

Paxlovid Cuts COVID Deaths But Most Don’t Take It

As Covid rises again, killing about 1,500 Americans each week, medical researchers of the National Institutes of Health, are trying to understand why so few people are taking Paxlovid, a medicine that is stunningly effective in preventing severe illness and death from the disease.

A study of a million high-risk people with COVID found that only about 15% who were eligible for the drug took it.

If instead half of the eligible U.S. patients had gotten Paxlovid during the time period of the research, 48,000 deaths could have been prevented.

Paxlovid, is a drug made by Pfizer, FDA-approved for adults 65+ and people with diabetes, obesity, asthma and other conditions.

It’s not because people don’t know about the drug — most do — but the reluctance seems to come from doctors worried about interactions with other drugs and people wary of a possible rebound case or the metallic aftertaste.

Regional differences offer a clue, with uptake highest in the blue areas of the Northeast and Pacific Northwest and lowest in deep red areas including Florida and Indiana.

Yet no careful study has clarified why so few people used the medication, which cut the risk of death by 73% for high-risk patients in the N.I.H. study.

Over the course of the entire million-person N.I.H. study, about 10% of high-risk patients eligible for Paxlovid took it, though the rate rose to about 15% toward the end of the study period in early 2023.

All told, the N.I.H. authors estimated that about 135,000 hospitalizations and 48,000 deaths could have been avoided if half of the patients eligible for the antiviral got it.

The New York Times,
01/04/2024

Half the Existing SNFs Could Be History by '34

The number of skilled nursing facilities certified by CMS peaked in 2017 but declined by 4% overall between 2015 and 2023 — a net loss of nearly 650 facilities. Meanwhile, the total number of nursing home residents dropped even more — 12%, during the same period.

Further, the average number of nurse hours PPD also has dropped.

Melissa Brown, COO of Gravity Healthcare Consulting sees it as a troubling trend.

"I believe that if major changes are not implemented now, we will see closures of at least 25% to 50% of the current nursing homes in the next five to 10 years."

McKnight's, 01/08/2024

A Call for CMS to Up Scrutiny On Related-Party Dealings

The National Consumer Voice for Quality Long-Term Care expressed concern that CMS' current oversight of nursing homes' related-party dealings is inadequate to catch any potential instances of nursing homes charging inflated service rates to their own facilities through related parties that they also own.

The group's report claims that as many as 75% of nursing homes currently use related-party transactions.

While acknowledging that CMS requires facilities to disclose these transactions, the advocacy group claimed that some related-party payments far exceed allowed Medicare costs and that CMS is not fulfilling its obligation to ensure effective use of public money.

McKnight's, 02/09/2024

150-bed Connecticut Nursing Home to Close

Middlesex Health Care Center in Middletown, Connecticut will close "on or before" March 4.

The home's operator, Athena Health Care Systems, cited costs of upgrading, staffing and rising costs.

The 150-bed skilled nursing facility currently has 55 residents.

The Middletown Press, 01/05/2024

WOW—Talking Same Language. What Next?

To reduce rehospitalizations, researchers have developed a new app that allows hospitals to speak the same language as the nursing homes receiving their newly discharged patients.

The app bridges the gap between medical records systems that use different data storage technologies and offers patient information in a format influenced by nursing home workers themselves.

The development stems from a study that started with a team of experienced nursing home nurses identifying key data points.

Journal of the American Medical Directors Association, 12/18/2023

Class Action Sought vs Canadian Nursing Homes

Lawyers representing long-term care residents who suffered or died during the COVID-19 pandemic argued a class-action suit against 304 Canadian nursing homes is the best way for those patients or families to get justice.

Lawyers argued the homes took a reactive, "wait-and-see" approach and "inexplicably" failed to follow the precautionary principle even while watching the disease take hold in Asia, resulting in thousands of unnecessary deaths,

Among other things the attorneys cited a lack of sanitary conditions and infection prevention and control (IPAC) measures, insufficient PPE supplies, and chronic understaffing.

A judge will decide whether the class action will proceed.

Trillium, 01/15/2024

Free COVID Test Kits

COVIDTests.gov

Briefly IN THE NEWS

Utah-based PACS Group (200+ SNFs in 9 states) announced Derick Apt is its new chief financial officer, succeeding Mark Hancock, who held that position since co-founding the post-acute ownership group in 2013. Hancock has moved into a new role of executive vice chairman (**PACS News release**).

Ethylene oxide the chemical used to sterilize half of all medical devices in the U.S. is also known to cause cancer. After years of deliberating on alternatives, the FDA this month deemed a safer gas, vaporized hydrogen peroxide, a legitimate way to decontaminate devices (**STAT**).

Samsung Electronics is exploring the development of noninvasive (no-prick) glucose monitoring and continuous blood pressure checking, setting its sights on ambitious health-care goals in a race with Apple and other tech giants. The work is part of a broader push to put health features in a range of devices. The company aims to eventually give consumers a complete picture of their well-being via sensors on different parts of the body and around the home (**Bloomberg**).

The landscape of healthcare financing, especially for skilled nursing facilities, has been undergoing significant shifts in recent times, but the growth outlook has improved and approval of government-backed loans is expected to rise in the coming months. One of the key indicators of the sector's financial health are HUD lending volumes, which are expected to increase in 2024 (**Skilled Nursing News**).

Omega Healthcare Investors is moving six more LaVie properties to new operators and likely will take the same approach with a half dozen properties run by Guardian Healthcare. Last year the REIT transitioned 30 LaVie properties to new tenants. During fourth quarter earnings call the company reported funds from operations at \$129 million for quarter four, compared to a loss of \$30 million to close out 2022 (**McKnight's**).

