COVID-19 Weekly Industry Updates

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McKnight's SENIOR LIVING
News, perspective and analysis

How CCaH programs are proving their worth during COVID-19

Written by: Amanda Young, MS, CMC

4/20/2020

There are more than 32 continuing care at home, or CCaH, programs throughout the United States, with more than 5,000 members, all of whom are part of the most vulnerable population during this COVID-19 outbreak.

The providers of these programs face the challenges, just as all of the brick-and-mortar continuing care retirement / life plan communities do, of continuing to provide services while keeping those we serve healthy and well. Our "residents," however, whom we call "members," are spread throughout a fairly large geographic region, living mostly independently in their own homes.

Despite these challenges, the programs quickly have developed innovative ways to support their members and continue to market the program to prospective members.

Technology has been central to maintaining operations of these programs through this pandemic. Our members have embraced technology, and programs have been able to have virtual town hall meetings to address concerns and answer questions while educating members on what they should be doing to stay healthy and prevent the spread of COVID-19. Each member has a personal wellness coordinator who also has been reaching out personally to him or her via phone, email, Skype or FaceTime.

The main goal is ensure that every member has the groceries, medications and supplies they need to be safe at home. Programs have been helping members set up delivery of these items as well as going as far as doing the shopping and obtaining supplies themselves so that members do not have to leave their home and risk exposure.

Programs also have been using technology to decrease anxiety and provide a social outlet for members while we are in isolation. Members have enjoyed video-chatting with staff members and other members to share stories and laugh. This not only gives them a connection but also provides the peace of mind knowing that, although we are not sitting in a community close together, they have a community of peers and professionals who cares about them during this uncertain time.

Some members need care services, and the wellness coordination staff members have been making sure there is continuing coverage and that the staff members who are going into someone's home have taken proper precautions. Those members who may be residing in a community or facility at this time are thankful for the staff members who have been working tirelessly to keep them well and healthy and are grateful that a team of caring people surrounds them.

CCaH programs also have been changing the way they market their programs to individuals who may be interested in joining, changing all in-person seminars and one-on-one appointments to webinars and video chats with success. We have been conducting contract-signing via mail or electronic signatures to maintain social distancing while continuing to increase membership and serve these individuals.

COVID-19 has forced changes in the way CCaH programs traditionally have operated, and some newly implemented ideas may continue to be used after this pandemic is over. Regardless of what happens, the members of these programs are able to have peace of mind knowing that they have a team of knowledgeable healthcare professionals available to them 24/7 who have their health and wellness as a top priority.

McKnight's
LONG-TERM CARE NEWS

Visits to Nursing Homes Would be Barred Until Final Phase Under Trump's Reopen Plan

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Written by: Danielle Brown

4/20/2020

On Sunday, as part of phase 1 of the administration's new guidelines for Opening Up America Again, the Centers for Medicare & Medicaid Services recommended reopening healthcare facilities to provide non-COVID healthcare in areas of the country with low and stable incidence of COVID-19.

But visits to nursing homes wouldn't be allowed until the final phase of the Trump administration's three-phase plan to reopen America amid the coronavirus pandemic.

The administration unveiled the economic relief plan late last week, with President Trump saying a "national shutdown is not a sustainable long-term solution."

Under phase one and phase two, the plan recommends that all vulnerable individuals continue to shelter in place. It also prohibits visits to senior living facilities and hospitals. People who interact with nursing home residents must adhere to strict hygiene protocols. Social distancing guidelines would also still be in place.

Not until phase three can vulnerable individuals resume public interactions, along with visits to nursing homes.

In March, the Centers for Medicare & Medicaid Services announced a ban on visitors and non-essential healthcare personnel from nursing homes to combat and limit the spread of COVID-19. The guidance also called for providers to cancel communal dining and all group activities.

Workers returning to facilities

Healthcare workers suspected of having coronavirus can return to work once their symptoms improve and they've tested as COVID-19 negative twice under updated guidance issued by the Centers for Disease Control and Prevention.

The guidance calls on providers to use the test-based strategy before allowing staff members to return work in healthcare settings.

If the test-based strategy can't be used, the guidance requires that workers still be excluded from work until at least three days have passed since their recovery and at least seven days have passed since symptoms first appeared.

For those who haven't developed symptoms, they can return to work10 days after their positive COVID-19 diagnostic test, assuming they haven't subsequently developed symptoms since their positive test.

Once they return to work, all healthcare workers are required to wear a facemask and would be restricted from contact with severely immunocompromised patients. They must also self-monitor for symptoms and seek if any respiratory symptoms recur or worsen.

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Skilled Nursing News

COVID-19 Crisis Reveals Deep Cracks, Conflicting Priorities in Nation's Nursing Home Infrastructure

Written by: Alex Spanko

4/16/2020

Over the course of decades, lawmakers have built a jury-rigged structure to support the American post-acute and long-term care landscape.

At the base, Medicaid supports long-term care residents who can no longer live on their own without around-the-clock care.

Medicare dollars pay for higher-acuity care that seniors require after hospital stays — and prop up insufficient Medicaid reimbursements that can't financially sustain a nursing home on their own.

The federal Centers for Medicare & Medicaid Services (CMS) provides the guy wires of regulation, which tangle with the parallel scaffolding of rules that state and local governments have built up alongside their counterparts in Washington and Baltimore.

To protect themselves from liability and ambitious plaintiffs' attorneys, operators covered up the windows to their offices with complex webs of intertwined ownership and management companies that even veteran journalists have struggled to unravel.

While such legal maneuvering is common and generally accepted in any industry with a significant real estate component, the nature of the clients that nursing homes serve — and the occasional horrific stories of serious lapses in care — made the media and the public deeply suspicious of what exactly was going on behind the curtain.

The vast majority of stakeholders who have contributed to this unwieldy model for providing care to the most vulnerable Americans made their decisions with seniors' best interests at heart — a few more Medicaid dollars here to fortify the foundation, a new Medicare payment model there to fill in the cracks and curb fraud, and everything will be just fine.

Frankly, in "normal" times with no pressing enemy or battle to fight, gradual change and patchwork upgrades were all that the realities of politics and regulatory agencies could allow.

Then the hurricane-force winds of the COVID-19 crisis blew the whole structure down.

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No one paying attention to the news, and watching the rapidly climbing coronavirus death toll at our nation's nursing homes and other long-term care facilities, can be blamed for being angry.

My own blood pressure spikes when I go through my inbox each morning, scrolling past story after story about shortages of protective equipment and temporary morgues in refrigerated trucks.

I think about my great-aunt Gloria, a surrogate grandmother who received top-notch care at a non-profit assisted living and skilled nursing campus in Vernon, Vt. for the last years of her life. I think about how the staff loved her as much as I did, and how her experience showed me that senior care isn't where you go to die — it's where you go to live the best life you can, for as long as your body allows.

I think about the peace I felt after her death in 2012 at the age of 87, knowing that she spent her twilight in comfort, surrounded by caring people who kept her safe.

Then I imagine how things could have been different if she'd been alive today. I think about her every time I see a heart-wrenching story of families who must accept that, because of infection-control precautions, they were unable to be with their loved ones in their final moments. I put myself in their shoes, and I feel the anger and the grief and the frustration.

But I want to make sure that compassionate, comprehensive post-acute and long-term care options exist for future generations of grandmas and aunts and brothers and uncles. As we enter this next phase of the COVID-19 crisis, it's important to direct that anger and grief and frustration at the right targets.

The federal government has taken some positive steps — restricting visits and focusing on infection-control inspections early in the process chief among them. While the industry itself has been out in front of CMS in many aspects, especially around calls for greater transparency about the number of reported cases, these steps reflect some understanding of how serious the situation would get, even before "social distancing" became a nationwide edict.

But the administration's inability to coordinate the distribution of personal protective equipment (PPE) and COVID-19 testing kits represents a profound failure. In the United States, nurses should never have to use garbage bags and ponchos to protect themselves and their patients. In the United States, everyone should be able to receive testing during a pandemic, but CMS and states should have pushed nursing homes to the front of the line at the very first signs of danger.

CMS, the Department of Health and Human Services (HHS), and other federal agencies also must coordinate better with states. As someone who covers the industry every day, it's been both fascinating and troubling to watch as the feds and states develop their parallel COVID-19 responses in real time — an effect perhaps best illustrated by the curious case of Massachusetts and cohorting.

Leaders in the Bay State were among the first to roll out an ambitious plan that would see nursing home operators volunteer certain buildings for COVID-19 cases, emptying them of residents and then converting them to coronavirus specialty centers.

CMS liked the idea so much that on April 2, administrator Seema Verma cited the Massachusetts model when announcing sweeping guidance that directed operators nationwide to create dedicated COVID-19 units and buildings of their own. But less than two weeks later, Massachusetts was forced to heavily modify that plan after long-awaited testing finally revealed more positive cases than officials anticipated.

Clearly, we are in unprecedented times, and well-meaning officials are going to make mistakes as they work to fight an unseen enemy. It's just one example, but it reveals the deep tensions that exist between state and federal oversight of nursing homes, both from a regulatory and payment standpoint.

Operators must rely on the perfect combination of federal Medicare dollars and state-level Medicaid funding to survive. The two care models that those funds support couldn't be more different, but persistent Medicaid shortfalls have made providing both short- and long-term care a necessity.

Without the Medicare money, a building simply can't support itself or its residents on Medicaid alone — but as COVID-19 has revealed, bringing post-acute residents into a setting with even more vulnerable long-term care patients can be a recipe for disaster.

Once the danger passes, lawmakers at all levels need to deeply question the ways that federal and state rules around nursing homes overlap and diverge. Big-picture thinkers have long predicted the development of a site-neutral model, but it's time to seriously consider a single federal payer source for all types of long-term and post-acute care. A split Medicare-Medicaid model, born largely by accident and sustained by inertia, falls apart in a crisis.

I understand that much of this is Monday-morning quarterbacking; leaders in the post-acute and long-term care space should prepare for a lot of that in the months and years to come.

When the coronavirus crisis abates — and operators and caregivers are no longer pleading for access to PPE and testing — my personal hope is that providers, lawmakers, and investors take seriously the opportunity to reflect on the failures baked into the system.

Maybe it's finally time to prioritize across-the-board increases in wages for the people who have spent this crisis putting themselves and their families at risk, even if it's at the expense at profit margins — temporary hazard pay and one-time stipends aren't enough to fairly compensate these essential workers.

Maybe it's finally time to embrace wholesale changes to payment models, instead of perceiving each tweak and update as an attack on the heart of the industry.

Maybe it's finally time to tear down the wall of suspicion and derision that leaders on both sides have built up between the public and nursing home operators.

It's natural for people who have devoted their lives to senior care to feel defensive when the media and resident advocates highlight the horrors of COVID-19.

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I've met so many people throughout my time covering this industry who love the residents in their care as much as the team at the Vernon Homes loved my great-aunt. They'll continue to provide that care, walking into the fire while the rest of us stay home, because that's the work they feel called to perform.

But I hope, deep down, everyone who works in this space uses this crisis as an opportunity to reflect on their role in the landscape — and how they can work to rebuild the structure on a sturdier foundation.

Skilled Nursing News

Multiple States Take Steps to Shield Nursing Homes From Liability Amid COVID-19 — But Rules Vary

Written by: Maggie Flynn

4/19/2020

Health care providers across the continuum have grappled with major challenges in providing care for patients with COVID-19, and several states have taken steps to shield them from lawsuits related to care provided during the national emergency.

Skilled nursing facilities are often included in those liability protections, but the extent to which the protections apply vary from state to state, and there are some key differences in how the states are phrasing their rules.

The patchwork quilt of liability rules is further complicated by local efforts to initiate civil and criminal investigations into nursing homes with significant COVID-19 outbreaks. The mayor of Joliet, Ill., for instance, late last week called on Gov. J.B. Pritzker to launch a state Department of Public Health probe into a facility where 22 residents and one staff member died from the virus.

One state over, Carmel, Ind. mayor Jim Brainard wrote a letter to one nursing home that allegedly refused to perform COVID-19 testing as directed, warning the administrator that they could be charged with negligent homicide if testing was not conducted and residents or staff subsequently died. The administrator, at least according to the mayor's office, eventually complied with the testing directive.

State-by-state variations

The state of New York has become the epicenter of the global COVID-19 outbreak, with 211,550 cases reported as of April 16, according to the Centers for Disease Control and Prevention (CDC). At the beginning of the month, the state took action to grant "qualified immunity" to a range of health care providers, including nursing homes, through the Emergency Disaster Treatment Protection Act included in the state's budget for fiscal year 2021.

The Emergency or Disaster Treatment Protection Act in New York takes steps to protect health care facilities and professionals from liability that could stem from treating COVID-19 patients under conditions related to the public health emergency, according to the act text itself.

This immunity does not extend to harm or damages caused by willful or criminal misconduct or gross negligence, but it will cover harm or damages if they stem "from a resource or staffing shortage."

That exemption tracks with guidance around protective equipment from the Centers of Medicare & Medicaid Services (CMS), which has indicated that it will not punish providers for infection-control issues caused by a lack of adequate supplies. That said, providers will still be on the hook for improper use of supplies such as they are available; the first round of COVID-19 inspections found that 36% of facilities were not following proper hand-washing protocols, while 25% did not demonstrate proper use of personal protective equipment (PPE).

Illinois addressed this issue through an April 1 executive order from Gov. J.B. Pritzker, with a similar stipulation regarding gross negligence or willful misconduct; it covers health care facilities, professionals, and volunteers. Michigan's executive order, issued March 29, protects hospitals and health care workers from liability for taking necessary steps to protect Michigan residents in an emergency, according to a March 29 release.

Other states that used executive orders to address the issue of legal immunity for health care providers include New Jersey and Iowa, according to an April 13 e-mail from Lisa Sanders, a spokeswoman for LeadingAge, which represents non-profit senior housing and care providers.

A letter from the association to Department of Health and Human Services (HHS) Secretary Alex Azar sought clarification on the legal immunity for health care facilities, especially SNFs and assisted living facilities, under the Public Readiness and Emergency Preparedness (PREP) Act and Azar's March 17 Notice of Declaration under the PREP Act for medical countermeasures against COVID-19, she noted.

The letter, dated March 25, sought "an express confirmation" that SNFs and ALFs are considered "covered persons" under both the act and the declaration, as well as a clarification that immunity under both the act and the declaration would extend to circumstances where "covered countermeasures are either scarce or unavailable."

That issue is particularly important given the shortage of tests and PPE, as well as shortfalls in drugs, respirators, and ventilators, LeadingAge argued in the letter.

"In order to support SNFs and ALFs providing treatment to elderly and at-risk individuals afflicted by COVID-19, it is essential that they be shielded from liability and costly litigation due to shortages beyond their control," the letter said.

There are other states that have laws providing immunity for providers when the governor declares an emergency; Sanders identified these as Indiana, Louisiana, Maryland, and Virginia in the April 13 email.

LeadingAge Connecticut, the Connecticut Association of Health Care Facilities (CAHCF), and the Connecticut Association for Healthcare at Home jointly sent a letter to Robert Clark, the general counsel of the office of the

governor, requesting clarifying provisions to ensure that immunity language submitted by the Connecticut Hospital Association could include their respective fields; the letter, provided by Sanders, was undated.

SNF associations in other states have requested immunity for care provided during the COVID-19 emergency; the Florida Health Care Association sent a letter to Gov. Ron DeSantis on April 3 requesting liability immunity for "any health care facility or health care professional" providing services in the emergency and in good faith.

A spokeswoman for the FHCA said that as of April 17, there was no response from DeSantis' office on the issue.

In Washington and Pennsylvania, provider associations have also requested legal immunity as they battle COVID-19. In both cases, the letters mentioned shortages of PPE, and in the case of the Washington state letter, the bevy of providers writing cited the shortage of PPE as an area of potential civil liability – even though the equipment is being reused and conserved in accordance with guidelines from the CDC and the Washington State Department of Health.

In an April 15 statement, the American Health Care Association (AHCA) — which represents thousands of nursing homes and assisted living providers — pointed out that the recent coronavirus stimulus bill does include some additional federal liability protection for volunteer health care workers during the COVID-19 emergency. It also pointed out the PREP Act immunity protections, noting that Secretary Azar issued a letter in March calling on state governors to protect health care professionals from medical liability.

But those measures do not go far enough to provide sufficient legal protection, AHCA added.

"We encourage every state to extend sovereign immunity provisions to the long-term care providers and other health care sectors associated with care provided during the COVID-19 pandemic," the association said.

Documenting everything

Perhaps an example of the different nuances is highlighted by a recent executive order from Georgia Gov. Brian Kemp, which would limit the liability of employees, staff, and contractors at health care institutions and medical facilities during the COVID-19 emergency, according to a client alert from the law firm Arnall Golden Gregory (AGG) published on April 16.

While this order, like the others, excludes liability immunity for damage or injury caused by willful misconduct, gross negligence, or bad faith, it is notable in that it does not restrict the protection to COVID-19-related treatment or care, AGG noted.

It also does not affirmatively protect the legal entity providing the health care service, though it does protect the staff, Hedy Rubinger, one of the authors of the alert and a partner at AGG, told Skilled Nursing News in an April 16 interview.

"It's maybe implied, but the way it's drafted, it is unclear as to whether it provides protection to the legal entity that holds the license, whether that be a SNF, an ALF, a hospital," she explained.

That makes it essential for SNFs to document every step they take in providing care if it deviates in any way from the standard practice — as well the reasons for doing so, according to AGG.

Another reason that documentation is so crucial is the fluidity of the guidance SNFs need to follow, Rubinger said. Keeping contemporaneous documents of what they do and why can help SNFs when they — or another party — is looking back at what happened in March through the lens of what's now known April, she said.

Some examples of practices that should be documented include the SNF's optimization or redistribution of staffing, isolation measures for residents who don't have COVID-19, the use of cloth masks, and the optimization of PPE, Rubinger told SNN in a follow-up email on April 16.

PPE is a particularly crucial area. As providers try address staffing challenges and shortages of masks and gowns, they need to be prepared for those challenges to feature prominently in future litigation, as Christy Tosh Crider, chair of the health care litigation group at the law firm Baker Donelson, noted on a recent webinar.

Rubinger also pointed to securing PPE as an example, highlighting it as a key area of documentation — and one that could get easily overlooked as the number of COVID-19 cases in long-term care facilities continues to mount.

"We've been trying to get them to keep records, also, to really document [the difficulty] and what they're doing in terms of outreach for COVID testing, PPE," Rubinger explained. "In most of our clients, it's all-hands-on-deck trying to work within the supply chain. And when the president of a company is working on that, it's not necessarily documented. They're not typically documenting what they're working on — they're just doing."

McKnight's SENIOR LIVING
News, perspective and analysis

Pandemic Putting Pressure on Seniors Housing: Marcus & Millichap

Written by: Amy Novotney

4/14/2020

The senior living industry may be one of the hardest hit by the coronavirus pandemic, yet with operators well suited to manage infectious diseases, and the strength of the seniors housing market before the virus, the industry has continued to maintain operations despite numerous COVID-19 challenges, according to a report released last week by Marcus & Millichap.

Independent living communities may be the least exposed to disruption, the authors said, because their residents tend to be younger and require less help. Overbuilding continues to be a concern for this sector, however, and likely will lead to delays on many construction projects until next year.

Assisted living environments have suffered several coronavirus outbreaks, increasing costs for labor and supplies, the report noted. Construction delays, however, could keep occupancies high and demand strong for existing communities.

Memory care communities face challenges in keeping residents safe from COVID-19 but may be best positioned to withstand an economic downturn, due to the specialized care they offer, according to the report. In the near term, however, occupancy could decline as the pace of tours and move-ins slows.

Skilled nursing facilities have experienced increasing infections and shortages of personal protective equipment, as well as the challenge of housing residents and patients who need around-the-clock medical care. Greater equipment and infrastructure, however, are helping skilled nursing stay better prepared during the COVID-19 pandemic than other senior housing and care types. The report authors said they believe nursing homes will see higher occupancy near term.

In the end, the authors note, strong investor sentiment likely will help the sector survive pandemic-related challenges.

“Sales volume over the previous 12-month period was up 18 percent from the prior stretch, lifted by healthy investor perceptions and attractive acquisition targets,” the report said. “REITs are eyeing new construction as large portfolio deals have slowed in the market, while private buyers now comprise a greater share of deal flow.”

SENIOR LIVING NEWS®
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Empower Equity Announces $2 Billion in Funding to Provide Critical Equipment Capital During COVID-19

4/18/2020

Empower Equity (EMPEQ), a service-disabled veteran-led fintech company focused on delivering equipment and project financing for commercial and industrial buildings, has broadened its portfolio with over $2 billion in available funding. With this fund, EMPEQ can provide immediate financing, ranging from $10,000 to $10 million, for small- to mid-sized organizations to upgrade their essential building equipment—such as HVAC systems, chillers, and boilers—with new systems. This funding is designed to help companies critical to the fight against the Coronavirus keep their buildings and equipment operational, preserve capital amidst the current economic

slowdown from COVID-19 and to cover the gap between their true need and the government stimulus they will receive.

Former US Marine, Herbert Dwyer, CEO of EMPEQ, co-founder of the service-disabled veteran owned and led company said, “We deeply understand and share in the concerns that business owners and building managers are facing in these unprecedented times, and are eager to help ease that burden in as many cases as we can. This funding is our way of helping companies and building owners optimize cashflow and ensure business continuity. It will also provide much needed work for professionals installing HVACR, lighting, and other equipment.”

With the developing situation in mind, the funding will prioritize businesses classified as essential in the fight against the pandemic, including hospitals, medical facilities, pharmacies, telecommunication providers, long-term care, and banks. EMPEQ will also accept applications from nonessential business owners looking for help to ease financial challenges stemming from COVID-19. While the CARES ACT is focused on providing essential working capital, and is flooded with requests, already exceeding initial expectations, EMPEQ has alternative private sources.

EMPEQ is uniquely positioned to help organizations struggling with the current business climate through its program, designed to fund projects faster than other companies. The suite of online tools developed to expedite the application can be completed in less than 5 minutes.

Businesses and building owners who can’t find the money in their budget for critical equipment—or are unable to get the funds from the stimulus package, can get their desired upgrade at no upfront cost and with no adverse effect on their balance sheet.

In one instance recently, the owner of a multi-unit housing complex in upstate New York had already decided to replace an outdated HVAC system in his complex with a newer, energy-efficient system, but he hesitated to pay upfront due to the economic uncertainty. After filling out the online application, EMPEQ quickly approved the $85,000 loan to pay for the new HVAC system in full, freeing up the owner’s cashflow. The new program is to help Small Business Owners keep operations running during the difficult times ahead.

According to a recent report from the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), improved airflow and recycling capabilities in HVAC systems can reduce airborne transmission of infectious diseases by diluting and removing the infectious agents from the area. For this reason, several leading industry experts are predicting a renewed emphasis on replacing HVAC systems in a wide variety of commercial buildings in the next year.

Incorporated in 2016, EMPEQ is changing the way commercial and industrial buildings finance their critical energy equipment and infrastructure projects. EMPEQ is a financial technology (Fintech) company that utilizes technology to provide small- and mid-size businesses, nonprofits, and municipalities easy to use and simple to understand finance options and tools for HVAC commercial contractors to close more deals, faster. EMPEQ deploys traditional financing as well as its unique subscription model.