YEAR-END REPORT - 2019

Published 23-Dec-2019
HPTS Issue Brief 12-23-19.24

Health Policy Tracking Service - Issue Briefs
Long-Term Care
Facility Quality and Safety

Authored by Andrew Lee, J.D., a contributing writer and Sydney Brude, a compliance attorney at the Publisher's Staff and a member of the Minnesota bar. Updated by Melissa D. Berry, Principal Attorney Editor, a member of the publisher's staff and licensed to practice in the State of Ohio.

12/23/2019

I. Background: Facility Care Scrutinized

NY AG Announces $600 Settlement Over Delayed Discharges

On December 16, New York Attorney General Eric T. Schneiderman announced that Elant, Inc., a Mid-Hudson area nursing home chain, will pay $600,000 to resolve claims that it delayed the discharges of short-term residents at its facilities. As part of a settlement, Elant admitted that between 2008 and 2011 it had a practice of postponing discharges of short-term residents who were clinically ready to leave Elant facilities against the wishes or without the informed consent of the residents or their families. Elant, which is headquartered in Goshen, also admitted that it orchestrated the transfer of several long-term residents to one of its financially-troubled facilities to improve that facility's financial condition.

”Nursing homes must not put their own financial interests above those of their residents – patients who rely on them for their care and treatment – and New York taxpayers,” Attorney General Schneiderman said. “All nursing home residents have a right to accurate and complete information about their options. Indeed, they need that information to make informed decisions about their care. My office will find those who use patients to siphon off critical taxpayer funds.”

“This settlement sends a clear and unmistakable message to those who seek to profit at the expense of vulnerable New Yorkers- and New York's taxpayers: you will be held fully accountable,” said Dennis Rosen, Medicaid Inspector General.

The settlement agreement follows a joint investigation of Elant by the Attorney General's Medicaid Fraud Control Unit and New York State Department of Health. Elant currently owns six nursing homes in Orange, Dutchess, and Westchester counties, but it has announced plans to try to sell several of the homes.

In the settlement agreement, Elant admitted that senior managers directed nursing home administrators to limit the number of planned discharges of short-term residents to two or three residents per week. Most short-term residents at nursing homes receive physical or occupational therapy following events such as strokes or broken hips. Elant admitted that the purpose of the delays was financial and that the practices were primarily directed at residents with Medicare or Medicaid coverage. Elant also admitted that it prolonged short-term stays by giving residents additional services that were not clinically necessary, avoiding residents who were actively seeking discharge, and delaying the completion of discharge paperwork.

The investigation revealed that administrators and staff openly discussed efforts to delay discharges and thereby keep daily resident counts for each home, which were known as the census, as high as possible. For instance, one former senior executive told other executives by email, “We need to slow discharges across the system. I will send the message to Goshen but please let the other buildings know.” Similarly, another senior executive sent an email with the subject line “Census” that stated, “As can be seen from this morning's census report, we are down across the system. Please manage your census this week and whatever discharges can be avoided, please do so. Residents and families can be very obstinate.” In emails, Elant personnel acknowledged that they were holding residents to help Elant's census. For example, one nursing home administrator began an update on discharges by noting, “We have held these discharges off in a number of cases due to low census.” Similarly, in another email thread about census in one facility, an Elant administrator acknowledged, “we are really holding these people against their will.”

The investigation also revealed that senior executives orchestrated the transfer of residents to Elant's financially-troubled facility in Westchester County, which used to be known as Elant at Brandywine. One such effort in early 2009 was designed to increase the

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

number of residents in advance of two meetings between executives and members of Elant's Board of Directors. Elant targeted certain residents with Medicaid coverage for transfer.

In connection with the investigation, the Department of Health sought the revocation of the nursing home administrator licenses of two former Chief Executive Officers of Elant and two former administrators of Elant skilled nursing facilities. Both of the former CEOs have surrendered their licenses, as has one of the former administrators. The license proceeding against one of the former administrators is ongoing.

Under the settlement, Elant must undertake a series of steps to ensure residents' rights are protected. Specifically, Elant agreed to adopt new policies that include prohibitions on deceiving residents about their discharge options and restrictions on taking Elant's finances into account when discharging residents. The settlement also requires Elant to enter into a Corporate Integrity Agreement with the Office of the Medicaid Inspector General ("OMIG"). Corporate Integrity Agreements typically require an outside monitor to oversee the activities of an organization for several years. In addition, the settlement allows OMIG to prevent Elant from employing people who were involved in the schemes to delay discharges or improperly transfer residents.

U.S. Population Aging Slower than Other Countries, Census Bureau Reports

America's 65-and-over population is projected to nearly double over the next three decades, ballooning from 48 million to 88 million by 2050. However, in a report released March 28, the U.S. Census Bureau projects the U.S. population will age at a slower rate compared with other countries. [FN1]

Worldwide, the 65-and-over population wills more than double to 1.6 billion by 2050, according to An Aging World: 2015. This new report from the Census Bureau examines the continuing global aging trend and projected growth of the population age 65 and over, with an emphasis on the differences among world regions.

In 2015, 14.9 percent of the U.S. population was 65 or over.

"The United States was the 48th oldest country out of 228 countries and areas in the world in 2015," said Wan He, a demographer on population aging research at the Census Bureau. "Baby boomers began reaching age 65 in 2011 and by 2050 the older share of the U.S. population will increase to 22.1 percent. However, the U.S. will fall to 85th because of the more rapid pace of aging in many Asian and Latin American countries."

Japan is the current oldest country in the world and will retain that position in 2050.

"However, South Korea, Hong Kong and Taiwan are projected to overtake Germany, Italy and Greece for second, third and fourth place by 2050," He said.

Some countries, including China, India, Indonesia, Brazil, Colombia and Cuba, will experience a quadrupling of their oldest-old population, those 80 and over, from 2015 to 2050.

While Europe is still the oldest region today and is projected to remain so by 2050, aging in Asia and Latin America has accelerated in recent decades. Asia is also notable for leading the world in the size of the older population with 341 million people 65 and older. On the other hand, Africa remained young in 2015, where only 3.5 percent of the total population was 65 and over.

Other highlights:

• Labor force participation among the older population continues to rise in many developed countries, yet remains highest in low-income countries.

• The last recession had a major impact on unemployment rates and financial assets among many older people in more developed countries. However, the trend of rising labor force participation rates among the population age 60 and older in these countries was not halted.

Full report available at: https://www.census.gov/newsroom/press-releases/2016/cb16-54.html.

Complaints Against Nursing Homes Are Rising

A September 29, 2017 report [FN2] from Health and Human Services Office of Inspector General indicates complaints against nursing homes are on the rise. In 2015, there were 62,790 complaints made against nursing homes, compared to 47,279 in 2011, though the number of nursing home residents actually declined slightly. States prioritized more than half of nursing home complaints into the most serious categories — "immediate jeopardy" and "high priority" — which require onsite investigations within 2 or 10 working days, respectively.

CMS Fine Iowa Nursing Home $77,000 Over Patient's Painful Death

The Des Moines Register reports that CMS is fining a northern Iowa nursing home $77,462 where an elderly woman died after suffering from dehydration. [FN3] The 87-year-old woman died in February at the Timely Mission nursing home in Buffalo Center, Iowa.

State inspectors reported the woman was in severe pain in the days leading to her death and may have gone several days without water.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

The Iowa Department of Inspectors and Appeals proposed a $29,750 for the woman's death, but allowed CMS to take over the case.

If the nursing home's owners decide to forego an appeal, the penalty is subject to a 35 percent reduction.

Minnesota Clears Backlog of Elder Abuse Complaints

The Minnesota Star Tribune reports that state health regulators have eliminated a backlog of more than 3,000 unresolved complaints alleging abuse and neglect at Minnesota senior care facilities. [FN4]

Minnesota began 2018 with 3,147 reports of abuse and maltreatment to investigate, including incidents in nursing homes and assisted-living facilities. As a result of the backlog, state investigators sometimes took months or even years to complete investigations.

Responding to pressure from family members of abuse victims, the Office of Health Facility Complaints, a division of the Minnesota Department of Health, has cleared the backlog and also implemented a new electronic system for processing the nearly 400 new allegations it receives weekly.

II. Legislative Overview

Legislative activity concerning quality and safety in long-term care facilities can be categorized into five major themes:

1) Quality of Care;

2) Safety and Protection;

3) Comfort of Residents;

4) Quality of Life; and

5) Ownership and Management of Facilities.

Long-term care has been described as a “variety of services and supports that meet health or personal needs over an extended period of time.” [FN5] Another source describes long-term care as the help people need when physical or mental disabilities impair their capacity to perform the basic tasks of everyday life. [FN6]

The need for long-term care can occur at any age. CMS reports that close to three million Americans, most of who are Medicare or Medicaid enrollees, require life saving or sustaining care from one of the nation's 16,000 nursing homes at some time during each year. [FN7] In fact, it was noted in a report that many thousands of children with disabilities live in nursing homes. [FN8] Studies show that 70% of all persons over the age of 65 will need long term care services at some point in their life [FN9] and that 40% of all persons over 65 will need care in a nursing home. [FN10]

I II . Quality of Care

CMS Adds New Quality Measures to Nursing Home Compare

On April 27, the Centers for Medicare & Medicaid Services (CMS) added six new quality measures to its consumer-based Nursing Home Compare website (https://www.medicare.gov/nursinghomecompare/search.html). Three of these six new quality measures are based on Medicare-claims data submitted by hospitals, which is significant because this is the first time CMS is including quality measures that are not based solely on data that are self-reported by nursing homes. These three quality measures measure the rate of rehospitalization, emergency room use, and community discharge among nursing home residents. They include:

• Percentage of short-stay residents who were successfully discharged to the community (Medicare claims- and MDS-based)

• Percentage of short-stay residents who have had an outpatient emergency department visit (Medicare claims- and MDS-based)

• Percentage of short-stay residents who were re-hospitalized after a nursing home admission (Medicare claims- and MDS-based)

• Percentage of short-stay residents who made improvements in function (MDS-based)

• Percentage of long-stay residents whose ability to move independently worsened (MDS-based)

• Percentage of long-stay residents who received an antianxiety or hypnotic medication (MDS-based)

“These new quality measures broaden the set of quality measures already on the site so that patients, their family members, and caregivers have more meaningful information when they consider facilities,” said CMS Deputy Administrator and Chief Medical Officer Patrick Conway, M.D., MSc.

With today's quality measure updates, CMS is nearly doubling the number of short-stay measures, which reflect care provided to residents who are in the nursing home for 100 days or less, on Nursing Home Compare. CMS is also providing information about key short-stay outcomes, including the percentage of residents who are successfully discharged and the rate of activities of daily life (ADL) improvement among short-stay residents.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Beginning in July 2016, CMS incorporated all of these measures, except for the antianxiety/hypnotic medication measure, into the calculation of the Nursing Home Five-Star Quality Ratings. CMS is not incorporating the antianxiety/hypnotic medication measure because it has been difficult to determine appropriate nursing home benchmarks for the acceptable use of these medications.

CMS Releases Nursing Home Action Plan for FY 2016 to 2017

On May 20, the CMS Center for Clinical Standards and Quality/Survey & Certification Group released its FY 2016 to 2017 Nursing Home Action Plan (the Plan). The Action Plan is located on the CMS website at http://www.cms.gov/Medicare/ProviderEnrollment-and-Certification/CertificationandComplianc/NHs.html. The Plan outlines five inter-related and coordinated approaches – or principles of action – for nursing home quality, ultimately aligning with CMS' main goals.

The Plan is organized into five actionable strategies:

1) Enhance Consumer Awareness and Assistance

Consumers are essential participants in ensuring the quality of care in any health care system. The availability of relevant, timely information can significantly assist consumers with actively managing their own care. Additionally, this information can enable individuals to hold the health care system accountable for the quality of services and support that should be provided. To that end, the DNH seeks to provide an increasing array of understandable information that can be readily accessed by the public. The CMS website, https://www.Medicare.gov, features important educational resources such as Nursing Home Compare as well as other information for consumers, families, and friends.

2) Strengthen Survey Processes, Standards and Training

The DNH is engaged in several ongoing initiatives to improve the effectiveness of annual nursing home surveys (standard surveys), as well as the investigations that are prompted by complaints (complaint surveys) from consumers or family members about nursing homes. The DNH also has improved the way that data are captured from oversight of state surveys. By strengthening the survey processes, the DNH believes that State Agencies will drive improvement at the population level in nursing homes. This, in turn, is likely to reduce the number of adverse events and preventable healthcare acquired conditions, leading to lower per capita costs.

3) Improve Enforcement Activities

The DNH is dedicated to maintaining an enforcement system that is centered on promoting quality resident-centered health and safety to nursing home residents and compliance with federal requirements. To improve our current enforcement efforts, we will continue to work in partnership with Regional Offices, States, consumer advocates, national associations, and others.

4) Promote Quality Improvement

We continue to promote comprehensive quality improvement programs in a number of key areas, including reductions in the use of physical restraints, the prevalence of preventable pressure ulcers and reduction in use of unnecessary antipsychotic medication. In an effort to achieve these quality improvement goals, the Agency's participation in the Advancing Excellence in America's Nursing Homes Campaign as well as support of the national “culture change” movement continues to grow. The principles behind culture change echo the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) principles of person-centered care – embracing individualized approaches to care.

5) Create Strategic Approaches through Partnerships

No single approach or individual can fully assure better health care. Rather, we must combine, coordinate, and mobilize many people and techniques through a partnership approach. State survey agencies and others are committed to such a common endeavor. The differences in their responsibilities remain, but their distinct roles can be coordinated in a number of appropriate ways to achieve better results than can be achieved by any one actor alone. In addition, the DNH plans to strengthen our partnerships with non-governmental organizations that are also committed to quality improvement in nursing homes. In May 2006, we began partnering with stakeholders to design and then facilitate the Advancing Excellence in America's Nursing Homes Campaign. The unprecedented, collaborative campaign seeks to better define quantitative goals in nursing home quality improvement. The DNH also partners with Quality Improvement Organizations (QIOs) to improve care for the millions of nursing home residents across the country and in April 2015, with the QIOs, CMS launched the National Nursing Home Quality Care Collaborative. The Collaborative will strive to instill quality and performance improvement practices, eliminate health care-acquired conditions and improve resident satisfaction by focusing on the systems that impact quality.

More than 3 million Americans rely on services provided by nursing homes at some point during the year; 1.4 million Americans reside in the Nation's approximately 15,654 nursing homes on any given day. Those individuals and an even larger number of their family members, friends, and relatives must be able to count on nursing homes to provide reliable, high quality care.

Final FY 2017 Payment and Policy Changes for Medicare SNFs

On July 29, 2016, the Centers for Medicare & Medicaid Services (CMS) issued a final rule outlining fiscal year (FY) 2017 Medicare payment policies and rates for the Skilled Nursing Facility Prospective Payment System (SNF PPS), the SNF Quality Reporting Program (SNF QRP), and the SNF Value-Based Purchasing (SNF VBP) Program. The FY 2017 final policies are summarized below.

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

The policies in the final rule continue to shift Medicare payments from volume to value. The Administration has set measurable goals and a timeline to move the Medicare program, and the health care system at large, toward paying providers based on the quality, rather than the quantity of care they provide to their patients. This final rule includes policies that advance that vision and support building a health care system that delivers better care, spends health care dollars more wisely, and results in healthier people.

CMS projects that aggregate payments to SNFs will increase in FY 2017 by $920 million, or 2.4 percent, from payments in FY 2016. This estimated increase is attributable to a 2.7 percent market basket increase reduced by 0.3 percentage points, in accordance with the multifactor productivity adjustment required by law.

The Improving Medicare Post-Acute Care Transformation Act of 2014 (the IMPACT Act) added Section 1899B to the Social Security Act that requires SNFs to report data on measures that satisfy measure domains specified in the Act. Section 1899B also requires that these measures be aligned with measures implemented for Long-Term Care Hospitals (LTCHs), Inpatient Rehabilitation Facilities, SNFs, and Home Health Agencies (HHAs). This final rule adopts three measures to meet the resource use and other measure domains and one measure to satisfy the domain of medication reconciliation. SNFs that fail to submit the required quality data to CMS will be subject to a 2 percentage point reduction to the annual market basket percentage update factor for fiscal years beginning with FY 2018.

Finalized Changes:

The quality measures finalized for the FY 2018 payment determination and subsequent years to meet the resource use and other measure domain are as follows:

• Medicare Spending Per Beneficiary - Post-Acute Care (PAC) SNF QRP

• Discharge to Community – PAC SNF QRP

• Potentially Preventable 30-Day Post-Discharge Readmission – SNF QRP.

The quality measure finalized for the FY 2020 payment determination and subsequent years to meet the medication reconciliation domain is:

• Drug Regimen Review Conducted with Follow-Up for Identified Issues. Policies and procedures associated with public reporting are also being finalized, including the reporting timelines, preview period, review and correction of assessment-based and claims-based quality measure data, and the provision of confidential feedback reports to SNFs. SNF Value-Based Purchasing (VBP) Program Section 215 of the Protecting Access to Medicare Act of 2014 (PAMA) authorizes the establishment of a SNF VBP Program beginning with FY 2019 under which value-based incentive payments are made to SNFs based on performance.

In this final rule, CMS has also finalized additional policies related to the SNF VBP Program.

Other Policies:

• This final rule specifies the SNF 30-Day Potentially Preventable Readmission Measure, (SNFPPR), as the all-cause, all-condition risk-adjusted potentially preventable hospital readmission measure as required by law. The SNFPPR assesses the facility-level risk-standardized rate of unplanned, potentially preventable hospital readmissions for SNF patients within 30 days of discharge from a prior admission to a hospital paid under the Inpatient Prospective Payment System, a critical access hospital, or a psychiatric hospital.

• Establishing performance standards;

• Establishing baseline and performance periods;

• Adopting a performance scoring methodology; and

• Providing confidential feedback reports to SNFs.

• For More Information

The final rule displayed on July 29, 2016, at the Federal Register's Public Inspection Desk and will be available under “Special Filings,” at http://www.federalregister.gov/inspection.aspx.

It will publish in the August 5, 2016 *Federal Register* and become effective on October 1, 2016.

Skilled Nursing Facilities Get 2.5% Increase for FY 2017

In a final rule [FN11] updated payment rates used under the prospective payment system for skilled nursing facilities for FY 2017. Under the rule, CMS is doubling the increase that skilled nursing facilities received last year, by 2.4% which would amount to an increase of $920 million. Along with the payment increase, CMS included the value-based SNF 30-Day Potentially preventable Readmission Measure, set to start in FY 2019.

CMS Updates Nursing Home Five-Star Quality Ratings

On August 10, the Centers for Medicare & Medicaid Services (CMS) updated the popular Nursing Home Compare Five-Star Quality Ratings to incorporate new measures, giving families more information at their fingertips to help them make important decisions about

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

care. These new measures look at successful discharges, emergency visits, and re-hospitalizations, and complement other nursing home measures previously announced in April.

“When residents and their families are faced with important decisions about care, they need an easy, transparent way to figure out which facility is the best fit for them or their loved ones,” said CMS Deputy Administrator and Chief Medical Officer Patrick Conway, M.D., MSc. “With this update, star ratings will provide an even more accurate reflection of the services that nursing homes provide.”

CMS is committed to making sure those residents, their family members, and caregivers have the most meaningful information possible when they consider facilities. Nursing Home Compare is the agency's public information website that provides information on how well Medicare and Medicaid certified nursing homes provide care to their residents.

Nursing homes receive four different star ratings on the Nursing Home Compare website (each ranging from 1 to 5 stars): one for each of the components –health inspections, staffing, and quality measures – and one for an overall rating, which is calculated by combining each of the three component star ratings. With the new quality measures added to the calculations, the quality measures star rating for each nursing home, as well as the overall rating, will likely change.

As part of a broader effort at data transparency and consumer choice, CMS hosts a number of sites to help those seeking health care compare various facilities based on star ratings. They include: Hospital Compare, Physician Compare, Medicare Plan Finder, Dialysis Compare, and Home Health Compare. These star rating programs are part of the Administration's Open Data Initiative which aims to make government data freely available and useful while ensuring privacy, confidentiality, and security.

More information on the announcement is available at: https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-08-10.html.

CMS Reports Sharp Reduction in Avoidable Hospitalizations Among Long-Term Care Facility Residents

On January 17, CMS released a data brief reporting a sharp reduction in avoidable hospitalizations among long-term care facility residents. [FN12]

For long-term care facility residents, avoidable hospitalizations can be dangerous, disruptive, and disorienting. Keeping our most vulnerable citizens healthy when they are residents of long-term care facilities and reducing potentially avoidable hospital stays has been a point of emphasis for the Centers for Medicare & Medicaid Services (CMS).

Over the last several years, with the help from the Affordable Care Act, Medicare and Medicaid have worked with other federal government agencies, states, patient organizations, and others to identify and prevent those health conditions that have caused long-term care residents to be unnecessarily hospitalized. Because of these efforts, we have seen a dramatic reduction in avoidable hospitalizations over the last several years, according to below analysis released by CMS today.

In 2001, the Agency for Healthcare Research and Quality (AHRQ) first identified a set of measures designed to identify hospitalizations that could potentially be avoided with appropriate outpatient care. They include hospital admissions for largely preventable or manageable conditions like bacterial pneumonia, urinary tract infections, congestive heart failure, dehydration, and chronic obstructive pulmonary disease. More recently, CMS's own Office of Enterprise Data and Analytics found that instances of these potentially avoidable hospitalizations (PAH) were disproportionally high among some of our nation's most vulnerable people, those dually eligible for Medicare and Medicaid living in long-term care facilities.

Treating conditions before hospitalization and preventing these conditions whenever possible would not only help long-term care facility residents stay healthy, but may also save Medicare and Medicaid money. After carefully examining this problem, CMS and others focused on reducing the instances of potentially avoidable hospitalizations from these facilities.

In 2015, Medicare fee-for-service (FFS) beneficiaries living in long-term care facilities had a total of 352,000 hospitalizations. Of this number, Medicare beneficiaries eligible for full Medicaid benefits living in long-term care facilities (LTC Duals) accounted for 270,000 hospitalizations. And, almost a third (approximately 80,000) of these hospitalizations was caused by six potentially avoidable conditions: bacterial pneumonia, urinary tract infections, congestive heart failure, dehydration, chronic obstructive pulmonary disease or asthma, and skin ulcers.

Through the concerted effort by CMS and many other to address these potentially avoidable conditions, real progress has been made to improve the health and wellbeing of some of our country's most vulnerable citizens. In recent years, the overall rate of hospitalizations declined by 13 percent for dually eligible Medicare and Medicaid beneficiaries. But we have seen even larger decreases in hospitalization rates for potentially avoidable conditions among beneficiaries living in long-term care facilities. Specifically, between 2010 and 2015, the hospitalization rate for the six potentially avoidable conditions listed above decreased by 31 percent for Medicare and Medicaid dually-eligible beneficiaries living in long-term care facilities.

In 2010, the rate of potentially avoidable hospitalizations for dually-eligible beneficiaries in long term care facilities was 227 per 1,000 beneficiaries; by 2015 the rate had decreased to 157 per 1,000. This decrease in potentially avoidable hospitalizations happened nationwide, with improvement in all 50 states. The reduced rate of potentially avoidable hospitalizations means that dually-eligible long-term care facility residents avoided 133,000 hospitalizations over the past five years.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

This success would not be possible without the committed work by those who directly serve older adults and people with disabilities. We also should consider the range of other contributing factors, including:

• An initiative launched in 2011 by the Medicare-Medicaid Coordination Office, CMS Innovation Center, and other partners to reduce avoidable hospitalizations among nursing facility residents in seven sites across the country. This initiative aimed at keeping dually-eligible long-term care residents healthy by focusing on preventable conditions that lead to hospitalizations.

• The AHRQ Safety Program for Long-Term Care significantly reduced catheter-associated urinary tract infections in hundreds of participating long-term care facilities nationwide, which helped prevent a recognized cause of hospitalizations in residents of these facilities.

• This work is in addition to the many other efforts and initiatives, including the Hospital Readmission Reduction Program, and systemic efforts to reduce readmissions through the Partnership for Patients;

• The efforts to align care with quality through Accountable Care Organizations, the Bundled Payments for Care Improvement models, and other delivery system reforms;

• And, finally, the countless other industry-led initiatives focusing on quality improvement and specifically reducing hospitalization rates among long-term care facility residents.

This success shows that a sustained commitment to smarter spending across the entire health care system can yield dramatic results and improve the lives of vulnerable Americans. These results are also consistent with other ongoing collaborative efforts to improve the quality of care patients received through preventing hospital-acquired conditions where approximately 125,000 fewer patients died due to hospital-acquired conditions and more than $28 billion in health care costs were saved from 2010 through 2015.

Finding the best possible long-term care facility care for a loved one is one of the most difficult decisions family members can make. Family members want to be assured that their loved one will receive the highest quality of care in a healthy environment. And thanks to efforts across the health care industry, and with tools from the Affordable Care Act that allow CMS to improve quality and test innovative strategies, these residents are living in safer, healthier environments.

Kansas Failed to Verify Correction of Identified Survey Deficiencies

In a recent report, the OIG found that the Kansas Department of Aging and Disability Services (Department) did not always verify nursing homes had corrected deficiencies identified during surveys in CY 2014 in accordance with federal requirements. [FN13] The OIG estimated that the Department did not obtain the nursing homes' evidence of correction for 53 percent of the deficiencies identified during surveys in CY 2014.

The OIG also estimated that the Department could not provide sufficient evidence that corrective actions had been taken by nursing homes for 13 percent of the deficiencies identified during surveys in CY 2014. Further, the OIG found that the Department did not conduct required standard surveys within 15 months of the previous standard surveys for 35 of 79 nursing homes in CY 2014.

The OIG recommended that the Department improve its practices for verifying nursing homes' correction of identified deficiencies by obtaining nursing homes' evidence of correction, update controls, policies and procedures to ensure that survey system data is protected against unauthorized or unintended modification or loss, and develop and implement a correction plan to ensure that the interval between consecutive standard surveys does not exceed 15 months.

Providers Critical of Trump Budget, Which Would Cut Medicare, Kill AHRQ, Slash IT Agency

Health care professionals are critical of the administration's new budget proposal. [FN14] Some of the largest cuts would directly affect the oldest citizens, including cuts to Medicaid, Medicare, and cuts to HUD, which provides low income housing to the elderly. Although Congress does not have to accept the President's recommendations, it does make the administration's priorities clear.

Experts: Hospitals Should Work Directly with Nursing Homes to Address Infections

Currently, nursing homes and rehab facilities are lagging behind in their ability to control infections among the people living at the facility. [FN15] Hospitals are able to dedicate a greater number of people and a larger amount of resources in order to research and implement the best containment solutions. The University of Michigan Medical School has suggested that, due to the increased resources of hospitals and the overwhelming interest in containing these types of infections, hospitals should work directly with nursing homes and rehab facilities to implement the best containment solutions.

Senate Democrats Ask HHS To Restore Some Nursing Home Regulations

After the current administration rolled back CMS standards and fines for certain federal regulations, Democratic Senators are asking that CMS begin reinstating these fines as to improve the care given to senior citizens. [FN16]

Infection Lapses Rampant In Nursing Homes But Punishment Is Rare

Long term care facilities are receiving the same citations year after year for the same violations regarding infection prevention with little to no consequences. [FN17] Federal inspections have shown that 74% of nursing homes show lapses in their infection prevention

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

protocol, more than any other type of health violation, but almost none of them have had any penalties associated with the citation. This gives the appearance that these violations are not as serious and that nursing homes can continue to violate these protocols without any federal blowback. This puts the residents in harm's way.

Minnesota LTC Pros Apologize to Public After Abuse Claims

After conditions in senior living facilities were exposed as being “horrific”, Minnesota officials are apologizing to the residents, family members of the residents, and the public for the lack of oversight. [FN18] Officials are now calling for sweeping reforms to the oversight and investigation process. Findings from the investigation had show that very few complaints are investigated and even fewer have punishment arise from the investigation.

Scrutinizing Medicare Coverage for Physical, Occupational and Speech Therapy

Medicare patients have been told that therapists can no longer see a patient due to a lack of progress by the patient or due to threshold caps. [FN19] However, Congress is addressing this problem in the latest budget bill. Now, patients no longer need to demonstrate progress. Limits have been changed for both Part A and Part B Medicare plans. For Part B, which covers speech and occupational therapies, the limits have been decreased, but there is the ability to ask for an exception with extra documentation. Therapists are hesitant with the new requirements for fear that asking for too many exceptions could result in the facilities being audited.

Aggressive' Advance Directive Would Allow Patients to Decline Food, Water at End of Dementia Battle

A New York based group has put forth a document which would allow dementia patients to refuse food or water in the late stages of the disease. [FN20] The advanced directive would address two situations, one where patients are happy to continue eating and drinking, food and water can continue to be given and another where even if the patient seems to be enjoying food and water, all assisted eating and drinking would be halted. Critics are concerned with the implications on caregivers and on the patient's want to change their mind about care later. One commentator stated that although this directive could be signed, it places no requirement on the caregiver or care provider to follow through with the wants of the patient, but instead makes the wants clear. Ultimately, it was agreed that more discussion is necessary before using the advance directive.

Nursing Homes May Be Targeted For Turning Away Patients Being Treated For Opioid Addiction

Many nursing homes across the country are turning away individuals who are being treated with drugs used to ease the effects of overcoming addiction. [FN21] „ There are two main viewpoints on this issue. The first, held by legal professionals, is that denying individuals care is a violation of the Americans with Disabilities Act. They feel that the stigma of mental illness is leading to a lack of care for these individuals. The other point of view is held by the American Health Care Association who believes that it is CMS who is preventing nursing homes from providing care by specifically stating that nursing homes cannot accept individuals for whom they cannot provide appropriate care. The staff at nursing homes does not have the specialized training necessary to provide appropriate care. There has not been any clarity on which side has the winning argument, and ultimately there may not be an answer without the courts becoming involved.

Under-65 Nursing Home Population Grows in Some States, Putting New Emphasis on Mental Health Care

The population of individuals who are living in nursing homes has dropped in Ohio. [FN22] This change is causing a shift in the needs of patients. Previous, the older population has needed staff to assist them in day to day activities, whereas the younger population needs more assistance in mental health care and less day to day assistance. Staff has to become better trained in mental health issues and creating a community for these younger individuals.

High-Quality, Short-Term Nursing Stays Lower Risk of Seniors Entering Long-Term Care

A study published by the Journal of the American Geriatric Society has shown that individuals who go to a high rated short-term nursing facility are less likely to have to be admitted to a long-term facility. [FN23] These findings raise a few concerns, the largest being the variety of quality of care received at different short-term facilities. Another factor that played into reducing the risk of entering long-term care is the staff to patient ratio, intuitively the relationship of more staff to provide care for a patient reduces the risk of entering long-term care. Ultimately, more research is needed into how specific places use short-term nursing care in order to fully understand the relationship between short-term nursing placement and the risk of entering long-term care after.

Lawmakers seek $250 Million Infusion for Geriatric Services

Senator Susan Collins is seeking funding for increased training in geriatric medicine. [FN24] There is currently a shortage of individuals who are experts in the field of geriatrics and many doctors who lack even the necessary knowledge to provide appropriate care The funds will be used to train existing caregivers and to provide education to new members of the profession.

Financial Incentives for Nursing Homes to Reduce Hospital Readmissions

Researchers at the Regenstrief Institute and Indiana University Center for Aging Research are testing whether providing nursing homes and the doctors and nurse practitioners who care for their residents with increased Medicare payments can further reduce avoidable

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

hospitalizations. [FN25] The study is part of the second phase of the OPTIMISTIC model of care created as part of a national CMS Demonstration Project in September 2012 at Indiana University. The goal is to improve nursing home care and create better outcomes for residents by keeping them out of the hospital and in the hands of on-site RNs and NPs. The first phase saw a significant 33 percent improvement, which did not include a financial incentive.

In phase two, 40 nursing homes are reimbursed for onsite treatment of the six most common conditions of older nursing home residents linked to unnecessary hospitalizations: pneumonia, urinary tract infections, congestive heart failure, dehydration, skin ulcers, and chronic obstructive pulmonary disease. The goal is to provide long-stay residents with more comprehensive quality care where they live and avoid disruptive and expensive hospitalizations. A CMS payment model which incentivizes nursing facilities, as well as their medical staffs, to provide higher levels of care on site.

Under the current CMS payment system, nursing facilities do not receive additional reimbursement to provide the care needed by residents who become sicker, unless the nursing home sends them to the hospital and then readmits them to the nursing home under the Medicare post-acute care benefit. There is no mechanism in place for CMS to pay nursing homes for ramping up nursing care and other care services needed when a resident becomes sicker.

CMS Releases Inaugural Release of SNF Quality Reporting Program Data on Nursing Home Compare

On October 24, CMS announced the inaugural release of the Skilled Nursing Facility (SNF) Quality Reporting Program (QRP) quality data on Nursing Home (NH) Compare. Certain post-acute care (PAC) providers, including SNFs, are required to report provider performance data on quality.

The Nursing Home Compare site allows individuals to find and compare SNFs that are certified by Medicare and nursing facilities that are certified by Medicaid. This website contains quality of resident care and staffing information for more than 15,000 nursing homes around the country and will now include SNF QRP quality data that can be used to help compare SNF providers by their performance on important indicators of quality, such as the percentage of a SNF's residents that develop pressure ulcers, or how many residents fall and are injured as a result of the fall.

The data can demonstrate how a SNF's performance on SNF QRP quality measures compares to that of other SNFs, as well as to the national average.

The SNF QRP data used for calculating measures include claims data for some measures and for others the data are collected and submitted to CMS via the Minimum Data Set (MDS), which is a core set of screening, clinical, and functional status elements, including common definitions and coding categories, which form the foundation of a comprehensive assessment for all residents of nursing homes certified to participate in Medicare or Medicaid. SNFs must complete a MDS admission record and discharge record on each resident that enters that SNF for care. The SNF QRP measures are calculated based on the admission and discharge data submitted for each SNF resident.

CMS has added the following five SNF QRP measures to Nursing Home Compare, including:

Assessment-based measures:

1) Percent of Residents or Patients in a SNF that develop new or worsened pressure ulcers (National Quality Forum #0678)

2) Percentage of residents or patients whose activities of daily living and thinking skills were assessed and related goals were included in their treatment plan (NQF #2631)

3) Percentage of SNF patients who experience one or more falls with major injury during their SNF stay (NQF #0674)

Claims-based measures:

4) Medicare Spending Per Beneficiary (MSPB) for patients in SNFs

5) Rate of successful return to home or community from an SNF

CMS Strengthens Nursing Home Oversight and Safety to Ensure Adequate Staffing

On November 30, the Centers for Medicare & Medicaid Services (CMS) announced actions that will bolster nursing home oversight and improve transparency in order to ensure that facilities are staffed adequately to provide high-quality care. These actions include sharing data with states when potential issues arise regarding staffing levels and the availability of onsite registered nurses; clarifying how facilities should report hours and deduct time for staff meal breaks; and providing facilities with new tools to help ensure their resident census is accurate.

“CMS takes very seriously our responsibility to protect the safety and quality of care for our beneficiaries,” said CMS Administrator Seema Verma. “Today CMS is taking important steps to protect nursing home residents based on potential risks revealed by new payroll-based staffing data that our Administration released. We're deeply concerned about potential inadequacies in staffing, such as low weekend staffing levels or times when registered nurses are not onsite, and the impact that this can have on patient care. The actions announced today strengthen our oversight of resident health and safety, and help ensure accurate public reporting.”

Research shows the ratio of nurses to residents impacts quality of care and health outcomes. For example, facilities with higher nurse staffing levels tend to have fewer resident hospitalizations. In general, the new payroll-based staffing data shows most facilities have

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

somewhat fewer staff on weekends, but some facilities have significantly lower weekend staffing. Additionally, some facilities have reported days with no registered nurse onsite, although nursing homes are generally required by law to have a registered nurse onsite eight hours a day, seven days a week.

To help address these risks, CMS will use frequently-updated payroll-based data to identify and provide state survey agencies with a list of nursing homes that have a significant drop in staffing levels on weekends, or that have several days in a quarter without a registered nurse onsite. State survey agencies will then be required to conduct surveys on some weekends based on this list. If surveyors identify insufficient nurse staffing levels, the facility will be cited for noncompliance and required to implement a plan of correction.

These oversight initiatives are part of broader efforts CMS has underway to strengthen safety and health outcomes for nursing home residents. For example, the Nursing Home Compare website and facility Star Ratings are key resources CMS provides to increase transparency into nursing home quality and help consumers and their caregivers make informed decisions.

CMS also operates the National Partnership to Improve Dementia Care in Nursing Homes, which is helping to reduce the inappropriate prescribing of antipsychotic drugs among nursing home residents, and the recently-launched Civil Money Penalty Reinvestment Program, a three-year initiative to improve residents' quality of life by equipping nursing home staff, management and stakeholders with practical tools, education, and assistance to enhance care.

State Legislative Activity

• District of Columbia

• 2017 DC L.B. 1011 (NS), introduced October 12, 2018 to amend the Nursing Facility Quality of Care Fund to update the reimbursement methodology to consider acuity of nursing facility residents and increase promotion of care, safety, and health of nursing facility residents.

• Illinois

o 2017 IL H.B. 5072 (NS), introduced February 16, 2018, would amend the Illinois Act on Aging to create a consumer Choice Information Report form. Assisted living facilities specializing in mental health rehabilitation or supportive living would have to file this form annually. The purpose of this form is to ensure that older individuals or those individuals with disabilities are receiving quality care.

• Missouri

o 2018 MS H.B. 1056 (NS), introduced January 15, 2018, would create an application to CMS for a waiver to allow the division to provide consumer-directed services to assist individuals and their families with care. The bill lists responsibilities of a consumer-directed employee.

• Oklahoma

o 2017 OK H.B. 2514 (NS), engrossed March 12, 2018, would require the State Board of Health to promulgate rules requiring all medical and direct care staff of nursing and specialized facilities, adult day care centers, assisted living centers, hospice agencies and home health agencies to complete at least one hour of in-service training per year in Alzheimer's- and dementia-related care.

IV. Safety and Protection

Long-term care facility safety and protection initiatives include fire safety, emergency preparedness, protecting residents from physical and financial abuse, protecting residents' health, and miscellaneous protection measures.

CMS Finalizes Improvements for Long-term Care Facility Residents

On September 28, CMS issued a final rule to make major changes to improve the care and safety of the nearly 1.5 million residents in the more than 15,000 long-term care facilities that participate in the Medicare and Medicaid programs. [FN26] The policies in this final rule are targeted at reducing unnecessary hospital readmissions and infections, improving the quality of care, and strengthening safety measures for residents in these facilities. These changes are an integral part of CMS's commitment to transform our health system to deliver better quality care and spend our health care dollars in a smarter way, setting high standards for quality and safety in long-term care facilities.

The health and safety of residents of long-term care facilities are our top priorities," said CMS Acting Administrator Slavitt. "The advances we are announcing today will give residents and families greater assurances of the care they receive."

As the first comprehensive update since 1991, this rule will bring best practices for resident care to all facilities that participate in Medicare or Medicaid, implement a number of important safeguards that have been identified by resident advocates and other stakeholders, and include additional protections required by the Affordable Care Act. CMS received nearly 10,000 public comments, which were considered in finalizing this rule.

Changes finalized in this rule include:

• Strengthening the rights of long-term care facility residents, including prohibiting the use of pre-dispute binding arbitration agreements.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• Ensuring that long-term care facility staff members are properly trained on caring for residents with dementia and in preventing elder abuse.

• Ensuring that long-term care facilities take into consideration the health of residents when making decisions on the kinds and levels of staffing a facility needs to properly take care of its residents.

• Ensuring that staff members have the right skill sets and competencies to provide person-centered care to residents. The care plans developed for residents will take into consideration their goals of care and preferences.

• Improving care planning, including discharge planning for all residents with involvement of the facility's interdisciplinary team and consideration of the caregiver's capacity, giving residents information they need for follow-up after discharge, and ensuring that instructions are transmitted to any receiving facilities or services.

• Allowing dietitians and therapy providers the authority to write orders in their areas of expertise when a physician delegates the responsibility and state licensing laws allow.

• Updating the long-term care facility's infection prevention and control program, including requiring an infection prevention and control officer and an antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.

Nursing Home Group Sues U.S. Over Rule Barring Mandatory Arbitration

(Reuters) - A group representing U.S. nursing homes has sued the federal government challenging a new rule barring nursing homes that receive federal funds from requiring their patients to bring claims against them in private arbitration, rather than in court. [FN27]

The lawsuit, filed Monday by the American Health Care Association in federal court in Oxford, Mississippi, seeks a court order stopping the rule from taking effect on Nov. 28.

Nursing Home Fines Drop As Trump Administration Heeds Industry Complaints

Under the Obama Administration, fees for long term care facility violations were assessed on a per day basis, causing facilities to become upset at the arbitrary nature of the fines. [FN28] The major issue that was addressed was that a facility that was inspected in February would have much greater fines than one inspected in March.

The Trump Administration made the decision, based on industry suggestions, to alter the fines to issuing a single fine for two thirds of infractions, reducing the number of fines. This method decreases the incentive to fix these violations, leaving a greater chance of someone getting hurt prior to the issue being fixed. Also, under the Trump Administration there was a decrease in the number of large fines. The fear is that the reduction in fines will not deter larger assisted living facilities and drive smaller facilities out of business.

Ensuring Safety and Quality in America's Nursing Homes

CMS has begun the process of streamlining care and oversight to ensure that individuals in long term care facilities are consistently receiving the highest quality of care regardless of where they live. [FN29] The first step in this process is to review State Survey Agencies (SSAs), the agencies that are used to investigate and identify issues within long term care facilities. CMS has found that some states have SSAs that consistently find serious issues with facilities and others that rarely find these issues. The goal is to update standards so that SSAs are providing consistent feedback on facilities.

Secondly, CMS plans to increase enforcement of staffing requirements. This requires that SSAs expand their investigatory times to review facilities at all hours to ensure that staffing requirements are being met. These staffing requirements have also been identified as issues when facilities have dementia patients, who are notoriously difficult and unruly. By strengthening SSAs and their enforcement of these standards, quality of care will increase in facilities.

Concurrently, CMS hopes to make the information gained from these investigations easier for the public to access and make it easier to understand. The availability of information will empower the public to make the best decisions for their families and themselves.

In addition, CMS hopes to reduce the amount of paperwork and measures to report on to allow staff to focus on patients. This is in line with the current administration's goals of reducing red tape and costs.

Nursing Home Negligence: Senate Report Names Nearly 400 Facilities with ‘Persistent Record of Poor Care’

Nearly 400 nursing home facilities that have been deemed to consistently give poor care have been identified by a CMS report, however the names of these facilities were not released by CMS. [FN30] Pennsylvania senators later released the names of the 400 facilities. Of the nursing homes identified, 80 are participating in the Special Focus Facility program. If these identified facilities do not improve the quality of care given, they can be cut off from Medicare and Medicaid. The number of facilities that CMS can enroll in this program is limited by the federal budget.

Ensuring Safety and Quality in Nursing Homes: Five Part Strategy Deep Dive

In the first segment of a five-part series reviewing each aspect of the five-part approach that CMS is taking to ensure the quality and safety of nursing homes. [FN31] This first blog is regarding strengthening oversight. The blog discusses the role of the State Survey Agencies (SSAs) in achieving this goal. Each facility accepting CMS payments must be visited by an SSA each year, however these

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

SSAs were previously using different standards depending on the region. CMS has implemented procedures to ensure that the quality of care given at all these facilities is high quality and uniform. CMS has moved to a single, computer-based system allowing SSAs across the country to use the same measures.

The blog discusses the costs involved in improving the quality of care. Inspection of each facility annually plus inspections upon each complaint leaves CMS stretched and hoping for an increase in budget with the 2020 federal budget.

A. Fire Safety

CMS Publishes Final Rule on Fire Safety Requirements for Certain Healthcare Facilities

On May 3, CMS announced a final rule to update healthcare facilities' fire protection guidelines to improve protections for all Medicare beneficiaries in facilities from fire. [FN32]

The new guidelines apply to hospitals; long-term care (LTC) facilities; critical access hospitals (CAHs); inpatient hospice facilities; programs for all-inclusive care for the elderly (PACE); religious non-medical healthcare institutions (RNHCI); ambulatory surgical centers (ASCs); and intermediate care facilities for individuals with intellectual disabilities (ICF-IID).

This rule adopts updated provisions of the National Fire Protection Association's (NFPA) 2012 edition of the Life Safety Code (LSC) as well as provisions of the NFPA's 2012 edition of the Health Care Facilities Code. CMS strives to promote health and safety for all patients, family and staff in every provider and supplier setting. Fire safety requirements are an important part of this effort.

“This final rule meets health care facilities' desire to modernize their environments while also ensuring the necessary steps to provide patients and staff with the appropriate level of safety,” said Kate Goodrich, MD MHS, Director Center for Clinical Standards and Quality, CMS. “Health care facilities can now be more home-like while ensuring that the most modern fire protection practices are in place.”

The provisions in this final rule cover construction, protection, and operational features designed to provide safety for Medicare beneficiaries from fire, smoke, and panic. Some of the main requirements laid out in this final rule include:

• Healthcare facilities located in buildings that are taller than 75 feet are required to install automatic sprinkler systems within 12 years after the rule's effective date.

• Health care facilities are required to have a fire watch or building evacuation if their sprinkler system is out of service for more than ten hours.

• The provisions offer LTC facilities greater flexibility in what they can place in corridors. Currently, they cannot include benches or other seating areas because of fire code requirements limiting potential barriers to firefighters. Moving forward, LTC facilities will be able to include more home-like items such as fixed seating in the corridor for resting and certain decorations in patient rooms (such as pictures and other items of home décor).

• Fireplaces will be permitted in smoke compartments without a one-hour fire wall rating, which makes a facility more home-like for residents.

• Cooking facilities now may have an opening to the hallway corridor. This will permit residents of inpatient facilities such as nursing homes to make food for themselves or others if they choose to, and, if the patient does decide to make food, facility staff is able to provide supervision of the patient.

• For ASCs, all doors to hazardous areas must be self-closing or must close automatically. Additionally, alcohol based hand rub dispensers now may be placed in corridors to allow for easier access.

ICF-IIDs have expanded sprinkler requirements to include habitable areas, closets, roofed porches, balconies and decks in new facilities. All attics must have a sprinkler system if they are used for living purposes, storage, or housing of fuel-fired equipment. If they are not used for these purposes, attics may have heat detection systems instead. Hazardous areas are to be separated from other parts of the building by smoke partitions. Existing ICF-IIDs must include certain fire alarm features when they choose to update their fire alarm systems.

The LSC is a compilation of fire safety requirements for new and existing buildings and is updated every three years. Currently, CMS is using the 2000 edition of the LSC to survey for health and safety compliance. With this rule, CMS is adopting provisions of the 2012 edition of the LSC and provisions of the 2012 edition of the Health Care Facilities Code to bring CMS's requirements more up to date. In addition, the 2012 edition of the NFPA's Health Care Facilities Code gives more detailed provisions specific to different types of health care facilities.

Health care providers affected by this rule must comply with all regulations within 60 days of the publication date of today's final rule, which is May 4, 2016, unless otherwise specified in the final rule.

Federal Regulations

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• 84 FR 51732-01, effective November 29, 2019, removes unnecessary, obsolete, or excessively burdensome regulations on health care providers and suppliers. Updates fire safety requirements for facilities providing End-Stage Renal Disease facilities by allowing state regulations to supplement federal requirements if the state requirements are more stringent or equivalent to federal requirements.

B. Emergency Preparedness

Ensuring that long-term care facilities are prepared to meet emergencies is a concern of legislators. Following the effects of 2012's hurricane season, many legislators have expressed a desire to bring a stronger focus to emergency preparedness for nursing homes.

One of the factors complicating emergency preparedness is that a 2012 study found there was a 218% increase in mortality after the residents were moved under the governmental guidelines for relocation. [FN33] Lisa Brown, the lead author of the study and a professor of aging studies at the University of South Florida-Tampa, said, “We don't know why these death are occurring after the evacuations. This is the first report to quantify the deaths. It tells us we need to think through evacuations.” The study looks at 21,255 residents within 30 days of the evacuations from their facilities. The mortality rate increased 158% after 90 days. According to the Office of Inspector General of Health and Human Services, the emergency plans of all 24 facilities in this study were missing approximately 50% of the tasks on a checklist of 70 items.

CMS Finalizes Rule for Emergency Preparedness of Certain Facilities Participating in Medicare and Medicaid

On September 8, the Centers for Medicare & Medicaid Services (CMS) finalized a rule to establish consistent emergency preparedness requirements for health care providers participating in Medicare and Medicaid, increase patient safety during emergencies, and establish a more coordinated response to natural and man-made disasters.

Over the past several years, and most recently in Louisiana, a number of natural and man-made disasters have put the health and safety of Medicare and Medicaid beneficiaries – and the public at large – at risk. These new requirements will require certain participating providers and suppliers to plan for disasters and coordinate with federal, state tribal, regional, and local emergency preparedness systems to ensure that facilities are adequately prepared to meet the needs of their patients during disasters and emergency situations.

“Situations like the recent flooding in Baton Rouge, Louisiana, remind us that in the event of an emergency, the first priority of health care providers and suppliers is to protect the health and safety of their patients,” said CMS Deputy Administrator and Chief Medical Officer Patrick Conway, M.D., MSc. “Preparation, planning, and one comprehensive approach for emergency preparedness is key. One life lost is one too many.”

“As people with medical needs are cared for in increasingly diverse settings, disaster preparedness is not only a responsibility of hospitals, but of many other providers and suppliers of healthcare services. Whether it's trauma care or long-term nursing care or a home health service, patients' needs for health care don't stop when disasters strike; in fact their needs often increase in the immediate aftermath of a disaster,” said Dr. Nicole Lurie, HHS assistant secretary for preparedness and response. “All parts of the healthcare system must be able to keep providing care through a disaster, both to save lives and to ensure that people can continue to function in their usual setting. Disasters tend to stress the entire health care system, and that's not good for anyone.”

After reviewing the current Medicare emergency preparedness regulations for both providers and suppliers, CMS found that regulatory requirements were not comprehensive enough to address the complexities of emergency preparedness. For example, the requirements did not address the need for: (1) communication to coordinate with other systems of care within cities or states; (2) contingency planning; and (3) training of personnel. CMS proposed policies to address these gaps in the proposed rule, which was open to stakeholder comments.

After careful consideration of stakeholder comments on the proposed rule, this final rule requires Medicare and Medicaid participating providers and suppliers to meet the following four common and well-known industry best practice standards.

1) Emergency plan: Based on a risk assessment, develop an emergency plan using an all-hazards approach focusing on capacities and capabilities that are critical to preparedness for a full spectrum of emergencies or disasters specific to the location of a provider or supplier.

2) Policies and procedures: Develop and implement policies and procedures based on the plan and risk assessment.

3) Communication plan: Develop and maintain a communication plan that complies with both Federal and State law. Patient care must be well-coordinated within the facility, across health care providers, and with State and local public health departments and emergency systems.

4) Training and testing program: Develop and maintain training and testing programs, including initial and annual trainings, and conduct drills and exercises or participate in an actual incident that tests the plan.

These standards are adjusted to reflect the characteristics of each type of provider and supplier. For example:

• Outpatient providers and suppliers such as Ambulatory Surgical Centers and End-Stage Renal Disease Facilities will not be required to have policies and procedures for provision of subsistence needs.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• Hospitals, Critical Access Hospitals, and Long-Term Care facilities will be required to install and maintain emergency and standby power systems based on their emergency plan.

In response to comments, CMS made changes in several areas of the final rule, including removing the requirement for additional hours of generator testing, flexibility to choose the type of exercise a facility conducts for its second annual testing requirement, and allowing a separately certified facility within a healthcare system to take part in the system's unified emergency preparedness program.

The final rule also includes a number of local and national resources related to emergency preparedness, including helpful reports, toolkits, and samples. Additionally, health care providers and suppliers can choose to participate in their local healthcare coalitions, which provide an opportunity to share resources and expertise in developing an emergency plan and also can provide support during an emergency.

These regulations are effective 60 days after publication in the Federal Register. Health care providers and suppliers affected by this rule must comply and implement all regulations one year after the effective date.

Nursing Home Disaster Plan Violations Often Unenforced

A recent Kaiser Health News article [FN34] highlighted that it does not take a hurricane to put nursing home residents at risk when disaster strikes.

Around the country, facilities have been caught unprepared for far more mundane emergencies than the hurricanes that recently struck Florida and Houston, according to an examination of federal inspection records. Those homes rarely face severe reprimands, records show, even when inspectors identify repeated lapses.

In some cases, nursing homes failed to prepare for basic contingencies.

In one visit last May, inspectors found that an El Paso, Texas, nursing home had no plan for how to bring wheelchair-dependent people down the stairs in case of an evacuation. Inspectors in Colorado found a nursing home's courtyard gate was locked and employees did not know the combination, inspection records show. During a fire at a Chicago facility, residents were evacuated in the wrong order, starting with the people farthest from the blaze.

Nursing home inspectors issued 2,300 violations of emergency-planning rules during the past four years. But they labeled only 20 so serious as to place residents in danger, the records show.

In addition, a third of U.S. nursing homes have been cited for another type of violation: failing to inspect their generators each week or to test them monthly. None of those violations was categorized as a major deficiency, even at 1,373 nursing facilities that were cited more than once for neglecting generator upkeep, the records show.

“That's the essential problem with the regulatory system: It misses many issues, and even when it identifies them, it doesn't treat them seriously enough,” said Toby Edelman, a senior policy attorney at the Center for Medicare Advocacy. “It's always the same story: We have some pretty good standards and we don't enforce them.”

Death Toll from Overheated Florida Nursing Home Rises to 10

(Reuters) - A 10th elderly patient at a Miami-area nursing home has died after she was exposed to sweltering heat in the aftermath of Hurricane Irma, police said on September 21. [FN35]

The resident of the Rehabilitation Center at Hollywood Hills died on Wednesday, police in Hollywood, Florida, said in a statement, without giving details.

Police have opened a criminal investigation into the deaths at the center, which city officials have said continued to operate with little or no air conditioning after power was cut off by Irma, which struck the state on Sept. 10.

Julie Allison, a lawyer for the nursing home, did not respond to a request for comment. Calls to the Rehabilitation Center went unanswered.

Florida's Agency for Health Care Administration suspended the center's license on Wednesday and terminated its participation in Medicaid, the federal-state healthcare program for the poor, disabled and elderly.

Medical personnel at the home had delayed calling 911 and residents were not quickly transported to an air-conditioned hospital across the street, the agency said in a statement.

Patients taken to the hospital had temperatures ranging from 107 Fahrenheit to 109.9 Fahrenheit (41.7 Celsius to 43.3 Celsius), it said. Average human body temperature is 98.6 Fahrenheit (37 Celsius).

Staff at the center also made many late entries to patients' medical records that inaccurately depicted what had happened, the agency's statement said.

One late entry said a patient was resting in bed with even and unlabored breathing, even though the person had already died, the statement said.

Last week, the agency ordered the center not to take new admissions and suspended it from taking part in Medicaid.

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Irma was one of the most powerful Atlantic storms on record and killed at least 84 people in its path across the Caribbean and the U.S. mainland.

Senate Finance Committee to Investigate LTC Emergency Preparedness

McKnight's reports that the U.S. Senate Finance Committee will scrutinize upcoming rules from CMS on nursing home emergency preparedness, following the impact of recent hurricanes.

In a letter to CMS Administrator Seema Verma, Committee Chairman Sen. Orrin Hatch (R-UT) and Ranking Member Sen. Ron Wyden (D-OR), called for information on the requirements for emergency preparedness and the agency's response standards for long-term care facilities.

The letter also sought information on penalties for facilities that fail to maintain temperatures between 71 and 81 degrees, as required under federal regulations, and whether the same requirements will continue in the new regulations. The letter also requests information on facilities' life support systems, emergency risk assessments and evacuation procedures, as well as whether CMS will review its emergency preparedness rules following Hurricanes Harvey and Irma.

The committee also sent letters requesting information from state health agencies in Texas and Florida regarding how the states prepared for and responded to the hurricanes.

Providers Forced to Invest $350 Million More to Keep Power Running in Emergencies

Florida has now passed a bill adding requirements for long-term care facilities to keep the power on during emergencies, which will cost an estimated $350 million dollars. [FN36] Representatives are currently trying to find a method to ease the transition. Options include extending the deadline for compliance and providing an exemption for sales tax on the generators purchased by facilities. The latter of which has already been approved.

Experts Cite LTC's Better Disaster Preparedness Scores but Say More Needed

Overall, National scores for emergency preparedness are going up, measured as a 3 percent increase in score from last year, however experts are saying that even more needs to be done. [FN37] Many efforts to focus on the emergency preparedness of a facility have focused on hospitals, leaving long-term care facilities to continue to improve at a pace that is not meeting the needs of the residents. Certain states, including Florida and Oklahoma, are making efforts to make these facilities able to care for residents in the case of a natural disaster, but there is not the same movement on a National scale. Many facilities have the written policies, but do not practice, therefore when an emergency hits the staff is unable to meet the needs of the residents.

Despite 12 Deaths, Nursing Facilities Denied Request to be on Utilities' Priority List

After Hurricane Irma last year, Florida hospitals were required to update their utilities in case of such emergencies. [FN38] However, very few of the long-term care facilities in the region have complied with such requirements despite a push from the governor. Other area hospitals have been asking for an extension to meet the required deadline, while others are seeking assistance due to a lack of funding. Nursing facilities in the region have asked to be prioritized by the utilities companies, but have found hurdles based on the prioritization requirements already in place. This existing prioritization does not reflect the hospitals currently seeking to update their facilities, without flexibility on the prioritization, facilities that are willing and able to upgrade may have to wait to fulfill the requirements.

Congress Passes Bill to Improve Long-Term Care Disaster Preparedness

On September 28, Congress passed a bipartisan bill to strengthen “worst-case scenario” preparedness for hospitals and long-term care facilities. The bill, introduced by Florida Congressman Daniel Webster (R-Clermont) and Rep. Debbie Dingell (D-Mich.), requires the U.S. Department of Health and Human Services to engage with the National Academy of Medicine to conduct a comprehensive study into the future natural disaster threats impacting emergency preparedness procedures for hospitals, long term care facilities, and other health care facilities. The study will provide Congress with new recommendations and expert analysis on:

• current emergency preparedness policies and regulations;

• identifying new policies that better address all future threats;

• improving Federal grant programs to assist health care facilities; and

• providing updated guidelines for alternative power systems and access to clean water.

Federal Activity

• 2017 CONG US HR 5832, introduced to the House 05/15/2018, would provide grants to long term care facilities to improve preparedness for power outages. These grants would focus on preparedness before and during natural disasters.

Wyden Finds Nursing Homes Unprepared for Natural Disasters

Senate Finance Committee Ranking Member Ron Wyden, D-Ore., today unveiled a report examining critical safety failures at nursing homes in Texas and Florida during and after Hurricanes Harvey and Irma. The report found that these incidents, which in Florida

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

resulted in the deaths of 12 seniors, were not chance accidents but preventable tragedies that resulted from inadequate regulation and oversight, ineffective planning and communications protocols, and questionable decision-making by facility administrators.

“When a loved one enters a nursing home, their families expect they will be safe and receive quality medical care,” Wyden said. “My investigation found that in too many cases, nursing homes were ill-equipped to keep their residents comfortable and safe in the face of natural disasters, in some cases with fatal consequences. This is a failure of responsible governing from top to bottom. Federal rules must be more robust and clear, while communication and planning among state and local officials and nursing homes must be dramatically improved. Until changes are made, seniors in America's nursing homes will continue to be at risk when disaster strikes.”

The report, produced by the Finance Committee minority staff, provides one of the most comprehensive reviews to date of the incidents at Texas long-term care facilities during Hurricane Harvey and at Hollywood Hills following Hurricane Irma. This review puts the incidents in the context of regulatory failures and lapses in communication and planning at every level of government. The report also examines regulations issued by the Centers for Medicare & Medicaid Services (CMS) meant to ensure long-term care providers like nursing homes are prepared for emergency conditions. The report finds that these rules are wholly inadequate when it comes to giving nursing homes the direction they need to be prepared in emergency situations.

The report comes as the United States has endured further significant hurricanes in 2018 that have resulted in widespread flooding and power outages similar to Hurricanes Harvey and Irma.

A summary document includes five “Lessons Learned”:

1) Temperature control is a basic safety issue for nursing homes residents.

2) Inadequate regulatory review allowed for non-functional emergency plans.

3) Greater preparation is needed when sheltering-in-place during natural disasters.

4) Federal temperature control rules are decades old and not based on modern science.

5) Threats to at-risk populations were not accounted for in power restoration priority.

The summary of Lessons Learned and Key Recommendations is available at: https://www.finance.senate.gov/imo/media/doc/Lessons&#R#ecommendations.pdf.

The report offers 18 recommendations for federal, state and local officials to help nursing homes prepare for natural disasters and execute contingency plans effectively when needed.

The full report is available at: https://www.finance.senate.gov/imo/media/doc/ShelteringïnD#angerR#eport(#2N#ov2#018).pdf.

State Legislative Activity

• Florida

o 2018 FL H.B. 933 (NS), introduced January 09, 2018, would prioritize power restoration to medical facilities with at least 50 people including nursing homes and assisted living facilities. The bill also describes punitive damages associated with a failure to follow emergency procedures. 2018 FL S.B. 1260, introduced January 11, 2018, is a sister bill to 2018 FL H.B. 933.

o 2018 FL H.B. 1369 (NS), introduced January 9, 2018, would determine the punitive damage limits and fund distribution for facilities that do not comply with new requirements regarding power restoration in the case of an emergency.

o 2018 FL S.B. 1874 (NS), amended/substituted January 30, 2018, would require the promulgation of rules regarding access to emergency power equipment. It would also require that this emergency power be able to sustain the facility for at minimum 96 hours after losing power.

o 2018 FL H.B. 7085 (NS), amended/substituted February 22, 2018, would require the Department of Health to maintain a statewide registry of individuals with special needs in order to allow for an emergency management plan. It would allow the management team to get resources to those who need them in times of crisis.

o 2019 FL H.B. 1299 (NS), engrossed April 29, would amend FL ST § 400.23 (2)(g) relating to licensure requirements to prevent municipalities, cities, or towns from adding additional heating or cooling requirements from long term care facilities.

• New Jersey

o 2018 NJ A.B. 2872 (NS), introduced February 01, 2018, would require long term care facilities to have a standby emergency power generator. All existing facilities operating an assisting living residence would have to comply within 90 days of the bill's effective date.

o 2018 NJ S.B. 794 (NS), amended/substituted May 21,2018, would establish maximum and minimum temperatures for emergency shelters. The bill requires compliance within one year, but does allow nursing homes to apply for an exception in order to give time to comply with air conditioning requirements.

• Texas

o 2019 TX H.B. 1922 (NS), introduced February 19, would require each licensed facility to ensure that the facility is equipped with an emergency power source.

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• Virginia

o 2018 VA S.B. 1277 (NS), adopted March 12, provides a 30-day exemption from the requirement to get a certificate of public need for an increase the total number of beds if the Commissioner has determined there is a man-made or natural disaster.

• 2019 VA H.B. 1870 (NS), approved February 22, would allow nursing homes to increase their total number of beds for 30 days without a certificate of public need if there is a natural or man-made disaster which caused the evacuation of nursing homes or hospitals and that disaster caused a bed shortage.

• 2018 VA S.B. 1077 (NS), adopted February 21, requires assisted living facilities with on-site emergency generators to provide a description of the generators capabilities in their preparedness plan and those without an on-site generator to include a vendor agreement for a generator.

C. Protecting Residents from Abuse

Long-term care facility residents are a vulnerable population by nature. Lawmakers have recently addressed many aspects of these problems, including protecting residents from physical, sexual, mental, or financial abuse. According to a study by the Medical University of South Carolina elder abuse affects 10% of all adults over the age of 60. [FN39] In addition to the efforts of legislators to combat this problem, a few nursing homes around the country have created shelters inside their own facilities to provide emergency short-term housing and health care services to victims.

Much of the recent activity in this area relates to criminal background checks to protect facility residents. Many of these criminal background check measures pertain to facility employees, but others are directed towards fellow residents.

Former SNF Administrator Sentenced to Four Years for Resident Theft

McKnight's reports that the former administrator of a New Jersey nursing facility and head of the county's Republican party was sentenced to four years in prison after he failed to pay restitution to a resident he stole more than $139,000 from. [FN40] His failure to make restitution violated a plea deal that had kept him out of jail.

Robert Greco, Jr. admitted to convincing a resident of an Eldora, New Jersey rehab center to give him power of attorney and control over his financial portfolio in 2012. Greco, who owned and operated the rehab center for nearly 30 years, stole more than $139,000 from the man to pay business expenses.

Greco originally pleaded guilty to third-degree theft charges and received a plea deal for probation in exchange for paying restitution to the man. He was arrested and sentenced after failing to pay the restitution.

Nursing Home Owner Surrenders License Over Sexual Assault Investigation

McKnight's reports that the investigation of sexual assault allegations at a Washington nursing home have resulted in the owner surrendering his operator's license. [FN41]

Following an investigation by the Department of Social and Health Services and the Department of Health into allegations of sexual assault in the dementia ward of the Cashmere Convalescent Center, Bill Dronen was ordered to surrender his operator's license. As a result, Dronen will no longer be allowed to own or operate a nursing home. Dronen's brother is reported to have taken over as owner of the facility.

According to a lawsuit filed by one resident's family, staff at the facility allegedly failed to prevent a resident of the dementia ward from sexually abusing multiple residents. In addition to allegations against Dronen, there is also an investigation into whether a nursing supervisor failed to report sexual assault.

One in Five Nursing Home Residents Abused by Other Residents

(Reuters Health) - At least one in five nursing home residents may endure verbal or physical abuse from their roommates or other residents, a U.S. study suggests. [FN42]

Researchers examined data on 2,011 nursing home residents and found 407 of them had been involved in at least once occurrence of abuse involving another resident during the four-week study period.

Verbal taunts were the most common, accounting for about 45 percent of these cases, followed by physical assaults, which made up 26 percent of incidents.

“Much (but not all) of inter-personal aggression in nursing homes stems from the fact that people, many of whom have dementia and other neurodegenerative illnesses, are being thrust into communal living environments for the first time in decades, if ever,” said lead study author Dr. Mark Lachs, a researcher at Weill Cornell Medicine and director of geriatrics at New York Presbyterian Health Care System.

“While memory loss and other cognitive problems are cardinal features of dementia, the behavior problems that accompany dementia are notorious triggers for nursing home placement,” Lachs added by email. “When many such people are asked to share common spaces or become roommates, these situations can occur.”

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

To assess the prevalence of abuse involving residents, Lachs and colleagues examined data from interviews with staff and residents of five urban and five suburban nursing homes in New York, as well as information from medical charts and accident or incident reports.

To include residents with mental health issues or language barriers that might make consent and participation difficult, researchers also interviewed family members or legal guardians of some residents.

Residents were about 84 years old on average, and 73 percent were women.

Roughly 16 percent of them resided in a unit for dementia patients.

While verbal and physical abuse was the most commonly reported type of abuse residents suffered from other residents, about 20 percent of incidents involved invasion of privacy, researchers report in the Annals of Internal Medicine.

In about 4 percent of cases, one resident directed menacing gestures or facial expressions at another resident. Slightly less than 3 percent of cases involved some form of sexual abuse.

The most common types of verbal aggression were screaming at another resident and using inappropriate words.

With physical aggression, the most common cases involved hitting or pushing another resident.

The incidents of invasion of privacy typically involved one resident entering another resident's room without permission and taking or touching property without asking.

One limitation of the study is that researchers relied in part on reports of staff, other residents, family members or legal guardians to verify when incidents occurred, the authors note. It's possible that abuse is much more prevalent than the study findings suggest, the authors conclude.

Often, nursing home staff may not have adequate training to deal with older adults with cognitive and psychiatric issues like dementia, depression, and delirium, said Dr. XinQi Dong, a researcher in aging at Rush University Medical Center in Chicago and coauthor of an accompanying editorial.

It's possible that a more narrow definition of abuse might make this look less prevalent because the study included any situation that caused distress among one resident as a potential case of abuse by a fellow resident, Dong said by email.

“At the same time, we must recognize that residents may be both victims and perpetrators of elder abuse and avoid blaming victims or resorting to interventions of convenience, such as the use of chemical sedation and physical restraints,” Dong said by email.

Families should look for nursing homes with rooms or units set aside for dementia patients or residents prone to aggressive behaviors,” said Dr. Janice Du Mont, a public health researcher at the University of Toronto who wasn't involved in the study.

“During a tour, see if there is adequate open space or if the facility feels overcrowded,” Du Mont added by email. “Assess how many residents are in each room, if there are separated recreational areas, and how many staff you see on duty.”

Official Work to Stop Abuse of Nursing Home Residents on Social Media

In a follow up to an earlier report, ProPublica reports that states are still working to update state laws to protect residents of nursing homes from abuse at the hands of healthcare workers who post photographs of the residents to social media sites such as Snapchat. [FN43]

According to the report, when a “certified nursing assistant in Hubbard, Iowa, shared a photo online in March [2016] of a nursing home resident with his pants around his ankles, his legs and hand covered in feces,” state health officials were surprised to find that posting the photo was not against the law.

Because the photograph did not show the resident's genitals, it did not violate the Iowa law intended to protect dependent adults from abuse. The law, which was “last updated in 2008, bars ‘sexual exploitation of a depended adult by a caretaker [.]”’

ProPublica's earlier report “identified nearly three dozen” cases where “employees at long-term care facilities violate the privacy of residents by posting photos on social media websites.” Since that report, ProPublica has identified nine more instances.

After ProPublica's earlier report, Sen. Charles Grassley (R-Iowa), who chairs the Senate Judiciary Committee, “sent letters to social media companies and federal agencies asking what they are doing to stop the abuse.” Grassley has also challenged regulators to improve their handling of these incidents.

In June, the nursing home industry released “its own suggestions for dealing with such situations, encouraging training and swift responses by [] facilities when allegations are brought to light.”

OIG Highlights “Early Alert” on Potential Nursing Home Abuse

McKnight's reports that the OIG's “early alert on potential abuse cases in nursing homes was highlighted in the agency's semiannual report to Congress. [FN44] According to the report from April through September of 2017, the alert covered 124 instances of potential abuse or neglect in skilled nursing facilities. Many had not been reported to law enforcement.

The OIG has now referred all cases to law enforcement officials and suggested immediate actions from CMS to protect residents.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Also according to the report, nursing home complaints rose by 33 percent over four years and that some states did not investigate serious complaints in a timely manner.

Federal Activity

OIG Issues Interim Report on National Background Check Program for LTC

Long-term-care employees provide essential care to patients in settings such as nursing facilities, home health agencies, and hospices. [FN45] Ensuring that these employees have undergone a minimum level of screening helps protect the safety of beneficiaries in these settings. The Patient Protection and Affordable Care Act (ACA) grants to states to implement background check programs for prospective long-term-care employees. The ACA also requires OIG to conduct an evaluation of this grant program-known as the National Background Check Program-after its completion. This interim report describes the overall implementation status and states' results from the first 4 years of the program, and provides CMS with information that may assist its ongoing administration of this program. OIG also plans to issue a final evaluation of the grant program after its completion.

OIG reviewed reports that each of the 25 states participating in the grant program submitted to CMS. These reports contained data on implementation milestones and expenditures and reflected each state's progress from program inception through September 30, 2014. The earliest program inception date was September 30, 2010. OIG also reviewed the data that 14 states provided regarding the number of background checks completed. CMS permits states to determine when their programs are sufficiently implemented to begin submitting background check data.

Four years into the grant program, the 25 states that are receiving grants reported having achieved varying levels of program implementation. Specifically, some states have not obtained legislation that would enable them to conduct background checks. Other states have not yet implemented processes to collect fingerprints and monitor criminal history information after individuals begin employment. Only 6 of the 25 states have submitted to CMS data sufficient to calculate the percentage of prospective employees who were disqualified because of their background checks. In these six states, 3 percent of prospective employees were disqualified from employment. Of the remaining 19 states, 11 states were not yet submitting data reports and 8 states had data gaps that prevented the calculation of disqualification rates.

OIG recommends that CMS continue to work with participating states to fully implement their background check programs and to improve required reporting to ensure that CMS can conduct effective oversight of the grant program. CMS concurred with both of the OIG recommendations.

CMS Addresses Social Media Abuse in Surveys

Following a series of reports from ProPublica, social media abuse of long-term care residents has drawn the attention of regulators. The ProPublica report identified dozens of cases where “employees of long-term care facilities violated the privacy of residents by posting photos on social media websites.” [FN46]

In an August 5 letter to state survey agency directors, CMS noted that surveyors will request and review facility policies and procedures to prevent staff from taking or using photographs or recordings in a manner that “demean or humiliate a resident.”

CMS characterized this as mental abuse as well as a violation of the resident's privacy.

According to the letter:

• “Each nursing home must establish and enforce an environment that encourages individuals to report allegations of abuse without fear of recrimination or intimidation”; and

• “The nursing home management must assure that all staff is aware of reporting responsibilities, including how to identify possible abuse and how to report any allegations of abuse.”

America's Hidden Horror: Sexual Abuse in Nursing Homes and Care Facilities

An April 23 article [FN47] in the Kansas City Star discusses the largely hidden problem of sexual abuse of residents in long-term care facilities, assisted-living centers and nursing homes nationwide.

The article states the problem hides behind reporting systems that fail to catalog such complaints separately from other forms of abuse that afflict the elderly and disabled. It hides behind business incentives that drive facility owners to conceal abuse.

It hides behind apathy and the reluctance of family, friends and visitors who know or suspect something has happened but don't want to get involved. It hides behind the failure to believe victims.

”People don't even think that an older person would be sexually assaulted, would be raped, would be a victim,” said Edwin Walker, once the head of Missouri's former department on aging and now a deputy assistant secretary at the federal Administration on Aging.

Yet inspection reports, regulatory notices and court documents describe many instances of sexual abuse of long-term care residents. One federal program has cataloged more than 20,000 complaints of sexual abuse at long-term care facilities over 20 years — a rate of nearly three such complaints a day.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Trump Administration Empowers Nursing Home Patients, Residents, Families, and Caregivers by Enhancing Transparency about Abuse and Neglect

In April of 2019 the Trump Administration announced its 5-part approach to ensuring safety and quality in nursing homes. [FN48] Part of this plan is increasing the transparency of CMS to allow consumers to make more informed decisions. On October 2nd CMS and the administration announced an enhancement to the Nursing Home Compare website directly aimed at this goal. When customers are reviewing the website they will now have access to an icon listed next to facilities that have had either abuse that lead to harm of a resident in the past year or abuse that could have potentially led to harm of a resident within the past two years. While this information was previously available, users would have to seek the information out in a separate document, now the icon, which will be updated monthly, will give immediate feedback on previous reports.

Selected State Legislation

• Illinois

• 2019 IL S.B. 1965 (NS), adopted July 31, adds individuals enrolled in training programs to the applicant definition and allows workforce intermediaries and pro bono legal services to initiate a fingerprint based criminal background check.

• Oklahoma

• 2019 OK S.B. 383 (NS), engrossed March 05, 2019, relating to nursing home administrators, requiring background checks, recognizing certain credentials, extending the licensure period and providing an effective date.

• New York

• 2019 NY A.B. 4416 (NS), amended/substituted June 03, 2019, would establish safety requirements and procedures when those requirements are violated including the penalties to be paid and the notice for hearings.

• Rhode Island

• 2019 RI H.B. 5573 (NS), adopted July 8, would add physician assistants and probation officers to the list of mandatory reporters in resident facilities.

• Washington

• 2019 WA REG TEXT 521565 (NS), proposed July 17, would amend WA ADC 388-78A-2380 repealing most of the information regarding who can come and go freely and adding information regarding controls to monitor the coming and going of residents.

D. Electronic Monitoring

Momentum Grows for In-room Cameras at Nursing Homes

In Louisiana there is now a measure on the House floor which would allow families or patients to install monitoring cameras in the patient's room at their own cost. [FN49] During a hearing last week, legislatures heard from a resident who found her mother with a black eye and in severe pain. Her mother, who has Alzheimer's, was unable to explain how she received the injuries. The woman then asked care givers how the injuries happened, a question that they were also unable to answer. After the resident, Lucie Titus, requested that she be allowed to place cameras in her mother's room she was denied. Titus sought legal intervention to allow the installation of the cameras however her mother passed before the issue could be resolved. The bill would avoid the necessity of the interventions. Individuals are concerned for patient's privacy and the possibility of hackers using the cameras. The bill has been sent to the House floor for debate.

State Legislative Activity

• Georgia

o 2017 GA H.B. 776 (NS), introduced January 31, 2018, would allow the resident or resident's guardian, as long as the resident has not affirmatively objected, to place an electronic monitoring system in the resident's room. The bill also describes the necessary steps if the resident has a roommate or for removing the electronic monitoring system.

• Illinois

• 2017 IL S.B. 3649 (NS), introduced November 27, amends the Authorized Electronic Monitoring in Long-Term Care Facilities Act. Includes in the definition of “facility” a facility that provides housing to individuals with dementia. Effective immediately.

• 2019 IL S.B. 109 (NS), adopted July 26, 2019, amends the Authorized Electronic Monitoring in Long-Term Care Facilities Act to include in the definition of “facility” a facility that provides housing to individuals with dementia. Effective immediately.

• Kansas

o 2017 KS H.B. 2232 (NS), adopted April 16, 2018, requires individuals who wish to have electronic monitoring in their room at a Long-term Care facility complete an authorization form. Also discusses the requirements if the resident has a roommate or wishes to withdraw consent.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• **Minnesota**

o 2017 MN S.F. 3100 (NS), introduced March 08, 2018, would allow residents or legal representatives of residents to conduct electronic monitoring of their room or living space so long as the monitoring is authorized. The bill also provides for who may request the monitoring, how the monitoring may be requested, and other specifics.

o 2017 MN S.F. 3437 (NS), engrossed April 30, 2018, would allow residents or legal representatives of residents to conduct electronic monitoring of their room or living space so long as the monitoring is authorized. The bill also provides for who may request the monitoring, how the monitoring may be requested, and other specifics.

o 2019 MN H.F. 146 (NS), introduced January 17, establishing a requirement for electronic monitoring in nursing and assisted living facilities.

o 2019 MN S.F. 805 (NS), introduced February 04, creates consumer protections for residents of assisted living establishments. These protections include the requirement of resident contracts, complaint procedures, notice requirements, electronic monitoring procedures, and other aspects of residential life.

o 2019 MN S.F. 11 (NS), introduced May 24, 2019, establishes requirements and protections for residents using electronic monitoring in long term care facilities. These protections include situations in which the monitoring must be shut down, and who must consent to monitoring and methods for removing monitoring.

• **New Jersey**

o 2018 NJ A.B. 2593 (NS), introduced February 1, 2018, would require nursing homes to allow residents to use electronic monitoring systems. The nursing home must allow for reasonable physical accommodations for the system to be physically placed on a secure mount.

o 2018 NJ A.B. 2872 (NS), introduced February 01, 2018, would require long term care facilities to have a standby emergency power generator. All existing facilities operating an assisting living residence would have to comply within 90 days of the bill's effective date.

• **New York**

o 2017 NY S.B. 7138 (NS), introduced January 03, 2018, allows every patient to install, at his or her own expense, an electronic monitoring device in his or her room. The bill also states the specifics allowed for the camera.

• 2017 NY A.B. 10703 (NS), introduced May 10, 2018, would allow a nursing home patient to install, operate, and maintain an electronic monitoring device in the resident's room. The costs associated with the device would be the responsibility of the resident.

• 2019 NY S.B. 3786 (NS), introduced February 14, would add a new subsection to NY PUB HEALTH § 2803-c allowing nursing home patients to install and maintain an electronic monitoring system at their own expense.

• **Pennsylvania**

o 2019 PA H.B. 397 (NS), introduced April 25, would add requirements for a display of notice that monitoring along with other requirements for electronic monitoring in long term care facilities.

• **South Dakota**

• 2019 SD H.B. 1268 (NS), introduced January 30, would allow for electronic monitoring of residents in assisted living centers and nursing facilities. The bill also sets out requirements for authorization and consent.

E. Protecting the Health of Residents

CMS Launches Infection Control Pilot Project

On December 23, CMS announced a three-year pilot project to improve assessment of infection control and prevention regulations in nursing homes, hospitals, and during transitions of care.

The pilot project is intended to meet identified joint priorities related to assessing the continuum of infection prevention efforts between hospitals and nursing homes in order to prevent transmission of infections in both settings. The recent U.S. experience with Ebola highlighted the critical importance of infection prevention programs in protecting both healthcare personnel and patients. Translating lessons learned from the Ebola outbreak, including the importance of core infection prevention practices, to every setting where individuals receive healthcare is a significant opportunity to increase the safety of U.S. healthcare facilities.

The role of nursing homes in healthcare delivery has expanded significantly. According to CMS over 3 million Americans receive care in U.S. nursing homes each year. Data about infections in nursing homes are limited, but it has been estimated in the medical literature that:

• 1 to 3 million serious infections occur every year in these facilities;

• Common infections include urinary tract infections, diarrheal diseases, antibioticresistant staphylococcal infections and other multi-drug resistant organisms; and,

• Infections are a major cause of hospitalization and death; as many as 380,000 people die from infections in nursing homes every year.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

There is a clear need to assess the continuum of infection prevention efforts between hospitals and nursing homes in order to prevent transmission of infections in both settings. Assessments in these educational, pilot surveys will allow for further review of infection prevention practices by the healthcare facilities, as well as examination of infection prevention during transitions of care. In addition, where the risk of non-compliance is documented, technical expertise to improve performance can be deployed. Sustainable improvements can then be measured using the CDC National Healthcare Safety Network (NHSN) data.

More information about the pilot program is available at: https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-16-05.pdf.

New Report Evaluates the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents

The Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents is a three-year program that seeks to improve the health of residents in long-stay nursing facilities who are insured with Medicare, Medicaid, or both Medicare and Medicaid. The theory is that if these facilities can improve the health of their residents, the residents will require fewer hospitalizations. The initiative is in its third year, and the Centers for Medicare and Medicaid Services (CMS) is evaluating the success of the initiative based on data from the second program year. [FN50] The report is annual, the first having been released in May 2015 based on data from the first program year. [FN51] The initiative is being administered by CMS' Office for Medicare-Medicaid Coordination and the Medicare and Medicaid Center for Innovation. CMS explains why reducing hospitalizations for this population is crucial:

For such individuals, avoidable hospitalizations can be dangerous, disruptive, and disorienting.

Many nursing facility residents are enrolled in both the Medicare and Medicaid programs (Medicare-Medicaid enrollees). CMS research on Medicare-Medicaid enrollees in nursing facilities found that approximately 45% of hospital admissions among individuals receiving either Medicare skilled nursing facility services or Medicaid nursing facility services could have been avoided, accounting for 314,000 potentially avoidable hospitalizations and $2.6 billion in Medicare expenditures in 2005. [FN52]

To achieve its goals, the initiative relies on seven Enhanced Care and Coordination Providers (ECCPs), which consist of academic institutions, quality improvement organizations, a health care provider network, and a hospital association. [FN53] The participating ECCPs are:

• Alabama Quality Assurance Foundation – Alabama,

• CHI/Alegent Creighton Health – Nebraska,

• HealthInsight of Nevada – Nevada,

• Indiana University – Indiana,

• The Curators of the University of Missouri – Missouri,

• The Greater New York Hospital Foundation, Inc. – New York City, and

• UPMC Community Provider Services – Pennsylvania. [FN54]

As of September 2013, these ECCPs were working to avoid admissions in 144 partner long-stay nursing facilities in seven states. [FN55] They are using clinical interventions and care models to improve the residents' health. In the latest report, CMS indicates that all seven ECCPs showed a general reduction in Medicare spending and, there was a statistically significant reduction in two. Similarly, all ECCPs saw a general reduction in all-cause hospitalizations and potentially avoidable hospitalizations, with four showing a statistically significant reduction in at least one hospitalization measure. [FN56] (Medicaid data is not available at this time.)

The initiative is to unfold in two phases. The program is currently in its first phase – Improving Clinical Care. The second phase will add payment reforms. CMS has announced the funding opportunity for the second phase, and all seven ECCPs currently participating have indicated intent to apply. [FN57]

Antipsychotic Usage Down Nearly 30 Percent in Skilled Nursing Centers

On February 9, the American Health Care Association (AHCA) announced that its skilled nursing center members have lowered antipsychotic usage by nearly 30 percent nationwide. [FN58] According to data from the Centers for Medicare & Medicaid Services (CMS), 16.7 percent of residents in member centers were receiving an antipsychotic medication in the third quarter of 2015 compared with 23.6 percent in the fourth quarter of 2011 -- a 29.2 percent decrease. Announced at its National Quality Summit in San Antonio, Texas, the milestone represents a faster rate of reduction and a lower rate of usage than non-member skilled nursing centers, which currently show a 27 percent decrease and 17.4 percent usage rate.

“This announcement today signals a major accomplishment not only for providers but, more importantly, for the tens of thousands of residents, patients and their families who are no longer experiencing the negative effects and toll these drugs take,” said AHCA/NCAL President and CEO Mark Parkinson. “While that's good news -- and represents progress throughout just one quarter of study -- we won't stop pursuing safe alternatives that result in better care for those in our centers. I'm proud of the incredible work our members have achieved. With help from CMS and our Quality Initiative, we continue to address challenges and improve lives.”

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

AHCA launched its metric-based Quality Initiative in 2012 and later joined CMS in supporting the National Partnership to Improve Dementia Care in Nursing Homes. In 2014, AHCA and CMS set goals to further decrease the use of antipsychotics in skilled nursing centers by a total of 30 percent by December 2016. Today, 54.6 percent of AHCA member centers have achieved the initial goal of a 25 percent reduction, while 48.9 percent have achieved the goal of a 30 percent reduction.

“We want to build upon this significant achievement,” said Dr. David Gifford, AHCA Senior Vice President of Quality and Regulatory Affairs and a board-certified geriatrician. “By taking a systems-based and person-centered care approach, I'm confident that we will continue to safely decrease the use of antipsychotics. Applying these approaches will also lead to success in other quality improvement areas.”

Jimmo Settlement Back in Court

In 2013, a settlement agreement was approved in the case of *Jimmo v. Sebelius*, to ensure that more nursing home residents receive coverage for skilled therapies that help them maintain critical functions and the quality of life. At issue was the inappropriate use of the “improvement standard” under which a claim would be denied due to the beneficiary's lack of restoration potential, even though the beneficiary did in fact require a covered level of *skilled care* in order to prevent or slow further deterioration in his or her clinical condition. [FN59]

Under the settlement agreement, CMS agreed to educate providers and its own contractors about inappropriate use of the “improvement standard.” Many therapists and facilities, however, are still hesitant about billing for services that help chronically ill patients receive maintenance therapies. The Center for Medicare Advocacy and Vermont Legal Aid allege that CMS has failed to comply with the settlement terms; that CMS's education campaign was insufficient. The agency hosted just one provider call on *Jimmo*, a lawyer for the Center for Medicare Advocacy says; although more than 3,000 people participated, only 18 were able to ask questions. [FN60]

CDC Investigating Infections Associated with Contaminated Prefilled Saline Flush Syringes

The CDC is working with the U.S. Food & Drug Administration, Delaware Health and Social Services, the Maryland Department of Health and Mental Hygiene, the New Jersey Department of Health, the New York State Department of Health, and the Pennsylvania Department of Health to investigate an outbreak of bloodstream infections caused by Burkholderia cepacia (B. cepacia), a group or “complex” of bacteria that can be found in soil and water.

There have been six deaths among the 151 reported cases in the five states cooperating in the investigation.

The majority of these cases have occurred in patients residing at long-term care or rehabilitation facilities who were receiving intravenous (IV) fluids and/or antibiotics through central venous catheters. Contaminated prefilled saline flush syringes manufactured by Nurse Assist, Haltom City, TX, are being investigated as the source of the bacteria. Nurse Assist therefore performed a voluntary recall and removal of all its prefilled saline flush syringes on October 4, 2016.

Pressure Injury Rates Up in LTC Facilities

McKnight's reports the “prevalence of pressure injuries acquired in long-term care facilities has risen in recent years,” citing a survey published in the Journal of Wound, Ostomy and Continence Nursing. [FN61] The International Pressure Ulcer Prevalence survey “examined a sample of more than 900,000 patients in the United States across healthcare settings between 2006 and 2015.”

Although the overall rate of pressure injury fell from 13.5 percent in 2006 to 9.3 percent in 2015, the “prevalence of facility-acquired pressure injuries in long-term care facilities was found to be on the rise in recent years, increasing from 3.8% in 2013 to 5.4% in 2015.”

Safety Program Cut SNF Infection Rates by More than 50 Percent

McKnight's reported on a patient safety program that reduced the rate of catheter-associated urinary tract infections by 54 percent for a cohort of long-term care facilities. [FN62]

The Comprehensive Unit-based Safety Program, or CUSP, was rolled out in more than 400 nursing homes in 38 states between 2014 and 2016. The project was funded by the Agency for Healthcare Research and Quality.

The CUSP program emphasizes leadership, communication, teamwork and a culture of safety in long-term care facilities. It also encourages evidence-based infection prevention practices, such as not ordering urine cultures for the majority of residents who don't have symptoms.

The study's University of Michigan-based research team found CUSP helped reduce catheter-associated UTI rates from 6.4 to 3.3 per 1,000 catheter days over the study period. Orders for urine cultures also dropped by 15%. [FN63]

Seventy-five percent of nursing homes that participated showed an infection reduction rate of at least 40%, a statistic that shows the CUSP project could benefit most providers, researchers said.

Falls Among Oldest Americans Increasing, but Outcomes Improving

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

In the past 20 years, the number of individuals over the age of 90 being admitted to the hospital for fall related injuries has doubled [FN64] . The most common injuries at the early stages of the study were to the upper body, including arms. In more recent years, individuals are more likely to suffer injuries to their spine or pelvis with almost 20 percent experiencing bleeding to the head. With these numbers increasing, it is also important to note that patients are more likely to be discharged from the hospital than previously. It is believed that this increase is due to the increase in use of physical therapists and other medical interventions.

Off-label Use of Antipsychotics Higher in Nursing Homes with Lower Registered Nurse Staffing, Study Finds

At least 5.7 million people in the U.S. have a form of dementia such as Alzheimer's, including more than half of all nursing home residents. Previous research has shown that nursing homes often overmedicate dementia patients with antipsychotic medications despite the fact that the FDA has not approved these medications for the treatment of dementia. Now, new research from the University of Missouri has found that increased staffing of registered nurses in Missouri nursing homes is associated with lower use of antipsychotics. [FN65]

“Missouri has fewer registered nurse hours per resident than the national average, and it ranks high in antipsychotic use,” said Lorraine Phillips, who conducted the research as an associate professor in MU's Sinclair School of Nursing. “We found that if registered nurse staffing in this state were to rise to meet the national average, the odds of antipsychotic use would go down by at least 22 percent.”

Phillips and her colleagues analyzed data from 458 Medicare or Medicaid certified nursing homes in Missouri. The data on residents came from the 2015 Minimum Data Set, a federally mandated assessment of residents in federally funded nursing homes, while facility-level information came from annual cost reports submitted to the Missouri Department of Health and Human Services. Researchers found that more than 11 percent of all residents – and about 15 percent of those with dementia – had received an antipsychotic medication within seven days of the assessment.

By comparing the facilities, researchers were able to show that increasing staffing of registered nurses by a full hour per resident per day could reduce antipsychotic use by more than 50 percent for residents, including those with and without dementia diagnoses. Simply bringing registered nurse staffing in line with the national average, which would require an increase of only 20 minutes per resident per day, would still result in a 22 percent overall decrease in use. Residents with diagnoses for which antipsychotics are approved were excluded from the study.

“People with dementia may have thoughts and feelings that interfere with relating to other people and the environment, and off-label use of antipsychotics is not likely to improve that issue,” Phillips said. “It's understandable that sometimes nursing homes simply can't fill positions due to a variety of circumstances, but we believe this study can be used to help nursing homes make better decisions about staffing and antipsychotic medications.”

In light of new, more stringent certification standards for dementia care from the Centers for Medicare and Medicaid Services (CMS), Phillips said adding more registered nurses could also help facilities avoid falling short of those standards. The study is the first to examine antipsychotic use in nursing home facilities on the state level with this degree of detail; researchers accounted for a variety of conditions and characteristics of residents, including cognitive performance, behaviors and symptoms, as well as many facility-level factors. According to Phillips, this level of detail could help researchers develop clinical decision tools for care facilities in the future.

“An observational study of antipsychotic medication use among long-stay nursing home residents without qualifying diagnoses” was published in the Journal of Psychiatric and Mental Health Nursing. Other researchers involved in the study were Marilyn Rantz, Nancy Birtley, Gregory Petrosky and Carol Siem of the University of Missouri. Funding was provided in part by the Missouri Department of Health and Senior Services.

New Resources Shine Light on Sepsis in Nursing Facilities

The Kaiser Family Foundation has released a new resource on the risk of sepsis in nursing homes. It is an interactive tool that provides state level data to allow users to explore sepsis risk factors in Medicaid and Medicare nursing homes in any particular state. [FN66]

Additionally, *Kaiser Health News* has published an article discussing the prevalence of sepsis in nursing facilities, the number of deaths from that condition in nursing homes, and the costs to the Medicare program for treating sepsis. Included in the article is a video explaining what sepsis is and how it happens. [FN67] According to the authors, bedsores and poor infection controls are among the leading causes of sepsis, and both of these causes could potentially be avoided. To the extent that sepsis is caused by bedsores or infections from other injuries, these cases could be avoided through better staffing. However, there are no clear standards for staffing levels in nursing homes. Moreover, low Medicaid payments may impact low staffing. A professor of medicine and sepsis expert told *Kaiser Health News*, “‘This is an enormous public health problem for the United States . . . . People don't go to a nursing home so they can get sepsis and die. That is what is happening a lot.’”

CMS Rule Would Increase Oversight of Elder Abuse Reporting In Nursing Homes

The CMS is looking to increase its oversight of post-acute care settings through new civil money penalties on nursing home staff and a new verification process to confirm personal attendants actually showed up to care for seniors when they are at home.

A proposed rule [FN68] in the works to implement a federal law would allow the CMS to impose enforcement actions on nursing home staff in cases of elder abuse or other illegal activities, the agency announced in a notice Friday.

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

The regulation being developed will outline how the CMS would impose civil money penalties, or CMPs, of up to $200,000 against nursing home staff or volunteers who fail to report reasonable suspicion of crimes. In addition, the proposed regulation would allow a two-year exclusion from federal health programs for retaliating against individuals who report.

CMS Improving Nursing Home Compare in April 2019

The beginning of April 2019, CMS will revise their nursing home star measures to include revisions to the inspection process, enhancement of new staffing information, and implementation of new quality measures. [FN69]

Previously, the inspection ratings had been frozen to allow time for a new health inspection survey process. Long Term Care facilities would have been reviewed under the new survey and some under the old survey due to the time of implementation. To ensure fairness, the measurement was frozen.

CMS has also changed the standards for star levels regarding nursing staff. This includes an automatic one star rating for facilities who have had no on-site nurse for 4 days in a quarter. In addition to altering the standard, CMS has added portions of their Meaningful Measurements Initiative, adding measurements for long-stay hospitalizations and emergency room transfers.

State Legislative Activity

Hawaii

• 2019 HI S.B. 462 (NS), amended/substituted March 22, 2019, extends the nursing facility sustainability fee program to 2021. Allows the nursing facility sustainability fee to be used to enhance capitated rates for the purpose of paying quality incentives. Increases the nursing facility sustainability fee limit from four to 5.5 per cent of net patient service revenue. Increases the per resident daily maximum fee from $13.46 to $20 for each facility, and increases the per resident reduced daily maximum fee from $5.85 to $9 for facilities that meet certain exceptions. Appropriates funds.

New Jersey

2018 NJ A.B. 5527 (NS), adopted August 15, 2019, requires long term care facilities including nursing homes, assisted living residences, comprehensive personal care homes, residential health care facilities, or dementia care home licensed facilities to submit outbreak response plans to outbreaks. This plan must include provisions for residents on ventilators.

Oklahoma

• 2019 OK S.B. 280 (NS), adopted May 28, 2019, amending O.S. 2011, Section 1011.5, which relates to nursing facility incentive reimbursement rate plan; modifying composition and focus of certain task force; modifying reimbursement methodology; directing certain redistribution of funds; establishing certain advisory group; specifying certain quality measures; requiring annual review of quality measures; listing certain criteria; deleting certain requirement to make refinements; and other related charges.

• 2019 OK H.B. 1206 (NS), amended/substituted February 19, requiring assisted living centers to provide certain information to residents about influenza; specifying information to be given; providing that taking certain action shall be deemed compliance; providing certain construction; protecting assisted living centers from certain civil and administrative actions; providing for codification; and providing an effective date.

• 2019 OK S.B. 142 (NS), adopted May 7, limits the drugs that facilities may provide to residents without a prescription. This includes antipsychotics unless there is an emergency situation.

F. Miscellaneous Protection Developments

State Legislative Activity

V. Comfort of Residents

Bills and regulations that address comfort levels in long-term care facilities focus on such issues as bed bug infestation and physical plant issues, such as controlling temperatures and ensuring that residents are not subjected to pesticides.

Hospital sinks $37 million into new nursing home that will operate like a hotel

Orlando Health has renovated an aging facility to better meet the needs of the future. [FN70] The hospital has taken an older health facility and created a 110-bed, 4 story building that will focus on meeting the health needs of short term stay individuals. The facility will look like a hotel including a garden but provide care necessary for patients who have recently undergone procedures. The hotel hopes to cater to the baby boomer generation. The building will include bed allotments for Alzheimer's and dementia patients and for Cornerstone Hospice who runs an existing unit in Orlando Health's downtown location.

State Legislative Activity

o **California**

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

• 2019 CA A.B. 458 (NS), adopted October 2, 2019, amends the Optometrist Licensing requirements, allowing optometrists to practice in a residential care facility or at a health facility.

o **Florida**

• 2019 FL S.B. 1592 (NS), amended/substituted April 08, 2019, would add requirements for nursing care facilities if it is taking care of patients who are bedridden. The bill would also update safety standards and drill requirements.

o **Georgia**

• 2019 GA H.B. 374 (NS), adopted May 11, 2019, amends GA ST § 31-7-12.2 to allow assisted living facility staff to provide liquid morphine to residents in hospice care.

o **Maryland**

• 2018 MD S.B. 386 (NS), approved May 08, 2018, amends the timelines that long-term care facilities must meet when investigating certain complaints.

o **New Jersey**

• 2018 NJ S.B. 794 (NS), amended/substituted May 21, 2018, would require nursing homes and residential care facilities to comply with regulations regarding the maximum and minimum temperatures the facility may be maintained at.

• 2018 NJ A.B. 2942 (NS), introduced February 01, 2018, would establish minimum and maximum temperatures for emergency shelters, rooming and boarding houses, dementia care homes, and certain nursing homes and residential health care facilities.

VI. Quality of Life

The last decade has witnessed a growing effort to change the “culture” of nursing homes from hospital-like institutions with rigid routines to residences that accommodate the preferences and interests of the inhabitants as well as their physical needs. [FN71] Efforts are being made to encourage patient self-determination and health care planning by seeing that residents have access to critical information. Other ways to improve the quality of life of patients include making voting easier for residents and ensuring that residents are free from discrimination.

CMS Withdraws Proposed Rule to Require LTC Facilities to Recognize Spousal Rights of Same-sex Couples

McKnight's reports that CMS has withdrawn a 2014 proposed rule that would have required long-term care facilities to recognize and ensure rights for same-sex marriages. [FN72] CMS reportedly withdrew the rule as unnecessary after the 2015 Supreme Court decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), legalized same-sex marriage. However, others express concern that same-sex couples may still be subject to discrimination because *Obergefell* only legalized sex-same marriage but did not necessarily prohibit discrimination.

California Governor Signs LGBT LTC Bill of Rights

McKnight's reports that California Gov. Jerry Brown (D) signed a bill into law on October 11 that provides protections on lesbian, gay, bisexual and transgender residents of long-term care facilities. Senate Bill 219, known as the “LGBT Seniors Bill of Rights,” makes it unlawful for long-term care providers to discriminate against a resident's sexual orientation, gender identify, gender expression or HIV status. The bill requires providers to use a resident's preferred name or pronouns, prohibits the denial of admission or the eviction of a resident based on their orientation or gender identify and prohibits the transfer of a resident to a new facility because of the “anti-LGBT attitudes” of other residents. Facilities are also required to post a notice regarding discrimination along with existing nondiscrimination policies.

Washington State Weighs LGBTQ Training for Long-Term Care Workers

State lawmakers heard testimony regarding the requirement for training Long-Term Care workers in the unique needs of LGBTQ seniors and the discrimination they may face while receiving care. **[FN73]** Most health care providers must already complete 12 hours of advanced training on various topics each year.

Kaiser Study: Nursing Homes Have Fewer Residents, but Those Residents Need More Help

Between 2009 and 2016, nursing home occupancy dropped, but the number of hours of care needed per resident per day increased. [FN74] This increase in the amount of care needed per resident has been attributed to the increasing need of the patients. In 2016, almost half of all nursing home patients had a dementia diagnosis, and just under one third of patients had been diagnosed with another psychiatric condition. Other studies have shown the importance of having a high staff to patient ratio to improve care outcomes. The outcome of the higher need patients and the studies showing the importance of having a large staff have caused the need for trained staff to continue to increase despite the lower residence numbers.

Obesity Soars Among Long-Stay Nursing Home Residents

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

In the past 10 years, the rates of obesity in nursing home residents has increased by 6%. [FN75] This trend has disproportionally effected women, raising the rate from 4% to 7%. Also, one of the trends that was found was that individuals falling into Class III, the heaviest of the obesity measurements, have dropped in median age. They have higher cases of chronic conditions, but lower rates of functional or cognitive decline. These residents had specific comorbidities, which will help facilities cater to this population's needs.

Nursing Home Rankings, Once Hidden From Public, Reveal Poor Picture of VA Care

After many years of recording measures but not releasing the information, the VA has released their results. [FN76] Over half of VA facilities received the agency's lowest ranking. A VA spokesperson believes that these rankings do not accurately depict the care given at these facilities. He speaks to the increased complexity of cases that the VA facilities treat and the improved quality over the past year. The VA's goal is to continue to improve care to match or beat the quality of private facilities.

State Legislative Activity

• Federal

• 84 FR 51836-01, effective November 29, 2019, allows patients to play a more active role in the discharge planning process by providing for a greater exchange of information and allowing patients and their families to make informed decisions about care after discharge. The goal of this regulation is to reduce the rates of rehospitalization.

• Florida

• 2019 FL S.B. 1606 (NS), introduced March 13, would prohibit long term care facilities from charging a fee to individuals or entities that provide health, social, legal, or other services to a resident for reasonable access to the resident.

• Georgia

• 2019 GA H.B. 374 (NS), adopted May 11, 2019, amends GA ST 31-7-12.2 to allow hospice physicians to prescribe liquid morphine to patients in assisted living facilities.

• Nevada

• 2019 NV S.B. 95 (NS), adopted May 29, amends NV ST § 449 by requiring medical facilities to take necessary actions to comply with dietary requirements of patients in their care.

• New Hampshire

• 2019 NH H.B. 531 (NS), adopted July 19, allows caregivers to deliver absentee ballots for voters who reside in nursing homes or assisted living facilities.

• New Jersey

• 2018 NJ S.B. 3484 (NS), amended/substituted May 13, 2019, would establish certain rights and protections for members of the LGBTQI community who are living in long term care facilities. Specifically, the bill would provide protections against discrimination based on an individual's sexual orientation, gender identity, gender expression, or HIV status.

• 2018 NJ A.B. 5075 (NS), introduced February 25, would establish required rights for LGBTQI individuals living in long term care facilities. These rights include the right to be free from harassment due to sexual orientation, gender identity, or HIV status.

• New York

• 2017 NY S.B. 8580 (NS), introduced May 10, 2018, would establish the lesbian, gay, bisexual, and transgender long-term care facility residents' bill of rights. This bill of rights includes but is not limited to the requirement that facilities take immediate action against staff who discriminate against a resident due to their actual or perceived HIV status. Other actions for which a facility must take immediate action are included.

• 2019 NY S.B. 2912 (NS), amended/substituted June 6, 2019, would create an LGBTQ+ and HIV positive individuals bill of rights for long term care facilities. The bill also includes training requirement for staff on cultural competency.

• 2019 NY A.B. 866 (NS), amended/substituted June 07, establishes a LGBT long-term care bill of rights.

• North Carolina

• 2019 NY S.B. 2912 (NS), amended/substituted June 6, 2019, would create an LGBTQ+ and HIV positive individuals bill of rights for long term care facilities. The bill also includes training requirement for staff on cultural competency.

• Virginia

• 2018 VA S.B. 1410 (NS), adopted February 21, requires assisted living facilities with patients with severe cognitive abilities to have a higher ratio of staff to patients.

VII. OWNERSHIP AND MANAGEMENT OF FACILITIES

Report Predicts 'Bright Future' For Nursing Homes – With Caveats

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Currently nursing homes are facing strong competition from at-home care, which had initially left some providers weary of the future of nursing homes. [FN77] „ However, new reports are showing that the demand for nursing homes will be increasing with the aging baby boomer population. There is an increase in demand in nursing staff which lead to higher salaries and an increase in the quality of care provided. With the increase in demand, there can be expected to be a growth in the need for lower length of stay.

VA Healthcare Bill Aims to Give Vets More Access to Private Long-Term Care Services

Currently, veterans seeking care from VA facilities are faced with long waitlists or facilities that are not capable of caring for certain medical conditions. [FN78] President Trump is currently reviewing a measure which would broaden the facilities that the VA would pay for to private long-term care facilities. The bill is facing opposition from those concerned with the amount of time it would take to reimburse non-VA facilities would cause serious delays.

CMS Announcement Reminds Changes are Near Regarding Nursing Home Compare, Staffing Changes

CMS is publishing nursing home performance data on July 1 and is urging nursing homes to review their scores prior to publishing. [FN79] However, corrections will not be allowed now, but nursing homes can submit a form for corrections to be made. This publishing period is the first time that new measures regarding staffing levels and re-hospitalization rates for short term residents are shared.

Advocacy Group Calls for 'Immediate' Congressional Hearings into Nursing Home Staffing

In response to a New York Times Article alleging chronic staffing shortages, the Elder Justice Coalition is calling for immediate hearings to investigate the validity of the claim. [FN80] More specifically, the Coalition would like to focus on the response by CMS and would like the bell curve associated with star quality ratings to change. CMS had previously stated that no staffing shortages were noticed. The need for a new, more accurate reporting system for nursing home staffing is being emphasized and it is believed would have prevented the problem discussed in the article.

Close to 1,400 Nursing Homes Lose a Rating Star Due to New Staffing Info

CMS has updated their star ratings, reflecting better reporting on staffing of nursing homes. [FN81] Nursing facilities believe that the change in star rating does not reflect a change in the actual number of individuals who are staffing these facilities but are a product of improved reporting methods. One major area of concern is the lack of registered nurses. Law requires that facilities have a registered nurse on staff for 8 hours a day. The facilities that received one star had a "high number of days" for over 3 months where there was unverifiable information related to the presence of a registered nurse on staff.

Nursing facilities managers believe that a lack of available nurses and a lack of funding have led to the staffing issues.

Federal Activity

• 83 FR 17777-01, proposed April 24, 2018, would amend regulations governing standards applicable to community residential care facilities. Currently, veterans residing in community residential care must finance their own care. The amendment would update the criteria the VA uses to determine whether the rate for care charged to a veteran is appropriate, and clarify how the VA determines whether a CRC rate should be approved.

State Legislative Activity

o **Alabama**

o 2019 AL H.B. 403 (NS), adopted May 29, would require that any adult working in a transitional living facility undergo a background check.

o **California**

o 2019 CA A.B. 1766 (NS), amended/substituted June 27, would limit the number of individuals with severe mental illness that a facility would be able to house. This is determined by the length of stay of the individual and the level of care needed.

o **Florida**

o 2019 FL S.B. 1592 (NS), amended/substituted April 08, would add requirements that facilities must meet in order to be qualified to house certain patients.

o 2020 FL S.B. 402 (NS), amended/substituted November 5, 2019, would amend definitions and clarify that an assisted living facility licensed to provide extended congregate care services or limited nursing services must maintain a written progress report on each person receiving services. Would also require that investigations of incidents must begin with 24 hours after the incident and the required notices that must be given to residents who are self-administering medication. Also amends the required notices given in patient's bill of rights.

o **Montana**

o 2019 MT H.B. 566 (NS), adopted May 7, would require that assisted living facility employees undergo a background check.

o **Nevada**

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

o 2019 NV S.B. 362 (NS), adopted June 05, requires that residential facilities complete certain assessments and requiring residents with dementia to be placed in facilities that meet requirements to fulfill these patient's needs.

o **New Jersey**

o 2018 NJ S.B. 462 (NS), introduced January 09, 2018, would require that assisted living facilities have residential units available for individuals with disabilities. This would require that at least one facility in the Northern, Central, and Southern regions of the state reserve at minimum 2-4 units.

o **New York**

o 2017 NY A.B. 9892 (NS), amended/substituted March 08, 2018, would authorize assisted living facilities to increase their number of bed in an existing program if the facility can show that there is a public need for the increase.

o 2019 NY A.B. 4277 (NS), introduced February 04, creates mandated reporting for individuals with limited cognitive abilities in long term care facilities. The bill provides definitions, a list of mandated reporters, and requires education for these mandated reports.

o **North Carolina**

o 2019 NC S.B. 302 (NS), adopted July 26, allows adult care homes to use service plans that were created for Medicaid Personal Care Service Assessments to fulfill the activities of the daily living portion of required service or care plans for residents. The bill establishes the qualifications for using the Medicaid service plans as a replacement for existing plans.

o **Oklahoma**

o 2019 OK S.B. 436 (NS), introduced February 4, would amend OK ST T. 231 § 1, to add hospice agencies and all workers trained in palliative care to the list of specialized facilities and individuals whom must have all workers receive 1 hour of training per year in Alzheimer's-and dementia-related care.

o **Tennessee**

o 2017 TN H.B. 2445 (NS), filed February 01, 2018, would increase the limit of residents from 5 to 8.

o **Virginia**

o 2018 VA H.B. 2521 (NS) adopted March 08, 2019 and 2018 VA S.B. 1410 (NS), adopted February 21, establish overnight staffing requirements for assisted living facilities with patients with serious cognitive impairment.

B. Ownership, Certification, Licensing and Educational Requirements

State Legislative Activity

o **California**

o 2019 CA A.B. 50 (NS), amended/substituted April 25, would require the department to submit, in 2019, to the federal Centers for Medicare and Medicaid Services a request for renewal of the Assisted Living Waiver program with specified amendments.

o **Colorado**

o 2019 CO H.B. 1268 (NS), adopted May 13, would require that assisted living facilities using referral agencies and paying them a fee to disclose that fact to prospective residents. Also dictates what information must be kept regarding the relationship between referral agencies, residents, and facilities.

o **Hawaii**

o 2019 HI H.B. 582 (NS), amended/substituted April 5, would keep long term care facilities licensing fees the same as the previous year.

o 2019 HI H.B. 1474 (NS), introduced January 24, would create standards for personal care services. These include the requirements for nurse certification, oversight of these nurses, and oversight for the living conditions of clients being served by these personal care services.

o 2019 HI H.B. 1596 (NS), introduced January 24, would allow for substitute caregivers to work at certain care facilities for a maximum of 6 hours per day.

o **Oklahoma**

o 2019 OK S.B. 383, engrossed March 05, 2019, would update licensing requirements to require that facilities have submitted to a national criminal record check. The bill also updates renewal dates.

o **Minnesota**

o 2019 MN H.F. 90 (NS), enrolled May 22, would require an assisted living contract to be signed by the resident and the facility. The bill includes the necessary terms of the contract and the rights of the residents.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

o 2019 MN S.F. 933 (NS), engrossed March 07, would amend MN ST § 144A.26 to update licensure requirements. Would add MN ST 144A.291 regarding fees for registration and licensure and repeal MN ST § 6400.6970.

o 2019 MN S.F. 2699 (NS), introduced March 26, and 2019 MN H.GG. 2722 (NS), introduced March 27, would amend MN ST §144.057 to require owners, managerial and operational staff who are seeking licensure to undergo background checks. Amends MN ST § 144A.01, § 144.18, § 144.19, § 144.20, § 144.21, § 144.23, § 144A.24, § 144A.251, et. al to include owners, managerial, and operational staff in the background check review processes.

o 2019 MN S.F. 8 (NS), adopted May 30, amends MN ST § 144A.051, § 144.122, § 144.1503 et. al to amend assisted living licensure requirements.

o 2019 MN H.F. 2414 (NS), engrossed May 1, would amend the Independent Living Facility chapter to include prohibited marketing techniques, dementia care, required disclosures, facility living contracts, safety requirements, and other laws.

o 2019 MN H.F. 90 (NS), adopted May 22, would amend licensing fees for assisted living facilities and assisted living facilities serving individuals with dementia. The bill would also prohibit deceptive marketing techniques and define what these techniques are.

o **New Jersey**

o 2018 NJ S.B. 3116 (NS), amended/substituted June 10, would require assisted living facilities, nursing homes, and residential health care facilities to undergo end-of-life training and planning as a condition of licensure.

o **Virginia**

o 2018 VA S.B. 891 (NS), introduced January 19, 2018, would exempt an assisted living administrator from licensure by the Board of Long-Term Care Administrators if the administrator is a licensed practical nurse and serves as an administrator for an assisted living facility that provides care to not more than 20 residents.

o **West Virginia**

o 2019 WV H.B. 2607 (NS), adopted March 1, repeals WV ST A16-5C-16 and WV ST A16-5C-17 and amend and reenact WA ST A16-5C-5 through A16-5C-22 regarding nursing home licensing requirements.

Selected Administrative Activity

Alabama

o Effective December 24, 2018, 2018 AL REG TEXT 505601 (NS) amends AL ADC 560-X-52-.03 (Eligibility) regarding the Home and Community-Based Living at Home (LH) Waiver.

o Effective December 24, 2018, 2018 AL REG TEXT 505598 (NS) amends AL ADC 560-X-52-.01 (Authority and Purpose) regarding the Home and Community-Based Living at Home (LH) Waiver.

California

o On December 14, 2018, 2018 CA REG TEXT 512126 (NS) provided notice of amendments to the 1915(c) Home and Community - Based Services (HCBS) Waiver for Persons with Developmental Disabilities.

Idaho

o Effective January 1, 2019, 2018 ID REG TEXT 494444 (NS) amends ID ADC 16.03.10.326 (Aged and Disabled Waiver Services: Coverage and Limitations) reauthorizing the Idaho Home Choice Program to continue after September 30, 2020 by modifying 1915(c) Home and Community Based Services (HCBS) Waivers.

Louisiana

o Effective December 20, 2018, 2018 LA REG TEXT 504129 (NS) amends various sections regarding Home and Community-Based Service Waivers—Adult Day Health Care Waiver.

Rhode Island

o Effective January 20, 2019, 2019 RI REG TEXT 504837 (NS), generally updates and clarifies the financial eligibility requirements for Medicaid long-term services and supports (LTSS) to comply with federal regulations.

C. Complaints, Litigation and Dispute Resolution

Supreme Court Sides with Nursing Home on Arbitration Issue

Finding that the Federal Arbitration Act (FAA) required “courts to place arbitration agreements ‘on equal footing with all other contracts' [Citations],” the U.S. Supreme Court on May 15 reversed the Kentucky Supreme Court, which had declined to give effect

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

to two arbitration agreements executed by individuals holding powers of attorney for two now-deceased residents a Kindred nursing home. [FN82]

The respondents had each executed arbitration agreement on her relative's behalf providing that any claims against the Kindred Nursing Centers L.P. would be resolved through binding arbitration. After their relatives died, each respondent filed suit against Kindred alleging substandard care in the facility had caused the deaths. Kindred moved to dismiss the cases based on the arbitration agreements. The trial court denied the motion and the Kentucky Court of Appeals agreed that the lawsuits could go forward.

The Kentucky Supreme Court consolidated the cases and affirmed. The Kentucky Constitution states that the “rights of access to the courts and trial by jury [are] ‘sacred’ and ‘inviolate.”’ Based on this, the Kentucky Supreme Court found that an agent could deprive her principal of those rights “only if expressly provided in the power of attorney.”

Relying on the FAA “command to place [arbitration] agreements on equal footing with all other contracts,” the U.S. Supreme Court found that the Clark power of attorney was sufficiently broad enough to cover executing an arbitration agreement and reversed the Kentucky Supreme Court. However, it remanded the Wellner case for further determination on the scope of the power of attorney.

Justice Thomas dissented arguing that the FAA “does not displace a rule that requires express authorization from a principal before an agent may waive the principal's right to a jury trial.”

Justice Gorsuch did not take part in consideration of the case.

CMS Issues Proposed Revision Requirements for Long-Term Care Facilities' Arbitration Agreements

CMS issued proposed revisions to arbitration agreement requirements for long-term care facilities. These proposed revisions would help strengthen transparency in the arbitration process, reduce unnecessary provider burden and support residents' rights to make informed decisions about important aspects of their health care.

Background

The Reform of Requirements for Long-Term Care Facilities Final Rule published on October 4, 2016 listed the requirements facilities need to follow if they choose to ask residents to sign agreements for binding arbitration. The final rule also prohibited pre-dispute agreements for binding arbitration. The American Health Care Association and a group of nursing homes sued for preliminary and permanent injunction to stop CMS from enforcing that requirement. The court granted a preliminary injunction on November 7, 2016. After that decision, CMS reviewed and reconsidered the arbitration requirements in the 2016 Final Rule.

Proposed Revisions to Arbitration Requirements

This proposed rule focuses on the transparency surrounding the arbitration process and includes the following proposals:

• The prohibition on pre-dispute binding arbitration agreements is removed.

• All agreements for binding arbitration must be in plain language.

• If signing the agreement for binding arbitration is a condition of admission into the facility, the language of the agreement must be in plain writing and in the admissions contract.

• The agreement must be explained to the resident and his or her representative in a form and manner they understand, including that it must be in a language they understand.

• The resident must acknowledge that he or she understands the agreement.

• The agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials, including federal and state surveyors, other federal or state health department employees, or representatives of the State Long-Term Care Ombudsman.

• If a facility resolves a dispute with a resident through arbitration, it must retain a copy of the signed agreement for binding arbitration and the arbitrator's final decision so it can be inspected by CMS or its designee.

The facility must post a notice regarding its use of binding arbitration in an area that is visible to both residents and visitors.

CMS Rules Put Patients First Updating Requirements for Arbitration Agreements and New Regulations That Put Patients Over Paperwork

CMS has announced two rules, one proposed and one final, that directly affect nursing homes. [FN83] The proposed rule would work to remove unnecessary regulations. This includes removing duplicative measures from different programs and reducing the amount of detail needed to fulfill the requirements of those programs. The goal of this rule would be to reduce the amount of time and resources necessary to comply with existing regulations and allow the saved time to be reinvested into the patients.

The final rule would increase the requirements for nursing homes to use pre-dispute arbitration agreements. CMS wants to protect the rights of residents to be involved in resolving their health care disputes. This would allow residents to choose the path of resolution that best fits their situation, while still allowing patients to seek dispute resolution services.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

Legislative Activity

o **Federal**

o 84 FR 34718-01, final rule July 18, 2019, prohibits the use of pre-dispute binding arbitration agreements. The purpose of this is to strengthen the transparency of arbitration and arbitration agreements in Long Term Care facilities. The rule also requires long term care facilities to participate in Medicare and Medicaid programs.

o **Nebraska**

o 2019 NE L.B. 571 (NS), adopted May 29, 2019, would reissue NE ST § 71-5901 to require assisted living facilities to have grievance procedures.

o **New Jersey**

o 2018 NJ A.B. 5200 (NS), introduced March 18, would require facilities requesting an informal dispute resolution to file to the commissioner to approve before continuing the process.

o **Texas**

o 2019 TX S.B. 1519 (NS), adopted June 10, establishes a committee to create a dispute resolution process for long term care facilities.

D. Ratings, Investigations and Violations

Drug Disposal Rule Could Put Providers at Risk for Noncompliance

McKnight's Senior Living reports that a proposal rule regarding the disposal of unused medications could put some providers "perpetually in noncompliance," according to several industry groups. [FN84]

The rule would prohibit healthcare facilities, including assisted living communities, continued care retirement/life plan communities and other senior living and healthcare settings, from disposing of pharmaceuticals considered to be hazardous waste down the toilet or drain. [FN85]

Under the rule, when providers transport drugs off site that are not eligible for a manufacturer's credit, they must ship the drugs as hazardous waste, with a hazardous waste manifest, to a Resource Conservation and Recovery Act interim status or permitted facility.

Kindred Healthcare to Pay $125 Million to End Medicare Fraud Probe

(Reuters) - Kindred Healthcare Inc. agreed to pay $125 million to settle government allegations that the largest U.S. nursing home therapy provider knowingly caused skilled nursing facilities to submit false or fraudulent Medicare reimbursement claims. [FN86]

The U.S. Department of Justice on January 12 said the accord resolves claims under the federal False Claims Act against Kindred and contract therapy providers RehabCare Group Inc. and RehabCare Group East Inc., which Kindred bought in June 2011.

RehabCare was accused of having since January 2009 engaged in schemes that permitted the submission of Medicare reimbursement claims for rehabilitation therapy services that were unreasonable, unnecessary, unskilled or nonexistent.

The government said these schemes included reporting extra therapy to boost reimbursements, scheduling therapy that patients' treating therapists thought superfluous, and providing skilled therapy to patients who were asleep.

U.S. Attorney Carmen Ortiz in Massachusetts said RehabCare and its nursing facility customers engaged in a "systematic and broad-ranging" scheme focused on boosting reimbursements instead of patients' clinical needs.

Four skilled nursing facilities using Kindred and RehabCare will pay $8.23 million to settle related claims, the Justice Department said.

Kindred said RehabCare denied engaging in illegal activity, and agreed to settle without admitting wrongdoing to "provide clarity" to shareholders, customers and regulators.

The Louisville, Kentucky-based company also said it previously set aside money for the accord, and intends to record a related tax benefit in last year's fourth quarter.

Tuesday's settlement resolves a whistleblower lawsuit filed in December 2011 by physical therapist Janet Halpin of Massachusetts and occupational therapist Shawn Fahey of New Hampshire, who has worked at RehabCare. They will receive nearly $24 million as their share of the recovery.

Kindred shares were down 4 percent at $9.69 in early afternoon trading on the New York Stock Exchange on January 12.

The case is U.S. ex rel Halpin et al v. Kindred Healthcare Inc. et al, U.S. District Court, District of Massachusetts, No. 11-12139.

Department of Justice Launches 10 Regional Elder Justice Task Forces

On March 30, the Department of Justice announced the launch of 10 regional Elder Justice Task Forces. These teams will bring together federal, state and local prosecutors, law enforcement, and agencies that provide services to the elderly, to coordinate and enhance efforts to pursue nursing homes that provide grossly substandard care to their residents.

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

“Millions of seniors count on nursing homes to provide them with quality care and to treat them with dignity and respect when they are most vulnerable,” said Acting Associate Attorney General Stuart F. Delery. “Yet, all too often we have found nursing home owners or operators who put their own economic gain before the needs of their residents. These task forces will help ensure that we are working closely with all relevant parties to protect the elderly.”

The Elder Justice Task Forces will include representatives from the U.S. Attorneys' Offices, state Medicaid Fraud Control Units, state and local prosecutors' offices, the Department of Health and Human Services (HHS), state Adult Protective Services agencies, Long-Term Care Ombudsman programs and law enforcement.

“The Department of Justice has a long history of holding nursing homes and long-term care providers accountable when they fail to provide their Medicare and Medicaid residents with even the most basic nursing services to which they were entitled,” said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division. “By bringing everyone to the table, we will be able to more effectively and quickly pursue nursing homes that are jeopardizing the health and well-being of their residents.”

The 10 Elder Justice Task Forces will be launched in the following Districts: Northern District of California, Northern District of Georgia, District of Kansas, Western District of Kentucky, Northern District of Iowa, District of Maryland, Southern District of Ohio, Eastern District of Pennsylvania, Middle District of Tennessee and the Western District of Washington.

“We believe that by actively participating in the Elder Justice Task Forces announced today through joint investigations, sharing information and regular meetings; we will strengthen our efforts nationally to protect the most vulnerable of our population who reside in our nursing homes and other care facilities,” said Keesha Mitchell, President of the National Association of Medicaid Fraud Control Units and the Director of the Ohio Medicaid Fraud Control Unit.

“The HHS Office of Inspector General (OIG) continues to pursue nursing home operators who provide potentially harmful care to residents who are often unable to protect themselves,” said Chief Counsel to the Inspector General Gregory Demske of HHS. “Creating these task forces sends a message to those in charge of caring for these beneficiaries that grossly substandard care will not be tolerated.”

“The Administration for Community Living was created to help ensure that older adults and people with disabilities are able to live the lives they want, with the people they choose, fully participating in their communities,” said Becky Kurtz, Director of the Office of Long-Term Care Ombudsman Programs at the Administration for Community Living. “Our mission includes supporting their basic right to live with dignity, free from abuse. We appreciate the Department of Justice's leadership on this important initiative and applaud its long-standing commitment to elder justice efforts.”

“Our most vulnerable citizens deserve the highest quality care and attention,” said Executive Director Kathleen Quinn of the National Adult Protective Services Association. “This initiative will help insure that long-term care facilities provide it. The Department of Justice is to be commended for this, and indeed all its efforts, to protect the millions of elder abuse victims in this country.”

Life Care to Pay Record $145 Million over False Claims

(Reuters) - Life Care Centers of America Inc. and its owner Forrest Preston agreed to pay $145 million to resolve a U.S. lawsuit accusing the company of submitting false claims for rehabilitation therapy services that were not reasonable, necessary or skilled, the U.S. Department of Justice said on October 24. [FN87]

The accord with the Cleveland, Tennessee-based company is the Justice Department's largest with a skilled nursing facility chain, according to Benjamin Mizer, who heads the department's civil division.

Bristol-Myers Squibb to Pay $19.5 Million to Settle Off-Label Promotion Case

(Reuters) - Drugmaker Bristol-Myers Squibb Co will pay $19.5 million to resolve multi-state allegations that it improperly promoted a schizophrenia treatment for uses not approved by the U.S. government, New York Attorney General Eric Schneiderman said on December 8. [FN88]

The company's agreement with 42 other states and the District of Columbia centers on charges that Bristol-Myers Squibb promoted its Abilify anti-psychotic drug for use in children and elderly patients with dementia and Alzheimer's disease.

A company spokesman did not have an immediate comment on the settlement.

At the time the marketing of the drug occurred, such uses were not approved by the Food and Drug Administration. In 2006, the drug had received a “black box” warning stating that it could increase the risk of death for dementia patients.

Besides addressing the off-label promotion allegations, the settlement also resolves charges that the company violated state consumer protection laws by misrepresenting side effects such as metabolic weight gain.

Phoenix Police Investigate After Woman in Coma for Decade Gives Birth

(Reuters) - Phoenix police on Saturday were investigating reports of a sexual assault after a woman who has been hospitalized in a vegetative state for the past decade gave birth. [FN89]

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

The woman, who was incapacitated in a drowning incident, was a patient at Hacienda Healthcare when she went into labor on Dec. 29 and delivered a baby boy, according to local media. No one knew she was pregnant and healthcare staff were initially unsure why she was moaning, the reports said.

“This matter is currently under investigation by the Phoenix Police Department,” Sergeant Tommy Thompson told Reuters when asked about the media reports.

Hacienda spokesman David Leibowitz said the facility had recently become aware of a “deeply disturbing incident” involving one of its residents.

He declined to say whether its staff were being asked to undergo DNA testing to identify a possible suspect, or whether the facility was taking any preventative measures to protect patients against a similar situation.

“While federal and state privacy laws prohibit us from publicly discussing a patient's health or case, Hacienda has and will continue to cooperate fully with law enforcement and all the relevant regulatory agencies regarding this matter,” Leibowitz said by email.

Victim advocate Tasha Menaker, chief strategy officer of the Arizona Coalition to End Sexual and Domestic Violence, said it would be appropriate for police to run DNA tests on male employees at the facility.

Hacienda HealthCare describes itself as Arizona's leading provider of specialized health care services for medically fragile and chronically ill infants, children, teens, and young adults as well as those with intellectual and developmental disabilities.

A spokesman for Arizona Governor Doug Ducey said the reports were “deeply troubling” and that the state was re-evaluating its contract and regulatory authority over Hacienda Healthcare to tighten up patient safety measures.

State Legislative Activity

o **Minnesota**

o 2019 MN H.F. 90 (NS), enrolled May 22, would require that both residents and facilities sign an assisted living contract. The bill lays out the requirements of the contract and the necessary components.

o **Ohio**

o 2019 OH S.B. 24 (NS), adopted November 6, 2019, establishes the Alzheimer's disease and Related Dementias Task Force, including individuals from long term care facilities.

© Copyright Thomson/West - NETSCAN's Health Policy Tracking Service

---

[FN1]

. News Release, U.S. Census Bureau (March 28, 2016).

[FN2]

. https://oig.hhs.gov/oei/reports/oei-01-16-00330.asp

[FN3]

. Clark Kauffman, Iowa nursing home fined $77,000 in elderly patient's painful death, Des Moines Register (August 3, 2018).

[FN4]

. Chris Serres, Minnesota clears giant backlog of elder abuse complaints, Star Tribune (August 8, 2018).

[FN5]

. Anne Tumlinson, Scott Woods, Avalere Health LLC, “Long-Term Care in America/An Introduction,” January 2007, available at: www.avalerehealth.net.

[FN6]

. Richard W. Johnson, Desmond Toohey, and Joshua M. Weiner, “Meeting the Long-Term Care Needs of the Baby Boomers: How Changing Families Will Affect Paid Helpers and Institutions,” available at: www.urban.org.

[FN7]

. Centers for Medicare & Medicaid Services, “CMS Publishes National List of Poor-Performing Nursing Homes, Key Tool for Families Seeking Quality Care,” Press Release, Nov. 29, 2007, available at: www.cms.hhs.gov.

[FN8]

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

. Kaiser Family Foundation *Daily Health Policy Report,* June 28, 2007, available at: www.kaisernetwork.org.

[FN9]

. National Clearinghouse for Long Term Care Information, U.S. Department of Health and Human Services: Planning for LTC. Date accessed, March 24, 2013. Available at: http://www.longtermcare.gov/LTC/Main_Site/Planning/Index.aspx.

[FN10]

. National Clearinghouse for Long Term Care Information, U.S. Department of Health and Human Services: Will You Need LTC. Date accessed, March 24, 2013. Available at: http://www.longtermcare.gov/LTC/Main_Site/Understanding/Definition/Know.aspx.

[FN11]

. Medicare Program; Prospective m; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2017, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, and SNF Payment Models Research, *Federal Register* (Aug. 5, 2016), available at: https://www.federalregister.gov/articles/2016/08/05/2016-18113/medicare-program-prospective-payment-system-and-consolidated-billing-for-skilled-nursing-facilities.

[FN12]

. Niall Brennan, Director of the CMS Office of Enterprise Data and Analytics, and CMS Chief Data Officer; and, Tim Engelhardt, Director of the Federal Coordinated Health Care Office at CMS, Data Brief: Sharp reduction in avoidable hospitalizations among long-term care facility residents (January 17, 2017) at https://blog.cms.gov/2017/01/17/data-brief-sharp-reduction-in-avoidable-hospitalizations-among-long-term-care-facility-residents/.

[FN13]

. See Kansas Did Not Always Verify Correction of Deficiencies Identified During Surveys of Nursing Homes Participating in Medicare and Medicaid (Sept. 2017) at: https://oig.hhs.gov/oas/reports/region7/71703218.pdf.

[FN14]

. https://www.mcknights.com/news/providers-critical-of-trump-budget-which-would-cut-medicare-kill-ahrq-slash-it-agency/article/743924/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180213&DCMP=EMC-MLT_DailyUpdate_20180213&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19007218&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1200810334&spReportId=MTIwMDgxMDMzNAS2

[FN15]

. https://www.mcknights.com/news/experts-hospitals-should-work-directly-with-nursing-homes-to-address-infections/article/748135/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180302&DCMP=EMC-MLT_DailyUpdate_20180302&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19115893&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1220110578&spReportId=MTIyMDExMDU3OAS2

[FN16]

. https://www.mcknights.com/news/senate-democrats-ask-hhs-to-restore-some-nursing-home-regulations/article/745814/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180222&DCMP=EMC-MLT_DailyUpdate_20180222&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19063346&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1201427135&spReportId=MTIwMTQyNzEzNQS2

[FN17]

. https://khn.org/news/infection-lapses-rampant-in-nursing-homes-but-punishment-is-rare/

[FN18]

. https://www.mcknights.com/news/minnesota-ltc-pros-apologize-to-public-after-abuse-claims/article/748137/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180302&DCMP=EMC-MLT_DailyUpdate_20180302&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19115893&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1220110578&spReportId=MTIyMDExMDU3OAS2

[FN19]

. https://khn.org/news/scrutinizing-medicare-coverage-for-physical-occupational-and-speech-therapy/

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

[FN20]

. https://www.mcknights.com/news/aggressive-advance-directive-would-allow-patients-to-decline-food-water-at-end-of-dementia-battle/article/755184/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180402&DCMP=EMC-MLT_DailyUpdate_20180402&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19297495&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1240062247&spReportId=MTI0MDA2MjI0NwS2

[FN21]

. https://www.mcknights.com/news/nursing-homes-may-be-targeted-for-turning-away-patients-being-treated-for-opioid-addiction/article/759332/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180418&DCMP=EMC-MLT_DailyUpdate_20180418&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19397110&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1241076711&spReportId=MTI0MTA3NjcxMQS2

[FN22]

. https://www.mcknights.com/news/under-65-nursing-home-population-grows-in-some-states-putting-new-emphasis-on-mental-health-care/article/759331/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180418&DCMP=EMC-MLT_DailyUpdate_20180418&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19397110&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1241076711&spReportId=MTI0MTA3NjcxMQS2

[FN23]

. https://www.mcknights.com/news/high-quality-short-term-nursing-stays-lower-risk-of-seniors-entering-long-term-care/article/759330/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180418&DCMP=EMC-MLT_DailyUpdate_20180418&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19397110&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1241076711&spReportId=MTI0MTA3NjcxMQS2

[FN24]

. https://www.mcknights.com/news/lawmakers-seek-250-million-infusion-for-geriatric-services/article/767895/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180523&DCMP=EMC-MLT_DailyUpdate_20180523&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19609000&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1261390381&spReportId=MTI2MTM5MDM4MQS2

[FN25]

. “Shaking up how nursing homes and their clinicians are paid to care for sick residents,” Regenstrief Institute (News, Oct. 8, 2018), available at: https://www.regenstrief.org/article/optimistic-nursing-homes-phase-2/.

[FN26]

. 81 FR 68688.

[FN27]

. Brendan Pierson, Nursing home group sues U.S. over rule barring mandatory arbitration, Reuters (Oct. 17, 2016).

[FN28]

. https://khn.org/news/nursing-home-fines-drop-as-trump-administration-heeds-industry-complaints/

[FN29]

. https://www.cms.gov/blog/ensuring-safety-and-quality-americas-nursing-homes

[FN30]

. https://www.usatoday.com/story/news/nation/2019/06/03/nursing-homes-senate-report-facilities-poor-care/1336251001/

[FN31]

. https://www.cms.gov/blog/ensuring-safety-and-quality-nursing-homes-five-part-strategy-deep-dive

[FN32]

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

. See 81 FR 26872-01.

[FN33]

. “Hurricane Evacuations Greatly Increase Risk of Death for Nursing Home Dementia Patients, Study Shows,” McKnight's Long-Term Care News & Assisted Living, Nov. 16, 2012, available at: http://www.mcknights.com/hurricane-evacuations-greatly-increase-risk-of-death-for-nursing-home-dementia-patients-study-shows/article/268561

[FN34]

. Jordan Rau, Nursing Home Disaster Plans Often Faulted As ‘Paper Tigers', KLN, September 19, 2017, available at: https://khn.org/NzY4MjU3

[FN35]

. Ian Simpson, Death toll from overheated Florida nursing home rises to 10, Reuters (Sept. 21, 2017).

[FN36]

. https://www.mcknights.com/news/providers-forced-to-invest-350-million-more-to-keep-power-running-in-emergencies/article/750520/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180313&DCMP=EMC-MLT_DailyUpdate_20180313&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19177635&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1220725615&spReportId=MTIyMDcyNTYxNQS2

[FN37]

. https://www.mcknights.com/news/experts-cite-ltcs-better-disaster-preparedness-scores-but-say-more-needed/article/760608/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180424&DCMP=EMC-MLT_DailyUpdate_20180424&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19432919&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1241441278&spReportId=MTI0MTQ0MTI3OAS2&check=true

[FN38]

. https://www.mcknights.com/news/despite-12-deaths-nursing-facilities-denied-request-to-be-on-utilities-priority-list/article/778397/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180705&hmSubId=&email_hash=f2f56cd35455743af0a44e4

[FN39]

. Kimberly Leonard, “Nursing Homes Begin to Offer Shelter for Elder Abuse Victims,” U.S. News and World Reports, Health, March 18, 2013, available at: http://health.usnews.com/health-news/best-nursing-homes/articles/2013/03/18/nursing-homes-begin-to-offer-shelter-for-elder-abuse-victims.

[FN40]

. Former SNF admin, GOP leader sentenced to 4 years for resident theft, McKnight's (Jan. 11, 2016).

[FN41]

. Emily Mongan, Nursing home owner gives up license following sexual assault investigations, McKnight's (January 19, 2016).

[FN42]

. Lisa Rapaport, One in five nursing home residents abused by other residents, Reuters (June 13,

[FN43]

. Charles Ornstein and Jessica Huseman, As Cases Multiply, Officials Scramble to Stop Abuse of Nursing Home Residents on Social Media, ProPublica (July 14, 2016), co-published with NPR's Shots blog and the Des Moines Register, at: https://www.propublica.org/article/cases-multiply-officials-scramble-stop-abuse-nursing-home-social-media.

[FN44]

. Emily Mongan, OIG tours nursing home crackdowns to Congress, McKnight's (Dec. 1, 2017).

[FN45]

. National Background Check Program for Long Term Care Employees: Interim Report, Office of Inspector General (January 2016) at: http://oig.hhs.gov/oei/reports/oei-07-10-00420.asp.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

[FN46]

. Charles Ornstein and Jessica Huseman, Social Media Abuse Of Nursing Home Residents Often Goes Unchecked, NPR (July 14, 2016) at: http://www.npr.org/sections/health-shots/2016/07/14/485293079/social-media-abuse-of-nursing-home-residents-often-goes-unchecked

[FN47]

. 2017 WLNR 12519876

[FN48]

. https://www.cms.gov/newsroom/press-releases/trump-administration-empowers-nursing-home-patients-residents-families-and-caregivers-enhancing

[FN49]

. https://www.mcknights.com/news/momentum-grows-for-in-room-cameras-at-nursing-homes/article/755183/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180402&DCMP=EMC-MLT_DailyUpdate_20180402&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19297495&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1240062247&spReportId=MTI0MDA2MjI0NwS2

[FN50]

. Melvin J. Ingber, et al., “Evaluation of the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents: Final Annual Report Project Year 3,” Jan. 2016, available at: https://innovation.cms.gov/Files/reports/irahnfr-finalyrthreeevalrpt.pdf.

[FN51]

. Melvin J. Ingber *et al*., “Evaluation of the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents,” CMS, May 2015, available at: https://innovation.cms.gov/Files/reports/irahnfr-secondevalrpt.pdf.

[FN52]

. “Initiative to Reduce Avoidable Hospitalizations Among Nursing Facility Residents,” CMS, updated Oct. 26, 2015, available at: https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/ReducingPreventableHospitalizationsAmong.

[FN53]

. Melvin J. Ingber, *et al.*, “Evaluation of the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents: Final Annual Report Project Year 3,” Jan. 2016, available at: https://innovation.cms.gov/Files/reports/irahnfr-finalyrthreeevalrpt.pdf.

[FN54]

. “Initiative to Reduce Avoidable Hospitalizations Among Nursing Facility Residents,” CMS, updated Oct. 26, 2015, available at: https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/ReducingPreventableHospitalizationsAmong.

[FN55]

. Melvin J. Ingber, et al., “Evaluation of the Initiative to Reduce Avoidable Hospitalizations among Nursing Facility Residents: Final Annual Report Project Year 3,” Jan. 2016, available at: https://innovation.cms.gov/Files/reports/irahnfr-finalyrthreeevalrpt.pdf.

[FN56]

. Patrick Conway, “Nursing Facility Initiative Annual Report,” CMS Blog, Feb. 3, 2016, available at: https://blog.cms.gov/2016/02/03/nursing-facility-initiative-annual-report/.

[FN57]

. “Initiative to Reduce Avoidable Hospitalizations Among Nursing Facility Residents,” CMS, updated Oct. 26, 2015, available at: https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/ReducingPreventableHospitalizationsAmong.

[FN58]

. Press Release, Antipsychotic Usage Down Nearly 30 Percent in Skilled Nursing Centers (Feb. 9, 2016) at: http://www.ahcancal.org/News/news_releases/Pages/Antipsychotic-Usage-Down-Nearly-30-Percent-in-Skilled-Nursing-Centers.aspx.

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

[FN59]

. *Jimmo v. Sebelius* Settlement Agreement Fact Sheet, Centers for Medicare and Medicaid Services, available at: https://www.cms.gov/medicare/medicare-fee-for-service-payment/SNFPPS/downloads/jimmo-factsheet.pdf.

[FN60]

. Kimberly Marselas, “Room for improvement,” *McKnight's* (Aug. 5, 2016), available at: http://www.mcknights.com/news/room-for-improvement/article/514332/.

[FN61]

. Emily Mongan, LTC-acquired pressure injury rates up in recent years, survey shows, McKnight's (Dec. 16, 2016).

[FN62]

. Emily Mongan, Safety program helped cut SNF infection rates by more than 50%, McKnight's (May 22, 2017).

[FN63]

. The full report is available at: http://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2628864.

[FN64]

. https://www.mcknights.com/news/falls-among-oldest-americans-increasing-but-outcomes-improving/article/752798/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180322&DCMP=EMC-MLT_DailyUpdate_20180322&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19235219&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1221283380&spReportId=MTIyMTI4MzM4MAS2

[FN65]

. Off-label use of antipsychotics higher in nursing homes with lower registered nurse staffing, MU study finds, University of Missouri News Release (Sept. 11, 2018).

[FN66]

. “Look-Up: Infection Risk Factors at Nursing Homes Near You,” Kaiser Family Foundation, Sept. 5, 2018, available at: https://khn.org/news/look-up-infection-risk-factors/?utm_campaign=KFF-2018-The-Latest&utm_source=hs_email&utm_medium=.

[FN67]

. Fred Schulte, et al., “Avoidable Sepsis Infections Send Thousands of Seniors to Gruesome Deaths,” *Kaiser Health News*, Sept. 5, 2018, available at: https://khn.org/news/avoidable-sepsis-infections-send-thousands-of-seniors-to-gruesome-deaths/?utm_campaign=KFF-2018-The-Latest&utm_source=hs_email&utm_medium=.

[FN68]

. https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/MPD-New-FY19-MPD.pdf

[FN69]

. https://www.cms.gov/newsroom/press-releases/cms-improving-nursing-home-compare-april-2019

[FN70]

. https://www.mcknights.com/news/hospital-sinks-37-million-into-new-nursing-home-that-will-operate-like-a-hotelß°–/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_Weekly_20190603&hmSubId=&hmEmail=cfNaEhjSJkqnpxns-fHdgmvG7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-4398-544457

[FN71]

. Martha Hostetter, The Commonwealth Fund, “Issue of the Month: Changing the Culture of Nursing Homes,” Jan. 18, 2007, available at: www.cmwf.org.

[FN72]

. The proposed rule is available at 79 FR 73873 (Dec. 12, 2014); the notice withdrawing the rule is available at 82 FR 46181 (Oct. 4, 2017).

[FN73]

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

. http://www.mcknights.com/news/washington-state-weighs-lgbtq-training-for-long-term-care-workers/article/737054/?DCMP=EMC-MLT_DailyUpdate_20180116&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=18826527&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1180862936

[FN74]

. https://www.mcknights.com/news/kaiser-study-nursing-homes-have-fewer-residents-but-those-residents-need-more-help/article/757579/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180411&DCMP=EMC-MLT_DailyUpdate_20180411&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19354873&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1240613792&spReportId=MTI0MDYxMzc5MgS2

[FN75]

. https://www.mcknights.com/news/obesity-soars-among-long-stay-nursing-home-residents/article/764151/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180508&DCMP=EMC-MLT_DailyUpdate_20180508&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19518504&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1260431885&spReportId=MTI2MDQzMTg4NQS2

[FN76]

. https://www.mcknights.com/news/nursing-home-rankings-once-hidden-from-public-reveal-poor-picture-of-va-care/article/774466/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180706&hmSubId=&email_hash=f2f56cd35455743af0a44e4

[FN77]

. https://www.mcknights.com/news/report-predicts-bright-future-for-nursing-homes-with-caveats/article/752169/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180320&DCMP=EMC-MLT_DailyUpdate_20180320&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19220278&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1221154919&spReportId=MTIyMTE1NDkxOQS2

[FN78]

. https://www.mcknights.com/news/va-healthcare-bill-aims-to-give-vets-more-access-to-private-long-term-care-services/article/768658/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180525&DCMP=EMC-MLT_DailyUpdate_20180525&hmSubId=&hmEmail=5X8kad4kl-g1&email_hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19625028&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1261523656&spReportId=MTI2MTUyMzY1NgS2

[FN79]

. https://www.mcknights.com/news/cms-announcement-reminds-changes-are-near-regarding-nursing-home-compare-staffing-levels/article/775649/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180706&hmSubId=&email_hash=f2f56cd35455743af0a44e4

[FN80]

. https://www.mcknights.com/news/advocacy-group-calls-for-immediate-congressional-hearings-into-nursing-home-staffing/article/779387/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180719&hmSubId=&email_hash=f2f56cd35455743af0a44e4

[FN81]

. https://www.mcknights.com/news/close-to-1400-nursing-homes-lose-a-rating-star-due-to-new-staffing-info/article/784464/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20180803&hmSubId=&email_hash=f2f56cd35455743af0a44e4

[FN82]

. Kindred Nursing Centers L.P. v. Clark, 581 U.S. _____ (2017) at: https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf

[FN83]

. https://www.cms.gov/newsroom/press-releases/cms-rules-put-patients-first-updating-requirements-arbitration-agreements-and-new-regulations-put

[FN84]

. Drug disposal rule sets up providers for noncompliance, groups say, McKnight's Senior Living (January 5, 2016).

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

[FN85]

. See Environmental Protection Agency, Management Standards for Hazardous Waste Pharmaceuticals, 80 Fed.Reg. 58014 (Sept. 25, 2015).

[FN86]

. Jonathan Stempel, Kindred Healthcare to pay $125 mln to end Medicare fraud probe, Reuters (January 12, 2016).

[FN87]

. Jonathan Stempel, Life Care to pay record $145 million over false claims, Reuters (Oct. 24, 2016).

[FN88]

. Sarah N. Lynch, Bristol-Myers Squibb to pay $19.5 million to settle off-label promotion case, Reuters (Dec. 8, 2016).

[FN89]

. Barbara Goldberg, Phoenix police investigate after woman in coma for decade gives birth, Reuters (Jan. 5, 2019).

Produced by Thomson Reuters Accelus Regulatory Intelligence 05-Feb-2020

THOMSON REUTERS™

© 2020 Thomson Reuters. No claim to original U.S. Government Works.