

YEAR-END REPORT - 2021

Published 20-Dec-2021
HPTS Issue Brief 12-20-21.24

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

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12/20/2021

I. Background: Facility Care Scrutinized**CMS Fines 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. ^[FN2] 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.

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. ^[FN3]

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.' ^[FN4] 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. ^[FN5]

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.



^[FN6] In fact, it was noted in a report that many thousands of children with disabilities live in nursing homes. ^[FN7] Studies show that 70% of all persons over the age of 65 will need long term care services at some point in their life ^[FN8] and that 40% of all persons over 65 will need care in a nursing home. ^[FN9]

1. Quality of Care

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. ^[FN10] 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. ^[FN11] 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.

Lawmakers seek \$250 Million Infusion for Geriatric Services

Senator Susan Collins is seeking funding for increased training in geriatric medicine. ^[FN12] 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.

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 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.

'Thousands' of Jobs Remain Unfilled Amid Ongoing Caregiver Shortage in Massachusetts



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Massachusetts is suffering due to a severe shortage of skilled nursing workers.^[FN13] Lawmakers are currently exploring ideas on how to reduce this shortage, with the main idea being increasing wages for these jobs. The hope is that by paying people a higher wage for such an emotionally demanding position will encourage individuals to enter the field.

Bill Would Re-establish House Panel that Reviews Long-Term Care Issues

A Democratic Representative from the state of Rhode Island is sponsoring legislation that would call for the permanent enactment of the Select Committee on Aging to address long term care needs and issues.^[FN14] The purpose is to show seniors of Congress' continued efforts and support of the needs and concerns of those in long-term care facilities.

Changes Coming to Nursing Home Preadmission Resident Screening Regulations

For the first time since the 1990's the Preadmission Screening and Resident Review regulations are being revised.^[FN15] The proposed changes include changes in definitions and the improved usage of telemedicine. These regulations provide screening for mental illness and intellectual disability to allow for the proper treatment and services to be provided.

CMS Announces Actions to Address Spread of Coronavirus

Effective immediately and until further notice, CMS has stated that state survey agencies and accrediting organizations should focus their efforts on ensuring that required infection control measures are maintained and are operating appropriately on top of ensuring that emergency situations are being investigated.^[FN16]

CMS has released the first of three memoranda detailing forward steps for State Survey Agencies and Accrediting Organizations. This memo clarifies the temporary focus of agencies on infection control and other emergent issues such as elder abuse. There are two more memoranda to be released to outline continued efforts to enforce guidelines to prevent the spread of Covid-19.

Officials Announce Possible Coronavirus Outbreak in Washington Nursing Facility

In Kirkland, WA, a long-term care facility may be the center of a Covid-19 outbreak with 2 presumptive positives coming from the facility.^[FN17] Health officials are particularly concerned because of the vulnerability of elderly persons against the virus. News of this outbreak comes shortly after the first death from the virus in the United States.

Official Confirms Trump Budget Proposes to Eliminate Enhanced Medicaid Match

The Department of Health and Human Services Secretary Alex Azar stated that the proposed 2021 budget may eliminate the enhanced federal match for expanded Medicaid states.^[FN18] The reason for this possible elimination is that states that have expanded Medicaid benefit able bodied adults and disfavor women, children, and disabled adults.

Coronavirus Stress Test: Many 5-Star Nursing Homes Have Infection-Control Lapses

Beginning in 2017, nursing homes have been cited for failing infection-control protocols more than any other violation with over half of the nearly 10,000 facilities being cited.^[FN19] These violations include actions such as failing to wash hands between patients or failing to don the proper gear when caring for an infectious patient. With the current covid-19 outbreak it is pertinent that facilities comply with these mandatory protocols.

Amid Outbreak, Trump Admin's Proposed Rollback of Nursing Home Regulations Faces Criticism

The Trump Administration has been rolling back regulations and reducing fines for violations since taking office.^[FN20] Now the same nursing homes that have been supporting these initiatives are facing an outbreak of a potentially deadly illness. In July of last year it was proposed that nursing homes no longer need to employ infection prevention specialist and instead allow nursing homes to use consultants. The large number of violations and the reduced oversight for infection control will end up being deadly to the thousands of nursing homes facing covid-19.

CMS Announces Independent Commission to Address Safety and Quality in Nursing Homes

Going into the beginning of Older Americans Month CMS has announced an independent Commission that will head up a review of the nursing home response to the coronavirus pandemic.^[FN21] This Commission will be in charge of reviewing nursing homes and providing reports to CMS providing recommendations to improve the current and future steps to protect seniors and facilities.

These Commissions will be headed up by industry experts, clinicians, family members, resident/patient advocates, medical ethicists, administrators, academicians, infection control and prevention professionals, state and local authorities, and other selected experts. The goal of the Commission is to provide recommendations on 3 tasks related to stopping the spread of COVID-19 in long-term care facilities.

Provider COVID-19 Relief Funds Now to be Based on 2018 Patient Revenue

Originally, the Department of Health and Human Services had stated that the distribution of the \$50 Billion COVID-19 relief fund would be distributed according to the 2019 Medicare revenues, but has since reversed course.^[FN22] The reason for this change was



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determined that a focus on Medicare disbursement would alienate those facilities that relied on Medicaid payments. Focusing on the net patient revenues for 2018 would level the playing field and allow a more equitable distribution of the funds.

Feds' Proposal to Extend COVID-19 Waivers Would Keep Some Telehealth Expansions but Could Deliver Rehab 'Double-Whammy'

After facing an 8% cut last year, CMS is proposing turning the current emergency regulations regarding telehealth in the pandemic into permanent regulations. ^[FN23] This would cause a squeeze on rehab therapy because providers are facing an even larger cut of 9% and they are trying to maintain the same access to patients. The increase in telehealth has caused a 40% increase of use in these services from last year putting a strain on providers. CMS is hoping to increase the coverage for telehealth services from once every 30 days to once every 3 days.

Nursing Home Supervisor Could Face Criminal Charges for Working Without a Mask While Ill, Subsequent COVID-19 Outbreak

After an employee of a Connecticut nursing home employee worked without a mask after being exposed to COVID-19 seems to be the source of an outbreak may be facing criminal charges. ^[FN24] The employee believed she had the virus, and yet did not follow safety protocols which included wearing a mask. The investigation is currently ongoing, but officials are stating the actions of the employee are at least reckless and put the lives of the residents in danger. The facility is also under fire for not following written procedures during the start of the outbreak.

Feds Sending 750k Faster COVID-19 Tests to Nursing Homes, Investigating Price Mark-Ups

The Department of Health and Human Services has sent out another wave of tests to nursing homes. ^[FN25] These new tests are said to be more sensitive to infections within the first 7 days. These tests will be used by nursing staff and priority will be given to those states that have the most stringent testing requirements. Although this new wave of tests is expected to last through at least November, HHS Assistant Secretary for Health has stated that this is not an indefinite commitment, but facilities will be able to purchase more tests later if needed.

CMS Will Pay More to Labs That Process COVID-19 Tests Quicker Starting Jan 1

CMS has announced that beginning on January 1, 2021, they will pay out \$100 for tests that are completed within two days and \$75 for tests that take longer. ^[FN26] In April of this year CMS stated that they would pay \$100 for every test that was given, meaning that this new standard would levy a \$25 fine against facilities who take longer than 2 days to return results. The goal of this is to ensure that individuals are able to self-isolate and receive care if needed sooner into a diagnosis in hopes of a more positive outcome. The base rate for testing payout will be dropped to \$75 dollars meaning that at that time it will turn into a \$25 dollar bonus rather than a penalty. The qualifications for meeting this standard include that the test is completed within two calendar days or less and that the majority of the test results are put through high technology outputs in the last month, meaning that all patients using that facility receive their results within the two day window.

SELECTED LEGISLATION & REGULATIONS

Federal

- [86 FR 26306-01](#), interim final rule with comment period effective May 21, 2021, revises the infection control requirements that long-term care (LTC) facilities (Medicaid nursing facilities and Medicare skilled nursing facilities, also collectively known as "nursing homes") and intermediate care facilities for individuals with intellectual disabilities (ICFs-IID) must meet to participate in the Medicare and Medicaid programs. This IFC aims to reduce the spread of SARS-CoV-2 infections, the virus that causes COVID-19, by requiring education about COVID-19 vaccines for LTC facility residents, ICF-IID clients, and staff serving both populations, and by requiring that such vaccines, when available, be offered to all residents, clients, and staff. It also requires LTC facilities to report COVID-19 vaccination status of residents and staff to the Centers for Disease Control and Prevention (CDC). These requirements are necessary to help protect the health and safety of ICF-IID clients and LTC facility residents. In addition, the rule solicits public comments on the potential application of these or other requirements to other congregate living settings over which CMS has regulatory or other oversight authority.
- [86 FR 61555-01](#), effective November 5, 2021, requires that most Medicare-and Medicaid-certified providers and suppliers must meet to participate in the Medicare and Medicaid programs. These changes are necessary to help protect the health and safety of residents, clients, patients, PACE participants, and staff, and reflect lessons learned to date as a result of the COVID-19 public health emergency. The revisions to the requirements establish COVID-19 vaccination requirements for staff at the included Medicare- and Medicaid-certified providers and suppliers.

Alaska

2020 AK REG TEXT 562141 (NS), effective March 31, 2021, changes regulations by streamlining the assessment process for Medicaid nursing facility level of care determinations for waiver services.

Arizona

2021 AZ [S.B. 1823](#) (NS), adopted June 30, 2021, makes general appropriations for 2021-2022.



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California

- 2021 CA A.B. 133 (NS), adopted July 27, 2021, adds, repeals, and amends sections related the to the Office of Statewide Health Planning and Development.
- 2021 CA A.B. 153 (NS), amended/substituted July 11, 2021, would relate to the Budget Act of 2021 and amend and repeal sections to the Family Code, the Health and Safety Code, and the Welfare and Institutions Code.
- 2021 CA A.B. 695 (NS), amended/substituted June 29, 2021, would amend Sections 15610.10, 15610.55, 15610.57, 15630, 15630.1, 15701.05, 15750, 15753, 15763, and 15771 of, and to add Sections 15651 and 15767 to, the Welfare and Institutions Code, relating to elder and dependent adults.
- 2021 CA A.B. 895 (NS), amended/substituted March 18, 2021, would add Section 1569.381 to, and to add and repeal Article 10 (commencing with Section 1569.900) of Chapter 3.2 of Division 2 of, the Health and Safety Code, relating to residential care facilities.

Connecticut

- 2021 CT S.B. 1030 (NS), effective October 1, 2021, relates to nursing homes and dementia special care units.
- 2021 CT H.B. 6666 (NS), adopted July 6, 2021, implements the recommendations of the Department of Public Health regarding various revisions to the public health statutes.

District of Columbia

2021 DC L.B. 1 (NS), enrolled July 6, 2021, would amend the District of Columbia Comprehensive Plan Act of 1984 to reflect revised policies, actions, and determinations, to update the Future Land Use Map and the Generalized Policy Map accordingly, and to require the Mayor to transmit the Future Land Use Map and the Generalized Policy Map to the Council for approval and to publish the Comprehensive Plan; to amend the School Based Budgeting and Accountability Act of 1998 to require that every 10 years the Mayor prepare and submit to the Council for its review and approval a proposed comprehensive Master Facilities Plan for public education facilities; to require the Office of Planning to provide to the Council a report giving additional guidance with respect to Production Distribution and Repair land; to provide that the text, maps, and graphics of the District Elements of the Comprehensive Plan for the National Capital need not be published in the District of Columbia Register to become effective; and to provide that no element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission.

Florida

2021 FL S.B. 828 (NS), introduced March 2, 2021, would require facilities to inform respondents with a serious mental illness of the essential elements of recovery and provide them assistance in accessing a continuum of care regimen; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; revising the requirements for when a person may be taken to a receiving facility for involuntary examination; revising the requirements for when a person may be ordered for involuntary inpatient placement; requiring the clerk of the court to notify the state attorney's office upon the receipt of a petition filed for involuntary treatment services, etc.

Hawaii

2021 HI H.R. 96 (NS), introduced March 12, 2021, would urge the Department of Human Services to convene a working group to explore creation of a sustainability fund for the community care foster family home and expanded adult residential care home programs.

Illinois

2019 IL S.B. 1510 (NS), adopted March 12, 2021, amends the Nursing Home Care Act. Makes a technical change in a Section concerning the short title.

Indiana

2021 IN H.B. 1177 (NS), adopted April 8, 2021, requires the division of aging (division) to develop a strategic plan concerning dementia in Indiana. Requires the division to submit an annual report to the general assembly concerning the dementia strategic plan and the outcomes of implementing the dementia strategic plan.

Kansas

- 2021 KS H.B. 2397 (NS), adopted May 21, 2021, makes appropriations for FY 2021, FY 2022, FY 2023 and FY 2024 for various state agencies.

Maine

2021 ME H.P. 543 (NS), introduced March 10, 2021, would provide high-quality health care for all Maine Residents.

Massachusetts

2021 MA S.B. 2564 (NS), introduced November 3, 2021, would provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2022, the sums set forth in section 2 are hereby appropriated from the Transitional Escrow Fund established in section 16 of chapter 76 of the acts of 2021 unless specifically designated otherwise in this act or in those



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appropriations acts, for the several purposes and subject to the conditions specified in this act, and subject to the laws regulating the disbursement of public funds for the fiscal year in which the sums are disbursed. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items. The sums set forth in section 2 shall be made available until June 30, 2022.

Minnesota

- 2021 MN H.F. 33 (NS), adopted June 29, 2021, establishes a biennial budget for health and human services; modifying various provisions governing Department of Human Services health programs, the Department of Health, health-related licensing boards, prescription drugs, telehealth, economic supports, child care assistance, child protection, behavioral health, direct care and treatment, disability services, and home and community-based services; continuing Minnesota premium security plan to a certain date; making technical changes; modifying fees; establishing civil and criminal penalties; establishing task forces; requiring reports; appropriating money; amending Minnesota Statutes.
- 2021 MN S.F. 383 (NS), engrossed April 29, 2021, would be an omnibus human services reform budget bill.
- 2021 MN H.F. 1087 (NS), introduced February 15, 2021, would modify electronic monitoring requirements long-term care setting infection control requirements modified, hospice and assisted living bill of rights modified, assisted living service termination during peacetime emergency prohibited, SARS-CoV-2 infection control plant in long-term care setting establishment required, Long-Term Care COVID-19 Task Force established, and money appropriated.
- 2021 MN S.F. 1160 (NS), engrossed April 27, 2021, would relate to the Minnesota Telehealth Act.
- 2021 MN H.F. 2128 (NS), adopted May 25, 2021, an Omnibus health and human services policy and finance bill.
- 2021 MN S.F. 2360 (NS), engrossed April 26, 2021, would be an omnibus health and human services policy and finance bill.

Montana

2021 MT H.B. 676 (NS), introduced March 24, 2021, would generally revise Medicaid and CHIP laws.

New Jersey

- 2020 NJ S.B. 3659 (NS), introduced April 26, 2021, would establish permanent unit in Office of Emergency Management to address access and functional needs of residents related to disasters and emergencies.
- 2020 NJ S.B. 3833 (NS), introduced June 1, 2021, would permit the use of automated dispensing devices in long-term care facilities and hospice care programs.
- 2020 NJ A.B. 4479 (NS), amended/substituted August 24, 2020, would provide supplemental payments to long-term care facility staff providing direct care services during COVID-19 pandemic.
- 2020 NJ A.B. 4864 (NS), amended/substituted June 21, 2021, would make FY 2021 supplemental appropriation of \$3,000,000 to DHS for temporary 25 percent increase to certain assisted living resident provider in Medicaid.

New York

- 2021 NY S.B. 2507 (NS), adopted April 19, 2021, enacts into law major components of legislation necessary to implement the state health and mental hygiene budget for the 2021-2022 state fiscal year.
- 2021 NY A.B. 3708 (NS), introduced January 28, 2021, would relate to allowing a nursing home patient, or his or her representative, to install, operate and maintain, at his or her own expense, an electronic monitoring device in his or her room.
- 2021 NY S.B. 4826 (NS), introduced February 12, 2021, would establish an emergency public health transparency and accountability council to receive reports of allegations of violations of any law, regulation or executive order related to the COVID-19 outbreak, in nursing homes and adult care facilities, or any conditions or actions that otherwise put any health care provider or resident of a nursing home or adult care facility at unnecessary risk.
- 2021 NY A.B. 6966 (NS), adopted May 13, 2021, provides for the authorization and regulation of visitation at nursing homes and residential health care facilities.
- 2021 NY A.B. 7022 (NS), adopted July 1, 2021, amends chapter 462 of the laws of 2015, amending the elder law relating to long term care ombudsman access to assisted living facilities, in relation to the effectiveness of certain provisions of such chapter.
- 2021 NY A.B. 8006 (NS), introduced June 4, 2021, would authorize residents of assisted living programs to receive hospice services; directs the commissioner of health to convene a workgroup of stakeholders to make recommendations as to coordination and division of services, responsibilities, and reimbursement of assisted living programs and hospice programs.
- 2021 NY A.B. 8370 (NS), introduced October 20, 2021, would allow personal caregivers to visit residents of adult care facilities at any time, in compliance with federal and state laws and regulations.

North Carolina



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2021 NC S.B. 105 (NS), amended/substituted June 22, 2021, would make base budget appropriations for current operations of state agencies, departments, and institutions.

Ohio

2021 OH H.B. 110 (NS), amended/substituted June 28, 2021, would make operating appropriations for the biennium beginning July 1, 2021, and ending June 30, 2023, to levy taxes, and to provide authorization and conditions for the operation of state programs.

Oklahoma

- 2021 OK H.R. 1019 (NS), introduced March 29, 2021, would reject privatized managed care and directing the Oklahoma Health Care Authority to create a state-based managed care system.
- 2021 OK H.B. 1794 (NS), adopted May 28, 2021, would amend O.S. 2011, Section 1-879.2a, which relates to the Alzheimer's Disease Special Care Disclosure Act; modifying title; amending O.S. 2011, Section 1879.2b, which relates to definitions; modifying term; defining term; amending O.S. 2011, Section 1879.2c, which relates to disclosure; modifying reference; modifying applicable facilities; requiring development of certain form; modifying disclosure recipients; providing for timing of certain submission; requiring the State Department of Health to examine and review disclosures at certain times; modifying terms; requiring certain disclosures; creating the Alzheimer-Dementia Disclosure Act Advisory Council; providing for membership, service without compensation, organization, quorum and staff assistance; providing for penalties; requiring certain information to be posted on a certain website; and providing an effective date.
- 2021 OK H.B. 1877 (NS), adopted April 19, 2021, amending 63 O.S. 2011, Section 1-890.8, as amended by Section 1, Chapter 248, O.S.L. 2013 ([63 O.S. Supp. 2020, Section 1-890.8](#)), which relates to the plan of accommodation for certain disabled residents; modifying criteria for prescription of antipsychotic drugs for residents; requiring assessments and monitoring; listing requirements; requiring documentation; and providing an effective date.

Oregon

2021 OR H.B. 2397 (NS), adopted July 27, 2021, relates to emergency medical services for residents in long term care settings.

Pennsylvania

2021 PA H.B. 208 (NS), introduced January 22, 2021, would provide for the disclosure of communicable diseases in certain facilities during disaster emergencies.

Texas

- 2021 TX S.J.R. 19 (NS), adopted June 1, 2021, is a constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation.
- 2021 TX [S.B. 25](#) (NS), adopted June 14, 2021, codifies the right of a long-term care resident, resident's guardian, or resident's legally authorized representative to designate an essential caregiver. The bill also directs the executive establishment of a visitation schedule of at least two hours each day, to allow physical contact with the resident, establish safety control measures not more stringent than safety protocols for the staff of the facility or residence, and creation of a signed acknowledgement that the caregiver abides by the rules. The guidelines developed by the executive commissioner will provide certainty and consistency for caregivers, residents, and long-term care providers. The legislation clarifies that essential caregivers are not required to provide care and a facility or provider cannot require a caregiver to provide care. The legislation also allows for a limited seven-day suspension of caregiver visits if visitation poses a serious community health risk. This suspension can only be extended for additional periods of no more than seven days with the approval of HHSC. (Original Author's/Sponsor's Statement of Intent) [S.B. 25](#) amends current law relating to the right of certain residents to designate an essential caregiver for in-person visitation. 2021 TX S.B. 503 (NS), engrossed April 23, 2021, would amend Chapter 260 of the Health and Safety Code by adding Section 260.0091.
- 2021 TX H.B. 161 (NS), introduced October 10, 2021, would relate to making supplemental appropriations relating to health and human services and giving direction regarding appropriations.
- 2021 TX S.B. 1136 (NS), adopted June 7, 2021, relates to implementation of certain health care provider initiatives and measures designed to reduce costs and improve recipient health outcomes under Medicaid.
- 2021 TX S.B. 1306 (NS), introduced March 9, 2021, would create a COVID-19 Health Equity Task Force and state agency response to the COVID-19 pandemic.

Rhode Island

- 2021 RI H.B. 5464 (NS), introduced February 10, 2021, would mandate that a patient shall not be denied appropriate care on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, source of income, source of payment or profession.
- 2021 RI H.B. 5543 (NS), adopted July 16, 2021, promulgates rules and regulations for essential caregivers at nursing homes during a declared emergency.

Utah



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2021 UT H.B. 226 (NS), adopted March 16, 2021, regulates assisted living and nursing home facilities.

Washington

- 2021 WA H.B. 1218 (NS), adopted May 3, 2021, would amend [RCW 18.20.110](#), [18.51.009](#), [18.51.091](#), [18.51.260](#), [74.42.420](#), [74.42.460](#), [70.97.160](#), [70.128.090](#), [70.128.130](#), [70.129.020](#), [70.129.030](#), [70.129.040](#), [70.129.080](#), [70.129.090](#), [70.129.110](#), [70.129.150](#), and [70.129.180](#); reenacting and amending [RCW 70.129.010](#); adding new sections to chapter 18.20 RCW; adding new sections to chapter 18.51 RCW; adding new sections to chapter 70.97 RCW; adding new sections to chapter 70.128 RCW; adding new sections to chapter 70.129 RCW; and creating a new section. Relating to improving the health, safety, and quality of life for residents in long-term care facilities through emergency preparedness, improvements in communications, resident information, and notice of sanctions.
- 2021 WA H.B. 1323 (NS), adopted April 21, 2021, relates to the long-term services, and supports trust program; amending [RCW 50B.04.010](#), [50B.04.020](#), [50B.04.050](#), [50B.04.085](#), and [50B.04.090](#); and adding a new section to chapter 50B.04 RCW.

Wyoming

2021 WY S.F. 139 (NS), adopted April 6, 2021 relating to community based in-home services; subjecting availability of the community based in-home services program to the availability of funds; and providing for an effective date.

2. 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.

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. ^[FN27] 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. ^[FN28] 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 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.

Some Residents Receive Fewer Prescriptions due to Lack of Medicare Coverage

Individuals in long-term care facilities who rely on Medicare for drug coverage may be receiving significantly fewer necessary prescriptions due to cost. ^[FN29] Experts believe that an expansion of Medicare Part D would be necessary to reduce the discrepancy of necessary drugs being taken and covered than what is currently being done.

BREAKING: CMS Issues New Guidance, Opening Up Nursing Home Visitation

The new visitation guidelines have been released by CMS. ^[FN30] These guidelines encourage outdoor visits and allow indoor visits if protocols are met. The guidelines also laid out requirements that long-term care facilities should meet to encourage safe visitation and provides for situations where residents could receive close 'compassionate care situations' that would ease the rules as well.

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. ^[FN31]

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 (RNHCl); 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.



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'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 decor).

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.

CMS Gives Therapy Providers the Green Light to Provide Medicare Telehealth Services

As of Thursday April 30, CMS has decided to waive limitations on the times of clinical practitioners that can provide Medicare telehealth services, allowing at risk patients to avoid going to health care facilities for services that don't need to be provided in person. ^[FN32] The health care professionals most greatly affected by this waiver are rehabilitative therapists. The goal of this waiver is to provide services to patients in nursing homes without exposing them to greater risk.

B. Emergency Preparedness

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



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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. ^[FN33] 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. ^[FN34] 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. ^[FN35] 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.

SELECTED LEGISLATION & REGULATIONS

Federal

- 2021 CONG US HR 4294, introduced June 30, 2021, would amend the Public Health Service Act to authorize the Secretary of Health and Human Services to award grants to nursing homes, assisted living facilities, and other long-term care facilities to improve their preparedness for power outages.
- [85 FR 79190-01](#), notice of amendment and republished declaration December 9, 2020, issues this amendment pursuant to section 319F-3 of the Public Health Service Act to amend his March 10, 2020 Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19.

Iowa

2021 IA [S.F. 55](#) (NS), introduced January 12, 2021, would create standards for carbon monoxide protection and making penalties applicable.

Kansas

- 2021 KS S.B. 14 (NS), enrolled January 25, 2021, would extend certain provisions of the governmental response to the COVID-19 pandemic in Kansas and providing certain relief related to health, welfare, property, and economic security during this public health emergency.
- 2021 KS H.B. 2048 (NS), introduced January 12, 2021, would extend certain provisions of the governmental response to the COVID-19 pandemic in Kansas and providing certain relief related to health, welfare, property, and economic security during this public health emergency.

New Jersey

- 2020 NJ [S.B. 537](#) (NS), adopted November 8, 2021, Establishes certain minimum and maximum temperatures in rooming and boarding houses, dementia care homes, and certain nursing homes and residential health care facilities.



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• 2020 NJ A.B. 3110 (NS), amended/substituted January 13, 2021, would establish minimum or maximum temperatures in dementia care homes and certain nursing home and residential care facilities.

Oklahoma

2021 OK S.B. 654 (NS), adopted April 20, 2021, modifies certain licensure fees and duration of license.

Pennsylvania

2021 PA H.B. 890 (NS), introduced March 15, 2021, would establish generator requirements for long-term care nursing facilities, assisted living residences, nursing homes, personal care homes and hospices; providing for powers and duties of the Department of Health and other State agencies; and imposing penalties.

Texas

2021 TX H.B. 1681 (NS), adopted June 15, 2021, relates to the construction of certain assisted living facilities located within a floodplain in certain counties.

C. Protecting Residents from Abuse

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. ^[FN36]

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."

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 narrower 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.



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'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. [FN37]

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. [FN38] 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.

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.

Top State Official was Warned Two Years Ago About 'Grave Risk' to Disabled Iowans at Glenwood Resource Center, Emails Show

Two years ago, officials were warned that clients were at serious risk due to the conditions at the facility. [FN39] This email was sent directly to a top state official regarding the conditions at a facility for people with disabilities. A lawsuit has been initiated regarding the quality of care following an increase in deaths of patients.

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. [FN40] 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 lead 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 LEGISLATION & REGULATIONS

Kansas

2021 KS H.B. 2114 (NS), adopted April 21, 2021, establishes the senior care task force, a definition of financial exploitation and Kansas elder and dependent adult abuse multidisciplinary team coordinator and teams, requiring additional mandatory reporters, increasing investigation days for reports of abuse, neglect and financial exploitation of certain adults and directing the department for children and families to inform certain chief administrative officers of substantiated findings of such reports.

D. Electronic Monitoring



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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. ^[FN41] 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.

SELECTED LEGISLATION & REGULATIONS

Florida

2021 FL S.B. 828 (NS), introduced March 2, 2021, would require facilities to inform respondents with a serious mental illness of the essential elements of recovery and provide them assistance in accessing a continuum of care regimen; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; revising the requirements for when a person may be taken to a receiving facility for involuntary examination; revising the requirements for when a person may be ordered for involuntary inpatient placement; requiring the clerk of the court to notify the state attorney's office upon the receipt of a petition filed for involuntary treatment services, etc.

Georgia

2021 GA H.B. 605 (NS), amended/substituted March 31, 2021, would provide for authorized electronic monitoring in long-term care facilities.

Indiana

2021 IN S.B. 378 (NS), introduced January 14, 2021, would allow the residents of: (1) health facilities; and (2) residential care facilities; to consent to the authorized electronic monitoring (monitoring) of their rooms. Allows specified individuals to consent to monitoring on behalf of health facility and residential care facility residents. Allows certain individuals to request conditions and restrictions when consenting to monitoring. Requires conditions and restrictions concerning monitoring to be memorialized in writing. Requires certain forms to be created and signed by specified parties when commencing or modifying monitoring. Allows certain individuals to refuse monitoring by withdrawing or withholding consent. Requires the withdrawal or withholding of consent to be memorialized in writing. Prohibits monitoring when certain parties refuse or decline consent. Requires a facility to make a reasonable effort to cohort residents in a manner that makes monitoring feasible. Specifies that a resident who occupies a private room for the purpose of making monitoring feasible must pay a private room rate. Requires a: (1) health facility; or (2) residential care facility; to provide specified individuals with complete copies of specified paperwork concerning monitoring upon request. Requires certain paperwork concerning monitoring to be made a permanent part of a resident's clinical report. Provides: (1) health facilities; and (2) residential care facilities; with immunity from civil liability when making a good faith effort to comply with laws, conditions, and restrictions pertaining to monitoring. Specifies that no other person or entity may be held liable for certain damages by reason of an agency relationship with a: (1) health facility; or (2) residential care facility; when the health facility or residential care facility is not liable for certain damages. Specifies an exception. Specifies permitted purposes for recordings created by an electronic monitoring device (device). Provides that a person who knowingly or intentionally hampers, obstructs, tampers with, or destroys: (1) a device; or (2) a recording created by a device; commits a Class A misdemeanor. Specifies that the offense is a Level 6 felony if the person knowingly or intentionally conceals or attempts to conceal any hampering, obstruction, tampering with, or destruction of a device or recording. Specifies an exception. Requires the state department of health to create certain forms for the purpose of memorializing specified requirements concerning monitoring. Defines certain terms.

Michigan

• 2021 MI S.B. 33 (NS), introduced January 26, 2021, would allow under certain circumstances electronic monitoring devices in nursing homes.

New York

- 2021 NY S.B. 1783 (NS), amended/substituted June 1, 2021, would direct the department of health to establish and implement an infection inspection audit and checklist on residential care facilities, nursing homes and long-term care facilities.
- 2021 NY S.B. 3821 (NS), amended/substituted March 10, 2021, would allow a nursing home patient to install, operate and maintain, at his or her own expense, an electronic monitoring device in his or her room.
- 2021 NY A.B. 5283 (NS), introduced February 12, 2021, would require video communication devices for patients or residents in nursing homes, hospitals or facilities providing health related services when visitor access is limited; further requires that as part of a disaster preparedness plan that nursing homes, adult homes, enriched housing programs, and assisted living facilities provide video communication devices to patients for use when visitor access is limited, including, but not limited to during a designated state of emergency or a state disaster emergency.



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Rhode Island

- 2021 RI S.B. 112 (NS), introduced January 26, 2021, would allow for the use of electronic monitoring of a resident's room or private living unit within a nursing home or assisted living facility, provided that the resident or resident representative acting on behalf of the resident.
- 2021 RI H.B. 5561 (NS), introduced February 12, 2021, would allow for the use of electronic monitoring of a resident's room or private living unit within a nursing home or assisted living facility, provided that the resident or resident representative acting on behalf of the resident, as well as the resident's roommate or roommate's representative acting on behalf of the roommate, consent to such electronic monitoring in writing in accordance with the applicable form.

E. Protecting the Health of Residents

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 ^[FN42] 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.

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. ^[FN43]

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.

CDC: Elderly May Get Top Priority for Eventual Coronavirus Vaccine

Due to the increased risk of complications due to COVID-19, the elderly, essential workers, and those at high risk may be the first to receive a vaccine. ^[FN44] There was also discussion of Black and Latinx patients receiving the vaccine first, but this is a more controversial provision. While these patients may receive the first vaccines, there will still be a large gap between the first vaccines and widespread vaccinations.

Feds Restart Regular Survey Inspections at Nursing Homes

CMS has announced that it will resume inspections of certified providers and suppliers after suspending inspections in March due to the spread of Corona virus. ^[FN45] Agencies have suggested that inspectors prioritize violations of immediate jeopardy and infection control protocols.

Testing, More PPE Lead to 90% Drop in Nursing Home COVID-19 Cases

Minnesota has shown a 90% decrease in the number of COVID-19 deaths per day since May of 2020. ^[FN46] The number of facilities with at least one new case of COVID-19 has dropped from 23 facilities per day to 6 facilities per day. This reduction in cases has been attributed to Governor Walz's 5-point plan for ensuring safety in long-term care facilities and the securement of more PPE for facility workers.

Preliminary Medicare COVID-19 Data Snapshot

CMS has released information related to the spread of COVID-19 in long-term care facilities. ^[FN47] The information contained includes the average length of hospital stay for COVID-19 cases and the distribution of cases per state.

New Study Links Facility Staffing Levels, Quality to Number of COVID-19 Cases

A new study published in the Journal of the American Geriatrics Society showed a correlation between low staffing levels and quality scores and high rates of COVID-19 deaths. ^[FN48] The data showed that nursing homes with more staffed RNs had 22% fewer cases and facilities with a 4 or 5 star rating at 13% fewer cases. The study also showed that facilities with more Medicaid residents and patients of color had more confirmed cases. Yue Li, a professor in the University of Rochester Medical Center commented on the socio-economic disparities and how these disparities are now reflecting in death rates during this pandemic.



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Facilities Lack Sufficient Tests to Meet COVID-19 Recommendations, Senate Report Finds

President Trump has called for universal weekly testing in long-term care facilities, however the limits on the number of tests have made it nearly impossible to meet the federal recommendations. ^[FN49] Only one state has stated that they feel they are in a good place to meet the testing requirements. Officials believe that until the time comes where the testing capacity can be met, facilities should implement procedures that meet the test supply and the needs of the facilities.

BREAKING NEWS: CMS Orders Resumption of Nursing Home Staffing Data Collection, Updates Star-Rating Plans

After a blanket waiver, CMS will begin requiring Nursing Facilities to submit staffing data again beginning August 14. ^[FN50] The waiver was previously in place to allow facilities to focus on the treatment of patients with COVID-19.

FDA Panel Recommends Emergency Use for Pfizer COVID Vaccine

The FDA voted in favor for the emergency use of the Pfizer vaccine in a 17-4 decision with one-member abstaining. ^[FN51] The Pfizer vaccine has also been approved in the UK and Canada, however due to severe reactions observed in Britain the vaccine is no longer recommended for people who have a history of severe allergic reactions. This decision was made after the CDC determined that those living and working in long-term care facilities should be among the first to be inoculated.

SELECTED LEGISLATION & REGULATIONS

California

- 2021 CA A.B. 636 (NS), adopted October 7, 2021, amends Section 15633.5 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.
- 2021 CA A.B. 665 (NS), adopted October 4, 2021, adds Sections 1537.1, 1568.074, and 1569.319 to the Health and Safety Code, relating to care facilities.
- 2021 CA [S.B. 806](#) (NS), adopted October 7, 2021, amends Sections 125.3, 801.01, 2001, 2020, 2021, 2064.5, 2065, 2081, 2096, 2111, 2112, 2113, 2168, 2168.4, 2228.1, 2273, 2424, 2435, 2443, 2450, 2454.5, 2460, 2520, 2529, 2529.5, 3504, 3509, 3510, 3512, 3517, 3519, 3519.5, 3524, 3527, 3530, 3533, and 3577 of, to add Sections 2097, 2220.01, 2227.3, 2511.5, 2519.5, and 3575.5 to, and to repeal Sections 2228.5, 3521.5, and 3546 of, the Business and Professions Code, relating to healing arts.

Connecticut

2021 CT [S.B. 815](#) (NS), introduced February 1, 2021, would protect the health of elderly persons by restricting cigarette smoking.

Florida

2021 FL REG TEXT 577474 (NS), effective February 17, 2021, adopts rules setting forth the procedures to control the spread of COVID-19 to protect the health, safety, and welfare of Florida's citizens.

New Jersey

2020 NJ S.B. 2798 (NS), adopted August 5, 2021, establishes requirements for long-term care facilities to establish outbreak response plans.

New York

2021 NY REG TEXT 588002 (NS), effective June 24, 2021, requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.

Pennsylvania

2021 PA H.B. 63 (NS), amended/substituted March 23, 2021, would relate to the administration and distribution of COVID-19 vaccinations in this Commonwealth.

Texas

2021 TX REG TEXT 589118 (NS), effective July 10, 2021, adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new s.553.2004, concerning an emergency rule to track vaccinations of staff and residents in long-term care facilities in Texas in response to COVID-19. As authorized by Texas Government Code s.2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code s.2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

F. Miscellaneous Protection Developments

Selected Legislation and Regulations

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New Jersey



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- 2020 NJ S.B. 3032 (NS), adopted November 8, 2021, Requires DOH to develop Statewide plan for infection control and prevention infrastructure improvements in nursing homes.
- 2020 NJ S.B. 3041 (NS), amended/substituted March 25, 2021, would require DOH to continuously publish total number of COVID-19 deaths in long-term care facilities and veterans' homes.
- 2020 NJ A.B. 4861 (NS), adopted November 8, 2021, Requires DOH to publish total number of COVID-19 deaths and cases in long-term care facilities.

3. 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.^[FN52] 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.

SELECTED LEGISLATION & REGULATIONS

Illinois

2021 IL REG TEXT 595138 (NS), effective September 15, 2021, emergency amendments are adopted in response to Governor JB Pritzker's Gubernatorial Disaster Proclamations issued related to COVID-19, and in response to new federal regulations requiring long-term care facilities to develop policies to administer the COVID-19 vaccine to facility staff and residents. Currently, only 59 percent of facility staff in Illinois are vaccinated. These emergency amendments are needed to bring that figure to as close to 100 percent as possible.

Iowa

2021 IA H.F. 190 (NS), introduced January 22, 2021, would relate to cross-over visitation between residents or tenants in a shared campus long-term care facility during a national public health emergency or public health disaster.

Kansas

2021 KS H.B. 2122 (NS), introduced January 22, 2021, would enact the supported decision-making agreements act to provide a statutory framework for adults who want decision-making assistance.

New Jersey

- 2020 NJ S.B. 537 (NS), amended/substituted January 13, 2021, would establish minimum and maximum temperatures in nursing homes and residential health care facilities.
- 2020 NJ A.B. 3110 (NS), amended/substituted January 13, 2021, would establish certain minimum and maximum temperatures in rooming and boarding houses, dementia care homes, and certain nursing homes and residential health care facilities.

New York

2021 NY S.B. 597 (NS), prefiled January 4, 2021, would enact the 'New York state nursing home virtual visitation act'.

Virginia

- 2020 VA H.B. 2107 (NS), prefiled January 12, 2021, would require the Board of Health to amend regulations governing hospitals, nursing homes, certified nursing facilities, and hospices to require such entities to adopt protocols to ensure that, during a public health emergency related to a communicable disease of public health threat, each patient is able to receive virtual visits from any person designated by the patient, within 72 hours of the time the request for a virtual visit is made.
- 2020 VA H.B. 2154 (NS), adopted March 18, 2021, directs the Board of Health to amend regulations governing hospitals, nursing homes, and certified nursing facilities to require each hospital, nursing home, and certified nursing facility to establish and implement policies to ensure the permissible access to and use of an intelligent personal assistant provided by the patient while receiving inpatient services. 'Intelligent personal assistant' is defined in the bill as a combination of an electronic device and a specialized software application designed to assist users with basic tasks using a combination of natural language processing and artificial intelligence, including such combinations known as 'digital assistants' or 'virtual assistants.'

4. 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.^[FN53] Efforts are being made to encourage patient self-determination and health care planning by seeing that residents have access to critical information.



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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. ^[FN54] 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. ^[FN55] 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. ^[FN56] 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

In the past 10 years, the rates of obesity in nursing home residents has increased by 6%. ^[FN57] This trend has disproportionately 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. ^[FN58] 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.

CMS Issues 'Long Overdue' Visitation Guidelines for Nursing Homes

The emotional toll of isolation due to the Coronavirus pandemic is clear and felt hardest by those in long-term care facilities. ^[FN59] CMS is working to create guidelines to ensure the safe opening of facilities during Phase 3 of opening. In addition to creating guidelines to ensure that visitors can safely visit but want to encourage solutions to enriching clients lives without the need for physical contact.

SELECTED LEGISLATION & REGULATIONS

Alaska

- 2021 AK S.B. 89 (NS), adopted August 25, 2021, relates to house rules for assisted living homes.
- 2021 AK H.B. 103 (NS), introduced February 18, 2021, would relate to house rules for assisted living homes.

Arizona

2021 AZ H.B. 2254 (NS), introduced January 21, 2021, would relate to end-of-life decisions; and terminally ill patients.

California



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- 2021 CA A.B. 226 (NS), enrolled September 15, 2021, would amend Section 1502 of, to add Chapter 7 (commencing with Section 1700) to Division 2 of, and to repeal Sections 1562.02 and 1562.03 of, the Health and Safety Code, and to amend Sections 11462.01 and 14021 of, and to repeal Section 11462.011 of, the Welfare and Institutions Code, relating to care facilities.
- 2021 CA A.B. 474 (NS), enrolled September 3, 2021, makes amendments related to long term care facilities.

Connecticut

- 2021 CT S.B. 973 (NS), enrolled June 28, 2021, would require input from residents' councils and family councils at long-term care facilities on any state-wide policies affecting living conditions for residents of such facilities.
- 2021 CT S.B. 975 (NS), adopted June 16, 2021, affirms that residents of long-term care facilities have the right to treat their living quarters as their homes and have the same rights as all other state residents, including the right to use technology of their choice for purposes, including, but not limited to, virtual visitation and file grievances for violations of their rights.

Iowa

2021 IA S.F. 4 (NS), introduced January 11, 2021, would eliminate the certificate of need process relating to the development of a new or changed institutional health service.

Kansas

2021 KS S.B. 303 (NS), introduced March 22, 2021, would prohibit boards of county commissioners, boards of trustees or employees from restricting visitors of residents of a county home for the aged or patients in a county hospital and permitting such residents and patients to waive state, city or federal restrictions on right to receive visitors.

Louisiana

2021 LA H.C.R. 34 (NS), enrolled May 24, 2021, would urge and request the Louisiana Department of Health to study potential means for financing dental care for adult residents of intermediate care facilities for persons with intellectual and developmental disabilities and to report findings of the study to the House Committee on Appropriations, the Senate Committee on Finance, and the legislative committees on health and welfare.

Michigan

- 2021 MI S.B. 82 (NS), adopted September 29, 2021, make, supplement, adjust, and consolidate appropriations for various state departments and agencies, the judicial branch, and the legislative branch for the fiscal years ending September 30, 2021 and September 30, 2022; to provide for certain conditions on appropriations; to provide for the expenditure of the appropriations; and to repeal acts and parts of acts.
- 2021 MI H.B. 5385 (NS), introduced October 13, 2021, would amend 1978 PA 368, entitled 'Public health code,' by amending section 20161 ([MCL 333.20161](#)), as amended by 2020 PA 169.

Minnesota

- 2021 MN S.F. 2316 (NS), introduced March 25, 2021, would provide customized living services providers standards establishment; long-term care consultation services for a resident's spouse or legal partner authorization; nursing facility rates definitions modifications; criteria for adequate nursing facility documentation expansion; payroll record requirements modification; confidentiality of nursing facility financial statements; requirements for accrued expense reimbursements establishment; scholarship per diems for nursing facility employees modification; adult foster care resident rule repeal.
- 2021 MN H.F. 2394 (NS), introduced March 25, 2021, would establish Primary Care Case Management program, authorize health care provider direct state payment, and appropriate money.

New Mexico

2021 NM REG TEXT 594751 (NS), notice provided September 28, 2021, requires all school workers comply with certain health requirements and requiring congregate care facility workers, hospital workers, and employees of the office of the governor be fully vaccinated.

North Carolina

- 2021 NC S.B. 105 (NS), amended/substituted August 10, 2021, would make base budget appropriations for current operations of state agencies, departments, and institutions and for other purposes.
- 2021 NC S.B. 191 (NS), enrolled October 7, 2021, would state patient visitation rights will not be impacted during declared disasters and emergencies and directing the department of health and human services to impose a civil penalty for any violation of those rights.
- 2021 NC H.B. 351 (NS), adopted September 10, 2021, directing the Secretary of the Department of Health and Human Services to establish visitation protocols for nursing homes, combination homes, and adult care homes, including family care homes, during declared disasters and emergencies and requiring these facilities to adhere to the established visitation protocols during declared disasters and emergencies when normal visitation policies are suspended or curtailed.



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Ohio

2021 OH H.B. 110 (NS), adopted July 1, 2021, makes operating appropriations for the biennium beginning July 1, 2021, and ending June 30, 2023, to levy taxes, and to provide authorization and conditions for the operation of state programs.

Oklahoma

2021 OK H.B. 1677 (NS), amended/substituted February 18, 2021, would relate to long-term care; providing for designation of compassionate caregivers for long-term care facility and assisted living residents; requiring access to residents by certain people; providing precautions that may be taken in certain situations; allowing revocation of compassionate caregiver status under certain circumstances; prohibiting elimination of visitation; providing for codification; and declaring an emergency.

Rhode Island

- 2021 RI H.B. 5547 (NS), introduced February 12, 2021, would entitle all residents of health care, and assisted living facilities, nursing homes, group homes and veterans' homes, to designate a person to provide them with companionship, personal health care guidance and advocacy.

- 2021 RI H.B. 6467 (NS), amended/substituted July 1, 2021, would require the department of health to promulgate rules and regulations providing for the designation of essential caregivers to provide in-person physical or emotional support to a resident of a healthcare facility during the period of fifteen (15) days after the declaration of disaster emergency and until sixty (60) days after the termination of the declaration of disaster emergency.

- 2021 RI REG TEXT 591587 (NS), effective August 20, 2021, Establishes routine testing for COVID-19 of all unvaccinated and vaccinated personnel which includes employees, as well as volunteers, students, trainees or any individual whether paid or unpaid directly employed by or under contract with the assisted living residences on a part time or full-time basis. By testing all unvaccinated personnel routinely, the transmission of COVID-19 in assisted living residences can be reduced.

Texas

- 2021 TX S.J.R. 19 (NS), amended/substituted March 15, 2021, would a constitutional amendment to codify a long-term care resident's right to designate an essential caregiver. The resolution also allows the legislature by general law to prescribe policies and procedures for an essential caregiver. C.S.S.J.R. 19 proposes a constitutional amendment establishing a right for certain residents receiving care in residential settings to designate an essential caregiver for in-person visitation.

- 2021 TX S.B. 25 (NS), engrossed March 17, 2021, would relate to the right of certain residents to designate an essential caregiver for in-person visitation.

- 2021 TX S.B. 1313 (NS), introduced March 9, 2021, would provide the right to choose and refuse medical treatment and control measures and to the imposition of isolation or quarantine control measures.

- 2021 TX S.B. 1876 (NS), adopted June 18, 2021, updates the current law relating to emergency planning for the continued treatment and safety of end stage renal disease facility patients by requiring end stage renal disease facilities to adopt a written emergency preparedness and contingency operations plan and by providing for the prioritization of power to such facilities so that they are on par with hospitals, nursing homes, assisted living facilities, and hospices.

- 2021 TX H.B. 2045 (NS), amended/substituted April 20, 2021, would establish a task force to evaluate the housing needs of LGBTQ senior citizens and to develop safe, affordable housing solutions to address those needs.

- 2021 TX H.B. 2867 (NS), engrossed May 5, 2021, would provide for the issuance of a temporary license for an assisted living facility that has a change in ownership.

- 2021 TX REG TEXT 580571 (NS), effective April 2, 2021, adopts on an emergency basis new s.500.1, Hospital Off-Site Facilities in Response to COVID-19, in Title 26, Texas Administrative Code, Chapter 500, concerning an emergency rule to allow hospitals to treat and house patients more effectively in response to COVID-19. As authorized by Texas Government Code s.2001.034, the Executive Commissioner may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code s.2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

- 2021 TX REG TEXT 580572 (NS), effective March 23, 2021, adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new s.554.2803, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in a facility. As authorized by Texas Government Code s.2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code s.2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

- 2021 TX REG TEXT 581030 (NS), effective March 24, 2021, adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) or Related Conditions, new s.551.47, concerning an emergency rule in response to COVID-19 describing requirements for limited indoor and outdoor visitation in ICF/IID. As authorized by Texas Government Code s.2001.034, the Commission may adopt an emergency rule without prior notice



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or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code s.2001.034, may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

- 2021 TX REG TEXT 588317 (NS), effective July 10, 2021, proposes in Texas Administrative Code (TAC) Title 26, Part 1, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, amendments to s.s.554.300, 554.301, 554.310, 554.311, 554.313 - 554.317, 554.321, 554.322, 554.326, 554.330, 554.332, 554.336, 554.337, 554.339, 554.340, 554.345, and 554.361, relating to Facility Construction; s.554.1001, relating to Nursing Services; s.554.1207, relating to Prescription of Psychoactive Medication; and 554.1601, relating to Infection Control.

Virginia

2020 VA H.B. 1856 (NS), introduced January 13, 2021, would relate to the Electronic execution of estate planning documents; Uniform Electronic Wills Act. Permits trusts, advance medical directives, and refusals to make anatomical gifts to be signed and notarized, as appropriate, by electronic means. The bill also codifies the Uniform Electronic Wills Act, which permits a testator to execute a will by electronic means. The Act requires that the will be signed by two witnesses who are in the physical or electronic presence of the testator and acknowledged by the testator and attesting witnesses in the physical or electronic presence of a notary public.

Washington

- 2021 WA H.B. 1218 (NS), adopted May 3, 2021, relates to improving the health, safety, and quality of life for residents in long-term care facilities through emergency preparedness, improvements in communications, resident information, and notice of sanctions; amending RCW 18.51.009, 18.51.260, 74.42.420, 74.42.460, 70.129.020, 70.129.030, 70.129.040, 70.129.080, 70.129.090, 70.129.110, 70.129.150, and 70.129.180; reenacting and amending RCW 70.129.010; adding new sections to chapter 18.20 RCW; adding new sections to chapter 18.51 RCW; adding new sections to chapter 70.97 RCW; adding new sections to chapter 70.128 RCW; adding new sections to chapter 70.129 RCW; adding a new section to chapter 70.01 RCW; and creating a new section.

- 2021 WA REG TEXT 587295 (NS), effective June 16, 2021, extends the amendment of the listed rules to ensure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.

5. OWNERSHIP AND MANAGEMENT OF FACILITIES

A. General Provisions

Providers Demand Piece of COVID-19 Stimulus Pie; 'We're in a recession,' Economist Declares

Long-term care facilities have received a boost from the stimulus bill, but with the recession on the horizon, facilities feel that they may need more help. ^[FN60] The bill provided for medical leave for employees of facilities with under 500 residents and a boost to Medicaid matching of 6.2 percentage points. With the strain on resources and the large number of employees expected to face the virus facilities may fall apart without more support.

Lawmakers' \$2T Stimulus Package Includes Nursing Homes Slice; COVID-Plagued SNF Stops Spread, Rebuffs Claims of Staffing, Supply Shortages

The stimulus bill provides long term health care facilities with a boost in Medicaid matching at support of employees, however provided no method of providing more supplies to these facilities. ^[FN61] After an outbreak at a facility in Illinois, the facility claimed a shortage in supplies, but the CEO of the supervising company was 'shocked' by the claims stating he had seen images of fully stocked inventory. The outbreak has since been stopped, but not until 33 residents and 13 staff members fell ill. A former employee claims to have quit due to insufficient safety supply and cleaning supply support.

CMS Guidance Bans Most Visitors, Communal Dining at Nursing Homes Over COVID-19

Recent guidance from CMS states that visitors to long-term care facilities should be limited to compassionate care situations and all other visitors should be prevented from entering. ^[FN62] This is a stark acceleration from just one week ago when it was stated that only visitors who are showing signs of COVID-19 should be prevented from visiting. With the close living quarters and care, the spread of the virus is rapid in these environments, so it is of utmost importance that residents are protected.

Trump Administration Issues Key Recommendations to Nursing Homes, State and Local Governments

President Trump has issued key guidance for long-term care facilities to focus on their infection prevention protocols. ^[FN63] Due to the compromised nature of many residents and the enclosed environments the virus is spreading rapidly through these communities. CMS has announced new infection control surveys to prevent further spread and to protect residents.

Breaking: HHS Announces \$4.9 Billion Fund for Skilled Nursing Pandemic Efforts

HHS has provided funds to support nursing homes that have lost revenue due to COVID-19. ^[FN64] These funds arise from the CARES Act that was passed by Congress. Now that these funds have been distributed, the focus is now on securing more funding for PPE. Providers are grateful for being allowed to continue quality care for those who need them.



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Trump Administration Issues Guidance to Ensure States Have a Plan in Place to Safely Reopen Nursing Homes

On May 18, 2020, CMS announced guidelines for reopening nursing homes.^[FN65] The guidelines focus on localities and working together with local governments. Other considerations include staffing and access to protective equipment. Links to official guidance are included.

Verma Calls Out Cuomo for Forcing NY Nursing Homes to Take COVID-19 Patients

Andrew Cuomo the New York Governor had made the decision to require providers to accept COVID-19 patients claiming that he was following administration guidelines but was faced with criticism from CMS Administrator Seema Verma.^[FN66] Verma clarified that facilities should not be taking in patients unless the facility is properly prepared to care for that patient and prevent the spread of the disease. The state has since announced that it will no longer require nursing homes to admit residents regardless of their COVID-19 status.

Omnicare to Pay \$15.3 Million to Settle Allegations it Wrongly Dispensed Opioids, Other Controlled Substances

Allegations arising from a May 2012 investigation against Omnicare have settled.^[FN67] Omnicare is a pharmacy provider for long-term care facilities which was acquired by CVS in 2015. The US attorney's office released the terms of settlement but did not disclose the source of the allegation or investigation. In addition to a \$15.3 million dollar fine, Omnicare will be required to increase its auditing and monitoring of emergency care kits in long-term care facilities. Omnicare and CVS admitted no wrongdoing.

Nursing Home Visitation ? COVID-19(REVISED)

CMS is committed to continuing to take critical steps to ensure America's healthcare facilities are prepared to respond to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).^[FN68] Visitation Guidance: CMS is issuing new guidance for visitation in nursing homes during the COVID-19 PHE, including the impact of COVID-19 vaccination.

Nursing Home Providers Sue Over Alleged Misallocation of \$150M in COVID-19 Funding

The state of Pennsylvania has been accused of withholding \$1.5 million in federal funding meant for long-term care facilities during the COVID-19 crisis.^[FN69] A lawsuit has been filed to force the Department to distribute the funds which the plaintiffs state was given to the state with the clear purpose of supporting nursing homes.

SELECTED LEGISLATION & REGULATIONS

Federal

- [86 FR 11954-01](#), proposed April 15, 2021, would update the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2022. In addition, the proposed rule includes a proposed forecast error adjustment for FY 2022, proposes updates to the diagnosis code mappings used under the Patient Driven Payment Model (PDP), proposes to rebase and revise the SNF market basket, proposes to implement a recently-enacted SNF consolidated billing exclusion along with the required proportional reduction in the SNF PPS base rates, and includes a discussion of a methodology to recalibrate the PDP parity adjustment. In addition, the proposed rule includes proposals for the SNF Quality Reporting Program (QRP) and the SNF Value-Based Purchasing (VBP) Program, including a proposal to suppress the use of the SNF readmission measure for scoring and payment adjustment purposes in the FY 2022 SNF VBP program because we have determined that circumstances caused by the public health emergency for COVID-19 have significantly affected the validity and reliability of the measure and resulting performance scores.
- [85 FR 84472-01](#), effective January 1, 2021, changes to the physician fee schedule (PFS); other changes to Medicare Part B payment policies to ensure that payment systems are updated to reflect changes in medical practice, relative value of services, and changes in the statute; Medicare Shared Savings Program requirements; Medicaid Promoting Interoperability Program requirements for Eligible Professionals; updates to the Quality Payment Program; Medicare coverage of opioid use disorder services furnished by opioid treatment programs; Medicare enrollment of Opioid Treatment Programs; payment for office/outpatient evaluation and management services; Requirement for Electronic Prescribing for Controlled Substances for a Covered Part D drug under a prescription drug plan or an MA-PD plan and Medicare Diabetes Prevention Program (MDPP) expanded model Emergency Policy. This final rule also finalizes certain provisions of the interim final rules with comment period that CMS issued on March 31, 2020, May 8, 2020^[FN.] and September 2, 2020 in response to the Public Health Emergency (PHE) for the Coronavirus Disease 2019 (COVID-19). This rule also establishes coding and payment for virtual check-in services and for personal protective equipment (PPE) on an interim final basis.
- [86 FR 42362-01](#), effective October 1, 2021, updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2022.
- [86 FR 42424-01](#), effective October 1, 2021, updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2022. In addition, the final rule includes a forecast error adjustment for FY 2022, updates the diagnosis code mappings used under the Patient Driven Payment Model (PDP), rebases and revises the SNF market basket, implements a recently-enacted SNF consolidated billing exclusion along with the required proportional reduction in the SNF PPS



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base rates, and includes a discussion of a PDP parity adjustment. In addition, the final rule includes updates for the SNF Quality Reporting Program (QRP) and the SNF Value-Based Purchasing (VBP) Program, including a policy to suppress the use of the SNF readmission measure for scoring and payment adjustment purposes in the FY 2022 SNF VBP Program because we have determined that circumstances caused by the public health emergency for COVID-19 have significantly affected the validity and reliability of the measure and resulting performance scores. We are also finalizing a technical correction to the physical environment requirements that Long-Term Care facilities must meet in order to participate in the Medicare and Medicaid programs.

- [86 FR 44332-02](#), notice of funds availability August 12, 2021, announces the availability of up to \$500 million in grant funding, appropriated under the American Rescue Plan Act of 2021, for the establishment of the Emergency Rural Health Care (ERHC) Grant Program.
- [86 FR 44774-01](#), effective October 1, 2021, revises the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital-related costs of acute care hospitals to implement changes arising from our continuing experience with these systems for FY 2022 and to implement certain recent legislation. The final rule also updates the payment policies and the annual payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs) for FY 2022. It also finalizes a May 10, 2021 interim final rule with comment period regarding rural reclassification through the Medicare Geographic Classification Review Board (MGCRB). The final rule also implements changes and updates for the Medicare Promoting Interoperability, Hospital Value-Based Purchasing, Hospital Readmissions Reduction, Hospital Inpatient Quality Reporting, Hospital-Acquired Condition Reduction, the PPS-Exempt Cancer Hospital Reporting, and the Long-Term Care Hospital Quality Reporting programs. It also finalizes provisions that alleviate a longstanding problem related to claiming Medicare bad debt and provide a participation opportunity for eligible accountable care organizations (ACOs).

Alabama

2021 AL H.B. 521 (NS), engrossed April 7, 2021, would require health care facilities to allow one caregiver or visitor to patients or residents, subject to reasonable restrictions.

Alaska

2021 AK REG TEXT 578156 (NS), adopted on an emergency basis June 18, 2021, changes in Title 12, Chapter 44 of the Alaska Administrative Code. In response to the increased demand for new certified nurse aides (CNAs) during the COVID-19 pandemic and in preparation for future disaster, the regulations streamline the requirements for training program instructors, allow a competency evaluation to be conducted at the facility where the CNA has been or will be employed, allow a CNA who has successfully completed that evaluation to be added to the nurse aide registry, allow a CNA student who started a discontinued training program or a program for which approval was withdrawn to complete the course and receive any credits earned, allow the delegation of the administration of medication to a CNA employed by a long-term care facility, require that a person to whom the administration of medication is delegated successfully complete a training course approved by the Board of Nursing, and provide that every two years the Board of Nursing will review the training program in administration of medication.

Arizona

- 2021 AZ S.B. 1085 (NS), introduced January 13, 2021, would relate to nursing-supported group homes and licensure.
- 2021 AZ H.B. 2242 (NS), filed January 13, 2021, would enact legislation related to agency actions and procedures. Would provide fee awards.
- 2021 AR H.B. 2633 (NS), adopted April 20, 2021, amending [section 36-2939, Arizona Revised Statutes](#); amending [section 36-2939, Arizona Revised Statutes](#), as amended by house bill 2521, section 4, fifty-fifth legislature, first regular session, as transmitted to the governor; relating to long-term care services.

California

2021 CA A.B. 474 (NS), adopted October 7, 2021, sections related to business and professions code, code of civil procedure, and others.

Connecticut

- 2021 CT S.B. 424 (NS), introduced January 27, 2021, would implement the recommendations of the Nursing Home and Assisted Living Oversight Working Group.
- 2021 CT [S.B. 493](#) (NS), introduced January 27, 2021, would implement the recommendations of the Nursing Home and Assisted Living Oversight Working Group.
- 2021 CT S.B. 494 (NS), introduced January 27, 2021, would implement the recommendations of the Nursing Home and Assisted Living Oversight Working Group.
- 2021 CT S.B. 561 (NS), introduced January 27, 2021, would require long-term assisted living facilities to assist in the establishment and operation of family councils in long-term care facilities.



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- 2021 CT S.B. 1030 (NS), amended/substituted May 17, 2021, would implement the recommendations of the Nursing Home and Assisted Living Oversight Working Group regarding long-term care facilities and make other revisions to the long-term care facility statutes.
- 2021 CT H.B. 6469 (NS), introduced February 18, 2021, would eliminate the copayment under the state-funded portion of the Connecticut home-care program for the elderly.
- 2021 CT H.B. 6595 (NS), introduced March 4, 2021, would address labor matters related to COVID-19, personal protective equipment, and other staffing issues.
- 2021 CT H.B. 6634 (NS), amended/substituted April 19, 2021, would allow long-term care facility residents to designate essential support persons who may visit and support their physical, emotional, psychological and socialization needs despite other visitation restrictions and to establish a state-wide visitation policy at long-term care facilities.

Florida

- 2021 FL S.B. 1830 (NS), introduced March 10, 2021, would use funds appropriated by the Legislature, requiring long-term care managed care plans to pay assisted living facilities certain rates and to calculate and make special payments for certain residents; requiring plans to pay assisted living facilities for claims within a specified timeframe; providing minimum requirements and specifications for training of medication technicians; requiring the agency to authorize online materials and courses to be used for such training, etc.
- 2021 FL [S.B. 1878](#) (NS), introduced March 10, 2021 would require certain facilities to provide patients admitted for inpatient treatment or their legal representatives with an opportunity to designate a caregiver for the patient's aftercare within a specified timeframe; requiring facilities to notify a patient's designated caregiver of the patient's discharge or transfer from the facility within a specified timeframe; providing facilities, facility employees, and persons under contract with a facility immunity from liability in administrative, civil, and criminal actions for certain acts or omissions of designated caregivers, etc.

Georgia

2021 GA H.B. 628 (NS), filed February 24, 2021, would provide for criminal background checks on individuals independently retained to provide personal care services for elderly persons who reside in a personal care home or assisted living facility.

Hawaii

- 2021 HI H.B. 227 (NS), amended/substituted February 19, 2021, would clarify the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals the landlord exclusion. Requires the department of health to prioritize complaint allegations based on severity for inspections of state-licensed or state-certified care facilities.
- 2019 HI H.B. 2431 (NS), introduced January 23, 2020, would require each assisted living facility to have at least 1 registered nurse available on its premises at all times to meet the care needs of its residents.

Illinois

2021 IL H.B. 422 (NS), introduced February 8, 2021, would amend the Nursing Home Care Act. Prohibits the involuntary discharge of an individual receiving care in an institutional setting as the result of the updated assessment tool until a transition plan has been developed.

Maryland

- 2021 MD S.B. 47 (NS), introduced January 13, 2021, would relate to the 'Nursing Homes and Assisted Living Programs' and essential caregivers.
- 2021 MD [S.B. 204](#) (NS), introduced January 13, 2021, would relate to 'Assisted Living Programs' and the memory care and Alzheimer's Disease unit regulations.
- 2021 MD [S.B. 707](#) (NS), introduced February 3, 2021, would require the Office of Health Care Quality to monitor the compliance of assisted living facilities with certain influenza virus immunization educational and informational requirements during a certain annual inspection; and generally relating to influenza virus immunization education and information and assisted living facilities.

Massachusetts

- 2019 MA S.B. 2708 (NS), introduced May 18, would address COVID-19 data collection and disparities in treatment.
- 2021 MA S.D. 757 (NS), draft/request February 5, 2021, would direct the administration to amend the Frail Elder Home and Community-Based Waiver to permit eligible older adults to choose to reside in Certified Assisted Living Residences

Mississippi

2021 MS H.B. 1255 (NS), introduced January 18, 2021, would establish the Mississippi Dementia Care program within the Department of Human Services as a pilot program.



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Missouri

2021 MO H.B. 632 (NS), introduced January 6, 2021, would create provisions related to end-of-life care homes.

Montana

2021 MT H.B. 702 (NS), amended/substituted April 30, 2021, would prohibit discrimination based on vaccine status or possessing immunity passport.

Nevada

2021 NV [S.B. 364](#) (NS), introduced March 25, 2021, would require certain medical facilities to provide training relating to caring for victims of sexual assault and attempted sexual assault to employees who provide such care; requiring such facilities to provide emergency contraception to such victims upon request; and providing other matters properly relating thereto.

New Jersey

- 2020 NJ. S.B. 2384 (NS), adopted February 4, 2021, requires health care facilities to report certain coronavirus disease 2019 (COVID-19) data related to health care workers and certain first responders.
- 2020 NJ S.B. 3041 (NS), amended/substituted March 25, 2021, would require DOH to publish total number of COVID-19 deaths in long-term care facilities.
- 2020 NJ S.B. 3350 (NS), introduced January 12, 2021, would require Medicaid fee-for-service coverage of managed long-term services, and supports when beneficiary is pending enrollment in managed care organization.
- 2020 NJ S.B. 3369 (NS), introduced January 21, 2021, would require long-term care facilities to submit reports regarding residents with disabilities.
- 2020 NJ A.B. 4374, introduced July 2, 2020, would require long-term care facilities to test personnel for COVID-19 twice per week.
- 2020 NJ A.B. 4616 (NS), amended/substituted March 8, 2021, would require residential psychiatric and long-term care facilities to provide certain financial information to facility residents and other individuals.
- 2020 NJ A.B. 4957 (NS), amended/substituted January 13, 2021, would require long-term care facilities to annually review residents' proxy directives.
- 2020 NJ A.B. 5253 (NS), introduced January 12, 2021, would require long-term care facilities to submit reports regarding residents with disabilities.
- 2020 NJ A.B. 5431 (NS), introduced March 8, 2021, would require biennial inspection of nursing homes, and assisted living facilities.
- 2020 NJ A.B. 5438 (NS), introduced March 8, 2021, would require county boards of elections to establish ballot drop boxes at certain long-term care facilities at least 45 days before election.
- 2020 NJ A.B. 5952 (NS), introduced November 8, 2021, would establish cause of action for residents of assisted living facilities and comprehensive personal care home providers.

New Mexico

2021 NM S.M. 6 (NS), introduced February 1, 2021, would request the Aging and Long-Term Services Department to establish a nursing home long-term care task force to ensure that New Mexico is adequately prepared for future emergencies.

New York

- 2021 NY S.B. 598 (NS), prefiled January 4, 2021, would enact the 'reimagining long-term care task force act' to create a task force to study the state of long-term care services in this state.
- 2021 NY [S.B. 612](#) (NS), prefiled January 4, 2021, would direct the office of the state long-term care ombudsman to provide opportunities for volunteers to work as resident advocates within the long-term care ombudsman program (Part A); directs the commissioner of health, in consultation with the state long-term care ombudsman, to establish policies and procedures for reporting, by staff and volunteers of the long-term care ombudsman program, issues concerning the health and safety of residents at nursing homes and residential health care facilities (Part B); includes access to state long-term care ombudsman program staff and volunteers within the pandemic emergency plan prepared by residential health care facilities (Part C); requires translations of a patient's rights into the six most common non-English languages of New York State (Part D); and relates to the posting of information relating to the long term care ombudsman program (Part E).
- 2021 NY A.B. 749 (NS), prefiled January 4, 2021, would authorize continuing care retirement communities to adopt a written cybersecurity policy and requires such policies to be self-certified and approved by the superintendent.
- 2021 NY S.B. 1080 (NS), amended/substituted March 19, 2021, would establish requirements for residential health care facilities during a state disaster emergency involving a disease outbreak; requires the department of health to issue guidance regarding precautions and procedures to maintain health and safety; establishes residential healthcare facility reporting requirements.



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- 2021 NY A.B. 1342 (NS), introduced January 8, 2021, would make assisted living programs eligible for access funding under the vital access provider program.
- 2021 NY S.B. 1593 (NS), introduced January 14, 2021, would allow an adult home, enriched housing facility, assisted living residence or special needs assisted living residence to provide for nursing services in the facility that are not continual, either by arrangement with a provider of nursing services or by employment.
- 2021 NY A.B. 1944 (NS), introduced January 13, 2021, would create a temporary state commission to study and investigate the effects of closures of long-term care facilities on the residents of such facilities and their families.
- 2021 NY S.B. 2103 (NS), amended/substituted May 3, 2021, relates to the use of psychotropic medications in nursing homes and adult care. 2021 NY A.B. 2211 (NS), introduced January 14, 2021, would specify procedures for the closure and/or decertification of assisted living residences; requires written notice and department approval and shall include timetables.
- 2021 NY A.B. 2100 (NS), introduced January 14, 2021, would require assisted living facilities to notify residents of changes to medical and support services 180 days prior to such changes taking effect.
- 2021 OR H.B. 2397 (NS), engrossed March 26, 2021, would relate to emergency medical services for residents in long term care settings.
- 2021 NY A.B. 3009 (NS), introduced January 19, 2021, would enact into law major components of legislation which are necessary to implement the state fiscal plan for the 2021-2022 state fiscal year.
- 2021 NY S.B. 3006 (NS), introduced January 27, 2021, would establish the affordable senior housing and services program to be administered by the housing trust fund corporation; such program shall provide payments, loans and grants for the reasonable and necessary expenses of creating, preserving or improving affordable senior housing which provides healthy aging services to residents.
- 2021 NY A.B. 5436 (NS), amended/substituted May 19, 2021, would direct the office of the state long-term care ombudsman to advertise and promote the long-term care ombudsman program and commissioners of the departments responsible for the license or certification of long-term care facilities (Part A); directs the commissioner of the state office for the aging, in consultation with the state long-term care ombudsman and the commissioners of the departments responsible for the license or certification of long-term care facilities, to establish policies and procedures for reporting, by staff and volunteers of the long-term care ombudsman program, issues concerning the health, safety and welfare of residents at long-term care facilities (Part B); includes access to state long-term care ombudsman program staff and volunteers within the pandemic emergency plan prepared by residential health care facilities (Part C).
- 2021 NY A.B. 6350 (NS), introduced March 16, 2021, would enact the 'New York state nursing home virtual visitation act'.
- 2021 NY S.B. 6462 (NS), introduced April 29, 2021, would limit the off label use of antipsychotic drugs with black box warnings on elderly patients with dementia; provides for professional misconduct for any health care professional who uses such drug on such patient.
- 2021 NY S.B. 6740 (NS), introduced May 13, 2021, would relate to long term care ombudsman access to assisted living facilities.
- 2021 NY A.B. 6965 (NS), introduced April 15, 2021, would extend the authority of the commissioner of health to appoint a temporary operator of a hospital or adult care facility where there are conditions within the facility that seriously endanger the life, health or safety of residents or patients.
- 2021 NY A.B. 7022 (NS), introduced April 21, 2021, would relate to the effectiveness of certain provisions relating to long term care ombudsman access to assisted living facilities.

North Carolina

- 2021 NC S.B. 191 (NS), engrossed May 5, 2021, would enact the No Patient Left Alone Act.
- 2021 NC S.B. 666 (NS), amended/substituted April 27, 2021, would update requirements and advance health care directives.

Oregon

2021 OR REG TEXT 593225 (NS), effective September 7, 2021, adopts rules for the administration of the Long-Term Care Capital Improvement Program, including requirements and criteria for the application, approval, distribution, and oversight of the program. In making grant award decisions, the department is directed to consider and prioritize long-term care facilities with high Medicaid-census, aging buildings, and upgrades; and, to ensure equitable access across the State. Eligible expenditures include emergency power sources, air quality and HVAC improvements, infectious disease prevention strategies and equipment, technology to facilitate virtual visits and telehealth for residents, and room reconfigurations that reduce the risk of transmitting infectious diseases.

Pennsylvania

2021 PA H.B. 649 (NS), adopted July 1, 2021, provides for access to congregate care facilities for essential caregivers, for additional safety requirements for residents of congregate care facilities, for suspension of access for essential caregivers and for costs associated with safety measures related to essential caregivers.



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Rhode Island

- 2021 RI REG TEXT 592333 (NS), effective August 31, 2021, establishes routine testing for COVID-19 of all unvaccinated and vaccinated personnel which includes employees, as well as volunteers, students, trainees or any individual whether paid or unpaid directly employed by or under contract with the assisted living residences on a part time or full-time basis. By testing all unvaccinated personnel routinely, the transmission of COVID-19 in assisted living residences can be reduced.
- 2021 RI REG TEXT 592459 (NS), effective August 31, 2021, establishes routine testing for COVID-19 of all unvaccinated nursing home residents and vaccinated and unvaccinated personnel which includes employees, as well as volunteers, students, trainees or any individual whether paid or unpaid directly employed by or under contract with the nursing home on a part time or full-time basis. By testing all unvaccinated personnel routinely, the transmission of COVID-19 in nursing facilities can be reduced.

Tennessee

2021 TN REG TEXT 597638 (NS), hearing notice provided October 20, 2021, would provide new Standards for Hospitals; Definitions; Basic Hospital Functions; Standards for Nursing Homes; Definitions; Disciplinary Procedures; Administration; Admissions, Discharges, and Transfers; Basic Services; Special Services: Alzheimer's Units; Building Standards; Life Safety; Infectious and Hazardous Waste; Resident Rights; Nurse Aide Competency Evaluation; Standards for Ambulatory Surgical Treatment Centers; Definitions; Administration; Records and Reports; Standards for Homes for the Aged; Definitions; Licensing Procedures; Admissions, Discharges and Transfers; Infectious and Hazardous Waste; Standards for Assisted-Care Living Facilities; Administration; Admissions, Discharges, and Transfers; Building Standards; Life Safety; Infectious and Hazardous Waste.

Texas

- 2021 TX S.B. 383 (NS), introduced January 21, 2021, would relate to disclosure requirements of certain facilities that provide care for persons with Alzheimer's disease and related disorders.
- 2021 TX S.B. 502 (NS), introduced January 28, 2021, would relate to the registration of certain establishments providing assisted living services.
- 2021 TX H.B. 1223 (NS), introduced January 20, 2021, would relate to minimum standards for staffing at assisted living facilities that provide care to persons with Alzheimer's disease or related disorders.
- 2021 TX H.B. 3037 (NS), amended/substituted April 16, 2021, would provide a civil penalty related to the regulation of referral agencies for senior living communities.
- 2021 TX H.B. 3961 (NS), amended/substituted April 19, 2021, would relate to required posting of information regarding the office of the state long-term care ombudsman on certain long-term care facilities' Internet websites.

Vermont

2021 VT S.B. 117 (NS), introduced March 10, 2021, proposes to extend until March 31, 2022 certain provisions of 2020 Acts and Resolves Nos. 91 and 140 allowing for health care-related regulatory flexibility during and immediately following the COVID-19 pandemic. It would require health insurance coverage of health care services delivered by audio-only telephone and establish requirements for health care providers delivering services in this manner. The bill would also allow remote witnesses for advance directives through June 30, 2022 and permit the Department of Health to provide immunization registry information to the Vermont Health Information Exchange.

Virginia

- 2020 VA S.B. 1205 (NS), adopted March 18, 2021, creates programs to address career fatigue and wellness in certain health care providers; civil immunity; emergency. Expands civil immunity for health care professionals serving as members of or consultants to entities that function primarily to review, evaluate, or make recommendations related to health care services to include health care professionals serving as members of or consultants to entities that function primarily to address issues related to career fatigue and wellness in health care professionals licensed, registered, or certified by the Boards of Medicine, Nursing, or Pharmacy, or in students enrolled in a school of medicine, osteopathic medicine, nursing, or pharmacy located in the Commonwealth. The bill contains an emergency clause and is identical to HB 1913.
- 2020 VA S.B. 1328 (NS), enrolled February 24, 2021, would create the State-Funded Kinship Guardianship Assistance program (the program) to facilitate child placements with relatives, including fictive kin, and ensure permanency for children. The bill sets forth eligibility criteria for the program, payment allowances to kinship guardians, and requirements for kinship guardianship assistance agreements.
- 2020 VA S.B. 1356 (NS), adopted April 7, 2021, requires the Board of Health to include in regulations governing hospitals, nursing homes, certified nursing facilities, and hospices and the Board of Social Services to include in regulations governing assisted living facilities a requirement that, during a public health emergency related to a communicable disease of public health threat, each hospital, nursing home, certified nursing facility, hospice, and assisted living facility establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with any executive order, order of public



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health, Department of Health guidance, or any other applicable federal or state guidance having the effect of limiting visitation. The bill provides that such protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology when use of interactive audio or video technology is determined to be necessary to comply with any applicable federal or state guidance or to protect the health and safety of the person, patients, or staff. Additionally, the protocol may require the person visiting a patient to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff.

- 2020 VA S.B. 1356 (NS), enrolled February 25, 2021, would require the Board of Health to include in regulations governing hospitals, nursing homes, certified nursing facilities, and hospices and the Board of Social Services to include in regulations governing assisted living facilities a requirement that, during a public health emergency related to a communicable disease of public health threat, each hospital, nursing home, certified nursing facility, hospice, and assisted living facility establish a protocol to allow patients to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the Centers for Disease Control and Prevention and the Centers for Medicare and Medicaid Services and subject to compliance with any executive order, order of public health, Department of Health guidance, or any other applicable federal or state guidance having the effect of limiting visitation. The bill provides that such protocol may restrict the frequency and duration of visits and may require visits to be conducted virtually using interactive audio or video technology when use of interactive audio or video technology is determined to be necessary to comply with any applicable federal or state guidance or to protect the health and safety of the person, patients or staff. Additionally, the protocol may require the person visiting a patient to comply with all reasonable requirements of the facility adopted to protect the health and safety of the person, patients, and staff.

- 2020 VA H.B. 2300 (NS), adopted March 18, 2021, requires each hospital with an emergency department that is currently regulated by the State Board of Health (the Board) to establish a protocol for treatment and discharge of individuals experiencing a substance use-related emergency, which shall include provisions for (i) appropriate screening and assessment of individuals experiencing substance use-related emergencies and (ii) recommendations for follow-up care, which may include dispensing of naloxone or other opioid antagonist used for overdose reversal, issuance of a prescription for naloxone, and information about accessing naloxone at a community pharmacy or organization that dispenses naloxone or other opioid antagonist to persons without a prescription. Such protocols may also include referrals to peer recovery specialists and community-based providers of behavioral health services or providers of pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses. The bill also directs the Department of Health Professions, together with the Department of Health, to convene a work group to develop recommendations for best practices for the treatment and discharging of patients in emergency departments experiencing opioid-related emergencies, including overdose, which shall include recommendations for best practices related to (a) performing substance use assessments and screenings for patients experiencing opioid-related overdose and other high-risk patients; (b) prescribing and dispensing naloxone or other opioid antagonists used for overdose reversal; (c) connecting patients treated for opioid-related emergencies, including overdose, and their families with community substance abuse resources, including existing harm reduction programs and other treatment providers; and (d) identifying barriers to and developing solutions to increase the availability and dispensing of naloxone or other opioid antagonist used for overdose reversal at hospitals and community pharmacies and by other community organizations. The bill also provides that hospitals in the Commonwealth may enter into agreements with the Department of Health for the provision to uninsured patients of naloxone or other opioid antagonist used for overdose reversal.

- 2021 VA REG TEXT 562722 (NS), effective January 27, 2021, is a requirement to Wear Face Covering While Inside Buildings. The Safety and Health Codes Board adopted the final standard to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, thereby protecting employees and the general public. SARS-CoV-2 is the virus that causes coronavirus disease 2019 (COVID-19). The final standard replaces the Emergency Temporary Standard (ETS) for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (16VAC25-220) that was adopted by the board effective July 2020.

- 2021 VA REG TEXT 593405 (NS), effective October 13, 2021, adds that, during a declared public health emergency related to a communicable disease of public health threat, assisted living facilities establish a protocol to receive visits from a rabbi, priest, minister, or clergyman of any religious denomination or sect consistent with guidance from state and federal health agencies and to protect the health and safety of the person, residents, and staff of the assisted living facility.

Washington

- 2021 WA H.B. 1124 (NS), prefiled January 8, 2021, would relate to nurse delegation of glucose monitoring, glucose testing, and insulin injections; amending RCW 18.79.260; reenacting and amending RCW 18.79.260; providing an effective date; and providing an expiration date.

- 2021 WA H.B. 1411 (NS), enrolled April 24, 2021, relates to the health care workforce eligibility for persons with prior involvement with the criminal justice system.

- 2021 WA S.B. 5115 (NS), prefiled January 8, 2021, would establish health emergency labor standards; amending [RCW 49.58.060](#), [49.58.070](#), [50A.15.010](#), [50A.15.020](#), [49.46.020](#), and [49.46.210](#); adding a new section to chapter 51.32 RCW; adding a new section to chapter 49.17 RCW; adding a new section to chapter 50A.15 RCW; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.16 RCW; adding a new chapter to Title 49 RCW; creating new sections; prescribing penalties; and declaring an emergency.



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- 2020 WA REG TEXT 534465 (NS), effective January 1, 2021, adopting rules regarding prescription drug utilization management to ensure implementation as provided for in ESHB 1879 (chapter 171, Laws of 2019), which has been codified in [RCW 48.43.400](#), 48.43.-410, and [48.43.420](#).
- 2021 WA REG TEXT 562840 (NS), effective March 26, 2021, would allow for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with [Public Law 116-136](#), s. 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act. This emergency rule will take effect upon the expiration of the existing emergency rule.
- 2021 WA REG TEXT 578165 (NS), effective February 18, 2021, extending the amendment of the rules listed below to ensure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.
- 2021 WA REG TEXT 596755 (NS), effective October 12, 2021, extends the amendment of the rules listed below to ensure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 epidemic. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.

West Virginia

- 2021 WV S.B. 687 (NS), introduced March 22, 2021, would amend and reenact A55-7B-6 of the Code of West Virginia, 1931, as amended, relating to the prerequisites for filing suit against a health care provider under the Medical Professional Liability Act; modifying the time frame for providing a statement of intent to provide a screening certificate of merit; updating the tolling of the statute of limitations applicable to a cause of action against a nursing home, assisted living facility, or their related entities or employees; and clarifying that A health care provider who executes a screening certificate of merit shall be subject to deposition upon request.
- 2021 WV H.B. 2349 (NS), introduced February 12, 2021, would authorize a medical power of attorney representative to sign a binding arbitration agreement with an extended care facility operated in conjunction with a hospital, an assisted living facility, a nursing home or their related entities and employees on behalf of an incapacitated person unless the representative as authority is clearly limited.

B. Ownership, Certification, Licensing, and Educational Requirements

SELECTED LEGISLATION & REGULATIONS

Federal

- [85 FR 77684-01](#), effective January 19, 2021, amends the safe harbors to the Federal anti-kickback statute by adding new safe harbors and modifying existing safe harbors that protect certain payment practices and business arrangements from sanctions under the anti-kickback statute. This rule is issued in conjunction with the Department of Health and Human Services' (HHS's) Regulatory Sprint to Coordinated Care and focuses on care coordination and value-based care. This rule also amends the civil monetary penalty (CMP) rules by codifying a revision to the definition of "remuneration" added by the Bipartisan Budget Act of 2018 (Budget Act of 2018).

Alaska

2021 AK [S.B. 67](#) (NS), introduced February 3, 2021, would relate to the licensure of nursing professionals; relating to a multistate nurse licensure compact; and providing for an effective date.

Arizona

- 2021 AZ S.B. 1085 (NS), engrossed January 28, 2021, would relate to nursing-supported group homes and licensure.
- 2021 AZ S.B. 1284 (NS), adopted April 28, 2021, would relate to occupational licensing; licensure; and fingerprint.

Arkansas

- 2021 AR [S.B. 568](#) (NS), adopted April 19, 2021, would expand the review of license application for long-term care facilities; to eliminate annual renewal for long-term care facility licenses; to require notification of changes in long-term care facility management; and for other purposes.
- 2021 AR S.B. 595 (NS), engrossed April 21, 2021, would clarify that the Department of Human Services is the agency that regulates long-term care; and for other purposes.

Connecticut

2021 CT H.B. 6109 (NS), amended/substituted March 9, 2021, would require the Albert J. Solnit Children's Center - South Campus to obtain licensure from the Department of Public Health.

Florida

- 2021 FL S.B. 2518 (NS), enrolled April 30, 2021, would revise the amount of money residents of a veterans' nursing home must receive monthly before being required to contribute to their maintenance and support; revising eligibility for Medicaid coverage for children according to the resource limits under the Temporary Cash Assistance Program; deleting authorization for payment for chiropractic, hearing, optometric, podiatric, and visual services provided to Medicaid recipients; revising the years of audited



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disproportionate share data the agency must use for calculating an average for purposes of calculating disproportionate share payments, etc.

- 2021 FL REG TEXT 494068 (NS), effective August 8, 2021, amends regulations related to Nursing Home Administration.
- 2021 FL REG TEXT 538329 (NS), effective August 8, 2021, amends regulations related to Nursing Home Administration.

Hawaii

2021 HI H.B. 224 (NS), amended/substituted April 23, 2021, would authorize the department of health to perform the duties required of the state health planning and development agency. Requires the state health planning and development agency or department of health to update the state health services and facilities plan every five years. Transfers moneys in excess of \$2,000,000 in the state health planning and development special fund to the general fund at the end of each fiscal year. Authorizes administrative penalties for persons who do not comply with an approved certificate of need. Exempts chronic renal dialysis services and psychiatric services from the certificate of need requirements. Requires the department of health to conduct a study on the efficacy of the measure after its repeal. Sunsets 7/1/2026. (CD1)2021 HI H.B. 227 (NS), filed January 21, 2021, would clarify the group of professionals who are prohibited from knowingly referring or transferring patients to an uncertified or unlicensed care facility. Repeals the landlord exclusion. Requires the department of health to prioritize complaint allegations based on severity for inspections of state-licensed or state-certified care facilities.

Kansas

2021 KS H.B. 2114 (NS), introduced January 22, 2021, would establish the Kansas senior care task force.

Maryland

2021 MD H.B. 623 (NS), introduced January 22, 2021, would require the Secretary of Health to notify the county health officer for Prince George's County if the Secretary receives a licensure application under a certain provision of law for an assisted living program that will be located in Prince George's County; requiring the county health officer to determine whether an assisted living program is to be operated within a common ownership community in the county; requiring, under certain circumstances, the county health officer to provide notice of a certain application to the county council and a certain common ownership community; defining a certain term; and generally relating to applications for licensure of assisted living programs in Prince George's County.

Massachusetts

2021 MA H.D. 3293 (NS), draft/request February 19, 2021, would require automated external defibrillators in assisted living residences.

Minnesota

2021 MN H.F. 3 (NS), introduced January 7, 2021, would provide long-term care protection and support, temporary staffing, emergency housing services, isolation spaces, and housing support funding provided; and money appropriated.

Mississippi

2021 MS S.B. 2221 (NS), introduced January 8, 2021, would establish the Mississippi dementia care pilot program within the Department of Human Services for the purpose of providing support services to informal caregivers of individuals with Alzheimer's Disease or related dementia and those living with Alzheimer's and related dementia.

Nevada

2021 NV A.B. 217 (NS), introduced March 9, 2021, would require the State Board of Health to adopt regulations requiring unlicensed caregivers at designated facilities to receive certain training; requiring the person in charge of such a facility to perform certain duties related to such training; and providing other matters properly relating thereto.

New York

- 2021 NY [S.B. 1784](#) (NS), amended/substituted February 10, 2021, would require adult care facilities to include quality assurance committees; includes a focus on infection control in such facilities' quality assurance plans.
- 2021 NY S.B. 5839 (NS), introduced March 19, 2021, would create a moratorium on new licensed home care service agency approvals.

North Carolina

- 2021 NC [S.B. 309](#) (NS), filed March 16, 2021, would repeal North Carolina's certificate of need laws.
- 2021 NC S.B. 506 (NS), introduced April 6, 2021, would modify certificate of need laws.
- 2021 NC H.B. 727 (NS), filed April 28, 2021, would establish a licensure accreditation process for adult care homes; exempting adult care homes that are licensed by virtue of accreditation from routine inspections and the star rating program for assisted living facilities; and appropriating funds for an assisted living accreditation grant program and for a comparison of resident outcomes in accredited versus non-accredited adult care homes.



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- 2021 NC H.B. 876 (NS), introduced May 5, 2021, would (1) protect individual decision making and health information with regard to an individual's private choices about receiving a COVID-19 vaccine, (2) to prohibit the state or any political subdivision of the state from issuing a COVID-19 vaccine passport, (3) to protect against employment related discrimination based on an employee's refusal of experimental vaccines, (4) to protect the individual's right against required vaccinations of any sort during declared disasters or emergencies, and (5) to prohibit required disclosure of any vaccine status regarding any adult or child under any circumstance whether related to education, health care, occupational licensing, health insurance, or driving privileges.

- 2019 NC H.B. 1105 (NS), enrolled September 3, 2020, would provide additional and revised uses for federal coronavirus relief funds, to provide funding for disaster recover, and to make other revisions of law.

Oklahoma

- 2021 OK S.B. 300 (NS), engrossed March 9, 2021, relates to guardianship of vulnerable adult; requiring dismissal of temporary guardianship upon removal of emergency conditions. Effective date.

- 2021 OK H.B. 2119 (NS), amended/substituted March 29, 2021, would relate to nursing facility reimbursement; providing for enhanced FMAP payments when certain funds are made available; and providing an effective date.

- 2021 OK H.B. 2566 (NS), enrolled April 21, 2021, would relate to Health care; long-term care; facilities; residents; visitation; health care providers; State Department of Health; emergency.

Oregon

2021 OR H.B. 2397 (NS), enrolled June 30, 2021, would relate to emergency medical services for residents in long term care settings.

Pennsylvania

2021 PA H.B. 1693 (NS), introduced June 24, 2021, would amend the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code, in departmental powers and duties as to licensing, providing for notice of legal representation for medical assistance.

Rhode Island

2021 S.B. 972 (NS), amended/substituted June 29, 2021, would increase the wages for direct care workers employed by home nursing care and home care providers licensed by the Rhode Island department of health.

Texas

2021 TX S.B. 271 (NS), enrolled May 24, 2021, would relate to applicants for employment at assisted living facilities.

Utah

2021 UT H.B. 98 (NS), enrolled March 12, 2021, would amend provisions related to local government building regulation.

Vermont

2021 VT S.B. 117 (NS), adopted March 29, 2021, extends health care regulatory flexibility during and after the COVID-19 pandemic and to coverage of health care services delivered by audio-only telephone.

Virginia

- 2021 VA S.B. 1149 (NS), prefiled January 6, 2021, would require the State Board of Health to establish staffing and care standards in nursing homes to require a minimum of direct care services to each resident per 24-hour period as follows: (i) a minimum of one registered nurse or licensed practical nurse per 15 patients and one certified nursing assistant per eight patients during the daytime; (ii) a minimum of one registered nurse or licensed practical nurse per 20 patients and one certified nursing assistant per 12 patients during the evening; and (iii) a minimum of one registered nurse or licensed practical nurse per 30 patients and one certified nursing assistant per 15 patients during the nighttime. Such requirements may not apply during a health crisis, emergency, or during an outbreak of a communicable disease of public health threat. The bill requires nursing homes to complete a criminal background check on each employee prior to the start of employment and every five years thereafter that the employee remains employed. The bill also requires nursing homes to provide quarterly staff training on first aid, medication administration, and compliance with nursing home policies and procedures.

- 2020 VA S.B. 1149 (NS), introduced January 13, 2021, would require the State Board of Health to establish staffing and care standards in nursing homes to require a minimum of direct care services to each resident per 24-hour period as follows: (i) a minimum of one registered nurse or licensed practical nurse per 15 patients and one certified nursing assistant per eight patients during the daytime; (ii) a minimum of one registered nurse or licensed practical nurse per 20 patients and one certified nursing assistant per 12 patients during the evening; and (iii) a minimum of one registered nurse or licensed practical nurse per 30 patients and one certified nursing assistant per 15 patients during the nighttime. Such requirements may not apply during a health crisis, emergency, or during an outbreak of a communicable disease of public health threat. The bill requires nursing homes to complete a criminal background check on each employee prior to the start of employment and every five years thereafter that the employee remains employed. The bill also requires nursing homes to provide quarterly staff training on first aid, medication administration, and compliance with nursing home policies and procedures.



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- 2020 VA S.B. 1449 (NS), introduced January 19, 2021, would prohibit discrimination based on a person's vaccination status with respect to any COVID-19 vaccine in numerous employment contexts.
- 2020 VA H.B. 1913 (NS), introduced January 10, 2021, would create Programs to address career fatigue and wellness in certain health care providers; civil immunity. Expands civil immunity for health care professionals serving as members of or consultants to entities that function primarily to review, evaluate, or make recommendations related to health care services to include health care professionals serving as members of or consultants to entities that function primarily to address issues related to career fatigue and wellness in health care professionals licensed, registered, or certified by the Boards of Medicine, Nursing, or Pharmacy, or in students enrolled in a school of medicine, osteopathic medicine, nursing, or pharmacy located in the Commonwealth. The bill contains an emergency clause.
- 2020 VA H.B. 2107 (NS), introduced January 13, 2021, would require the Board of Health to amend regulations governing hospitals, nursing homes, certified nursing facilities, and hospices to require such entities to adopt protocols to ensure that, during a public health emergency related to a communicable disease of public health threat, each patient is able to receive virtual visits from any person designated by the patient, within 72 hours of the time the request for a virtual visit is made.
- 2020 VA H.B. 2156 (NS), prefiled January 12, 2021, would require regulations establishing the staffing and care standards in nursing homes to require a minimum number of hours of direct care services to each resident per 24-hour period, which minimum increases in specified phases from 3.5 hours to 4.1 hours. The bill also directs the Joint Commission on Health Care to study issues related to establishment of a minimum number of hours of direct care services for nursing homes as part of its study of the nursing facility workforce authorized by the Commission on December 15, 2020, and to report its findings by December 1, 2021. The regulatory provisions of the bill have a delayed effective date of July 1, 2022.
- 2020 VA H.B. 2242 (NS), introduced January 13, 2021, would prohibit the State Health Commissioner and the Board of Health, the Board of Behavioral Health and Developmental Services, the Department of Health Professions and any regulatory board therein, and the Department of Social Services from requiring any person to undergo vaccination for COVID-19 and prohibits discrimination based on a person's vaccination status with respect to any COVID-19 vaccine (i) with regard to education, employment, insurance, or issuance of a driver's license or other state identification or (ii) in numerous other contexts. The bill also prohibits the inclusion of any patient immunization information in the Virginia Immunization Information System (VIIS) unless the patient has consented, in writing, to inclusion of his information in the VIIS.

Washington

- 2019 WA S.B. 6209 (NS), amended/substituted February 5, 2020, would establish requirements for a multistate license to practice registered or licensed practical or vocational nursing.
- 2019 WA S.B. 6658 (NS), introduced January 31, 2020, would amend [WA ST 74.39A.086](#) would require payment to be denied to any individual provider of home care services who has not been certified as a home care aide and may terminate the contract of any individual provider of home care services if deemed appropriate.

Wisconsin

2021 WI [S.B. 277](#) (NS), introduced April 5, 2021, would relate topayments to certain long-term care facilities and their staff.

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 to two arbitration agreements executed by individuals holding powers of attorney for two now-deceased residents a Kindred nursing home. ^[FN70]

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 'inviolable.' 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.'



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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. ^[FN71] 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.

SELECTED LEGISLATION & REGULATIONS

Florida

- 2021 FL H.B. 6065 (NS), filed September 23, 2021, would remove provisions requiring portion of punitive damages awarded for certain claims relating to nursing homes & assisted living facilities to be deposited into Quality of Long-Term Care Facility Improvement Trust Fund.
- 2022 FL S.B. 646 (NS), filed October 26, 2021, would delete provisions requiring that a portion of the punitive damages awarded for claims brought under part II of ch. 400, F.S., relating to nursing homes, and part I of ch. 429, F.S., relating to assisted living facilities, be deposited into the Quality of Long-Term Care Facility Improvement Trust Fund, etc.

Hawaii

2021 HI S.B. 59 (NS), introduced January 21, 2021, would require operators of adult residential care homes, assisted living facilities, long-term care facilities, nursing homes, and community care facilities to establish and implement infectious disease control and prevention training and other related protocols. Requires the Department of Health to ensure compliance with infectious disease control and prevention training programs prior to the issuance or renewal of a license. Authorizes the Department of Health to conduct random audits to determine compliance with infectious disease control and prevention training program or course requirements. Requires the Department of Health to establish a hotline to field calls and complaints regarding violations. Authorizes the Department of Health to



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adopt rules, including emergency rules, and assess fines. Requires the Department of Health to conduct an annual announced and scheduled visit and inspection for all state-licensed or state-certified care facilities, in addition to its required annual inspections without notice. Requires applicants for nursing home administrator licenses to demonstrate at least five years of experience and the ability to document all training, experience, and certifications.

Kansas

- 2021 KS H.B. 2004 (NS), introduced January 11, 2021, would create the right to appeal an involuntary discharge or transfer from an adult residential care facility.
- 2021 KS H.B. 2024 (NS), introduced January 11, 2021, would provide immunity from civil liability for adult care homes for COVID-19 claims.
- 2021 KS H.B. 2126 (NS), adopted April 9, 2021, provides immunity from civil liability for COVID-19 claims for certain covered facilities, including adult care homes, community mental health centers, crisis intervention centers, community service providers and community developmental disability organizations.
- 2021 KS H.B. 2153 (NS), introduced January 27, 2021 would increase the criminal penalty for mistreatment of a dependent adult or elder person when the victim is a reside of an adult care home.

Massachusetts

2021 MA H.D. 2046 (NS), draft/request February 16, 2021, relates to Assisted Living Facility Residences Appeal of Findings.

Montana

2021 MT H.B. 435 (NS), introduced February 16, 2021, would generally revise civil liability laws for government.

New York

- 2021 NY [S.B. 1576](#) (NS), introduced January 13, 2021, would relate to violations of safety conditions in adult care facilities; provides penalties for safety violations and operating without a valid license; prohibits reductions in fines in certain circumstances where a patient is endangered or harmed.
- 2021 NY A.B. 2420 (NS), introduced January 19, 2021, would establish the mandatory reporting by certain professional or official persons who come into contact with mentally or physically incapacitated persons who were abused including residents of assisted living and adult care facilities who may be abused, mistreated or neglected; provides reporting procedures and grants immunity for such reporting; provides criminal and civil penalties.
- 2021 NY A.B. 3009 (NS), introduced January 19, 2021, would enact into law major components of legislation which are necessary to implement the state fiscal plan for the 2021-2022 state fiscal year.
- 2021 NY [S.B. 3006](#) (NS), introduced January 27, 2021, would establish the affordable senior housing and services program to be administered by the housing trust fund corporation; such program shall provide payments, loans and grants for the reasonable and necessary expenses of creating, preserving or improving affordable senior housing which provides healthy aging services to residents.

Virginia

2020 VA H.B. 2092 (NS), amended/substituted January 25, 2021, would set out the barrier crimes for any person who provides contractual services directly to an individual receiving services on behalf of a licensed provider. Relates to background checks

D. Ratings, Investigations, and Violations

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. ^[FN72]

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.



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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.

After Anonymous Tip, 17 Bodies Are Found at Nursing Home Hit by Virus

In a New Jersey nursing home, a morgue made for 4 bodies was found with 17 bodies inside due to an outbreak of COVID-19.^[FN73] An anonymous tip let officials know of the indiscretion. An outbreak at the nursing home had caused 68 deaths at the facility, of which the 17 bodies belonged. After the bodies were found, 76 more patients tested positive along with 41 staff members.

This outbreak has brought to the forefront long term facility's ability to deal with an outbreak at this magnitude.

Trump Wants Masks on All Nursing Home Workers, Temperature Checks for All, and Separate COVID-19 Units

The Trump Administration issued a set of 'critical recommendations' for long-term care facilities.^[FN74] These recommendations state that every single person working in a nursing home wear a mask while working for the duration of the pandemic. It is also recommended that employees have their temperature checked prior to work and be checked for other symptoms.

These recommendations come alongside the finding that handwashing and infection control protocols continue to fall short of existing standards.

New York Reportedly Allows COVID-19-positive Staff to Continue Working in Nursing Home

The New York Health Department recently signed off on a measure that would allow nursing home staff to return to work after testing positive for COVID-19.^[FN75] This action comes under extreme scrutiny after the state had told nursing homes to readmit patients who tested positive for COVID-19 but no longer need intensive care.

HCR ManorCare: 70 percent of COVID-19 Infected Employees Asymptomatic

In a large long-term care facility chain, consisting of 22 facilities there have been 1,500 positive cases of COVID-19, resulting in a 15% mortality rate.^[FN76] However, the scariest part is that 70% of health care providers who have tested positive were asymptomatic when tested and 30%-50% of positive patients were also asymptomatic. The spread of the virus is frustrating with the number of asymptomatic individuals and the lack of PPE. Facilities are operating with 10% of the necessary supplies according to ManorCare Medical Director.

SELECTED LEGISLATION & REGULATIONS

Arkansas

2021 AR S.B. 301 (NS), filed February 8, 2021, would require state agencies to return fines collected under ? 20-7-101 during the public health emergency for a failure to comply with rules, orders, or directives to mitigate or prevent the spread of coronavirus 2019, to declare an emergency, and other purposes.

New York

- 2021 NY S.B. 1784 (NS), amended/substituted February 10, 2021, would require adult care facilities to include quality assurance committees; includes a focus on infection control in such facilities' quality assurance plans.
- 2021 NY S.B. 3061 (NS), amended/substituted February 10, 2021, would outline requirements for reporting communicable diseases and deaths due to such communicable diseases for the commissioner of public health, state institutions, and hospitals.
- 2021 NY REG TEXT 593545 (NS), effective August 26, 2021, requires covered entities to ensure their personnel are fully vaccinated against COVID-19 subject to certain exemptions.

Rhode Island

2021 RI REG TEXT 588146 (NS), proposed July 14, 2021, Updated certain Medicaid income and resource standards are adjusted annually in accordance with changes in the SSI federal benefit rate (FBR) and the Consumer Price Index (CPI).

Texas

2021 TX S.B. 504 (NS), adopted June 14, 2021, amending current law relating to authority of certain county fire marshals to inspect group homes, authorizes a fee, and creates a criminal offense.

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[FN2]
. Clark Kauffman, Iowa nursing home fined \$77,000 in elderly patient's painful death, Des Moines Register (August 3, 2018).

[FN3]
. Chris Serres, Minnesota clears giant backlog of elder abuse complaints, Star Tribune (August 8, 2018).

[FN4]
. Anne Tumlinson, Scott Woods, Avalere Health LLC, "Long-Term Care in America/An Introduction," January 2007, available at: www.avalerehealth.net.

[FN5]
. 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.

[FN6]
. 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.

[FN7]
. Kaiser Family Foundation *Daily Health Policy Report*, June 28, 2007, available at: www.kaisernetwork.org.

[FN8]
. 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.

[FN9]
. 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.

[FN10]
. <https://khn.org/news/scrutinizing-medicare-coverage-for-physical-occupational-and-speech-therapy/>

[FN11]
. 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

[FN12]
. 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

[FN13]
. https://www.mcknights.com/news/thousands-of-jobs-remain-unfilled-amid-ongoing-caregiver-shortage-in-massachusetts/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200206&hmSubId=&hmEmail=cfNaEhjSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-7701-544457

[FN14]
. https://www.mcknights.com/news/bill-would-re-establish-house-panel-that-reviews-long-term-care-issues/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200205&hmSubId=&hmEmail=cfNaEhjSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-7672-544457

[FN15]



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. https://www.mcknights.com/news/changes-coming-to-nursing-home-preadmission-resident-screening-regulations/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200219&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-7860-544457

[FN16]

. <https://www.cms.gov/newsroom/press-releases/cms-announces-actions-address-spread-coronavirus>

[FN17]

. <https://thehill.com/policy/healthcare/485302-officials-announce-possible-coronavirus-outbreak-in-washington-nursing>

[FN18]

. https://www.mcknights.com/news/official-confirms-trump-budget-proposes-to-eliminate-enhanced-medicaid-match/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200303&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-8006-544457

[FN19]

. https://khn.org/news/coronavirus-preparedness-infection-control-lapses-at-top-rated-nursing-homes/?utm_campaign=KHN#D#aily#ealthP#olicyR#eport&utm_source=hs_email&utm_medium=email&utm_content=84253728&_hsenc=p2ANqtz-_SHKBhWP6YXkrOZ8vi6DwSUc47o8PIJrG3FI-mXcveD61rcRffd6VPgZ9NgTVKoxjFhlo_hekDDQE5TqEZ1FRci8YoEQ&_hsmi=84253728

[FN20]

. <https://www.nbcnews.com/news/us-news/amid-coronavirus-outbreak-trump-administration-s-proposed-rollback-nursing-home-n1147661?cid=googlenews-usnews>

[FN21]

. <https://www.cms.gov/newsroom/press-releases/cms-announces-independent-commission-address-safety-and-quality-nursing-homes>

[FN22]

. https://www.mcknights.com/news/provider-covid-19-relief-funds-now-to-be-based-on-2018-patient-revenue/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200622&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9546-544457

[FN23]

. https://www.mcknights.com/news/feds-proposal-to-extend-covid-19-waivers-would-keep-some-telehealth-expansions-but-could-deliver-rehab-double-whammy/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200814&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-10865-544457

[FN24]

. https://www.mcknights.com/news/nursing-home-supervisor-could-face-criminal-charges-for-working-without-a-mask-while-ill-subsequent-covid-19-outbreak/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200923&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-11655-544457

[FN25]

. <https://www.mcknights.com/news/feds-sending-750k-faster-poc-tests-to-nhs-alarmed-at-price-mark-ups/?mpweb=1326-11769-544457>

[FN26]

. https://www.mcknights.com/news/cms-will-pay-more-to-labs-that-process-covid-19-tests-quicker-starting-jan-1/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20201016&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-12711-544457

[FN27]

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

[FN28]

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



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[FN29]
. https://www.mcknights.com/news/some-residents-receive-fewer-prescriptions-due-to-lack-of-medicare-coverage/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200205&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-7592-544457

[FN30]
. <https://www.mcknights.com/news/breaking-cms-issues-new-guidance-opening-up-nursing-home-visitation/?mpweb=1326-12082-544457>

[FN31]
. See [81 FR 26872-01](#).

[FN32]
. https://www.mcknights.com/news/cms-gives-therapy-providers-the-green-light-to-provide-medicare-telehealth-services/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200501&hmSubId=&hmEmail=cfNaEhJSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9077-544457

[FN33]
. 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

[FN34]
. 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

[FN35]
. 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

[FN36]
. Lisa Rapaport, One in five nursing home residents abused by other residents, Reuters (June 13,

[FN37]
. 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>.

[FN38]
. Emily Mongan, OIG tours nursing home crackdowns to Congress, McKnight's (Dec. 1, 2017).

[FN39]
. <https://www.desmoinesregister.com/story/news/health/2020/02/13/glenwood-administrator-warned-top-state-official-problems-state-run-center-dhs-jerry-foxhoven/4750052002/>

[FN40]
. <https://www.cms.gov/newsroom/press-releases/trump-administration-empowers-nursing-home-patients-residents-families-and-caregivers-enhancing>

[FN41]
. 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_



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hash=F2F56CD35455743AF0A44E424A3A6430&spMailingID=19297495&spUserID=NDIwMzE0OTI0NDk3S0&spJobID=1240062247&spReportId=MTI0MDA2MjI0NwS2

[FN42]

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

[FN43]

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

[FN44]

. https://www.mcknights.com/news/cdc-elderly-may-get-top-priority-for-eventual-coronavirus-vaccine/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200716&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-10254-544457

[FN45]

. https://www.mcknights.com/news/feds-restart-regular-survey-inspections-at-nursing-homes/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200824&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-11211-544457

[FN46]

. https://www.mcknights.com/news/testing-more-ppe-lead-to-90-drop-in-nursing-home-covid-19-cases/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200729&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-10514-544457

[FN47]

. <https://www.cms.gov/research-statistics-data-systems/preliminary-medicare-covid-19-data-snapshot>

[FN48]

. https://www.mcknights.com/news/new-study-links-facility-staffing-levels-quality-to-number-of-covid-19-cases/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200622&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9912-544457

[FN49]

. https://www.mcknights.com/news/facilities-lack-sufficient-tests-to-meet-covid-19-recommendations-senate-report-finds/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200729&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-10276-544457

[FN50]

. <https://www.mcknights.com/news/breaking-news-cms-orders-resumption-of-nursing-home-staffing-data-collection-updates-star-rating-plans/?mpweb=1326-10035-544457>

[FN51]

. https://www.mcknights.com/news/clinical-news/fda-panel-recommends-emergency-use-for-pfizer-covid-vaccine/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_ClinicalDaily_20201211&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-14192-544457

[FN52]

. https://www.mcknights.com/news/hospital-sinks-37-million-into-new-nursing-home-that-will-operate-like-a-hotel/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_Weekly_20190603&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-4398-544457

[FN53]

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

[FN54]



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© 2022 Thomson Reuters. No claim to original U.S. Government Works.

. 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).

[FN55]

. 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=NDlwMzE0OTI0NDk3S0&spJobID=1180862936

[FN56]

. 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=NDlwMzE0OTI0NDk3S0&spJobID=1240613792&spReportId=MTI0MDYxMzc5MgS2

[FN57]

. 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=NDlwMzE0OTI0NDk3S0&spJobID=1260431885&spReportId=MTI2MDQzMTg4NQS2

[FN58]

. 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

[FN59]

. https://www.mcknights.com/news/cms-issues-long-overdue-visitation-guidelines-for-nursing-homes/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200629&hmSubId=&hmEmail=cfNaEhJSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-10029-544457

[FN60]

. https://www.mcknights.com/news/providers-demand-piece-of-covid-19-stimulus-pie-were-in-a-recession-economist-declares/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200329&hmSubId=&hmEmail=cfNaEhJSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-8340-544457

[FN61]

. https://www.mcknights.com/news/lawmakers-2t-stimulus-package-includes-nursing-homes-slice-covid-plagued-snf-stops-spread-rebuffs-claims-of-staffing-supply-shortages/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200329&hmSubId=&hmEmail=cfNaEhJSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-8455-544457

[FN62]

. https://www.mcknights.com/news/cms-guidance-bans-most-visitors-communal-dining-at-nursing-homes-over-covid-19/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200329&hmSubId=&hmEmail=cfNaEhJSJkqnpnxns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-8259-544457

[FN63]

. <https://www.cms.gov/newsroom/press-releases/trump-administration-issues-key-recommendations-nursing-homes-state-and-local-governments>

[FN64]

. <https://www.mcknights.com/news/hhs-announces-4-9-billion-fund-for-skilled-nursing-pandemic-efforts/?mpweb=1326-9403-544457>

[FN65]

. <https://www.cms.gov/newsroom/press-releases/trump-administration-issues-guidance-ensure-states-have-plan-place-safely-reopen-nursing-homes>



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- [FN66]
. https://www.mcknights.com/news/verma-calls-out-cuomo-for-forcing-ny-nursing-homes-to-take-covid-19-patients/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200529&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9474-544457
- [FN67]
. https://www.mcknights.com/news/omnicare-to-pay-15-3-million-to-settle-allegations-it-wrongly-dispensed-opioids-other-controlled-substances/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200528&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9284-544457
- [FN68]
. <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfor-and-memos-states-and/nursing-home-visitation-covid-19-revised>
- [FN69]
. <https://www.mcknights.com/news/nursing-home-providers-sue-over-alleged-misallocation-of-150m-in-covid-19-funding69>
- [FN70]
. Kindred Nursing Centers L.P. v. Clark, 581 U.S. ____ (2017) at: https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf
- [FN71]
. <https://www.cms.gov/newsroom/press-releases/cms-rules-put-patients-first-updating-requirements-arbitration-agreements-and-new-regulations-put>
- [FN72]
. Barbara Goldberg, Phoenix police investigate after woman in coma for decade gives birth, Reuters (Jan. 5, 2019).
- [FN73]
. <https://www.msn.com/en-us/news/us/after-anonymous-tip-17-bodies-are-found-at-nursing-home-hit-by-virus/ar-BB12GNxV?li=BBnb7Kz&ocid=U142DHP>
- [FN74]
. https://www.mcknights.com/news/trump-wants-masks-on-all-nursing-home-workers-temperature-checks-for-all-and-separate-covid-units/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200416&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-8597-544457
- [FN75]
. https://www.mcknights.com/news/new-york-reportedly-allows-covid-19-positive-staff-to-continue-working-in-nursing-home/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200501&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9077-544457
- [FN76]
. https://www.mcknights.com/news/hcr-manorcare-70-percent-of-covid-19-infected-employees-asymptomatic/?utm_source=newsletter&utm_medium=email&utm_campaign=MLT_DailyUpdate_20200508&hmSubId=&hmEmail=cfNaEhjSJkqnpXns-fHdgmVg7nM-b3hH-tFEQ4nh0og1&email_hash=f2f56cd35455743af0a44e424a3a6430&mpweb=1326-9169-544457

