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Trials & Errors Safety Seminar 2021

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Today

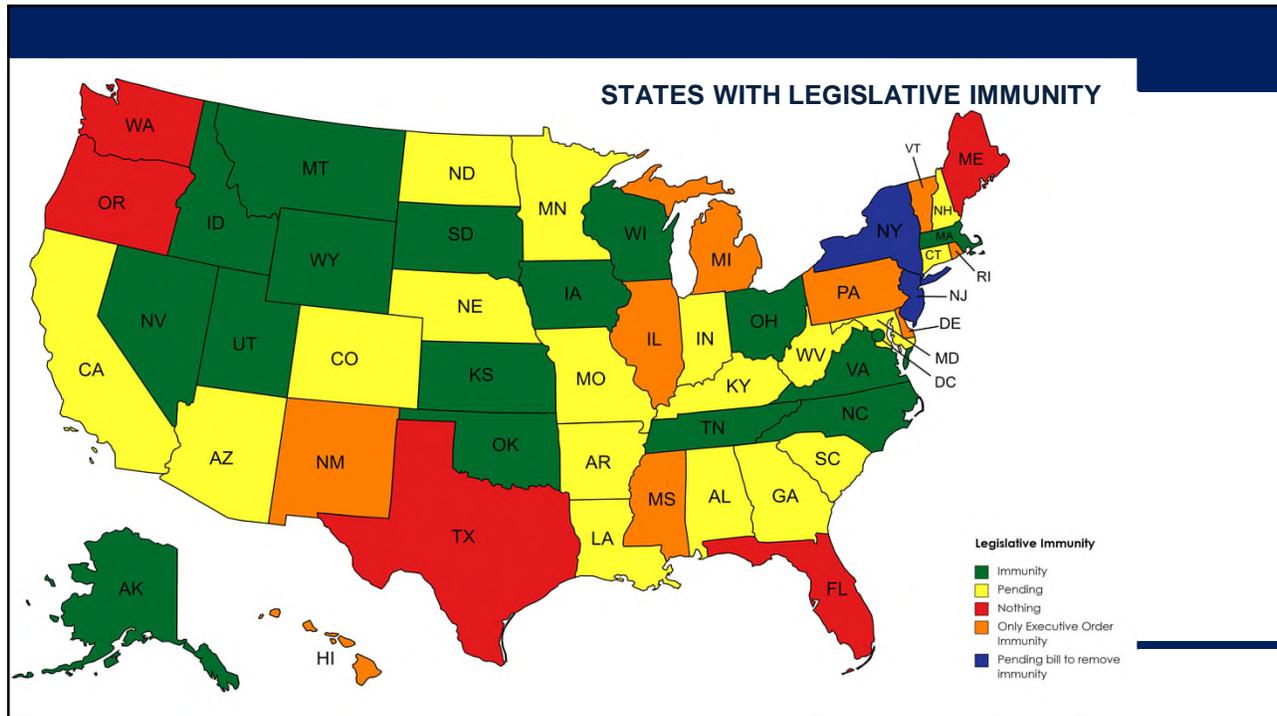
- COVID – 19
 - Litigation Update
 - Liability Theories
 - Enhancing COVID-19 Claim Defensibility
 - Vaccines
- Overview of Iowa LTC Law
- General Liability
- LTC Professional Liability Verdicts
 - Nationwide
 - Iowa
- Professional Liability Case Studies



COVID - 19

Litigation Update
Liability Theories
Preparing to Defend a COVID-19 Claim
Vaccines





Answers!

- Everyone wants answers
- Won't be answers for a very long time
- FL Tort Reform
 - Passed 2001
 - Overturned 2012

Defending Cases on Their Merits

- Plaintiff still must prove their case
- Negligence
- Causation
- Damages

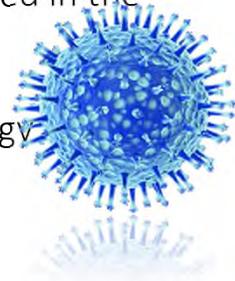
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Covid Related Coverage Issues

- Messy coverage issues unless there is clear COVID coverage
- Many different forms and policy language are being used in the industry
- Multi-line insurance companies perspective and strategy



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COVID -19 Liability Theories

Initial Theories
Not Exhaustive
Will Evolve



COVID -19 Liability Theories

- Failed to develop appropriate infection control and prevention policies and procedures;
- Failed to develop and implement COVID-19 isolation and infection control and prevention procedures that were specifically tailored to Facility;
- Failed to implement appropriate interventions related to infection control and prevention;
- Failed to screen all residents for COVID-19 symptoms and elevated temperature, heart rate, respirations, and pulse oximetry;
- Negligently instructed one or more members of the Defendant's nursing staff to continue to come into Facility and provide direct care to elderly residents;
- Failed to frequently obtain vitals for all residents for signs/symptoms of respiratory distress, fever, cough, all of which are known signs/symptoms of COVID-19;
- Failed to timely isolate residents suspected and/or symptomatic of COVID-19 from the general resident population;
- Failed to provide, maintain, monitor and/or employ standard contact and droplet precautions and PPE;



COVID -19 Liability Theories

- Failed to ensure sufficient levels of staff to provide skilled nursing care and treatment to all residents in accordance with their care plans;
- Failed to ensure sufficient levels of staff to limit the nursing staff caring and/or assigned to positive or symptomatic residents from providing any care to negative or asymptomatic residents;
- Failed to provide positive or symptomatic patients with surgical masks and other protective interventions to help reduce transmission;
- Failed to immediately isolate residents identified with symptoms of fever and lower respiratory illness, including, but not limited to cough, shortness of breath, and sore throat;
- Failed to maintain isolation protocols for residents identified with symptoms of fever and lower respiratory illness up to and until staff obtained a physician order that discontinued isolation protocol;
- Failed to provide all resident services, including, but not limited to meals, physical and occupational therapy, social service activities, and personal hygiene in residents' designated rooms with the door closed for both suspected and confirmed COVID-19 residents, and/or any resident displaying acute respiratory symptoms;
- Failed to disinfect frequently touched surfaces at a minimum of every two hours with EPA registered and approved products;

COVID -19 Liability Theories

- Failed to adhere to, and/or have in place, cleaning and disinfection policies and procedures;
- Failed to purchase, provide, maintain, monitor and/or employ adequate PPE;
- Failed to limit access to the Facility to any and all individuals that were not essential employees and/or nursing staff personnel;
- Failed to ensure adequate levels of hand hygiene, hand washing, and/or alcohol-based hand disinfectant products/equipment;
- Failed to provide alcohol-based hand disinfectant/hygiene products both inside and outside of residents' rooms at all entrances, and throughout any and all clinical areas;
- Failed to provide appropriate and sufficient levels of nursing staff to meet the daily needs of its' residents;
- Failed to take appropriate action after residents displayed and/or complained of symptoms of fever and lower respiratory illness, including, but not limited to cough, shortness of breath, and sore throat;
- Negligently accepted new admissions and/or re-admissions of residents that were symptomatic and/or tested positive for COVID-19;

COVID -19 Liability Theories

- Negligently co-horted suspected and/or positive COVID-19 residents with (at the time) non-COVID-19 residents;
- Failed to test residents for COVID-19 despite their presentation and complaints of COVID-19 symptoms, including, but not limited to, fever, cough, general but articulable malaise, and shortness of breath, intentionally, recklessly and/or repeatedly failed to test residents for COVID-19;
- Failed to communicate to residents' physician the need to test residents for COVID-19 after they presented with, and complained of, COVID-19 symptoms, including, but not limited to, fever, cough, general but articulable malaise, and shortness of breath;
- Failed to maintain sufficient nursing staff to provide nursing and related services to attain or maintain residents' highest practicable physical, mental, and psychosocial wellbeing as determined by residents' assessments and individual plans of care;
- Failed to operate and provide services in compliance with all applicable professional standards in ways including, but not limited to, maintaining adequate documentation in residents' clinical record; and
- Failed to promote care for residents in a manner and in an environment that maintains or enhances each residents' dignity and respect.



The FCA's Worthless Services Doctrine - A Possible COVID-19 Liability Theory



April 16, 2021
Health Law Weekly

The FCA's Worthless Services Doctrine: A Possible COVID-19 Liability Mechanism

This Featured Article is contributed by AHLA's Health Care Liability and Litigation Practice Group

April 16, 2021

Robert Noveck, Deputy Attorney General, Indiana Attorney General's Health Fraud Center (2021) 0411



Health care providers are typically insured for liability and litigation on quality of care issues (i.e., allegations of substandard care and/or poor health care) and not with administrative lawmaking, rulemaking or health care enforcement. However, creation of new, public, and political forces could shift quality of care to focus on broader enforcement issues. Under the FCA's worthless services doctrine, the FCA's enforcement...

The COVID-19 pandemic has taken a toll on all of us. It is probably safe to say that America's seniors living in long-term care (LTC) facilities... (1) While the courts rarely use the public disclosure or availability of information to establish liability, which they have done, and to raise a reasonable... liability for improper and health care services by health care providers, including LTC facilities, during the entirety of the pandemic... (2) The law does not prohibit the federal government from using... With the increasing focus on enforcement and... courts generally agree... (3) The law does not prohibit the federal government from using... With the increasing focus on enforcement and... courts generally agree... (4) The law does not prohibit the federal government from using... With the increasing focus on enforcement and... courts generally agree...

This article begins with a brief primer on the FCA and identifies one of the most health care fraud allegations. The article then outlines the case law and highlights recent enforcement precedents on the worthless services doctrine. Finally, this article focuses on possible COVID-19 related FCA enforcement actions based on the worthless services doctrine.

It is believed that the Biden Administration will increase enforcement measures;

LTC facilities could find themselves the target of largescale FCA investigations and incur liability under the **worthless services doctrine**.



FCA Primer

- Also known as Lincoln’s law, the FCA was enacted in 1863 and “was originally aimed principally at stopping massive frauds perpetrated by large contractors during the Civil War.”
- Congress responded by enacting the FCA, which contained provisions for imposing civil and criminal liability for fraud perpetrated on the government and subjecting fraudsters to double damages, among other penalties.
- FCA imposes liability on those **knowingly** presenting false or fraudulent claims to the government for approval or payment.
- Congress defined “knowing” and “knowingly” to mean that a person acts with actual knowledge of a claim’s falsity, acts in deliberate ignorance of a claim’s truth or falsity, or acts in reckless disregard of a claim’s truth or falsity, and **does not require proof of specific intent** to defraud.
- Today, an FCA conviction results in treble damages, plus civil penalties between \$11,665 to \$23,330 per false claim submitted. Most important to health care providers, a conviction can result in exclusion from all federal health care programs.
- In 2020—a slow year—the U.S. Department of Justice (DOJ) recovered more than \$1.8 billion under the FCA from health care related matters.
- FCA enforcement action following common theories of liability: claims for medically unnecessary services, upcoding claims, or claims tainted by violations of the Stark Law and/or the Anti-Kickback Statute. FCA claims related to LTC quality of care during the COVID-19 pandemic do not fit neatly within any of these more common theories of liability.

Worthless Services Doctrine

- The **worthless services doctrine** is premised on the idea that a defendant received reimbursement from the government for products or services that were worthless, meaning they lack any medical value.
- The performance of the service is so deficient that for all practical purposes it is the equivalent of no performance at all.
- A defendant seeks “federal reimbursement for a procedure with no medical value.
- “Medical value” in a worthless services claim can be measured by **determining a defendant’s compliance with federal statutes and regulations** intended to ensure value in the services provided.
- The federal government has gone to great lengths to ensure value in the services provided by LTC facilities that the government reimburses.
- For example, an LTC facility “must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident,” and is required to “provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident’s comprehensive assessment and plan of care.”
- In theory, an LTC facility that fails to care for its residents in a way that promotes their quality of life is liable under the worthless services doctrine.

Worthless Services Doctrine (Cont.)

- In 2019, the DOJ announced a settlement with LTC facility operator Vanguard Healthcare, LLC, and its related entities. Vanguard agreed to pay more than \$18 million to resolve claims that it billed Medicare and Tennessee Medicaid for grossly substandard nursing home services.
- Owner and CEO agreed to pay \$250,000 as part of the settlement—consistent with the DOJ’s mandate to prosecute individuals responsible for corporate misconduct.
- In its complaint against Vanguard, the governments alleged that five Vanguard facilities:
 - failed to administer **medications** as prescribed;
 - failed to provide standard **infection control**, resulting in urinary tract infections and wound infections;
 - failed to provide **wound care** as ordered;
 - failed to take prophylactic measures to **prevent pressure ulcers**, such as repositioning and turning;
 - used unnecessary physical restraints on residents; and
 - failed to meet basic nutrition and hygiene requirements of residents.
- Vanguard also agreed to enter into a chain-wide, quality of care Corporate Integrity Agreement (CIA).
- In addition to the Vanguard settlement, the federal government has also secured FCA recoveries based on the **worthless services** doctrine from LTC facilities in Texas, Kentucky, Mississippi, and another in Tennessee.



Sava Senior Care LLC Agreed to Pay \$11.2 Million to Resolve False Claims Act Allegations

- **Allegations Include Medically Unnecessary Rehabilitation Therapy Services and Grossly Substandard Skilled Nursing Services**
- SavaSeniorCare LLC and related entities (Sava), based in Georgia, have agreed to pay \$11.2 million, plus additional amounts if certain financial contingencies occur, to resolve allegations that Sava **violated the False Claims Act** by causing its skilled nursing facilities (SNFs) to bill the Medicare program for rehabilitation therapy services that were not reasonable, necessary or skilled, and to resolve allegations that Sava **billed the Medicare and Medicaid programs for grossly substandard skilled nursing services**.
- Resolves allegations that between January 2008 and December 2018, Sava knowingly submitted false claims for payment to Medicare and Medicaid for grossly and materially substandard and/or **worthless skilled nursing services**.
- The government also alleged that in certain skilled nursing facilities, Sava failed to follow appropriate **pressure ulcer protocols** and appropriate **falls protocols**, and failed to **appropriately administer medications** to some of the residents.



Possible COVID-19–Related FCA Enforcement

- Likely the most cost-effective manner for the DOJ to identify investigation targets is to determine which LTC facilities sustained large-scale COVID-19 outbreaks by combing Centers for Medicare & Medicaid Services (CMS) or state COVID-19 nursing home data dashboards.
- Once those facilities are identified, investigators can build a case by compiling evidence from state-level health department and CMS survey reports..

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INFECTION CONTROL

Facilities should be in the most serious and the most ongoing. Not all are properly staffed. Infection control is a key factor for the COVID-19 pandemic. The national regulatory monitoring agency (CMS) is reporting on long-term care facilities. Regulatory (CMS) data from within the pandemic, LTC facilities were required to maintain infection prevention and control programs designed to prevent or minimize the spread of COVID-19 and other respiratory viruses. The program requires, in addition, several infection control measures:

- a written system of surveillance designed to identify infections before they can spread;
- written transmission-based precautions to be followed to prevent the spread of infections;
- plan for when and how isolation should be used for a resident; written hand hygiene procedures to be followed by staff involved in direct resident contact; and
- at least one designated and professionally trained infection preventionist.

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Possible COVID-19–Related FCA Enforcement

Infection Control

- Even before the pandemic, LTC facilities were required to maintain an infection prevention and control program.
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Possible COVID-19–Related FCA Enforcement

- Infection Control (Cont.)
- The COVID-19 pandemic brought on new infection control reporting and testing requirements for LTC facilities. LTC facilities now must submit—no less than weekly—an electronic report to the HHS Secretary that includes:
 - suspected and confirmed COVID-19 infections among residents and staff;
 - total deaths and COVID-19 deaths among residents and staff;
 - personal protective equipment and hand hygiene supplies in the facility;
 - ventilator capacity and supplies; and
 - staffing shortages.
- Take actions to prevent transmission of anyone identified as symptomatic or who tests positive for COVID-19.
- The government will likely look for CMS and state health department survey reports dated either just before or just after a large outbreak and identify any infection control violations noted by the surveyors. The government’s argument would be fairly straightforward: a LTC facility’s failure to adhere to specific infection control regulations—especially during a viral pandemic particularly lethal among the elderly—rendered all services provided within the facility completely worthless; in fact, the LTC facility’s inadequate care directly led to the deaths of one or more residents.

Possible COVID-19–Related FCA Enforcement

- Adequate Staffing Levels
- LTC facilities are required to have sufficient nursing staff with appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.
- Government will aim to prove that a LTC facility, or chain of facilities, was systematically understaffed before the pandemic, which led to problems when COVID-19 began spreading.
- This type of investigation would likely require more than a review of CMS survey reports, primarily interviews of residents, staff, administrators, and even executives.

Comments

- Although LTC facilities may be granted protection from various state liability shields, they are not safeguarded from federal investigations.
- We must continue to retain evidence of any valuable services provided during COVID-19 outbreaks within our facilities to defend against claims of worthless services.
- LTC facilities should continue to place an extreme emphasis on compliance with federal regulations—especially those for infection control, respiratory care, and adequate staffing levels.



Enhancing COVID Claim Defensibility



COVID-19 Response File

- Items to record and/or copy
- Enables you to demonstrate the actions taken, **when they were taken**, and **how they continue to be taken** in response to the pandemic
- Identify these documents as “Do Not Destroy” in your record retention policy
- Organizations may choose to do this under **privilege (QA or Attorney Client Work Product.)**
- Please consult your corporate **counsel and leadership to evaluate best approach for your organization.**

What Documents?

- Infection Prevention policy
- **All screening documents of any kind (residents, staff, visitors, vendors, contractors)**
- Letters to families/representatives
- **Letters, social media posts, emails from family & staff**
- Recruiting efforts
- **Training on infection control records**
- **Auditing / Monitoring of PPE usage compliance**

And....

- Employee screening policy
 - Retain each version, **and** references used to update / revise
- PPE efforts
 - Successful and unsuccessful
 - Written and verbal
 - Document all calls – when, with whom, request, response, follow-up
- Website updates (NHSN)
- Notifications for positive cases

Resident Specific Documentation

- Vital signs
- Notification to local health department
- Notification to the resident's representative and physician
- Telemedicine visits
- Written, verbal or emailed/texted communications
 - HIPAA remains the law relative to PHI

Timeline

Critical to maintaining an accurate record of events

The “standard of care” is defined as the **generally accepted procedures and practices employed by medical professionals to treat patients suffering from a specific disorder or illness.**

Typically changes over time, during the pandemic, changing in some cases, overnight



Things to Consider – Timeline Protocols

- When restrictions were implemented/lifted
- **Assessments being performed**
- Screening procedures implemented
- **Testing**
- Communication
- **Positive cases**
- Opening/closing of COVID dedicated unit
- **Cohorting decisions**



Things to Consider – Timeline

- First Positive Resident
- First positive staff case
- First positive admission
- When state closed schools
- When state reopened schools
- State issued stay at home order
- State loosened stay at home order
- Stay at home order lifted

Things to Consider - Timeline

- First positive in county
- Agency/supplemental staff introduced
- Agency/supplemental staff discontinued
- CMS Phase 2 begun
- CMS Phase 3 begun

What Documents?

HealthCap

- Infection Prevention policy
- All screening documents of any kind (residents, staff, visitors, vendors, contractors)
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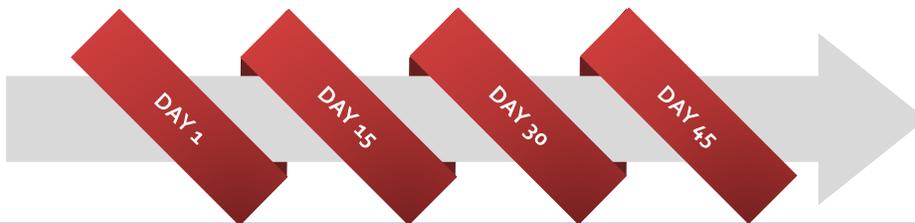
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Timeline

- Critical to maintaining an accurate record of events HealthCap
- The "standard of care" is defined as the **generally accepted procedures and practices employed by medical professionals to treat patients suffering from a specific disorder or illness.**
-
- Typically changes over time, during the pandemic, could change overnight



Timeline Protocols

- When restrictions were implemented/lifted
- Assessments being performed
- Screening procedures implemented
- Testing
- Communication
- Positive cases
- Opening/closing of COVID dedicated unit
- Cohorting decisions

Timeline

- First resident testing positive
- First staff member testing positive
- First new admission testing positive
- When state closed schools
- When state reopened schools
- State issued stay at home order
- State loosened stay at home order
- Stay at home order lifted

Timeline

- First positive case in county
- Agency/supplemental staff introduced
- Agency/supplemental staff discontinued
- Initiated CMS Phase 2
- Initiated CMS Phase 3

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COVID-19 - Vaccines

Pro's and Con's of Mandating the COVID-19 Vaccine

Pro's and Con's of Mandating the COVID-19 Vaccine

Senior living providers are well positioned to vaccinate residents, and are hopeful that this will provide much needed help in their fight to keep their residents safe and care. In fact, a newly released report from the CDC shows that 37.5% of staff members have received the vaccine.

Many of our senior living clients are going to great lengths and coming up with creative ways to encourage staff to participate. However, as vaccine hesitancy remains a real hurdle, and amid concerns that some vaccinated residents that they may want to be vaccinated staff, some clients are considering mandating that staff be vaccinated. To help with your analysis of this issue, we brought together a brief overview of the pros and cons of mandating the COVID-19 vaccine for your staff.

Can An Employer Mandate Employees Be Vaccinated Against The COVID-19 Virus?

While the legal analysis associated with a mandate to COVID-19 is complex, the general consensus is that an employer can require employees to be vaccinated for the COVID-19 virus. However, under Title VII of the Civil Rights Act of 1964 (Title VII), an employer may be prohibited in an exemption of the employee has a sincerely held religious belief or practice that prevents them from receiving the COVID-19 vaccine. Additionally, the Americans with Disabilities Act (ADA), restricts an employer to an exemption if the employee has a disability that prevents them from safely receiving the COVID-19 vaccine.

If an employee refuses to get the vaccine, the employer should inquire into whether or not the employee is entitled to an accommodation under Title VII or the ADA before making a decision regarding the employee's continued employment.

Can an employer require only certain employees get the COVID-19 vaccine?

An employer may differentiate based on an exemption for other employees to get the vaccine. For example, a Senior Living provider may consider mandating the vaccine only for the staff that interact with residents, especially those responsible for monitoring and recording any feedback or complaints, e.g., all employees over a certain age may be vaccinated. While the science supports the belief that older individuals are at greater risk from the COVID-19 virus, having a mandatory vaccine policy on age could expose an employer to an age discrimination claim. Accordingly, employers must take care to use any mandatory vaccine policy on an exempting which employees will be required to get the COVID-19 vaccine.

Can an Employer Mandate the Vaccine?

Generally, the answer is yes, an employer can mandate the vaccine;

Are their exceptions?

- Religious Beliefs
- ADA
- Governors in six states – [Arizona](#), [Florida](#), [Idaho](#), [Montana](#), [Texas](#) and [South Dakota](#) – have issued executive orders prohibiting vaccine passports/requirements in some regard.



COVID-19 Vaccinations: EEO Overview

U.S. Equal Employment Opportunity Commission

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Document and Brochure | Updated on May 14, 2021

INTRODUCTION

- The EEOC oversees federal anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (Rehab Act). The EEOC also enforces state and local laws that prohibit discrimination on the basis of race, color, sex, age, religion, national origin, and genetic information. The EEOC also enforces state and local laws that prohibit discrimination on the basis of sex, age, religion, national origin, and genetic information.
- The ADA and the Rehab Act apply to private employers with 15 or more employees, to state and local government agencies, and to other entities. All state and local government agencies are covered by the ADA and the Rehab Act. For more information, see the EEOC's [ADA and the Rehab Act](#) technical assistance document.
- The EEOC, including the ADA and the Rehab Act, oversees and enforces the laws of the COVID-19 pandemic, including the CDC's [state and local public health orders](#) and the [EEOC's guidance on COVID-19 public health orders](#). [www.eeoc.gov/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws](#)

"Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety."

COVID-19 Vaccinations: EEO Overview

K.1. Under the ADA, Title VII, and other federal employment nondiscrimination laws, may an employer require all employees physically entering the workplace to be vaccinated for COVID-19? (5/28/21)

The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the [reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below](#). These principles apply if an employee gets the vaccine in the community or from the employer.

In some circumstances, Title VII and the ADA require an employer to provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, practice, or observance, do not get vaccinated for COVID-19, unless providing an accommodation would pose an undue hardship on the operation of the employer's business. The analysis for undue hardship depends on whether the accommodation is for a disability (including pregnancy-related conditions that constitute a disability) (see K.6) or for religion (see K.12).

As with any employment policy, employers that have a vaccine requirement may need to respond to allegations that the requirement has a disparate impact on—or disproportionately excludes—employees based on their race, color, religion, sex, or national origin under Title VII (or age under the Age Discrimination in Employment Act (40+)). Employers should keep in mind that because some individuals or demographic groups may face greater barriers to receiving a COVID-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement.

It would also be unlawful to apply a vaccination requirement to employees in a way that treats employees differently based on disability, race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age, or genetic information, unless there is a legitimate non-discriminatory reason.

The EEOC clarified its stance, stating that **"federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19," as long as employers allow for reasonable accommodation of their vaccine mandate for medical or religious reasons.** Like all requests for accommodation, employers may avail themselves of the "undue hardship" exception for denying an employee's request for accommodation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>



EEOC Says Employers Can Mandate COVID-19 Vaccines, but Tread Carefully...

Key Highlights of the EEOC's Guidance Include:

- From the EEOC's perspective, a mandatory COVID-19 vaccination program is permissible if it is job-related and consistent with business necessity based on safety concerns arising from COVID-19.
- Employers must engage in the interactive process with employees who seek reasonable accommodation to the mandatory vaccination. Reasonable accommodations may include: requiring an unvaccinated employee to wear a face mask or work at a social distance from coworkers or non-employees, working a modified shift, remote or telework, or accepting a reassignment.
- If an employee cannot get vaccinated because of a disability or religious belief, the employer may not require vaccination for that employee unless the employer can demonstrate that the employee would pose a "direct threat" to the health or safety of the workplace.
- Employers should ask only for vaccination status.
- Documentation or other confirmation of COVID-19 vaccination status is confidential medical information, and it must be kept confidential and stored separately from the employee's personnel files.
- Employers may offer incentives (both reward and penalty) to employees for voluntarily receiving a vaccination.

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EEOC Says Employers Can Mandate COVID-19 Vaccines, but...

What should employers do now?

- *Take Stock:* Consider whether a vaccination program is appropriate for your business needs in light of the risks.
- *Continue to Educate Employees on Vaccines:* If you haven't already, consider providing employees with access to state and federal government websites that discuss the benefits, risks and logistics of vaccinations.
- *Incentivize Carefully:* Consider tailored, business-specific minimal incentive programs that remove hurdles to vaccination for employees who choose to get vaccinated while avoiding penalizing employees who opt out for medical or religious reasons.
- *Notify Employees of the Reasonable Accommodation Process:* Communicate to your employees in writing that you will consider requests for reasonable accommodation for exemptions from the mandatory vaccination program.
- *Safeguard Employee Confidential Vaccination Status Data:* Ensure that information relating to employees' vaccination status is maintained in separate confidential files.
- *Monitor OSHA Guidance:* As of the date of publication, OSHA still has not issued guidance suggesting a vaccine is required for a safe working environment. OSHA will likely update its guidance soon based on the CDC's updated guidance.
- *Stay Tuned:* This is a rapidly evolving area where federal and state guidance seems to change by the day.

https://www.lanepowell.com/Our-Insights/225935/EEOC-Says-Employers-Can-Mandate-COVID-19-Vaccines-But-Tread-Carefully?mkt_tok=NDU0LVV5Syo1MDEAAAF9cGgGhTicyDIM03YDJA64deOszonH4sD6nLefu5NIB3Hh6Gkoajks7yFoy5oRtB3tmCZAEHrgeOBzF6KXzZguOCIAQM

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States Are Banning COVID-19 Vaccine Requirements



- Attempts to ban COVID-19 vaccine requirements are common among states. Overall, at least 32 bills have been introduced across 25 states that "would limit mandatory COVID-19 vaccines for students, employees or generally."
- Multiple State Governors "have issued executive orders prohibiting vaccine passports/requirements in some regard."
- The ban on requirements related to employment has some exceptions, including state-owned medical facilities, nursing homes, and long-term care facilities.
- Some states are going the other way on COVID-19 vaccine requirements. At least two – Hawaii and New York – have considered legislation "that would support or allow the use of coronavirus vaccine records or 'passports' in some capacity."

<https://www.usnews.com/news/best-states/articles/2021-04-30/these-states-are-banning-covid-19-vaccine-requirements>



Pro's and Con's of Mandating the COVID-19 Vaccine

Can an Employer who mandates employees receive a COVID-19 vaccine be sued by an employee or their family if the employee has (or claims to have had) an adverse reaction to the vaccine?

Pro's and Con's of Mandating the COVID-19 Vaccine

Can An Employer Who Mandates Employees Receive A COVID-19 As A Condition Of Employment Be Sued By An Employee Who Claims They Suffered An Adverse Reaction To The Vaccine?

The simple answer, yes. We have all heard about friction burn. In 1976 Richard Goodson of Alcoa was sued for failing to warn workers about the dangers of friction burn. He was later found liable for \$1.5 million in damages. The friction burn was caused by the use of a hand saw. The friction burn was caused by the use of a hand saw. The friction burn was caused by the use of a hand saw. The friction burn was caused by the use of a hand saw.

Would a claim by an employee alleging they suffered an adverse reaction to a COVID-19 vaccine be allowed to be brought against the employer? The answer is yes. The employer has a duty to provide a safe workplace. The employer has a duty to provide a safe workplace. The employer has a duty to provide a safe workplace. The employer has a duty to provide a safe workplace.

At this point, there are COVID-19 vaccines available in the United States. Food and Drug Administration (FDA) has approved the AstraZeneca COVID-19 vaccine. The employer has a duty to provide a safe workplace. The employer has a duty to provide a safe workplace. The employer has a duty to provide a safe workplace.



Pro's and Con's of Mandating the COVID-19 Vaccine

Pro's and Con's of Mandating the COVID-19 Vaccine

As stated previously, these questions have not yet been tested in the courts, at least with respect to the COVID-19 vaccine. While the Public Readiness and Emergency Preparedness (PREP) Act provides certain liability protections to certain covered organizations and individuals with respect to safety and administration of the COVID-19 vaccine, it is not clear that it protects employers who mandate the vaccine.

While the guidance of this time appears to suggest that employers who set up vaccine distribution programs, whether on-site or off-site through a third party vendor, will be immune from future liability claims related to the vaccine, the question of liability for adverse reactions to a mandatory vaccination has not been addressed by the Department of Health and Human Services. Therefore, it is necessary to look to state law in each state to determine an employer who mandates the vaccine, or a state legislator who enacts legislation providing immunity, it is still unclear the overall immunity of the employer. A legislative approach to providing immunity, it is still unclear the overall immunity of the employer.

A. Protection Under the PREP Act

Although the PREP Act appears to provide some liability protection to employers who administer programs to their employees, it does not address the COVID-19 vaccine. There is no other guidance as to whether the protections extend to employers who mandate that their employees are vaccinated.

Passed by Congress and signed into law by President George W. Bush in 2005, the PREP Act authorized the Director of the Department of Health and Human Services to issue a declaration to provide liability immunity to certain individuals and entities covered. Covered persons agree any claim of tort, contract, or other liability, or claim for damages, compensation, or other relief, arising from the use of a medical countermeasure against a declared emergency, shall be extinguished. The act also provides that individuals covered by the PREP Act for COVID-19 in March 2020 and who are not provided that declaration are not eligible for liability coverage. On December 1, 2020, HHS issued a final declaration to the declaration that the law accordingly extends under the PREP Act to all individuals involved in the distribution of the COVID-19 vaccine. It also specified that the act applies to individuals who are not administering COVID-19 vaccines if they have complied with the notification requirements of that law, including the requirements for notification and administration. This act applies to an employer who enters into an agreement with a third party to administer COVID-19 vaccines to their employees without using any of the liability protections established by the PREP Act.

In addition, HHS generally cannot offer protection under an advisory opinion on October 23, 2020, regarding "ongoing processes" for the distribution of the vaccine and whether that qualified because immunity under the PREP Act. At this time, there was a question as to whether public or private employers could qualify for protection under the PREP Act. However, the act does not provide that an employer could enter into an agreement with a third party to administer COVID-19 vaccines to their employees without using any of the liability protections established by the PREP Act.

Who is has immunity under a EUA approval by the FDA?

What are PREP Act protections?

State law immunity



Pro's and Con's of Mandating the COVID-19 Vaccine

Pro's and Con's of Mandating the COVID-19 Vaccine

Employers also need to consider the potential liability of not mandating the vaccine. If an employee refuses to get vaccinated, becomes infected, and then spreads the virus to other employees or visitors at a building, the employer may be liable for the vaccine cost. However, the vaccine cost is not the only cost. If an employee is infected by another individual who was not vaccinated, it is not clear the standard of care for a doctor, long-term care provider, or other healthcare provider who is not mandating the vaccine at this time, in and of itself, would not be a significant liability risk. Hence, long-term care providers should annually evaluate their vaccine liability risk for their staff, occupational and implementation of robust infection prevention programs.

The cost of potential litigation, and the uncertainty that will accompany this litigation, are potentially two of the biggest factors to consider.

Insurance Considerations

One area of concern for providers considering a mandate is how their insurance policies may or may not respond to potential liability claims from mandating the vaccine. Providers should look at some critical policies, and their provisions related to such a mandate. We will discuss how liability related to an employee's potential adverse reaction, as well as a responsible party claim resulting from the mandated vaccine.

Workers' Compensation and Employer's Liability

Workers' Compensation coverage is designed to cover an employee who is injured or becomes ill as a result of their employment. What is covered under the coverage will vary by policy and by state. An employer who mandates the COVID-19 vaccine may be liable for an adverse reaction with an employee mandating a COVID-19 vaccine.

Certainly different jurisdictions would treat this differently, but it is important to note the vaccine could be considered to be within the scope of duties of the employee if the employer is mandating the vaccine. Actual coverage under workers' compensation policies will vary by state. Some states have specific COVID-19 coverage and some states have no specific COVID-19 coverage. Some states have no specific COVID-19 coverage and some states have no specific COVID-19 coverage. Some states have no specific COVID-19 coverage and some states have no specific COVID-19 coverage.

The employer's liability coverage under the Workers' Compensation policy, would also likely be triggered (at least in a defense) in the event of an allegation of injury to an employee's family member arising from the mandated vaccine. Again, individual circumstances and insurance policy provisions will affect the final coverage decision.

Does my insurance protect me from suit by an employee who claims they suffered an adverse reaction to a mandated vaccine?

Pro's and Con's of Mandating the COVID-19 Vaccine

General Professional Liability
These policies are designed to cover the bodily injury and property damage to third parties. These policies typically contain an exclusion for any obligation arising out of any act or omission by the insured. Compensation, injury, or death to an employee, which includes bodily injury to the employee's spouse, child, brother or sister, or a consequence of the employee's bodily injury or illness, is excluded from coverage. Employees qualify as third parties under these policies and most policies contain an exclusion for injury to, illness, or death of an employee. These policies would not cover an employee who is injured or becomes ill as a result of their employment.

Directors and Officers - Employment Practices Liability

CEO policies are intended to cover the wrongful acts of named persons and entities. A general definition of wrongful acts means any act or omission, error, or omission, including negligent or reckless acts, which causes or results in a claim for damages, compensation, or other relief, arising out of the act or omission of a named person or entity. CEO policies typically include claims arising out of bodily injury, disability or death to an employee, which includes bodily injury to the employee's spouse, child, brother or sister, or a consequence of the employee's bodily injury or illness, is excluded from coverage. Employees qualify as third parties under these policies and most policies contain an exclusion for injury to, illness, or death of an employee. These policies would not cover an employee who is injured or becomes ill as a result of their employment.

Excess/Umbrella Policies

These policies are designed to provide higher limits of coverage and may be written to extend over some or all of the policies listed above as well as other work or non-work liability insurance.

In summary, the Workers' Compensation policy is designed to cover injury and illness to an employee arising out of the scope and duties of their employment. If the employee is not vaccinated or the vaccine is defective or otherwise, it is possible that an adverse reaction to the vaccine could be considered to be within the scope of duties of the employee, and would likely trigger a claim under workers' compensation. However, individual circumstances and insurance policy provisions will affect the final coverage decision.



Overview of Iowa LTC Law



Hamlin & Burton Iowa Long Term Care Experience

- Handling Iowa LTC claims since 2003.
- Dates of Loss back to 1999.
- 355 Iowa claims and potential claims.



Iowa LTC Law

- 2017 Tort Reform: Cap is \$250K
- Very poorly written
 - Substantial Impairment
 - Death Claims
- Pain & Suffering only
- Does NOT apply to General Liability
- Almost no help at all!!

- * Disfigurement
- * Malice

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General Liability Issues and Claims

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COVID-19 and Contractual Liability



What is Contractual Liability and How Does it Arise?

- Contractual liability is liability for breach of a contract
 - Arises when one party to a contract fails to fulfill their contractual obligations in a material way
 - Statute of limitations is generally 6 years – so significantly longer than the statute of limitations for tort
- Whether a breach occurred and whether the breach was material are often very fact dependent questions
- Class actions have already been filed in a wide variety of industries alleging an entity breached the contracts of a class of plaintiffs by not providing contractually promised services
 - Class action firms are soliciting new class action plaintiffs
 - See e.g.: <https://www.classaction.org/coronavirus-covid-19-refund-lawsuits>



More Types of Contractual Liability

- Class actions related to COVID-19 have alleged plaintiffs are owed refunds in a wide variety of situations including:
 - Cancellation of flights, train tickets, rental cars
 - Concerts and other performance venues
 - Gym memberships and ski resort passes
 - University admission and tuition agreements
- Even if damages per plaintiff are not sizable, class actions are very expensive to defend
- Class actions against nursing home and assisted living facilities alleging negligence that permitted COVID-19 transmissions or complications to occur are in the pipeline
- Not much of a leap to get to class actions also asserting breach of contract

Contractual Defenses

- Often, a party has one or more defenses against breach of contract including:
 - Facts do not support alleged breach
 - Breach not material
 - Impossibility of performance
 - Frustration of purpose
 - Force majeure clauses

What is Force Majeure?

- Force majeure means “superior force”
- Sometimes referred to as “Act of God” clauses
- Clauses are meant to:
 - Protect the parties in the event a contract cannot be performed due to causes outside the control of the parties and could not be avoided by exercise of due care
 - Allocate risk between the parties when an unanticipated event makes performance impossible or impracticable

Force Majeure Clauses

- Typical language:
 - Force Majeure. The obligations of either party to perform under this Agreement shall be excused during each period of delay caused by matters such as fires, riots, flood, strikes, shortages of fuel, power, raw materials or supplies, government orders, freight embargo, transportation delays, or acts of God, which are reasonably beyond the control of the party obligated to perform. Both parties will use commercially reasonable efforts to resume normal business operations as soon as possible after a force majeure event.
- We have had numerous “government orders” in conjunction with the COVID-19 emergency
- If you have force majeure language in your contracts and it refers to government orders, you may already have some force majeure defenses

Force Majeure Clauses

- Even better to specifically reference pandemics and epidemics:
 - Force Majeure. A party shall not be liable, including any penalty or monetary damages, for any failure of, or delay in the performance of, this Agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affects the performance of any of its obligations under this Agreement, and could not reasonably have been foreseen or provided against due to acts of God, including severe acts of nature or weather including flood, fires, earthquakes, hurricanes or tornadoes, war, acts of terrorism, contagion or epidemics, pandemics, acts of governmental authorities such as expropriation, condemnation, and changes in laws and regulations, a State or federal disaster or state of emergency declaration, or strikes and labor disputes, but in no event will the foregoing force majeure events excuse Resident's prompt payment of any monetary obligation to Facility, including, without limitation, the prompt payment of your Monthly Service Fee.
- Typically, nonperforming party alleging force majeure must show event that prevented performance:
 - Was not foreseeable
 - Directly caused the failure to perform

Remedies for Force Majeure Defaults

- Often the remedy for nonperformance of a contractual obligation due to force majeure is a delay in performance
- Remedy also may be excused performance or contract termination
- Ideally, there would be no payment or penalty for the delay
- Contractual language can help address the scope and parameters for potential force majeure events and consequences
- Even if force majeure clause is not a “home run” for defending nonperformance of contractual obligations, these types of clauses may help

How do I use Force Majeure Clauses?

- Add relevant clause to residency agreements:
 - A party shall not be liable, including liable for penalties or offsets against amounts otherwise due under this Agreement, for any failure of, or delay in the performance of, this Agreement for the period that such failure or delay is beyond the reasonable control of a party, materially affects the performance of any of its obligations under this Agreement, and could not reasonably have been foreseen or provided against due to acts of God, including severe acts of nature or weather including flood, fires, earthquakes, hurricanes or tornadoes, war, acts of terrorism, contagion or epidemics, pandemics, acts of governmental authorities such as expropriation, condemnation, and changes in laws and regulations, a State or federal disaster or state of emergency declaration, or strikes and labor disputes, but in no event will the foregoing force majeure events excuse your prompt payment of any monetary obligation to Facility, including, without limitation, the prompt payment of your Monthly Service Fee.

Other Potential Force Majeure Issues

- Move-in date:
 - Facility may delay your move-in date if, in its sole and exclusive judgment, it determines that such delay would be appropriate for safe management of the Facility during any force majeure event as defined in Section ____.
- To allow unilateral amendment by Facility:
 - Any of the terms and conditions of this Residency Agreement, including rent, may be changed by Facility by giving at least thirty (30) days prior written notice to Resident, except Facility may make changes immediately upon written notice to Resident that, in Facility's sole and exclusive judgment, are necessary or appropriate to manage and protect the health and safety of Facility residents and staff or that are mandated or recommended by State or federal order, rule, policy, procedure or other directive, during any force majeure event as defined in Section ____.

Other Instances for Force Majeure Clauses

- Meal service:
 - Facility may change policies and procedures for meal service upon written notice to Resident during any force majeure event as defined in Section ____.
- Transportation:
 - Facility reserves the right to modify or cancel its transportation schedules and destinations as it deems appropriate and to discontinue or temporarily suspend transportation services during any force majeure event as defined in Section ____.
- Activities:
 - Facility reserves the right to cancel, postpone or modify group activities on the campus and/or off-site trips and tours during any force majeure event as defined in Section ____.

Other Instances for Force Majeure Clauses

- Housekeeping:
 - Facility reserves the right to modify housekeeping policies during any force majeure event as defined in Section ____.
- Guests:
 - Facility reserves the right to limit or prohibit guests of Resident during any force majeure event as defined in Section ____.
- Changes to Resident Handbook:
 - Facility reserves the unilaterally amend the Resident Handbook to modify Facility policies and procedures as determined by Facility in its sole discretion as necessary or appropriate for the safe and efficient operation of the Community during any force majeure event as defined in Section ____.

Other Potential Contractual Changes to Address COVID-19

- **Outside Providers:**
 - Facility may establish reasonable screening requirements for any outside providers entering the Facility’s campus. Failure by any outside providers retained by Resident to comply with such screening requirements and other policies and procedures implemented by the Facility for vendors accessing the campus may require Resident to select alternative providers.
- **Testing (when not otherwise mandated – still need consent):**
 - To preserve the health and safety of all residents and staff of the Facility, Facility may require Resident to undergo testing for infectious or highly transmissible diseases and pathogens, including COVID-19, and to provide Facility with the test results prior to admission or re-admission.
- **Self-Isolation:**
 - Facility may require Resident to self-isolate in Resident’s unit to comply with governmental directives or recommendations for prevention of transmission of infectious or highly transmissible diseases or pathogens, including COVID-19.

Arbitration Clauses and Agreements

- Some controversy around the use of arbitration agreements in NH admission agreements because of CMS policies in 2016
 - Current status is arbitration agreements/clauses are not prohibited
 - But under current CMS rules, Medicare/Medicaid nursing home:
 - May not require resident to sign binding arbitration agreements as a condition for receiving care
 - Must inform residents or their representatives they are not required to sign a binding arbitration agreement
 - Must include language stating the arbitration agreement does not prevent resident or anyone else from communicating with federal, state, or local officials

Arbitration Clauses and Agreements

- Arbitration agreements for assisted and independent living are not prohibited
 - Although not regulated by CMS, A/L and I/L facilities should be thoughtful about drafting arbitration agreements so document is clear that arbitration is voluntary by resident and include other reasonable provisions
- Facilities may wish to re-visit their use of arbitration agreements due to the COVID-19 crisis
 - If properly drafted, may help defeat class actions because arbitration (vs. litigation) may be mandatory and the decision binding on the parties with same force as a decision issued by a court of law

Waivers of Liability/Assumption of Risk

- We have seen a number of “waiver of liability” agreements/forms since the COVID-19 emergency began
 - May take the form of a “Risk Addendum” or “COVID-19 Liability Addendum” to the residency agreement
- Intent is make residents aware that COVID-19 is highly contagious and that there is a risk of exposure at any congregate living facility despite the facility’s mitigation and prevention efforts
- Often require the resident to cooperate fully with all Facility mitigation and prevention efforts and indicate that willful failure to do so is cause for termination of the residency agreement
- Purport to require resident to assume and accept sole responsibility for any risks associated with possible exposure to COVID-19

Waivers of Liability/Assumption of Risk

- Unclear whether these will be enforceable given “assumption of risk” is disfavored by the law in tort litigation
- May deter litigation as some residents may conclude they are bound by these types of agreements
- Facility using waiver of liability/assumption of risk forms should understand these forms may offer limited or no actual protection
 - Will not relieve any facility from compliance with applicable licensure or Medicare/Medicaid requirements
 - Not appropriate for highly regulated settings, e.g., SNF
 - Need to do everything you would otherwise do to prevent or mitigate transmission of COVID-19 in your facility

Waivers of Liability/Assumption of Risk

- If use, need to be carefully drafted and need to consider whether the “cons” outweigh any “pros” including:
 - Deterring potential residents from congregate living
 - Potential adverse media interpretation
 - Whether precluded by HUD or other regulatory agencies
 - If a registered life plan community, whether addendum requires LARA – Living Care Section review and approval
 - May need carefully thought-out communication strategy to accompany waiver and explanation to prospective residents and/or their representatives

FHA Considerations for ALF and I/L Operators

- Providers facilities should also remain attuned to potential Fair Housing Act (“FHA”) issues
- An individual with COVID-19 or recovering from COVID-19 is presumptively an individual with a disability and reasonable accommodation may be required
- Tricky issue as to residents who were exposed that may need to self-isolate for 14 days
 - Senior housing residents likely to have other disabilities that trigger the FHA and prohibit discrimination on the basis of a disability
 - But need to analyze if treatment is different because of potential COVID-19 status
- Strive for uniform and equally applied policies and procedures

How to improve your risk profile: General Liability

- Cap on damages may not apply.
- Contracts can be critical.
- If you pay them – make them sign a contract.

ALL Vendors and Independent Contractors:

- Clear, signed contract.
- Detail the scope of work.
- Hold Harmless and Indemnification Clause in your favor.
- Establish independent contractor status. Not foolproof but good to have.
- Proof of Liability Insurance.
- **Retain a copy!**

GL Claim Examples

- Burning death of resident in wheelchair
- Video recording of entire incident
- Disabled key code exit door
- Staff and management knowledge
- Understaffing
- Uncapped exposure

GL Claim Examples

Premises Liability / Security / Murders: NC

- Estranged Husband of Employee shot to death 6 residents.
- Four lawsuits alleging negligent security.
- Vigorously defended.
- Successful strategy.



GL Claim Examples- -Independent Contractor Issues

Painter fell off ladder: NY

- Serious injuries, surgeries, etc.
- Landlord / Facility was sued.
- Lack of signed contract resulted in strict liability.
- Work Comp Immunity to the plaintiff's employer creates strong motivation to find a deep pocket.
- Ultimately settled and incurred significant defense costs.
- Unsafe work on your property = exposure to you.



GL Claim Examples - -Independent Contractor Issues

Electrician was electrocuted: NY

- Death of wage earner with wife and minor children.
- Sued Facility.
- Work Comp Immunity to plaintiff's employer.
- Lack of signed contract resulted in liability problems.
- Ultimately settled after incurring significant defense costs.

GL Claim Examples- Independent Contractor Issues

Construction / Remodeling: NY

- General Contractor hired to renovate outside area, patio, etc.
- Signed version of contract was missing.
- Work order was not specific as to scope.
- Employee Trip and Fall over rebar.
- Separate corporation, not licensee, owned the real estate. Therefore, no Work Comp Immunity.
- Serious injuries, surgeries, etc.
- Dispute between G.C., Sub, Facility all via their insurance carriers.
- Costly litigation with the plaintiffs and the co-defendants.
- Ultimately settled \$200K, \$50K from Facility.-

GL Claim Examples-Independent Contractor Issues

Hairdresser Burned Resident: GA

- Hairdresser came to facility once per week.
- Poorly written contract.
- Unclear policy and procedures for supervision.
- Resident's ear severely burned, loss of ear.
- Hairdryer not Retained – Spoliation of Evidence.
- No insurance by Hairdresser.
- Bad case, pending.



GL Claim Examples-Independent Contractor Issues

Sitter Related Fall, Fracture, Head Injury: MS

- Hired by Family at ALF.
- No Contract with Facility.
- Facility Billed for Services for Sitter.
- No Liability Insurance.
- De Facto Employee / Agent of Facility.
- Settled Claim.



GL Claim Examples-Independent Contractor Issues

Premises Liability: NY

- CCRC with no history of crime.
- Fenced, gated, lighted, security cameras.
- Private security company hired.
- Guard at gate and a roving guard.
- Unlocked car garage door
- Intruder broke into room, severely beat resident.
- Very poor contract with Security Company.
- Security Company refusing to defend and indemnify.

GL Claim Examples-Independent Contractor Issues

Delivery Company - Fall: NY

- Delivery van offloading boxes at loading dock.
- Partially blocked access resulting in inadequate parking of truck.
- Use of board owned by Facility to bridge the gap.
- Board broke resulting in fall.
- Lost wages, medical bills, 6 back surgeries, wage earner with minor children.
- Security camera video altered – Spoliation.
- Board discarded – Spoliation.
- Pending.

GL Claim Examples

Fire in Facility: IL

- Resident known to have smoking material in room against policy.
- Maintenance person knew smoke alarms in room not working, removed battery.
- No maintenance records.
- Poor written protocols of maintenance activity.
- Inadequate supervision.
- Fire in room resulting in two deaths, another serious injury.
- Indefensible claims.
- No Cap.

GL Claim Examples

Exploding Meth Lab: OH

- Visitor of Resident brought in mobile meth lab.
- Exploded: 1 death, 6 injured.
- Question of knew or should have known, inadequate security, supervision, failure to keep facility safe.
- Star witness!
- No Claims Brought.

PL & GL Claim Example

Resident on Resident Murder: MA

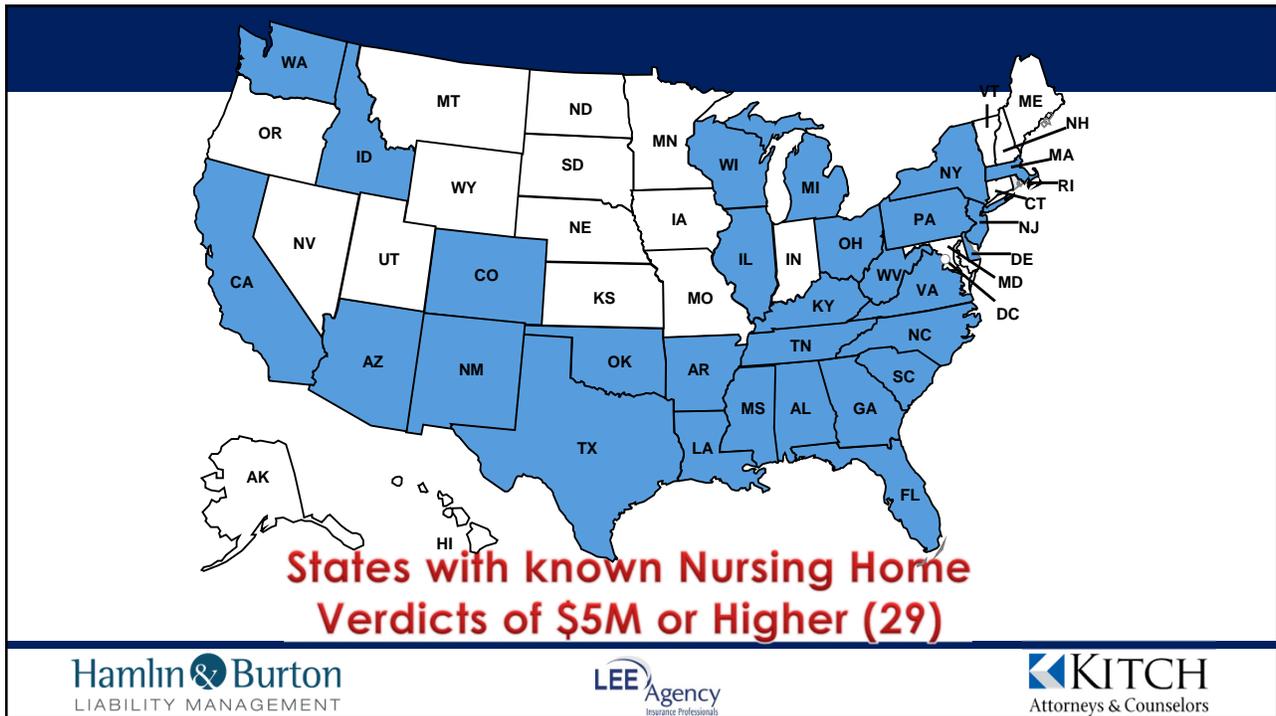
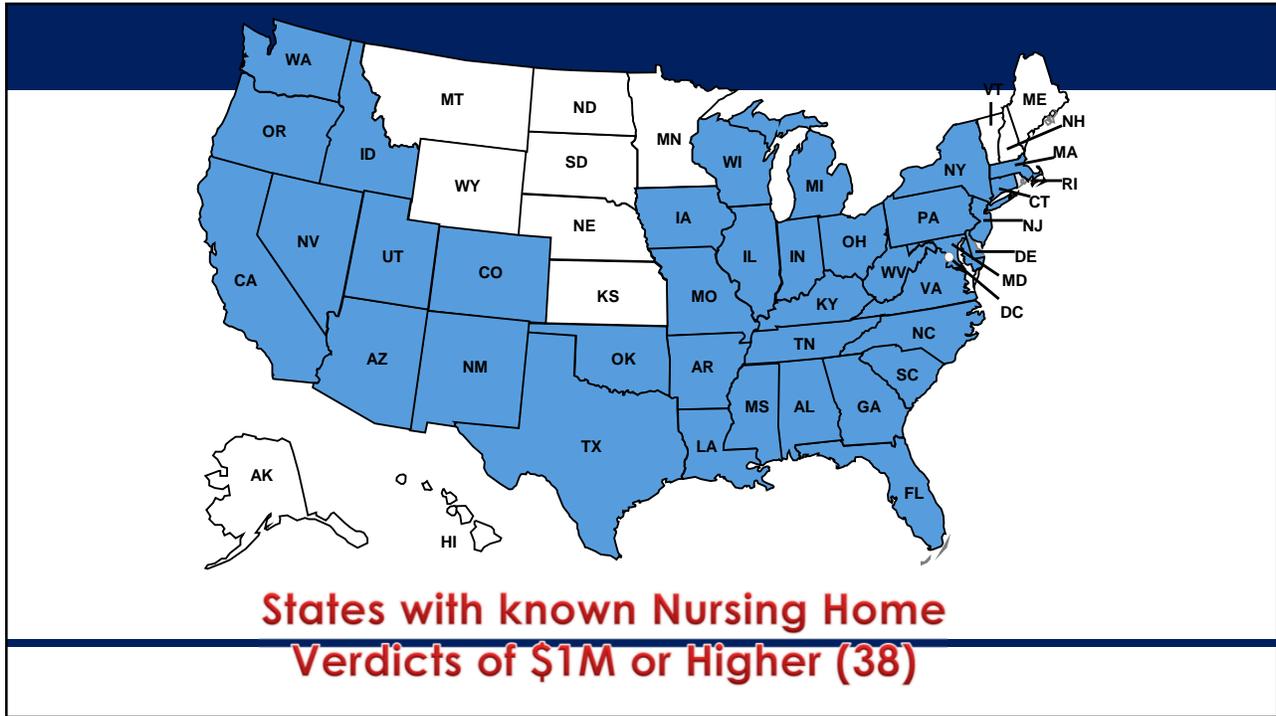
- 98 year old resident murdered 101 year old roommate.
- Suffocation, strangulation, crushed neck.
- Failure to keep resident safe.
- Knew or should have known resident was dangerous.
- Significant publicity.
- 6 year old case, won at arbitration, appealed, overturned.

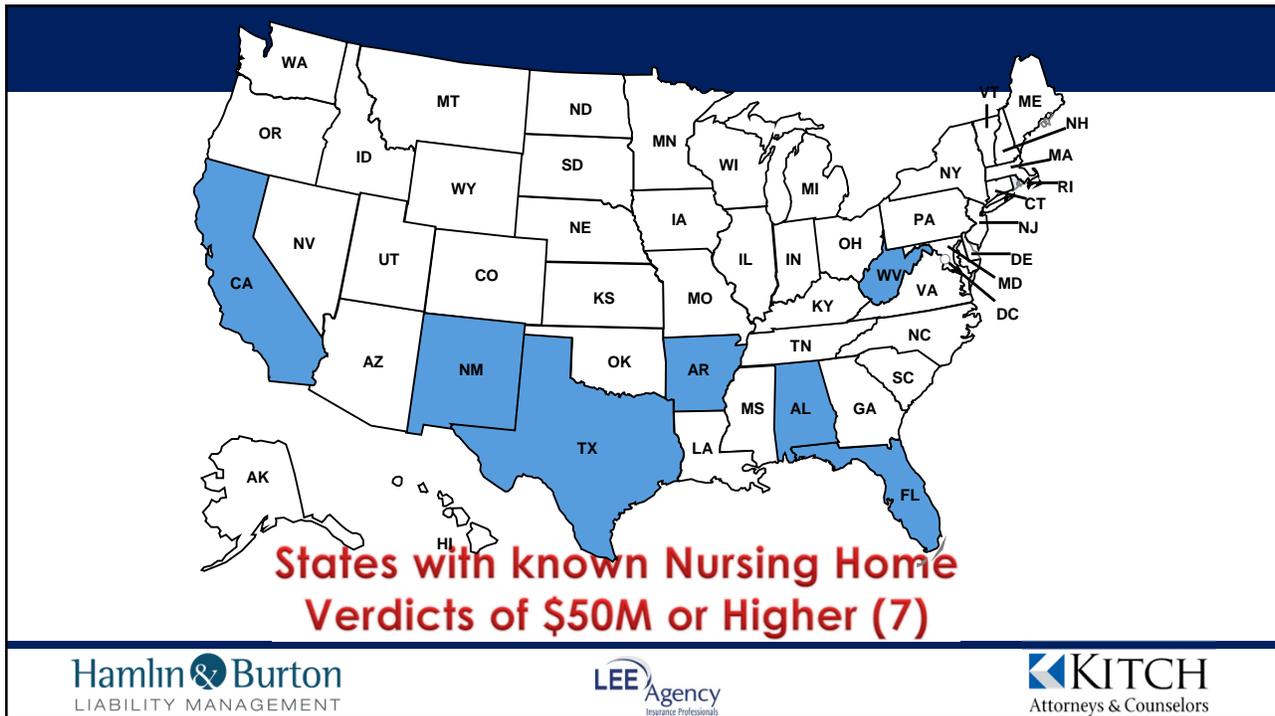
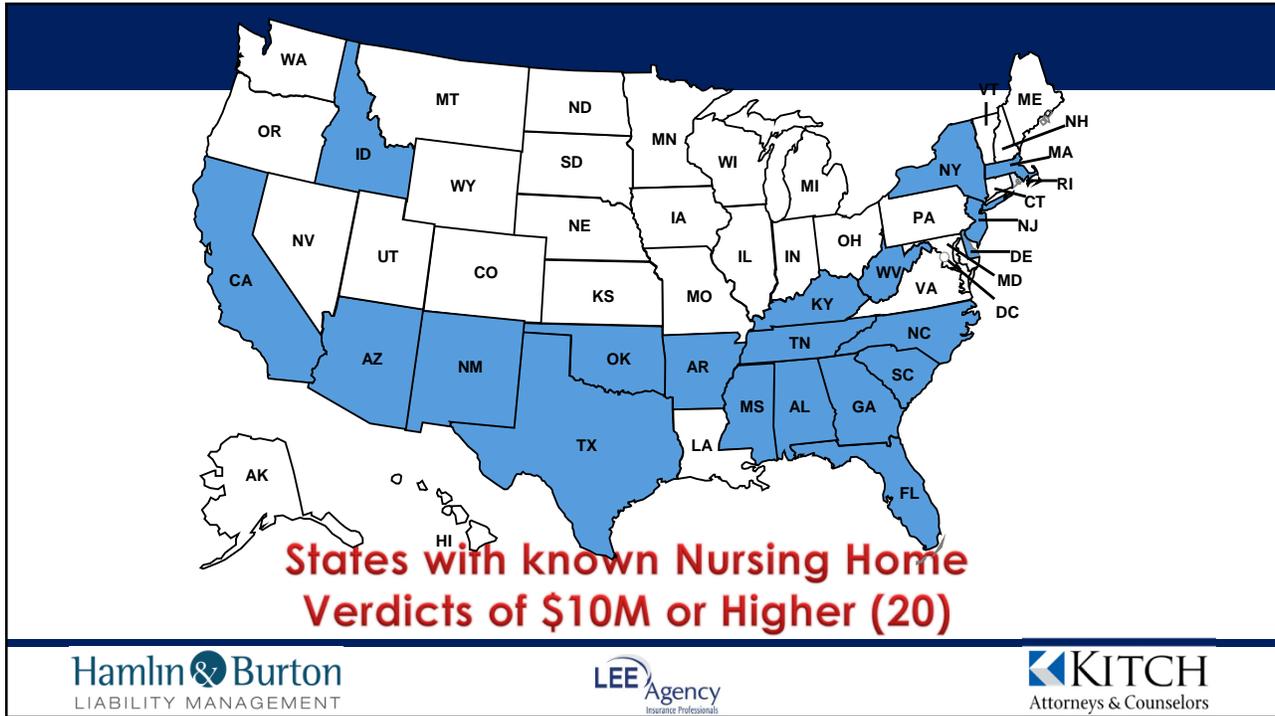
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LTC Professional Liability Verdict History across the Country





Iowa LTC Verdict History

- Large IA LTC verdicts:
\$2.17M, \$2M, \$900K, \$700K, \$600K, \$546K,
\$500K
- Based only on known LTC verdicts
- No such thing as a safe or conservative venue
— Emmet, Scott, Polk, Des Moines, Delaware, Cerro Gordo, Clinton,
Jackson
- Plaintiffs won 9 out of 12 known LTC Verdicts -
75%

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