

## REGULATORY INTELLIGENCE

## YEAR-END REPORT - 2022

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Long-Term Care  
Facility Quality and Safety

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### 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. <sup>[FN2]</sup> 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. <sup>[FN3]</sup>

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.' <sup>[FN4]</sup> 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. <sup>[FN5]</sup>

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.



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

## 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. <sup>[FN10]</sup> 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. <sup>[FN11]</sup> 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. <sup>[FN12]</sup> 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.<sup>[FN13]</sup> 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.<sup>[FN14]</sup> 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.<sup>[FN15]</sup> 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.<sup>[FN16]</sup>

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.<sup>[FN17]</sup> 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.<sup>[FN18]</sup> 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.<sup>[FN19]</sup> 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.<sup>[FN20]</sup> 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.<sup>[FN21]</sup> 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.<sup>[FN22]</sup> 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. <sup>[FN23]</sup> 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. <sup>[FN24]</sup> 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. <sup>[FN25]</sup> 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. <sup>[FN26]</sup> 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**

- 2021 CONG US HR 8750, introduced in House August 26, 2022, would require the Secretary of Veterans Affairs to carry out a pilot program to provide assisted living services to eligible veterans, and for other purposes.
- 2021 FD S.B. 4169 (NS), referred to the Committee on Veterans' Affairs 5/10/2022, would require the Secretary of Veterans Affairs to carry out a pilot program to provide assisted living services to eligible veterans, and for other purposes.

### **Arizona**

- 2022 AZ S.B. 1202 (NS), adopted March 18, 2022, a continuation for regulations associated with nursing care in assisted living.
- 2022 AZ S.B. 1242 (NS), adopted March 18, 2022, creates regulation for nursing care in assisted living.
- 2022 AZ S.B. 1729 (NS), engrossed June 23, 2022, would provide general appropriations for 2022-2023.
- 2022 AZ H.B. 2450 (NS), adopted April 13, 2022, amending [sections 32-1651](#), [36-401](#), [36-402](#), [36-422](#), [36-439](#), [36-439.01](#), [36-439.04](#) and [36-439.05](#), [Arizona Revised Statutes](#); relating to health care institutions.
- 2022 AZ REG TEXT 593365 (NS), effective April 8, 2022, requires the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10, Article 8 for assisted living facilities. Laws 2019, Ch. 190, adds an exemption that removes architectural plans and specifications requirements and physical plant standard for the Arizona Pioneers' Home.

### **California**

- 2021 CA A.B. 895 (NS), adopted September 27, 2022, adds 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.



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- 2021 CA S.B. 1093 (NS), adopted September 27, 2022, amends Sections 1522, 1568.09, 1569.17, 1596.871, and 1796.24 of the Health and Safety Code, relating to community care facilities.
- 2021 CA A.B. 1502 (NS), adopted September 27, 2022, amends Sections 1265 and 1267.5 of, and to add Sections 1253.2 and 1253.3 to, the Health and Safety Code, relating to health facilities.
- 2021 CA A.B. 1720 (NS), adopted September 27, 2022, amends Sections 1522, 1568.09, 1569.17, 1596.871, 1796.19, 1796.23, 1796.24, 1796.25, and 1796.26 of, and to add Section 1522.7 to, the Health and Safety Code, relating to care facilities.
- 2021 CA A.B. 2079 (NS), enrolled August 29, 2022, would add Section 1272.5 to the Health and Safety Code, relating to skilled nursing facilities.
- 2021 CA A.B. 2483 (NS), adopted September 28, 2022, amends Sections 1504.5, 50675.1, and 50675.5 of, and to add Section 50675.15 to, the Health and Safety Code, relating to housing.

### Colorado

- 2022 CO S.B. 53 (NS), adopted June 8, 2022, concerning visitation rights at health-care facilities, and, in connection therewith, making an appropriation.

### District of Columbia

2021 DC L.B. 1 (NS), adopted July 7, 2021, amends 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

2022 FL S.B. 1734 (NS), introduced January 18, 2022, would require a resident's attending health care provider in a nursing home facility to consult with the resident's personal physician, if selected, in the provision of acute care to the resident and before ordering or prescribing medication to the resident; requiring the resident's attending health care provider to document any such consultations in the resident's records; requiring nursing home facilities to take certain measures before admitting a resident; requiring nursing home facilities to provide each resident with the opportunity to select a personal physician; revising the timeframe in which nursing home facilities must furnish requested records of a current or former resident, etc.

### Hawaii

2021 HI H.R. 96 (NS), introduced March 11, 2022, 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

- 2021 IL S.B. 3166 (NS), adopted May 27, 2022, would amend the University of Illinois Hospital Act, the Assisted Living and Shared Housing Act, the Community Living Facilities Licensing Act, the Life Care Facilities Act, the Nursing Home Care Act, the MC/DD Act, the ID/DD Community Care Act, and the Hospital Licensing Act. Provides that hospitals, establishments, or facilities organized or licensed under the Acts shall ensure that nurses employed by the hospital, establishment, or facility are aware of the Illinois Professionals Health Program (IPHP) by completing specified requirements. Amends the Nurse Practice Act. In provisions regarding continuing education for RN and APRN licensees, requires one hour of training on substance abuse and disorders for nurses.
- 2021 IL S.B. 3490 (NS), adopted May 16, 2022, amends the Illinois Act on the Aging. In provisions concerning the Council on Aging, provides that at least 7 citizen members shall represent underrepresented communities, including, but not limited to: one member who is a lesbian, gay, bisexual, or queer individual; one member who is a transgender or gender-expansive individual; one member who is an African-American or Black individual; and one member who is an Asian-American or Pacific Islander individual. Creates the Illinois Commission on LGBTQ Aging to investigate, analyze, and study the health, housing, financial, psychosocial, home-and-community-based services, assisted living, and long-term care needs of LGBTQ older adults and their caregivers. Requires the Commission to make recommendations to improve access to benefits, services, and supports for LGBTQ older adults and their caregivers. Requires the Commission to: examine the impact of State and local laws, policies, and regulations on LGBTQ older adults and make recommendations to ensure equitable access, treatment, care and benefits, and overall quality of life; and examine strategies to increase provider awareness of the needs of LGBTQ older adults and their caregivers and to improve the competence of and access to treatment, services, and ongoing care, including preventive care; and carry out other duties. Contains provisions concerning: members appointed to the Commission; Commission meetings and reports; an LGBTQ Older Adult Advocate to advocate for LGBTQ older adults and older adults living with HIV who experience barriers to accessing and utilizing services; an LGBTQ Older Adult Curriculum and Training Program; and other matters. Effective immediately.



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• 2021 IL S.B. 4024 (NS), adopted May 27, 2022, amends the Illinois Act on the Aging. In a provision requiring the Department on Aging to make certain long term care consumer choice information available to the public on the Internet, removes a reference to the name of the hyperlink 'Resident's Right to Know'.

• 2021 IL H.B. 4656 (NS), engrossed February 22, 2022, would amend the Illinois Act on the Aging. In provisions concerning the Council on Aging, provides that at least 7 citizen members shall represent underrepresented communities, including, but no limited to: one member who is a lesbian, gay, bisexual, or queer individual; one member who is a transgender or gender-expansive individual; one member who is an African-American or Black individual; and one member who is an Asian-American or Pacific Islander individual. Creates the Illinois Commission on LGBTQ Aging to investigate, analyze, and study the health, housing, financial, psychosocial, home-and-community-based services, assisted living, and long-term care needs of LGBTQ older adults and their caregivers. Requires the Commission to make recommendations to improve access to benefits, services, and supports for LGBTQ older adults and their caregivers. Requires the Commission to: examine the impact of State and local laws, policies, and regulations on LGBTQ older adults and make recommendations to ensure equitable access, treatment, care and benefits, and overall quality of life; and examine strategies to increase provider awareness of the needs of LGBTQ older adults and their caregivers and to improve the competence of and access to treatment, services, and ongoing care, including preventive care; and carry out other duties. Contains provisions concerning: members appointed to the Commission; Commission meetings and reports; an LGBTQ Older Adult Advocate to advocate for LGBTQ older adults and older adults living with HIV who experience barriers to accessing and utilizing services; an LGBTQ Older Adult Curriculum and Training Program; and other matters. Effective immediately.

• 2021 IL H.B. 4763 (NS), engrossed March 4, 2022, would amend the Assisted Living and Shared Housing Act, the Community Living Facilities Licensing Act, the Life Care Facilities Act, the Nursing Home Care Act, the MC/DD Act, and the ID/DD Community Care Act. Provides that establishments or facilities licensed under the Acts shall post on the establishment's or facility's website specified information about the Department on Aging's Long Term Care Ombudsman Program. Provides that an establishment or facility may comply with the provisions by posting the required information on the website of its parent company if the establishment does not maintain a unique website and is not required to comply with the provisions if the establishment or facility and any parent company do not maintain a website. Effective January 1, 2023.

• 2021 IL H.B. 5222 (NS), introduced January 31, 2022, would amend the Illinois Act on the Aging. Provides that each long term care facility, supportive living facility, assisted living establishment, and shared housing establishment shall display, in an easily readable format and in a manner prescribed by the Office of the Long Term Care Ombudsman, the address and phone number of the Office in a conspicuous place next to the facility's main entrances for exterior viewing and in multiple, conspicuous public places within the facility accessible to both visitors and residents.

• 2021 IL H.B. 5223 (NS), introduced January 31, 2022, would require each assisted living or shared housing establishment in the State, as a condition of establishment licensure, to adopt and implement written policies, provide for the availability of technology to establishment residents, and ensure that appropriate staff and other capabilities are in place to prevent the social isolation of establishment residents. Contains specified requirements for the social isolation prevention policies. Provides that the social isolation prevention policies shall not be interpreted as a substitute for in person visitation but shall be wholly in addition to the existing in person visitation policies. Provides that an assisted living or shared housing establishment may apply to the Department for civil monetary penalty fund grants and may request other available federal and State funds. Provides that whenever the Department conducts an inspection of an assisted living or shared housing establishment, the Department shall determine whether the establishment is in compliance with the provisions and the policies, protocols, and procedures adopted pursuant to the provisions. Provides that an establishment that fails to comply with the provisions or properly implement the policies, protocols, and procedures required shall be liable to pay an administrative penalty as a Type 3 violation on and after January 1, 2023. Contains other provisions. Effective immediately.

## **Kansas**

2021 KS H.B. 2748 (NS), introduced April 1, 2022, would enact the no patient left alone act to require certain healthcare facilities to allow in-person visitation of patients or residents.

## **Michigan**

• 2021 MI S.B. 844 (NS), adopted October 4, 2022, makes, supplements, and adjusts appropriations for various state departments and agencies for the fiscal years ending September 30, 2022 and September 30, 2023; 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. 5609 (NS), adopted July 25, 2022, would amend 1978 PA 368, entitled 'Public health code,' by amending sections 20155, 20155a, 20161, 21734, 21771, 21794, and 21799b ([MCL 333.20155](#), [333.20155a](#), [333.20161](#), [333.21734](#), [333.21771](#), [333.21794](#), and [333.21799b](#)), sections 20155, 20155a, and 21734 as amended by 2015 PA 155, section 20161 as amended by 2020 PA 169, section 21771 as amended by 2012 PA 174, section 21794 as added by 2014 PA 529, and section 21799b as amended by 2000 PA 437, and by adding section 21771a

## **Minnesota**



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2021 MN H.F. 4065 (NS), adopted June 2, 2022, modifies provisions governing the Department of Health, health care, health-related licensing boards, health insurance, community supports, behavioral health, continuing care for older adults, child and vulnerable adult protection, economic assistance, direct care and treatment, preventing homelessness, human services licensing and operations, the Minnesota Rare Disease Advisory Council, nonintoxicating hemp regulation, organ donation regulation, mandated reports, and long-term care consultation services; making forecast adjustments; requiring reports; appropriating money.

### **Nebraska**

2021 NE L.B. 752 (NS), adopted April 18, 2022, would adopt the Alzheimer's Disease and Other Dementia Support Act, the Licensed Professional Counselors Interstate Compact, and the Occupational Therapy Practice Interstate Compact, require notifications regarding stem cell therapy, and redefine respiratory care under the Respiratory Care Practice Act

### **New Jersey**

- 2022 NJ A.B. 358 (NS), amended/substituted September 15, 2022, would establish testing and visitation requirements and employment restrictions for long-term care facilities in response to outbreaks of infectious disease.
- 2022 NJ S.B. 2466 (NS), introduced May 9, 2022, would require long-term care facilities to provide certain disability protection and advocacy agencies access to residents.
- 2022 NJ S.B. 2520 (NS), introduced May 12, 2022, would establish the 'New Jersey No Patient Left Alone Act'; requires certain facilities to establish policies guaranteeing visitation rights for facility residents.
- 2022 NJ A.B. 4428 (NS), introduced June 29, 2022, would establish cause of action for residents of assisted living facilities and comprehensive personal care home providers.

### **New Mexico**

2022 NM H.B. 2 (NS), adopted March 9, 2022, makes general appropriations and authorizing expenditures by state agencies required by law.

### **New York**

- 2021 NY A.B. 9007 (NS), adopted April 9, 2022, amends the public health law, in relation to the implementation of the Nurses Across New York (NANY) program (Part A); to amend the education law, in relation to enacting the interstate medical licensure compact; and to amend the education law, in relation to enacting the nurse licensure compact (Part B); to amend the public health law and the education law, in relation to allowing pharmacists to direct limited service laboratories and order waived tests and modernizing nurse practitioners and, in relation to regulations for medication-related tasks provided by certified medical aides; to amend the education law, in relation to allowing for certain individuals to administer tests to determine the presence of SARS-CoV-2 or its antibodies, influenza virus or respiratory syncytial virus in certain situations; to amend part D of chapter 56 of the laws of 2014, amending the education law relating to enacting the 'nurse practitioners modernization act', in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon the expiration thereof (Part C); to amend the social services law, in relation to establishing the health care and mental hygiene worker bonuses (Part D); to amend the public health law, in relation to increasing general public health work base grants for both full-service and partial-service counties and allow for local health departments to claim up to fifty percent of personnel service costs (Part E); to amend the public health law, in relation to the modernization of the emergency medical system (Part F); to repeal articles governing healthcare professions in the education law and adding such laws to the public health law and transferring all functions, powers, duties and obligations relating thereto (Part G); to amend part H of chapter 59 of the laws of 2011, amending the public
- 2022 NY REG TEXT 607453 (NS), effective January 26, 2022, requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.
- 2022 NY REG TEXT 613996 (NS), effective on an emergency basis May 11, 2022, requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.

### **North Carolina**

2021 NC H.B. 103 (NS), adopted July 11, 2022, modifies the current operations appropriations act of 2021 and to make other changes in the budget operations of the state.

### **Oklahoma**

2021 OK S.B. 1668 (NS), amended/substituted February 14, 2022, would relate to qualifications for license or certification of long-term care administrators; broadening types of administrators exempt from certain requirement; providing that certain experience shall substitute for certain degree; requiring Oklahoma State Board of Examiners for Long-Term Care Administrators to grant assistant administrator certification to applicants who meet certain criteria; providing for full licensure of certified assistant administrators; requiring Board to grant provisional licensure to applicants who meet certain criteria; granting provisional licensee certain rights; providing for licensure by endorsement; providing for revocation of provisional license; requiring Board to approve certain organizations or agencies for certain training program under certain condition; requiring Board to ensure availability of at least two training programs; authorizing Board to provide training; and providing an effective date.



## Oregon

2022 OR H.B. 4003 (NS), adopted March 23, 2022, would direct Oregon State Board of Nursing to issue nurse internship license to qualified applicant. Allows nurse intern to practice nursing subject to certain limitations and under supervision of registered nurse. Directs Healthcare Workforce Advisory Committee to study nursing workforce shortage. Requires report to interim committee of Legislative Assembly related to health care no later than November 15, 2022. Allows nonresident nurses to practice in Oregon for up to 90 days under certain circumstances at specified entities. Requires entities experiencing temporary staffing shortage to notify nurses' exclusive bargaining representative of shortage and other information. Allows person other than applicant for licensure by indorsement to pay application fee. Directs board to support Oregon nonprofit organization that promotes well-being of Oregon health professionals in order to ensure nurses may access program. Declares emergency, effective on passage.

## Rhode Island

- 2021 RI H.B. 7123 (NS), adopted June 27, 2022, would make appropriations for the support of the state for the fiscal year ending June 30, 2023.

- 2021 RI H.B. 7446 (NS), introduced February 11, 2022, would provide for Medicaid home care, home nursing care and hospice base rate adjustments for services delivered by professionals and paraprofessionals to meet the increasing demand for services for medically-complex and rural patients and to meet the need to grow and sustain the workforce. This act would support the state's long-term care rebalancing goals by keeping high-acuity or high medical necessity patients out of skilled nursing facilities and hospitals and remain safe at home and in the community with highly trained and stable long-term services and support. This act would authorize the executive office of health and human services (EOHHS) to develop a methodology for the compliance of United States Department of Labor requirements for time and travel between patients' homes.

## Virginia

- 2022 VA H.B. 916 (NS), approved April 8, 2022, amends and reenacts ? 32.1? 127 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1?2404.1, relating to health care providers; health care records of minors; available via secure website.

- 2022 VA REG TEXT 625041 (NS), effective October 27, 2022, does the following (i) remove the responsibility of the Department of Medical Assistance Services to reimburse assessors for conducting assisted living facility assessments and add language to indicate that the cost of assessments conducted by qualified assessors identified in the regulation for public pay individuals shall be borne by each entity conducting the assessment; and (ii) update a citation to the Code of Virginia.

## Washington

2022 WA REG TEXT 609578 (NS), effective on an emergency basis October 20, 2022, extending the amendment of the rules listed below. Because of the ongoing COVID-19 public health emergency, on January 18, 2022, home and community services (HCS) temporarily suspended conducting ongoing assessments for HCS clients living in adult family homes, assisted living facilities, and enhanced services facilities. This suspension allows HCS staff to focus on conducting assessments for patients staying in hospitals to facilitate their discharge to long-term care facilities and improve the current surge capacity in hospitals. This emergency rule suspends the regulatory requirement for these facilities to complete assessments for HCS clients while the HCS assessors are not available. The Centers for Medicare and Medicaid Services (CMS) approved this flexibility for Medicaid beneficiaries needing specific long-term care services and supports whose assessments meet the requirements under [42 C.F.R. 441.720](#). The department filed a CR-101 under WSR 22-13-121 to begin the permanent rule-making process.

## 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. <sup>[FN27]</sup> 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. <sup>[FN28]</sup> 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.



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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.<sup>[FN29]</sup> 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.<sup>[FN30]</sup> 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.

## **SELECTED LEGISLATION & REGULATIONS**

### **Colorado**

2022 CO S.B. 154 (NS), adopted June 2, 2022, would concern increasing safety in assisted living residences, and, in connection therewith, making an appropriation.

### **Connecticut**

- 2022 CT S.B. 186 (NS), amended/substituted April 18, 2022, would (1) Enable care-giving institutions to institute, and certain pharmacists to operate under, collaborative drug therapy management policies; (2) provide that prescribing practitioners and pharmacists may enter into collaborative drug therapy management agreements and operate under collaborative drug therapy management policies; (3) provide that collaborative drug therapy management agreements and policies may apply to patient populations; (4) require that written protocols and collaborative drug therapy care plans (A) be specific to the patient, patients or patient populations involved, (B) contain detailed direction concerning the actions pharmacists may perform for the patient population involved, (C) include the therapeutic class of drug or classes of drugs, or medical devices, to be managed by pharmacists, and (D) contain a definition of the patient population involved; (5) eliminate a reporting requirement concerning encounters within the scope of collaborative drug therapy management agreements; (6) impose a reporting requirement concerning changes made to drug therapies within the scope of collaborative drug therapy management agreements and policies; and (7) require the Commissioner of Consumer Protection to adopt regulations concerning collaborative drug therapy management policies.
- 2022 CT S.B. 477 (NS), amended/substituted April 19, 2022, would address the public health needs of residents of the state.
- 2022 CT H.B. 5227 (NS), amended/substituted April 26, 2022, would establish a Community Ombudsman program to respond to complaints regarding home and community-based long-term services and supports in programs administered by the Department of Social Services.
- 2022 CT H.B. 5339 (NS), amended/substituted April 18, 2022, would expand access to the state-funded portion of the Connecticut home-care program for the elderly by reducing copayments and increasing asset limits.

### **Hawaii**

2021 HI S.B. 3236 (NS), adopted July 7, 2022, would appropriate funds to provide enhanced payments to state-licensed skilled nursing facilities, community care foster family homes, and expanded adult residential care homes that are caring for Medicaid patients; provided that the Department of Human Services shall obtain the maximum amount of federal matching funds available for this expenditure.

### **Minnesota**

- 2021 MN S.F. 4410 (NS), engrossed May 3, 2022, would provide an Omnibus health and human services policy and supplemental appropriations.
- 2021 MN S.F. 4409 (NS), introduced March 31, 2022, would relate to Commissioner of health and commissioner of human services appropriation for long-term care protection and support activities and a temporary staffing pool authorization.

### **New York**

2021 NY A.B. 196 (NS), amended/substituted May 18, 2022, 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.

## **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.<sup>[FN31]</sup>



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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.

'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. <sup>[FN32]</sup> 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.

### **New Jersey**

2022 NJ S.B. 732 (NS), amended/substituted November 21, 2022, would require certain health care facilities to adopt and implement policies to prevent exposure to surgical smoke via use of smoke evacuation system.

### **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.



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

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

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

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

Florida has now passed a bill adding requirements for long-term care facilities to keep the power on during emergencies, which will cost an estimated \$350 million dollars. <sup>[FN33]</sup> 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. <sup>[FN34]</sup> 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. <sup>[FN35]</sup> 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**

### **Louisiana**

- 2022 LA S.B. 167 (NS), adopted June 18, 2022, amends and reenacts R.S. 40:2009.25(A) through (E) and (I), relative to emergency preparedness plans for nursing homes; to provide for submissions to the local office of emergency preparedness; to provide for the duties of the local office of emergency preparedness; to provide for the duties of the Louisiana Department of Health; to provide for an effective date; and to provide for related matters.
- 2022 LA H.B. 291 (NS), adopted June 16, 2022, amends and reenacts R.S. 40:2009.25(A), (B), (C)(introductory paragraph), (D), (E), (F)(introductory paragraph), (9), and (12), and (H), relative to regulation of nursing homes; to revise laws pertaining to emergency preparedness among nursing homes; to require that all nursing homes maintain in effect emergency preparedness plans approved by the Louisiana Department of Health; to repeal a geographic limitation pertaining to nursing home emergency preparedness plan requirements; and to provide for related matters.

### **Oregon**



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2021 OR REG TEXT 602981 (NS), effective January 1, 2022, amending rules addressing long-term care settings, to control the virus in these settings. Additionally, fire and life safety for new construction and newly licensed adult foster homes is crucial to the health and safety of adult foster home residents. The Department of Building Code Services has implemented new OARs through Oregon Residential Specialty Code (ORSC) requiring sprinkler systems or an alternative. To ensure the health and safety of residents, create guidance for licensed providers and the local licensing authority, the Department has amended program language to reflect the changes to State of Oregon Building Codes Division OARs that became effective April 1, 2021.

## Washington

2022 WA REG TEXT 607486 (NS), effective May 18, 2022, suspends requirements in WAC 388-97-1740 Disaster and emergency preparedness, 388-97-1760 Quality assessment and assurance, and 388-97-2400 Resident rooms. The filing was an extension of emergency rules filed consecutively since June 23, 2020, to maintain compliance with blanket waivers issued by the Centers for Medicare and Medicaid Services (CMS) to ensure nursing homes are not significantly impeded from caring for residents during the COVID-19 pandemic.

### 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. <sup>[FN36]</sup>

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**

### **D. Electronic Monitoring**

#### **Momentum Grows for In-room Cameras at Nursing Homes**

In Louisiana there is now a measure on the House floor which would allow families or patients to install monitoring cameras in the patient's room at their own cost. [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



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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**

### **Arizona**

- 2022 AZ S.B. 1297 (NS), introduced January 24, 2022, would relate to visitation of religious counselors in healthcare facilities.
- 2022 AZ H.B. 2449 (NS), adopted April 25, 2022, relates to care facilities and clergy visitation.

### **New Jersey**

- 2022 NJ S.B. 710 (NS), introduced January 11, 2022, would require nursing homes to permit use of electronic monitoring device at request of resident.
- 2022 NJ A.B. 2335 (NS), introduced February 7, 2022, would require nursing homes to permit use of electronic monitoring devices at request of resident.

### **Virginia**

2022 VA H.B. 97 (NS), introduced January 12, 2022, would direct the Board of Health to include in regulations governing nursing homes a provision prohibiting a nursing home from refusing to admit, transferring, or discharging a patient on the grounds that the patient has implemented or requested to implement electronic monitoring, provided such request and electronic monitoring is in accordance with regulations of the Board.

## **E. Protecting the Health of Residents**

### **GAO: Federal Falls Programs Overlook Disabled Seniors and Should Share More Data**

The Government Accountability Office (GAO) has stated that federal programs are not capturing the full picture of falls had by seniors.<sup>[FN42]</sup> Currently, federal programs do not include fall information for disabled seniors younger than age 60. The GAO has found that disabled adults between the ages of 45-59 fall at a higher rate than their older counterparts. By increasing the data collected and creating a greater network for information sharing to include the GAO wants to increase the safety for all seniors. The proposed agencies to be included would be the Administration on Community Living, the CDC, the Department of Housing and Urban Development, and the Department of Veterans Affairs.

### **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<sup>[FN43]</sup> 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.<sup>[FN44]</sup>

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.<sup>[FN45]</sup> 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**



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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. <sup>[FN46]</sup> 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. <sup>[FN47]</sup> 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. <sup>[FN48]</sup> 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. <sup>[FN49]</sup> 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.

### **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. <sup>[FN50]</sup> 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. <sup>[FN51]</sup> 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. <sup>[FN52]</sup> 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**

### **New York**

2022 NY REG TEXT 616230 (NS), effective September 28, 2022, requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.

### **Rhode Island**

2022 RI REG TEXT 604203 (NS), emergency rule effective January 10, 2022, provides COVID-19 procedures for long-term care facilities regarding testing of residents and personnel; collecting vaccination status of personnel; and provide requirements for visitors and essential caregivers to enter the facility.

## **F. Miscellaneous Protection Developments**

### **Selected Legislation and Regulations**

-

### **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. <sup>[FN53]</sup> 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



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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.

#### **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. <sup>[FN54]</sup> Efforts are being made to encourage patient self-determination and health care planning by seeing that residents have access to critical information. Other ways to improve the quality of life of patients include making voting easier for residents and ensuring that residents are free from discrimination.

#### **CMS Withdraws Proposed Rule to Require LTC Facilities to Recognize Spousal Rights of Same-Sex Couples**

McKnight's reports that CMS has withdrawn a 2014 proposed rule that would have required long-term care facilities to recognize and ensure rights for same-sex marriages. <sup>[FN55]</sup> 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. <sup>[FN56]</sup> 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. <sup>[FN57]</sup> 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%. <sup>[FN58]</sup> 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. <sup>[FN59]</sup> 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. <sup>[FN60]</sup> 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**

#### **Colorado**



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- 2022 CO H.B. 1303 (NS), enrolled May 18, 2022, would concern an increase in the number of residential senate behavioral health beds, and, in connection therewith, making an appropriation.
- 2022 CO REG TEXT 614234 (NS), effective May 30, 2022, is a Medicaid Nursing Facilities Demonstration of Need with Technical Changes Revision to the Medical Assistance Program Requirements for Nursing Facilities.

### Illinois

- 2021 IL [S.B. 3490](#) (NS), adopted May 16, 2022, amends the Illinois Act on the Aging. In provisions concerning the Council on Aging, provides that at least 7 citizen members shall represent underrepresented communities, including, but not limited to: one member who is a lesbian, gay, bisexual, or queer individual; one member who is a transgender or gender-expansive individual; one member who is an African-American or Black individual; and one member who is an Asian-American or Pacific Islander individual. Creates the Illinois Commission on LGBTQ Aging to investigate, analyze, and study the health, housing, financial, psychosocial, home-and-community-based services, assisted living, and long-term care needs of LGBTQ older adults and their caregivers. Requires the Commission to make recommendations to improve access to benefits, services, and supports for LGBTQ older adults and their caregivers. Requires the Commission to: examine the impact of State and local laws, policies, and regulations on LGBTQ older adults and make recommendations to ensure equitable access, treatment, care and benefits, and overall quality of life; and examine strategies to increase provider awareness of the needs of LGBTQ older adults and their caregivers and to improve the competence of and access to treatment, services, and ongoing care, including preventive care; and carry out other duties. Contains provisions concerning: members appointed to the Commission; Commission meetings and reports; an LGBTQ Older Adult Advocate to advocate for LGBTQ older adults and older adults living with HIV who experience barriers to accessing and utilizing services; an LGBTQ Older Adult Curriculum and Training Program; and other matters. Effective immediately.
- 2021 IL S.B. 3617 (NS), adopted June 10, 2022, Creates the Ensuring a More Qualified, Competent, and Diverse Community Behavioral Health Workforce Act.
- 2021 IL H.B. 4465 (NS), introduced January 11, 2022, would amend the Assisted Living and Shared Housing Act, the Community Living Facilities Licensing Act, the Life Care Facilities Act, the Nursing Home Care Act, the MC/DD Act, and the ID/DD Community Care Act. Provides that, on and after 36 months after the amendatory Act's effective date, facilities or establishments licensed under the Acts are prohibited from: (1) being owned by and leased or rented to related business entities; and (2) employing a service provider that is a related business entity of the owner of the facility or establishment. Provides that a facility or establishment shall not charge any over-market rate for a resident's rent or for services provided to a resident. Provides that the provisions do not apply to any facility or establishment that does not receive State or federal funds through Medicaid or Medicare. Contains other provisions.

### Louisiana

- 2022 LA [S.B. 30](#) (NS), adopted June 17, 2022, would amend and reenact R.S. 40:2116 and to enact R.S. 40:2009.4I, 2116.1, 2116.2, and 2180.2(12), relative to facility need review; to provide legislative authority for facility need review; to provide for healthcare provider types subject to facility need review; to provide for the facility need review committee; to provide for a nursing facility moratorium; to provide for exceptions; to provide for cost effective measures; to provide for notice of sex offenders living in certain facilities; and to provide for related matters.
- 2022 LA H.B. 189 (NS), adopted May 25, 2022, would amend and reenact the heading of Part I-A of Chapter 11-A of Title 37 of the Louisiana Revised Statutes of 1950 and R.S. 37:1026.1, 1026.2, 1026.3(4), 1026.4, 1026.6(A) and (B)(6), 1026.7(8), and 1026.8, relative to medication attendant services; to provide for applicable facilities; to provide for definitions; to provide for authorizations and prohibitions of medication attendants; to provide for the promulgation of rules and regulations; to provide for applicant qualifications for the Medication administration course; to provide for registration information; and to provide for related matters.

### New Jersey

2022 NJ [S.B. 1040](#) (NS), introduced January 31, 2022, would require each nursing home to employ a patient advocate.

### South Dakota

2022 SD H.B. 1283 (NS), adopted March 9, 2022, requires the posting of laws regarding hospital, nursing facility, and assisted living center visitation.

### Vermont

2022 VT REG TEXT 598152 (NS), adopted March 10, 2022, amends its rules governing therapeutic community residences to require those facilities to contact any former resident, who had received treatment for serious mental illness, within 72 hours of the resident's discharge.

### Virginia

- 2022 VA S.B. 40 (NS), enrolled April 27, 2022, would require that regulations of the Board of Social Services regarding involuntary discharges of residents from assisted living facilities provide certain safeguards for residents, including a description of the reasons for which a resident may be involuntarily discharged, certain notice requirements, a requirement that the facility make reasonable efforts



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to resolve any issues upon which the discharge is based, and the provision of information regarding the resident's right to appeal the facility's decision to discharge the resident.

- 2022 VA S.B. 130 (NS), enrolled April 27, 2022, would provide for an exemption from the requirement for a certificate of public need, for the duration of the State Health Commissioner's determination, emergency order of the State Board of Health, or Commissioner's exercising of authority on behalf of the Board, plus a period of 30 days, for projects involving a temporary increase in the total number of beds in an existing hospital or nursing home, which may include temporary structures or satellite locations that are operated by the hospital or nursing home in response to a public health emergency, when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds, or when the Board has made an emergency order or the Commissioner is exercising authority on behalf of the Board for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious, and infectious diseases and other dangers to the public life and health.

- 2022 VA H.B. 634 (NS), adopted April 8, 2022, requires a guardian to visit an incapacitated person at least once every 90 days and make certain observations and assessments during each visit. The bill provides that a guardian may utilize a person who is directly employed and supervised by the guardian, or contract the services of a care manager who is a trained professional who specializes in the field of life-care management, geriatrics, older adults and aging or adults with disabilities and who provides written reports to the guardian regarding any such visits to satisfy the duties imposed upon such a guardian.

## **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. <sup>[FN61]</sup> 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. <sup>[FN62]</sup> 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. <sup>[FN63]</sup> 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. <sup>[FN64]</sup> 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. <sup>[FN65]</sup> 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.

#### **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. <sup>[FN66]</sup> 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. <sup>[FN67]</sup> Verma clarified that



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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. <sup>[FN68]</sup> 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). <sup>[FN69]</sup> . 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. <sup>[FN70]</sup> 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**

- [87 FR 45860-01](#), proposed July 29, 2022, would make 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; updates to the Quality Payment Program; Medicare coverage of opioid use disorder services furnished by opioid treatment programs; updates to certain Medicare and Medicaid provider enrollment policies, including for skilled nursing facilities; updates to conditions of payment for DMEPOS suppliers; HCPCS Level II coding and payment for wound care management products; electronic prescribing for controlled substances for a covered Part D drug under a prescription drug plan or an MA-PD plan under the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act (SUPPORT Act); updates to the Medicare Ground Ambulance Data Collection System; and provisions under the Infrastructure Investment and Jobs Act.

### **Delaware**

- 2021 DE H.B. 424 (NS), introduced May 13, 2022, would amend title 16 of the Delaware code relating to staffing in nursing facilities, intermediate care facilities for persons with intellectual disabilities, assisted living facilities, and dementia care.

### **District of Columbia**

- 2022 DC REG TEXT 597010 (NS), effective March 25, 2022, gives notice of the adoption of a final rulemaking to add a new Chapter 112 (Health Care Facilities-Required Vaccinations) to Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations.

### **Florida**

- 2022 FL H.B. 469 (NS), adopted April 6, 2022, authorizes unlicensed persons to assist patients with other specified tasks; revises provisions relating to medications & devices with which unlicensed persons may assist patients in self-administration; specifies staffing requirements for advanced life support ambulances during interfacility transfers; provides certain persons occupying such ambulances are in charge of patient care during transfers; revises list of medications that registered nurses may delegate administration to certified nursing assistants or home health aides; authorizes certified nursing assistants to administer certain medication to patients in county detention facilities under certain circumstances.
- 2022 FL H.B. 1361 (NS), introduced January 11, 2022, would require resident's attending health care provider to consult with resident's personal physician under certain circumstances; requires resident's attending health care provider to document consultations in resident's records; requires facilities to take certain measures before admitting residents; requires facilities to provide resident with opportunity to select personal physician; provides requirements for residents' records; revises timeframe in which facilities must furnish requested records; requires facilities to post specified information on their websites.
- 2022 FL H.B. 1507 (NS), introduced January 11, 2022, would require DOEA or its designee to develop or approve education & training regarding care for persons with Alzheimer's disease or related dementia; provides requirements for education, training, & covered providers; revises dementia-related staff training requirements for nursing homes, home health agencies, facilities providing



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special care for certain persons, assisted living facilities, adult family-care homes, adult day care centers, & specialized Alzheimer's services adult day care centers.

- 2022 FL S.B. 1950 (NS), adopted April 6, 2022, requiring, rather than authorizing, that the reimbursement method for provider service networks be on a prepaid basis; deleting a requirement that the Agency for Health Care Administration provide the opportunity for public feedback on a certain waiver application; revising requirements relating to the databook published by the agency consisting of Medicaid utilization and spending data; deleting procedures for plan procurements when no provider service networks submit bids; providing that cancer hospitals meeting certain criteria are statewide essential providers, etc.
- 2022 FL REG TEXT 609888 (NS), effective October 4, 2022, would outline the responsibilities for food service standards within assisted living facilities.
- 2022 FL REG TEXT 617369 (NS), proposed June 20, 2022, would outline requirements for record keeping in assisted living facilities.
- 2022 FL REG TEXT 618652 (NS), proposed July 5, 2022, proposes to revise Rules 59A-36.019 and 59A-36.025 to align language with statute regarding submission and approval of comprehensive emergency management plans (CEMP) and emergency environmental control plans, remove obsolete language and update incorporated CEMP form for assisted living facilities.

### **Idaho**

2022 ID H.B. 735 (NS), adopted March 29, 2022, would amend, repeal, and add to existing law to revise provisions regarding county indigent services and finances.

### **Illinois**

2021 IL H.B. 5541 (NS), introduced January 31, 2022, would require long-term care facilities to conduct regular universal testing for all facility residents and staff and disclose all COVID-19 cases and deaths to facility residents, residents' family members, the Department of Public Health, and the federal Centers for Disease Control and Prevention. Provides that the Department of Public Health shall coordinate with local, State, and federal governments to establish COVID-19 alternate care sites with staffing. Requires the Department to establish a commission to implement increased State oversight of facilities, provide additional staff resources and personal protective equipment (PPE) for workers, and consider receivership for facilities with chronic public health violations. Effective immediately.

### **Louisiana**

2022 LA H.B. 933 (NS), adopted June 16, 2022, amends and reenacts R.S. 40:2009.25 and to repeal R.S. 36:259(B)(28) and R.S. 40:2009.1, relative to nursing homes licensed by the Louisiana Department of Health; to provide relative to emergency preparedness among nursing homes; to provide requirements and standards for nursing home emergency preparedness plans; to provide procedures for and schedules by which nursing homes shall develop and submit such plans; to provide for duties of the Louisiana Department of Health and local offices of emergency preparedness with respect to nursing home emergency preparedness; to provide relative to sites to which nursing home residents may be evacuated; to revise laws creating and providing for the Nursing Home Emergency Preparedness Review Committee within the Louisiana Department of Health; to repeal laws creating and providing for a nursing home advisory committee within the Louisiana Department of Health; to provide for limitation of liability; to require promulgation of administrative rules; to provide for an effective date; and to provide for related matters.

### **New York**

2021 NY S.B. 2103 (NS), amended/substituted January 24, 2022, 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.

### **Pennsylvania**

2021 PA H.B. 2400 (NS), amended/substituted September 21, 2022, 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 supervision, providing for Keystone STARS Program; and, in departmental powers and duties as to licensing, further providing for fees, providing for Keystone STARS Program and further providing for definition.

### **Virginia**

- 2022 VA H.B. 234 (NS), adopted April 11, 2022, would direct the Secretary of Health and Human Resources to study the current oversight and regulation of nursing homes, assisted living facilities, and other congregate living settings to improve efficiency and effectiveness of regulation and oversight, provide better transparency for members of the public navigating the process of receiving services from such facilities, and better protect the health and safety of the public and to report his findings and recommendations to the Governor and the Chairmen of the Senate Committees on Education and Health and Finance and Appropriations and the House Committees on Appropriations and Health, Welfare and Institutions by October 1, 2022.
- 2022 VA H.B. 277 (NS), enrolled April 27, 2022, would require every person who operates a recovery residence to disclose to potential residents whether the recovery residence is a certified recovery residence and that no health care provider or behavioral health service provider who receives public funds or state agency shall refer a person with substance abuse disorder to a recovery residence unless the recovery residence has been certified by the Department of Behavioral Health and Developmental Services (the



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Department) in accordance with regulations adopted by the Board of Behavioral Health and Developmental Services (the Board). The bill also provides that credentialing agencies by which the Board may require accreditation or in which the Board may require membership shall administer credentialing and certification programs in accordance with standards of the National Alliance for Recovery Residences; requires the Board to adopt regulations requiring each certified recovery residence include one or more resident or nonresident staff persons who is employed by the provider for compensation and who is responsible for oversight or management of the recovery residence; and requires the Department to provide, for each certified recovery residence included on the list maintained on the Department's website the level of support provided by the certified recovery residence. The bill also provides that certified recovery residences shall constitute residential occupancy by a single family for zoning purposes, regardless of the number of persons residing in the certified recovery residence, and exempts certified recovery residences from the provisions of the Virginia Landlord and Tenant Act.

- 2022 VA H.B. 537 (NS), adopted April 8, 2022, would allow certain practitioners of professions regulated by the Boards of Medicine, Counseling, Psychology, and Social Work who provide behavioral health services and who are licensed in another state, the District of Columbia, or a United States territory or possession and in good standing with the applicable regulatory agency to engage in the practice of that profession in the Commonwealth with a patient located in the Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services and (ii) the practitioner has previously established a practitioner-patient relationship with the patient. The bill provides that a practitioner who provides behavioral health services to a patient located in the Commonwealth through use of telemedicine services may provide such services for a period of no more than one year from the date on which the practitioner began providing such services to such patient.
- 2022 VA H.B. 900 (NS), adopted April 27, 2022, creates an exemption from the requirement for a certificate of public need or a license for the temporary addition of beds located in a temporary structure or satellite location by a hospital or nursing home in cases in which the Board of Health or the Commissioner of Health (the Commissioner) has entered an emergency order for the purpose of suppressing a nuisance dangerous to public health or a communicable, contagious, or infectious disease or other danger to the public life and health and provides that such exemption shall apply for the duration of the emergency order plus 30 days. The bill also expands the duration of the existing exemption from the requirement for a certificate of public need or a license for the addition of temporary beds when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds to the duration of such determination plus 30 days and makes clear that such exemption shall apply to the temporary addition of beds located in a temporary structure or satellite location by a hospital or nursing home.
- 2022 VA REG TEXT 572686 (NS), proposed January 31, 2022, would add to the reporting requirements for physicians and directors of medical care facilities for COVID-19 to (i) require physicians and directors of medical care facilities to report suspected or confirmed COVID-19 cases and COVID-19 hospitalizations and intensive care unit admissions to the Virginia Department of Health (VDH) through participation in the Emergency Department Care Coordination Program; (ii) require all suspected or confirmed COVID-19 case report forms be submitted electronically to VDH; (iii) clarify that the category 'laboratory directors' includes pharmacies that hold Clinical Laboratory Improvement Amendments Certificates of Waiver so that pharmacies testing for COVID-19 are required to report to VDH; (iv) require laboratory directors report both positive and negative COVID-19 test results.

## Washington

- 2021 WA H.B. 1124 (NS), adopted March 11, 2022, relates 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. 1742 (NS), introduced January 10, 2022, would relate to creating fairness in the operation of the long-term services and supports trust program; and amending [RCW 50B.04.010](#), [50B.04.020](#), [50B.04.030](#), [50B.04.060](#), [50B.04.070](#), [50B.04.080](#), [50B.04.085](#), [50B.04.100](#), [50B.04.140](#), and [48.83.170](#).
- 2021 WA REG TEXT 562837 (NS), effective March 6, 2022, extending the suspension of the rules listed below to ensure long-term care facilities and providers are not significantly impeded during the hiring process due to an inability to access required tuberculosis (TB) testing as a result of the COVID-19 epidemic. Clinics providing TB testing continue to be short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state. These emergency rules will help increase the number of long-term care workers necessary to provide essential services for some of Washington's most vulnerable residents.
- 2022 WA REG TEXT 607486 (NS), effective February 3, 2022, 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 pandemic. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.
- 2022 WA REG TEXT 609578 (NS), effective March 16, 2022, temporarily suspended conducting ongoing assessments for HCS clients living in adult family homes, assisted living facilities, and enhanced services facilities. The intent of this suspension is to allow HCS staff to focus on conducting assessments for patients staying in hospitals, which will facilitate their discharge to long-term care facilities and improve the current surge capacity in hospitals. This emergency rule suspends the regulatory requirement for these



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facilities to complete assessments for HCS clients while the HCS assessors are not available. The Centers for Medicare and Medicaid Services approved this flexibility for Medicaid beneficiaries needing specific long-term care services and supports whose assessments meet the requirements under [42 C.F.R. 441.720](#). The emergency rule will be effective retroactively to match the suspension effective date by HCS.

- 2022 WA REG TEXT 619700 (NS), effective July 1, 2022, submits Medicaid SPA 22-0029 in order to increase daily rates for adult family homes, assisted living facilities, adult day health, agency providers, and individual providers. This amendment will also amend the private duty nursing methodology, nursing facility methodology, swing bed rate, and budget dial.

## **B. Ownership, Certification, Licensing, and Educational Requirements**

### **SELECTED LEGISLATION & REGULATIONS**

#### **Federal**

[87 FR 67586-01](#), proposed November 9, 2022, proposes a rule under the Consumer Product Safety Act (CPSA) to require that APBRs meet the requirements of the applicable voluntary standard on APBRs, with modifications. The Commission is providing an opportunity for interested parties to present written and oral comments on this notice of proposed rulemaking (NPR). Like written comments, any oral comments will be part of the rulemaking record.

#### **Arizona**

- 2022 AZ S.B. 1308 (NS), engrossed May 5, 2022, would relate to DHS licensure and group homes.
- 2022 AZ REG TEXT 616025 (NS), effective September 23, 2022, amends rules specifying the rate that will be assessed for each reported bed day beginning October 1, 2022.

#### **California**

2021 CA A.B. 2511 (NS), amended/substituted April 7, 2022, would add Section 1418.22 to the Health and Safety Code, relating to skilled nursing facilities.

#### **Colorado**

2022 CO S.B. 79 (NS), adopted May 31, 2022, relates to required dementia training for direct-care staff or specified facilities that provide services to clients living with dementia.

#### **Georgia**

- 2021 GA H.B. 1049 (NS), adopted May 2, 2022, would revise composition of the State Board of Nursing Administrators.
- 2021 GA H.B. 1069 (NS), adopted May 6, 2022, amends Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination, treatment, etc., for mental illness, so as to provide for the licensure of adult residential mental health programs; to provide for a short title; to provide for the purpose; to provide for definitions; to provide for classification; to provide for minimum standards of quality and services; to provide for rules and regulations; to provide for enforcement; to provide for licensure; to provide for contingent effectiveness; to provide for applications; to provide for provisional licenses; to provide for provisional licensure of existing personal care homes that meet the requirements of this article; to provide for meeting certain requirements based on proof of accreditation; to provide that licenses are nontransferable; to provide for denial, suspension, or revocation of license; to provide for notice and hearings; to provide for confidentiality of records; to provide for criminal and civil penalties for operating unauthorized adult residential mental health programs; to provide for inspection by the Department of Community Health; to provide for oversight by the disability services ombudsman; to amend Code [Section 31-7-351 of the Official Code of Georgia Annotated](#), relating to definitions relative to the 'Georgia Long-term Care Background Check Program,' so as to provide for background checks for applicants, employees, and owners of adult residential mental health programs; to provide for related matters; to repeal conflicting laws; and for other purposes.
- 2021 GA H.B. 1526 (NS), introduced March 8, 2022, would amend Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to public assistance, so as to establish the Healthy Georgia Program, providing comprehensive universal single payer healthcare coverage and a healthcare cost control system for the benefit of all Georgia residents; to provide for definitions; to establish the Healthy Georgia Board and its composition, duties, and responsibilities; to provide for an executive board and an executive director; to establish four public advisory committees and the composition, terms, duties, and responsibilities of such committees; to authorize the board to organize, administer, market, and fund the program; to restrict what policies an insurer can offer during the transition and implementation periods of such program; to provide for the board to make additional proposals for recommended program services; to provide for the collection, transmission, retention, analysis, and disclosure of data to promote transparency and ensure the quality of healthcare services provided to members through the program; to prohibit law enforcement from using program money or property to investigate criminal, civil, or administrative violations; to provide for member enrollment and allow certain nonresidents to enroll in the program; to provide for covered healthcare benefits and ancillary healthcare services; to allow any qualified healthcare provider to participate in the program; to provide for a care coordinator and care coordination in the program; to provide for the approval of care coordinators and the approval of healthcare organizations; to authorize the board to establish payment methodologies for care coordination, healthcare services, and ancillary healthcare services; to authorize the board to establish minimum uniform healthcare standards; to authorize the board to seek all federal waivers and other arrangements to secure federal funding for and support of the



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program; to establish the Healthy Georgia Trust Fund to support the Healthy Georgia Program; to authorize appropriation of money to the fund; to allow healthcare providers to enter into collective negotiations to reach agreement on terms and conditions of contracts for the program; to provide for related matters; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

- 2021 GA H.B. 1531 (NS), amended/substituted March 11, 2022, would amend Article 1 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation of hospitals and related institutions, so as to revise provisions relating to minimum staffing requirements in assisted living communities and memory care centers; to provide a definition; to provide for related matters; to repeal conflicting laws; and for other purposes.

- 2021 GA H.B. 1547 (NS), introduced March 9, 2022, would amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to revise various provisions relating to certificate of need requirements; to revise definitions; to revise requirements under certificate of need to provide indigent and charity care; to provide for attorney's fees under certain conditions; to provide for venture capital partnerships; to expand the exemption for single-specialty ambulatory surgical centers to physician owned ambulatory surgical centers; to provide that affiliates and subsidiaries of hospital authorities are subject to open records laws; to provide for withholding of state funds from hospital authorities that fail to comply with certain reporting requirements; to revise provisions relating to community benefit; to limit the amount of cash reserves a hospital authority can maintain; to provide for consequences for noncompliance; to provide for filing of reports to the Office of Health Strategy and Coordination; to provide that hospitals or hospital authorities utilizing certain captive insurance companies are not eligible for certain trust funds; to amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so as to establish a program to provide state funded mental health assistance for indigent persons in this state; to provide for prioritized disability services for uninsured consumers and Medicaid recipients; to amend Code [Section 50-18-70 of the Official Code of Georgia Annotated](#), relating to legislative intent and definitions relative to open records laws, so as to provide that certain organizations or entities that lease or operate facilities of hospital authorities are considered agencies for purposes of open records; to provide for the delayed repeal of certificate of need requirements; to transfer charity and indigent care requirements from certificate of need requirements to licensure requirements; to provide for regulations and penalties; to amend other provisions in various titles of the Official Code of Georgia Annotated for purposes of conformity; to revise definitions; to provide for related matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

#### **Hawaii**

2021 HI [S.B. 3113](#) (NS), adopted June 27, 2022, would incorporate the kupuna caregivers program into the kupuna care program and adds services for care recipients, caregivers, and employed caregivers.

#### **Kansas**

- 2021 KS [S.B. 2](#) (NS), adopted April 18, 2022, prohibits certain acts by business entities, governmental entities or public officials based upon a person's vaccination status or possession of an immunity passport; ensuring a right to in-person visitation at medical care facilities and adult care homes; allowing patients to sign a liability waiver to be prescribed off-label use drugs; prohibiting certain public health orders related to isolation and quarantine, stay-at-home orders, curfews and face masks; limiting isolation or quarantine orders to recommendations and providing criminal penalties for certain violations; amending the employment security law to provide exceptions to benefit eligibility conditions and disqualification conditions based on an employee's unwillingness to receive a vaccination; amending the Kansas act against discrimination to define unlawful employment practices related to vaccination status or possession of an immunity passport; limiting state of disaster emergency powers of the governor related to stay-at-home orders, curfews and face masks; and amending provisions related to childhood immunizations required for attendance at a child care facility or school and exemptions from such requirements.

- 2021 KS [S.B. 453](#) (NS), adopted April 18, 2022, requires unlicensed employees of adult care homes who take training courses to demonstrate certain skills to successfully complete such training courses, requiring licensed nurses to teach and evaluate such training courses and allowing simulation experiences to be used as part of such training courses.

- 2021 KS H.B. 2678 (NS), introduced February 9, 2022, would ensure a right to in-person visitation at medical care facilities and adult care homes, prohibiting certain public health orders related to isolation and quarantine, stay-at-home orders, curfews and face masks, limiting isolation or quarantine orders to recommendations and providing criminal penalties for certain violations, limiting state of disaster emergency powers of the governor and state of local disaster emergency powers of counties and cities related to stay-at-home orders, curfews and face masks and limiting powers of the secretary of health and environment and local health officers.

- 2021 KS H.B. 2699 (NS), introduced February 11, 2022, would exempt any skilled nursing care facility for which the secretary for aging and disability services is appointed as receiver from the quality care assessment.

#### **Idaho**

2022 ID H.B. 613 (NS), introduced February 14, 2022, would add to existing law to provide for occupational licensing protection with respect to coronavirus.

#### **Illinois**

2021 IL H.B. 5223 (NS), introduced January 31, 2022, would amend the Assisted Living and Shared Housing Act. Provides that the Department of Public Health shall require each assisted living or shared housing establishment in the State, as a condition of



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establishment licensure, to adopt and implement written policies, provide for the availability of technology to establishment residents, and ensure that appropriate staff and other capabilities are in place to prevent the social isolation of establishment residents. Contains specified requirements for the social isolation prevention policies. Provides that the social isolation prevention policies shall not be interpreted as a substitute for in person visitation, but shall be wholly in addition to the existing in person visitation policies. Provides that an assisted living or shared housing establishment may apply to the Department for civil monetary penalty fund grants, and may request other available federal and State funds. Provides that whenever the Department conducts an inspection of an assisted living or shared housing establishment, the Department shall determine whether the establishment is in compliance with the provisions and the policies, protocols, and procedures adopted pursuant to the provisions. Provides that an establishment that fails to comply with the provisions or properly implement the policies, protocols, and procedures required shall be liable to pay an administrative penalty as a Type 3 violation on and after January 1, 2023. Contains other provisions. Effective immediately.

#### **Maine**

2021 ME H.P. 1370 (NS), adopted March 31, 2022, clarifies inspection requirements for hospitals and certain nursing facilities.

#### **Massachusetts**

- 2022 MD S.B. 720 (NS), adopted May 29, 2022, renames the State Board of Examiners of Nursing Home Administrators to be the State Board of Long-Term Care Administrators and establishing a licensing and regulatory system for assisted living managers under the Board; and generally relating to the licensing of assisted living managers and the State Board of Long-Term Care Administrators.
- 2022 MD S.B. 840 (NS), introduced February 7, 2022, would establish and alter certain requirements related to COVID-19, including requirements related to planning by institutions of higher education, home health agencies, nursing homes, and assisted living programs, the provision of coverage by the Maryland Medical Assistance Program, the Maryland MyIR Mobile immunization record service, and reporting by the Maryland Department of Health; establishing that certain urgent care centers are not subject to the rate-setting jurisdiction of the Health Services Cost Review Commission; requiring the State Board of Nursing to establish an apprentice geriatric nursing assistant program; altering the authority of pharmacists to refill prescriptions, administer certain vaccines, and delegate certain functions to pharmacy technicians; and generally relating to public health, the provision of health care services, and responding to COVID-19 in the State.

#### **New Hampshire**

- 2021 NH S.B. 281 (NS), adopted July 8, 2022, would prohibit a private nursing home or assisted living facility from enforcing a 30-day notice of vacancy policy in the event of a resident's death and provides that, in such cases, the month in which the resident passes shall be the last month for which payment is due.
- 2021 NH REG TEXT 598921 (NS), adopted February 10, 2022, sets forth the classification of and licensing requirements for supported residential health care facilities (SRHCF) pursuant to RSA 151:2, I(e)(2) and as described in RSA 151:9, VII(a)(2). Groups affected by this rule include any individual, agency, partnership, corporation, government entity, association or, or other legal entity operating a SRHCF pursuant to RSA 151:9, VII(a)(2).
- 2022 NH REG TEXT 627439 (NS), proposed October 27, 2022, would set forth the classification of and licensing requirements for all hospice houses (HH) pursuant to RSA 151:2, I(e)(2) and as described in RSA 151:9, VII(a)(2) to include the areas of sanitation, organization, administration, physical environment, health and safety, nursing services, resident environment, dietary needs, medical records, medication, infection control, personnel, protective oversight services, and management of patient records. Groups affected by this rule include any operators of a HH, the patients receiving services at a HH, and their families.

#### **New Jersey**

- 2022 NJ A.R. 147 (NS), introduced June 2, 2022, would urge Centers for Medicare and Medicaid Services to increase access to skilled nursing facility and home office data.
- 2022 NJ A.B. 4541 (NS), introduced September 22, 2022, would require long-term care facilities to submit reports regarding residents with disabilities.
- 2022 NJ A.B. 4542 (NS), introduced September 22, 2022, would require certain places of public assembly to have automated external defibrillator on-site.

#### **New York**

- 2021 NY S.B. 7777 (NS), introduced January 11, 2022, would direct 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, safety and welfare of residents at long-term care facilities.
- 2021 NY S.B. 7892 (NS), introduced January 18, 2022, would require nursing homes and assisted living facilities to provide and maintain automated external defibrillators in quantities and types deemed by the commissioner to be adequate to ensure ready and appropriate access for use during emergencies.
- 2021 NY S.B. 8813 (NS), introduced April 20, 2022, would require adult care facilities to include demographic information, including race or ethnicity, in certain admission and discharge records maintained by the facility.



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- 2021 NY A.B. 8920 (NS), introduced January 19, 2022, would require certain residential adult care facilities that house individuals with traumatic brain injuries to hold a certification or professional license or employ a resident manager who holds a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional, certified brain injury specialist (CBIS) or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury.
- 2021 NY A.B. 9290 (NS), adopted June 30, 2022, requires adult care facilities to include demographic information, including race or ethnicity, in certain admission and discharge records maintained by the facility.
- 2022 NY REG TEXT 616230 (NS), effective September 28, 2022, requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.

#### **Oklahoma**

2021 OK S.B. 1156 (NS), introduced February 7, 2022, would relate to licensure requirements for adult day care centers; allowing certain facilities to be licensed as adult day care centers; requiring State Department of Health to consider certain licensure as proof of compliance with applicable standards; requiring application and fee; specifying applicability of Adult Day Care Act; and providing an effective date.

#### **Oregon**

2022 OR REG TEXT 613826 (NS), effective July 11, 2022, would add language indicating the Department may impose a \$250 daily penalty if weekly reporting of vaccination data is not submitted timely. Other changes may be made to [OAR 411-061-0010](#) to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

#### **Pennsylvania**

- 2021 PA H.B. 1693 (NS), amended/substituted September 13, 2022, 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.
- 2021 PA H.B. 2293 (NS), adopted November 3, 2022, amending the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, providing for temporary health care services agencies.

#### **Rhode Island**

- 2021 RI [S.B. 2948](#) (NS), introduced May 18, 2022, would establish a nursing service agency maximum rate of two hundred percent (200%) of the regional average hourly wage for each position for services provided to a client, including, but not limited to, a health care facility and assisted living residence, by a nurse or nurse aide. Additionally, this act would create employment prohibitions which would not allow a nursing service agency to recruit and /or hire potential employees from a client to which it actively provides services under contract. Also, this act would create annual reporting requirements for certain statistics to the department in order for the department to enforce the provisions of this act.
- 2021 RI H.B. 8137 (NS), introduced April 13, 2022, would allow assisted living facilities ('ALFs') the ability to provide assisted living flex care to better care for individuals whose health care needs progress over time. This act would allow ALFs to provide more intensive medical and skilled nursing care services to residents in the assisted living setting, as their care needs change over time, rather than requiring their transition to a skilled nursing facility when full-time skilled services are required for the resident. It would also remove the forty-five (45) day limitation on medical or skilled care permitted for a resident of an ALF, whose condition may require longer daily skilled care, because of that condition or illness.

#### **Texas**

- 2022 TX REG TEXT 604353 (NS), effective January 6, 2022, 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, HHSC 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.
- 2022 TX REG TEXT 611683 (NS), effective March 28, 2022, adopts on an emergency basis in Title 26, Texas Administrative Code, Chapter 554, Nursing Facility Requirements for Licensure and Medicaid Certification, new s.554.2802. This emergency rule is adopted in response to COVID-19 and requires nursing facilities to take certain actions to reduce the risk of spreading COVID-19. The emergency rule also permits nursing facilities to request temporary increases in capacity and Medicaid bed allocations to aid in preventing the transmission of COVID-19 or caring for residents with COVID-19.

#### **Utah**

2022 UT [S.B. 101](#) (NS), adopted March 23, 2022, creates a license for registered nurse apprentices.

#### **Virginia**



- 2022 VA H.B. 330 (NS), introduced January 12, 2022, would require nursing homes to meet a baseline staffing level based on resident acuity in alignment with the Centers for Medicare and Medicaid Services staffing level recommendations. The bill requires nursing homes to collect and submit to the Department of Health certain data related to staffing. The bill gives the Commissioner of Health the power to impose administrative sanctions on nursing homes and directs the Board of Health to promulgate regulations related to the criteria and procedures for imposition of administrative sanctions or initiation of court proceedings for violations of the bill. The bill provides that nursing homes shall only be subject to administrative sanctions upon initial funding for the state share of the cost to implement the provisions of the bill. The bill establishes the Long-Term Care Services Fund for the purpose of making grants to assist in the provision of activities that protect or improve the quality of care or quality of life for residents, patients, and consumers of long-term care services.
- 2022 VA S.B. 406 (NS), introduced January 12, 2022, would require nursing homes to meet a baseline staffing level based on resident acuity in alignment with the Centers for Medicare and Medicaid Services staffing level recommendations. The bill requires nursing homes to collect and submit to the Department of Health certain data related to staffing. The bill gives the Commissioner of Health the power to impose administrative sanctions on nursing homes and directs the Board of Health to promulgate regulations related to the criteria and procedures for imposition of administrative sanctions or initiation of court proceedings for violations of the bill. The bill provides that nursing homes shall only be subject to administrative sanctions upon initial funding for the state share of the cost to implement the provisions of the bill. The bill establishes the Long-Term Care Services Fund for the purpose of making grants to assist in the provision of activities that protect or improve the quality of care or quality of life for residents, patients, and consumers of long-term care services.
- 2022 VA H.B. 646 (NS), introduced January 12, 2022, 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 2.8 direct care hours provided by a nurse aide per resident, per day; (ii) a minimum of 1.3 direct care hours provided by a registered nurse or licensed practical nurse per resident, per day; and (iii) a minimum of 0.75 hours out of total 4.1 required direct hours provided by a registered nurse per resident, per day. The bill requires nursing homes to provide quarterly staff training on first aid, medication administration, and compliance with nursing home policies and procedures. Additionally, the bill removes language requiring that each hospital, nursing home, and certified nursing facility establish protocols for patient visits from a rabbi, priest, minister, or clergy of any religious denomination or sect during a declared public health emergency related to a communicable disease of public health threat.
- 2022 VA REG TEXT 604650 (NS), effective March 4, 2022, repeals the regulation associated with the Alzheimer's Assisted Living Waiver, which was developed to provide care and support to help aging Virginia residents who have been diagnosed with Alzheimer's disease or other related memory disorders and was ended effective June 30, 2017. Centers for Medicare and Medicaid Services home-and-community based services Final Rule (79 FR 2958 through 79 FR 3039) established new reimbursement criteria with the goal of enabling Medicaid members to receive services in settings that are integrated into the community rather than in skilled nursing facilities.

### Washington

2022 WA REG TEXT 604674 (NS), effective January 1, 2022, increases daily rates for assisted living facilities. SPA 22-0010 is expected to increase the daily rate for assisted living facilities on average by two percent. The weighted average increase is expected to be \$1.70, though this amount will vary based on the comprehensive assessment reporting evaluation classification of each individual client.

### West Virginia

2022 WV H.B. 4257 (NS), adopted March 28, 2022, would amend and reenact [16-39-3](#) and [16-39-8 of the Code of West Virginia, 1931](#), as amended, all relating to requiring visitation of a patient in a health care facility; defining terms; permitting visitation when the patient is stable following a surgical procedure; permitting visitation of a patient by a member of clergy; and establishing parameters for clergy visitation.

## 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.<sup>[FN71]</sup>

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.'



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

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

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

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

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

#### **Background**

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

#### **Proposed Revisions to Arbitration Requirements**

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

- The prohibition on pre-dispute binding arbitration agreements is removed.
- All agreements for binding arbitration must be in plain language.
- If signing the agreement for binding arbitration is a condition of admission into the facility, the language of the agreement must be in plain writing and in the admissions contract.
- The agreement must be explained to the resident and his or her representative in a form and manner they understand, including that it must be in a language they understand.
- The resident must acknowledge that he or she understands the agreement.
- The agreement must not contain any language that prohibits or discourages the resident or anyone else from communicating with federal, state, or local officials, including federal and state surveyors, other federal or state health department employees, or representatives of the State Long-Term Care Ombudsman.
- If a facility resolves a dispute with a resident through arbitration, it must retain a copy of the signed agreement for binding arbitration and the arbitrator's final decision so it can be inspected by CMS or its designee.

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

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

CMS has announced two rules, one proposed and one final, that directly affect nursing homes. <sup>[FN72]</sup> 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**

- 2022 FL S.B. 646 (NS), introduced January 11, 2022, 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.

#### **New York**

- 2021 NY S.B. 1576 (NS), amended/substituted May 17, 2022, 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.



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• 2021 NY S.B. 8285 (NS), introduced February 9, 2022, would direct the commissioner of health to conduct an investigation of the department's performance, compliance and enforcement of applicable state laws, rules, regulations, and directives or executive orders, with respect to mitigating the impact of COVID-19 in nursing homes, adult care facilities, and assisted living residences, and to propose a pandemic response plan for future disease outbreaks.

#### **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. <sup>[FN73]</sup>

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

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

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

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

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

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

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

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

##### **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. <sup>[FN74]</sup> 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. <sup>[FN75]</sup> 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. <sup>[FN76]</sup> 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. <sup>[FN77]</sup> 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**

##### **New York**



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2021 NY A.B. 9532 (NS), introduced March 16, 2022, would direct the commissioner of health to conduct an investigation of the department's performance, compliance and enforcement of applicable state laws, rules, regulations, and directives or executive orders, with respect to mitigating the impact of COVID-19 in nursing homes, adult care facilities, and assisted living residences, and to propose a pandemic response plan for future disease outbreaks.

### Washington

2021 WA H.B. 1645 (NS), introduced January 10, 2022, would relate to Medicaid assisted living payment methodology; amending [RCW 74.39A.032](#) and [70.129.030](#); and creating new sections.

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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).

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