



# PULSE

A PUBLICATION FOR FLORIDA'S LONG TERM CARE COMMUNITY

## Photo Contest Highlights Lives Being Enriched in Florida's Long Term Care Centers



#RenewalHappensHere captured by Vincenza Shihada of The Bristol at Tampa Rehabilitation and Nursing Center takes home First Place in the 2018 LTC Photo Contest.

The Bristol at Tampa Rehabilitation and Nursing Center came in first in the state in FHCA's Long Term Care Photo Contest, which aims to highlight the daily life in Florida's outstanding care centers. The image "#RenewalHappensHere" prevailed over nearly 200 photos to win the annual contest and earn a \$500 prize to be used toward resident activities.

Over the period of a few weeks, contest finalists' photos were displayed on FHCA's Facebook page, generating more than 6,500 online votes. Palm Garden of Largo in Seminole placed second in the annual contest, earning \$300 with the entry "Love for Amos." The third-place entry, "Lighting the Menorah," earned a \$200 prize for The Rehabilitation Center at Jupiter Gardens.

"These photos capture the real zest for life present in all of Florida's skilled nursing centers," said Emmett Reed, FHCA's executive director. "The joy of residents, families, and staff comes shining through in these incredible images, which showcase the outstanding quality of life being enjoyed at centers across our state."

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# Back where it all began

This will mark my final President's column for the FHCA *Pulse*. In July, I'll hand over the gavel at Annual Conference, marking an end to my term as President. I can't help but reflect on how my involvement with FHCA will come full circle at Annual Conference, for it was at The Diplomat in Hollywood back in 2005 that FHCA President Dion Sena challenged me to get off the sidelines and get into the game by taking on a more active leadership role with FHCA. I was nervous, unsure if I could balance my time as an administrator with being an engaged volunteer leader. I began the adventure slowly, first by chairing committees then serving as president of District IX in Jacksonville. I eventually made my way up the ladder to leadership and held various positions on FHCA's Executive Committee before ultimately becoming your President in 2016.

I had no idea what was in store for me, but I can honestly say it was one of the best decisions I ever made. Being active in my district pushed me to become more engaged with the Legislature, and walking the halls of the Capitol with FHCA Chief Lobbyist Bob Asztalos was an eye-opening experience about just how important it was for us to tell our stories, first hand, to those who were making decisions about our profession.

Lobby Wednesdays were just taking off, and nursing centers were the unfortunate low-hanging fruit when it came to how we were funded (or rather, were not) in the state budget. Our legislative success is now balanced by the recognition we're earning nationally for our leadership in delivering high-quality care. We are unified in our messages and have earned the respect of lawmakers and regulators, both in Florida and in Washington, DC.

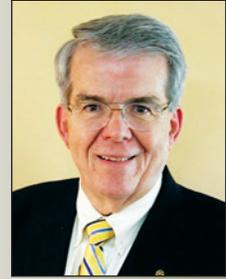
We have more members actively participating on committees, councils, task forces and leadership training programs than ever before. And our educational programming is top notch, giving members a significant return on their investment when it comes to events like Annual Conference, regional trainings and other professional development opportunities.

Just before I end my term, I'll have the privilege of cutting the ribbon for FHCA's new Education and Training Center. The vision of so many past presidents and other volunteer leaders who came before me will finally come to fruition in July when the expansion of our headquarters opens for business. The July opening will be one of many opportunities for members to walk the space and come together under one roof to learn, network, advocate and celebrate in Tallahassee. I can't wait for each and every one of you to experience it.

Since that challenge from Dion in 2005, we have evolved as an Association — one that is truly member-driven, and I believe it's because of the transparency in how we communicate and the opportunities that FHCA affords every one of us. There is always a way to share your feedback, get involved and make a difference in the work we do.

If no one has ever asked or challenged you to get involved, then I'm challenging you now. If you ever questioned whether you have the time or talent, I'm telling you that you do. We all have something to contribute to the success of this incredible Association, and what you give or receive will be so much more than you can imagine.

I'm thankful to my Board of Directors, the FHCA staff and all the members for giving me the opportunity to serve as your President for the past two years. It has been an incredible journey, and though my term is ending I don't plan to close the chapter on this book just yet. I am excited to head back to south Florida in July to celebrate with you in the place it all began, and I look forward to seeing what the next set of FHCA leaders have planned. ♦



By John Simmons, NHA, MSW  
FHCA President

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*The mission of FHCA is to advance the quality of services, image, professional development and financial stability of its members.*

## FHCA PULSE May/June 2018

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by J. Emmett Reed, CAE  
FHCA/Our Florida Promise  
Executive Director

## Running toward the fire

*Big Game Club in Bimini, Bahamas, is home to one of the few deep-water marinas on the small island. Like several spots in Bimini, the Big Game Club boasts hosting the famed author, Ernest Hemingway, as a regular customer back in the day.*

The marina is also known for an unusually high number of bull sharks that swim under the docks and boats. The sharks are fed by the locals, and tourists can watch them from a cage secured to the dock - no thanks! Most sharks are around 7-10 feet in length and weigh over 300 pounds. I'm told there are usually 15-17 of these beasts hanging around the marina.

Recently, I went to Bimini on my first "guys trip" in over a decade. One afternoon, Jason Gonzalez, a top-notch Tallahassee attorney, and I decided to check out the marina in search of a boat for fishing the next morning. As we walked the docks looking for a captain, I took a few minutes to film the big bull sharks swimming under the docks. The water is crystal clear, and I had a great vantage point from above.

About a minute after I stopped filming, I heard a loud splash in the distance behind me. One dock over, a boy had fallen in the water. He was about 20-feet from a ladder and safety. Knowing sharks were nearby, Jason and I quickly started walking toward him. Suddenly, three dorsal fins popped out of the water and headed straight toward the boy, who was only about five feet from the ladder. Jason and I began to run as fast as we could toward him. As the sharks zeroed in on their target, one jumped out of the water, thrashed his tail and the boy completely disappeared from view. It was horrifying.

After what seemed like an eternity, the boy emerged from the depths. He was treading water and screaming, "Help me, help me!" I yelled at the top of my lungs, "Swim to the ladder, don't stop, swim to the ladder," while running toward him. The boy made it up the ladder and out of the water just as we arrived. Jason helped him onto the dock and after looking at his bleeding feet, I told him to sit down. Funny side note - after it was over, one of the locals told me, "Your voice scared the sharks off Mon."

We shouted for towels and medical help. The boy's parents arrived, I calmed them down and Jason and I said a prayer for the boy. The people responded and within a few minutes, his feet were wrapped and he was headed to the island clinic. He ended up with 50 stitches in one foot and six stitches in the other. Unbelievably, the boy was expected to be walking within a week of the attack.

It could have been so much worse; I'm thankful it was not. We never saw the boy again except for news articles from around the world reporting the event. Judging by the articles, I don't think that boy or his family understood there were three bull sharks attacking him. It could have been so much worse.

After the attack, suffice it to say my friend and I needed a soft chair and a strong island concoction. As we sat there recounting the event, one question kept coming up. Would we have jumped into the water with three bull sharks attacking the boy had we been closer?

It's easy to say, "Of course we would," but until you're thrust into the situation, you don't really know. Had we arrived in time and close enough to jump in to help, I believe we would have. When I recount what was going through my head, contemplating a plan of action, jumping in was definitely one of my thoughts. Another thought running through my mind was, "Man I really do not want to have to jump in with those sharks."

I can say this with certainty. Those thoughts flew through my mind as if we were running toward a fire. We weren't waiting for someone else to react or respond to the situation. It was instinctive. Horrifying, but instinctive nonetheless.

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# Issues related to the loss of power

By Karen Goldsmith

Since the tragedy in South Florida that resulted in emergency generator regulations for nursing centers and assisted living facilities, there has been a great deal of discussion about how to prevent a similar situation in the future. Thinking outside the box will be particularly important during the interim period when permanent generators are being installed. Hopefully, we won't have a need for emergency power during that time or, if we do, everyone's temporary source of power will run without a hitch. But if it doesn't and just for an added level of security, let's share some ideas as to how to keep the residents safe.

## Someone in charge

At all times, it is imperative to have someone on the premises and in charge who knows how to monitor the residents and can call for assistance if necessary. That person should either have the clinical knowledge or always have someone with him/her who does and have full authority to call 911 if necessary.

## Train staff on use of the emergency equipment

There should be staff and a supervisor in the building at all times who are very familiar with the emergency equipment your center is using and know how to use it safely. For example, many portable air conditioners need to be vented to the outside or hot air will merely circulate back into the building. How to ventilate them, and when, should be communicated to several staff members. In all likelihood, you will already have those coolers set up and properly ventilated before the storm strikes, but staff should know the importance of proper ventilation so they don't modify something you have done.

Someone should always be there who can decide if equipment is running properly and safely. Portable generators may give off fumes that can be toxic if pulled back into the facility. Of course, your plant operations people know that, but other staff should as well. This would allow the clinical staff to recognize problems residents may be having that are associated with fumes immediately so plant operations can rectify the situation. Written protocols are very important.

## Housing staff

In most cases during the interim period, you are likely to have a smaller area of refuge than you will have when the project is completed. Accommodating staff without compromising the safety and comfort of residents is important. Plan in advance as to where staff will sleep and how many will be with residents at any given time. Communicate your requirements and expectations with your staff in advance and enforce it to protect staff and residents.

## Resident privacy

While certain legal requirements are relaxed in an emergency situation, people who are being cared for need privacy and dignity. Plan in advance how this is going to be achieved and communicate it with your staff. The importance of protecting residents' rights, as best you can, should be a paramount goal.

## Ice and water

Dehydration must be avoided as it can lead to serious, irreversible harm to elderly residents. Someone needs to be responsible to ensure that when an event is approaching that could lead to a power failure, plenty of ice is available. Water usually isn't an issue because you are required to have a certain amount in your emergency storage. Someone should also be responsible to ensure ice and water are passed very often. The water pass gives staff an opportunity to observe residents for any signs of issues arising from the emergency. Staff should be reminded regularly of this obligation.

## Resident health issues

Staff need to know the residents for whom they are providing care. Subtle signs of issues related to the loss of power can occur, and if the staff member caring for that resident does not know her health status, those issues might be missed.

## Seeking health timely

"Timely" during a normal day is likely quite different from "timely" during an emergency event. Assuming emergency and fire department personnel can get to you, it may take longer than normal. Ask for the help early so it comes before a relatively minor issue becomes a disaster. Your staff will be monitoring residents' vital signs and other potential signs of problems often enough that they can recognize an issue at its onset and seek help as necessary.

These are some of the concerns shared with us by our clients. You have likely thought of these and more, but it never hurts to remind ourselves.◆



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# Guidelines on smoking for skilled nursing centers

By Deborah Franklin

*With the implementation of the Centers for Medicare and Medicaid Services (CMS) Requirements of Participation (RoP) came new focus on skilled nursing centers' smoking policies and procedures. CMS gives direction to the regulators to focus on areas that have resulted in actual harm. One example of actual harm was of a resident smoking in his room while he was receiving oxygen which caused a facility fire that killed two and injured 14. In another example, a resident went alone to a smoking area directly from the dining room with her clothing protector still intact, and the clothing protector caught on fire.*

Each center should clearly define their smoking policies and inform staff and residents prior to admission or hiring. Communication and education of the policy is the key to safety and adherence to guidelines.

Skilled nursing centers should follow NFPA 101 at 19.7.4 and K-741 guidelines when developing and implementing their smoking policies. K-741 requires that smoking regulations shall be adopted and shall include not less than the following provisions:

- Smoking shall be prohibited in any room, ward or compartment where flammable liquids, combustible gases, or oxygen is used or stored and in any other hazardous location, and such area shall be posted with signs that read "NO SMOKING" or shall be posted with the international symbol for no smoking.
- In health care occupancies where smoking is prohibited, and signs are prominently placed at all major entrances, secondary signs with language that prohibits smoking shall not be required.
- Smoking by patients classified as not responsible shall be prohibited.
- The requirement of 18.7.4(3) shall not apply where the patient is under direct supervision.
- Ashtrays of noncombustible material and safe design shall be provided in all areas where smoking is permitted.
- Metal containers with self-closing cover devices into which ashtrays can be emptied shall be readily available to all areas where smoking is permitted.

In addition to K-741, the center should follow interpretive guidance for F926 to ensure all regulations are met when developing and implementing smoking policies. The interpretive guidelines require that the surveyor review the facility smoking policies to determine if they have been developed and are being implemented.

Interpretive guidance for F926 requires that when the surveyor is interviewing residents who smoke, she is to ask the residents how the

center permits them to smoke. Make sure those residents who smoke clearly understand your center's proper policies and procedures.

The interpretive guidelines for F689 has a section for Resident Smoking and states the center must assess the resident's capabilities and deficits to determine whether supervision is required. If it is determined that the resident needs assistance and supervision for smoking, the center must include this information in the resident's care plan and then review and revise the plan as needed. The center may designate certain areas for resident smoking and must ensure that precautions are taken for the resident's individual safety, as well as the safety of others in the center. Such precautions may include smoking only in designated areas, supervising residents whose assessment and care plan indicate a need for it and limiting the accessibility of matches and lighters by residents who need supervision when smoking for safety reasons. Smoking by residents when oxygen is in use is prohibited, and any smoking by others near flammable substances is also problematic.

In addition to the above regulations, there are several factors centers should consider regarding residents who desire to smoke. Listed below are some of these factors. Please note the below list is not all-inclusive as each situation is different and may vary according to resident and center characteristics.

- **Center policy** - The smoking policy should be written clearly without ambiguity and be communicated to employees, residents, staff and visitors. While safety should be a primary consideration with regards to developing an effective smoking policy, resident

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# Hurricanes – gear up and get ready for 2018

*Slightly above-average season predicted*

By April Henkel

*As I write these words, I can already imagine your reaction. If you don't say it out loud, your brain is thinking, "Must we talk about hurricanes again? Didn't we have two back-to-back abundant years in Florida with Hurricanes Hermine and Matthew (2016) and Irma in 2017?" Sadly, the answer is yes. Don't think that your intense preparation, response and recovery efforts last year let you mark it off the list for 2018.*

Hurricane season begins June 1 and runs through November 30 each year. Most Floridians are aware of these bookend dates, but this important calendar note may not be known to newer residents (who may also be your employees). While June 1 — November 30 is the official season, the National Oceanic and Atmospheric Administration (NOAA) describes a "season within the season" from mid-August through mid-October. During this period, storm activity increases, accounting for 78% of the tropical storm days, 87% of category 1 and 2 days, and and...wait for it...96% of the major hurricane days (category 4 & 5 on the Saffir-Simpson Hurricane Wind Scale). Read more about this phenomenon on NOAA's website at [www.noaa.gov](http://www.noaa.gov).

The 2018 prediction released by the Colorado State University (CSU) calls for a "slightly above-average" hurricane season. The CSU tropical meteorology team predicts 14 named storms during the Atlantic Hurricane Season, with seven to become named hurricanes and three to reach major hurricane strength (sustained winds of 111 miles per hour or greater).

As we move into the 2018 hurricane season, FHCA wants to encourage you to be deliberate and intentional in your preparedness activities. Begin by making sure staff are prepared, personally, for a hurricane. Helpful resources are available from the Florida Division of Emergency Management ([www.FloridaDisaster.org](http://www.FloridaDisaster.org)) and the American Red Cross ([www.redcross.org](http://www.redcross.org)). An important next step is having social media connections in place with your local office of emergency management (OEM). Many OEMs used Twitter extensively during Hurricane Irma, providing frequent just-in-time updates for local citizens. Along with OEMs, Twitter was used by the National Hurricane Center and other key information sources.

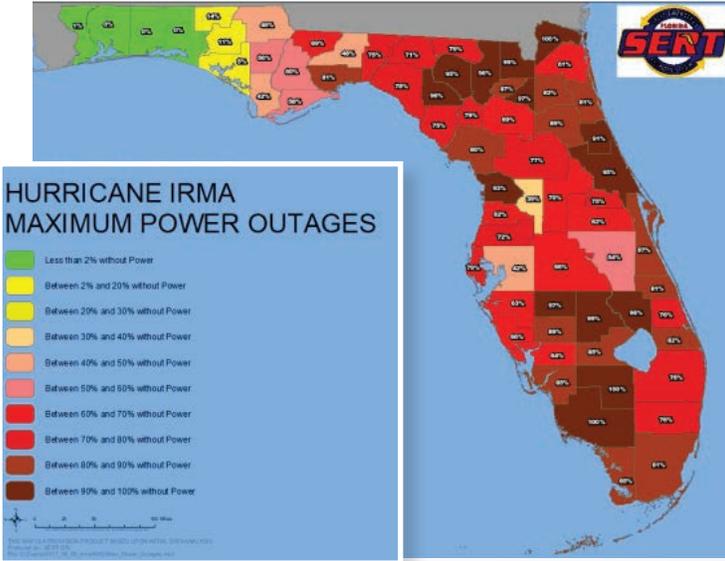
You can also visit [www.LTCprepare.org](http://www.LTCprepare.org) and see Twitter feeds from the National Hurricane Center, the State Emergency Response Team (SERT), and the Florida Department of Health. Keep in mind these three are state-level resources rather than local. All emergencies are local, so your best information source should always be your county's office of emergency management. The very best information source must always start with your local emergency officials.

Another strategy we strongly encourage is involvement with your region's Healthcare (preparedness) Coalition, or HCC. Visit the Program section on the Florida Department of Health website at [www.floridahealth.gov](http://www.floridahealth.gov) to access their emergency preparedness resources, which includes a map of the locations and contacts for these valuable organizations. HCCs focus on local/regional emergency preparedness and provide training, exercises, information and the opportunity to develop relationships with preparedness partners whom you may need during a disaster situation.

Throughout the season, FHCA will include emergency preparedness tips in the weekly *Focus on Florida* e-newsletter to members, and more articles on emergency preparedness will be posted on our *Pulse* blog at [www.fhcapulse.com](http://www.fhcapulse.com).



*April Henkel is FHCA Quality Improvement & Education Manager and staff liaison to the Emergency Preparedness Committee. She can be reached at [ahenkel@fhca.org](mailto:ahenkel@fhca.org).*



# Business News

By Lorne Simmons, Moore Stephens Lovelace

## Proposed Medicare Rule for FY 2018 released

The Centers for Medicare and Medicaid Services (CMS) recently released the proposed Rule for the Skilled Nursing Facility Prospective Payment System (SNFPPS) FY2019. As expected, CMS did not finalize Resident Classification System Version 1 (RCS-1) published in an advanced notice of proposed rulemaking last year. Instead, CMS proposed to implement a revised version of RCS-1, now titled the Patient-Driven Payment Model (PDPM), effective October 1, 2019. Similar to RCS-1, PDPM sets daily Medicare Part A payment rates on factors other than therapy days and minutes. Unlike the RUG-IV classification where each resident is only classified into 1 RUG group based on the MDS, PDPM breaks apart therapy and nursing to allow for a separate classification for each. As a result, CMS did not make any changes to downgrade the significance of therapy in the existing PPS. Although CMS did not choose to abandon the notion of a new SNF payment model and to focus instead on developing a unified post-acute payment system (UPAC), they did change PDPM to align it better with UPAC.

The proposed rule for FY 2019 establishes a net market basket increase of 2.4 percent statutorily mandated by Congress. Based on the proposed rule, CMS projects aggregate payments to SNFs will increase in FY 2019 by \$850 million from payments in FY 2018. CMS estimates that the overall economic impact of the SNF Value-Based Purchasing Program (VBP) will be an estimated reduction of \$211 million in aggregate payment to SNFs during FY19. CMS specifies the method for applying the adjustment factor to SNFs. CMS will first reduce the claims payment by 2% for all SNFs (e.g. the 2% withhold, AKA Sequestration). Second, they will then increase the claims payment by a center's specific incentive based payment adjustment (up to 2%). These two steps will be done simultaneously so it will not impact cash flow. This financial transaction will happen each time CMS pays a claim. Our understanding is that the 2% cuts will both be applied to the gross amounts paid by CMS and not sequentially.

Finally, beginning October 1, 2018, and each subsequent rate year, the Secretary shall reduce payment rates during such FY by 2% for any provider failing to meet the requirements and the quality reporting measures required for the SNF Quality Reporting Program (QRP) annually. This reduction is only applicable to providers that fail to report their quality data based on QRP rules.

### Hurricane season financial tips

The hurricane season is quickly approaching, how time flies. Last year, although not a year for multiple storms, Hurricane Irma slammed the state of Florida in more ways than one. After the storm, the focus

quickly shifted to protecting residents in the event of a power outage which evolved into new mandates established by the state of Florida along with local counties and municipalities in an effort to ensure resident safety and comfort during such horrific natural disasters.

With that, here is our annual reminder for our long term care friends of the more important financial issues when dealing with disasters.

#### Cash is king

When a major storm is imminent, ensure sufficient cash is on hand with several key staff members or department heads so they can adequately perform their necessary functions. Credit/debit cards don't work well in a world without power.

#### Documentation

Make sure your office manager keeps an accurate account of expenditures for hurricane-related costs and tracks all receipts during and after the disaster, especially when cash is involved. It's easy to lose control of cash flows during and after a disaster and, unfortunately, some people take advantage of poor oversight when they think no one is looking.

#### Secure your records

To preserve important financial history and support claims for insurance, tax and reimbursement, consider offsite storage of critical records. At a minimum, 10 years of financial statements and 7 years of tax returns and general ledgers should be in a secure, storm and flood-proof location.

#### Program billing

Placements of 30 days or less are generally considered temporary. If temporary, the transferring facility continues to bill and should pay for the services rendered by the receiving facility. If the transfer is permanent, the receiving facility should bill for services. Providers should act now to ensure their transfer agreements with other facilities are up to date and executed properly to avoid any problems during a disaster. ♦



Lorne Simmons and Sandy Swindling are with Moore Stephens Lovelace, P.A., FHCA's CPA Consultant. Learn more about MSL at [www.mslcpa.com](http://www.mslcpa.com).

# Improving compliance with KEPRO's Service Termination Reviews

Skilled nursing center service terminations are one of the highest volume reviews at KEPRO. With that in mind, what can your facility do to help make for a smooth review process? Listed below are some of the top reasons for Beneficiary and Family Centered Care Quality Improvement Organization (BFCC-QIO) denials:

1. The medical record documentation doesn't support the discontinuation of skilled services; and
2. The Notice of Medicare Non-coverage (NOMNC) is invalid for a number of reasons including:
  - a. failure to provide a two-day window between the signature/delivery date and the Effective Date
  - b. no signature on the NOMNC
  - c. if telephonically delivered, lack of annotation on the NOMNC or within the medical record to indicate that the organization called the representative and verbally delivered the NOMNC

Providers should know that the NOMNC is included in the SNF Beneficiary Protection Notification Review (form CMS-20052) in the new long-term care survey process. Because of that, it might be helpful to be aware of some items related to the NOMNC process.

The Centers for Medicare and Medicaid Services (CMS) provides instructions for the issuance of the NOMNC as well as provides health care organizations with a copy of the appropriate NOMNC and Detailed Explanation of Non-coverage (DENC) to be used. For official language, visit <http://tiny.cc/CMSbni>.

As a general statement, skilled nursing centers are required to provide a NOMNC to Medicare beneficiaries when their Medicare-covered service(s) are ending. The NOMNC informs beneficiaries

how to request an expedited determination from KEPRO and gives beneficiaries the opportunity to request an expedited determination. A DENC is given only if a beneficiary requests an expedited determination and provides the organization or Medicare Advantage plan with the opportunity to explain their rationale for ending the Medicare-covered service(s).

Another area of confusion is regarding the new SNF Advance Beneficiary Notice (ABN). Some providers have been using the new ABN in place of the NOMNC. These are different forms with different purposes. Information about how to use the ABN can be found on the Beneficiary Notices Initiative web site listed above. KEPRO does not have review authority for the Fee-for-Service ABN. Its review authority is limited to the NOMNC.

A few other tips to help ensure a smooth review process with KEPRO:

1. Make sure your weekend staff is familiar with the process
2. Send the medical records in by the due date
3. Make sure that KEPRO has the appropriate contact information for your facility (contact information can be updated at [www.keproqio.com/providers/updatecontactinfo](http://www.keproqio.com/providers/updatecontactinfo))
4. Know KEPRO's telephone number (available at [www.keproqio.com](http://www.keproqio.com))
5. Send sufficient medical records (include all components from the fax request sheet)

*KEPRO is the Medicare Quality Improvement Organization working under contract with the Centers for Medicare and Medicaid Services. For more information about KEPRO, please visit [www.keproqio.com](http://www.keproqio.com).* ♦



## 2018 People's Choice Award

*Sharon Baker, Director of Nursing with Palm Garden of Ocala, recently earned the 2018 People's Choice Award from Ocala Magazine. Selected out of 71 nominees in the Ocala community, Sharon is described by her coworkers as "the best nurse and person you will ever meet...she loves her job and it shows." Palm Garden of Ocala executive director Jennifer Mikula says of Sharon, "Her patient care is exceptional. She greets everyone with a smile and is known for being the type of person to do whatever it takes to make others happy."*

# Is your facility prepared for Legionella and other waterborne pathogens

By Jonathan Teeter, MS, CIC, MREMT

*Waterborne pathogen transmission is a major concern for health care facilities. Due to the nature of long term care, residents are exposed to water in a variety of ways. Facilities need to be able to ensure that resident risk is reduced when using municipal water sources for hygiene, medical care or food preparation. Of all waterborne pathogens associated with health care systems, Legionella species are the most often implicated and most frequently discussed pathogen.*

In June 2017, the Centers for Medicare and Medicaid Services (CMS) released a memorandum detailing expectations for acute care, critical access and long term care facilities for controlling Legionella and other waterborne pathogens. The memo outlines the three critical elements that surveyors will be addressing to fully meet CMS standards.

- Facilities must perform a risk assessment for Legionella and other waterborne pathogens.
- Facilities must have a plan to monitor water systems to ensure that risks are mitigated.
- Facilities must document and review this plan to ensure that it is effective.

The memo refers facilities to the CDC Legionella Toolkit and to the ASHRAE 188 standard for more details. These two documents form the accepted standards for creating a water management program. Both documents spell out the basic steps in ensuring your facility has a functioning program.

The CDC Toolkit outlines seven basic elements of a successful program:

1. Establish a water management program team
2. Describe the building water systems using text and flow diagrams
3. Identify areas where Legionella or other pathogens could grow and spread
4. Decide where control measures should be applied and how to monitor them
5. Establish interventions when control limits are not met
6. Make sure program is effective
7. Document and communicate activities

Perhaps the most important step for any facility is setting up an appropriate program design. This includes forming an appropriate team, conducting a facility risk assessment, describing the facility water system, identifying potential problem areas, and setting monitoring and control measures. All other efforts, including surveillance, enhanced testing, response measures, or documentation and reporting are all dependent on ensuring that the assessment and identification are completed. The types of controls and processes will depend on the type of system in the building and the areas of hazard identified in the beginning. For example, a building with numerous hydrotherapy rooms will need to ensure these areas are monitored. This is also why the first step, establish a team, is critical to make sure the proper expertise is at the table.

An important aspect to remember is that CMS does not proscribe any specific set of measures that need to be implemented. The CDC Toolkit and the ASHRAE 188 standard are also broad, leaving each facility the ability to implement controls and measures that fit their individual water distribution systems, environment, and patient populations. In this way, each facility can ensure they adhere to local laws and use the best measures for them.

For us in Florida, our natural environment and water sources provide an ample source for natural pathogens, contrary to what might be other climates. Therefore, it is vitally important that facilities establish the proper team and program to demonstrate effective mitigation of risks to residents.◆



*Jonathan Teeter is Infection Prevention Advisor at RB Health Partners, Inc., a clinical risk, Medicare and operations firm that consults with FHCA on quality affairs. For more information, email Jonathan at [jonathan@rbhealthpartners.com](mailto:jonathan@rbhealthpartners.com).*

## Running toward the fire

Fortunately for us, jumping in was never a viable option because the boy was able to get out before any further damage was done. This experience has helped me understand how those who perform heroic actions often respond by saying, "I'm no hero." If my experience is any measure, that kind of response is likely because they felt the same horrific feelings I did as I was running to help.

The more I think about it, the more respect it gives me for our first responders, and for our members who care for Florida's frail elders every day.

Like the firefighter, our members run toward the "fire" to help, whatever that "fire" might be.

We saw that during Hurricane Irma, when caregivers slept in their facilities for days on end until the storm passed and the power returned to make sure their residents were safe. We hear the countless stories

of nurses and other staff who, on their own time and with their own money, buy gifts for their residents. Others too, spend holidays with residents who have no family to call their own or continue to visit those individuals long after they've been discharged from the facility.

There is an outpouring of love among FHCA member staff and their residents. That was evident from the pictures we received for this year's Photo Contest. That compassionate care, the dedication and the sacrifices that our members make happens day in and day out, in spite of regulatory burdens, negative press or misguided legislation being filed.

FHCA members run toward all types of "fires" every day. And they do it with a fearlessness that is to be admired.

I'm certain you would jump in with sharks; you are true heroes. Thank you all for making lives better, even saving lives, every day. ♦

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# Ever heard of an ADA interference claim?

By Mike Miller

Miller Tack & Madson, FHCA Labor Relations Consultant

There is a little-known provision in the Americans with Disabilities Act (ADA), which states:

"It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter."

This is referred to as the ADA's anti-interference provision, and claims brought under this provision are referred to as ADA interference claims.

Recently, a federal district court in Connecticut decided an ADA interference claim brought by the Equal Employment Opportunity Commission (EEOC), which had to do with a letter sent by a company's labor counsel to its employees informing them that they may be contacted by an EEOC investigator regarding a charge filed by another employee. Among other things, the letter identified the employee who filed the charge by name and detailed the allegations of his charge. According to the EEOC, the letter violated the ADA's anti-retaliation provision by interfering with the complaining employee's rights under the ADA, and had a tendency to chill the rights of those who received the letter to exercise their rights under the ADA.

Acknowledging that neither the Supreme Court nor the Second Circuit (which covers Connecticut) had yet outlined a legal test for an ADA interference claim, the district court relied on general interpretations of a "similar" provision in the National Labor Relations Act in finding that the company violated the ADA's anti-interference provision. In reaching its conclusion, the court reasoned that a jury could conclude that the letter could interfere with or intimidate the letter's recipients with respect to communicating with the EEOC about possible disability discrimination. The court's use of the word "could" suggests that the reach of an ADA interference claim is quite broad.

Because the EEOC had success in obtaining a broad interpretation of the ADA's anti-interference provision in Connecticut, we are likely to see more of this little known provision of the ADA in charges and lawsuits in the future.

## Goodwill and affiliate settle EEOC sexual harassment suit for \$850,000

The EEOC recently announced that a charity and an affiliated company providing vocational training and employment to people with disabilities will pay \$850,000 to settle a sexual harassment and retaliation lawsuit filed by the EEOC on behalf of eight current and former employees. According to the EEOC, six female janitors were subject to routine sexual harassment by their immediate supervisor. The alleged victims included young women with developmental disabilities who were relatively new to the workforce and employed by the charity and its affiliate under a federal government contract. The EEOC further alleged that the charity and its affiliate retaliated against two managers by unfairly criticizing and disciplining them for supporting the female janitors' sexual harassment claims.

In addition to paying \$850,000 to settle the litigation, the defendants will make changes to their EEO policies and complaint and investigation procedures; institute supervisor accountability policies, conduct comprehensive training; and hire a consult to monitor their responses to any future complaints. Referring to the #MeToo movement, an EEOC official commenting on the case stated that "... [e]mployers must take proactive measures to stop predators who would abuse their power over vulnerable workers."

The EEOC has issued "Promising Practices for Preventing Harassment" at <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm>. Employers should have comprehensive and effective EEO and harassment policies in place with an effective and accessible complaint system, provide ongoing harassment training for all employees and be committed to maintaining a culture in which harassment will not be tolerated. ♦



Mike Miller is with Miller Tack & Madson, FHCA's Labor Relations Consultant. Learn more about MTM at [www.peolawyers.net](http://www.peolawyers.net).

## FHCA on the Web [www.fhca.org](http://www.fhca.org)

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## Photo Contest Highlights Lives Being Enriched in Florida's Long Term Care Centers

The first-place photo was submitted by The Bristol at Tampa Rehabilitation and Nursing Center, a warm and close-knit subacute CareRite Center proudly serving Tampa and the surrounding area. The photo features James J., a resident who is one of the center's biggest success stories. A jokester, incredible artist, and active participant in the center's vast therapeutic recreational program offerings, James shows off his fun-loving nature by posing next to a Suzuki motorcycle. The wheels are owned by the husband of Vincenza Shihada, the center's director of business development, who snapped the image. For submitting the top vote-getting photo, the center will receive a \$500 award that can be used for any activity to benefit its residents and staff.

"We are so proud of all our residents and their constant accomplishments," Shihada said. "We knew this photo of Mr. James would be a perfect way to show how renewal truly happens here at The Bristol."



Second place went to Palm Garden of Largo, with the photo, "Love for Amos" taken by Annie Johnson, the center's life enrichment director. In the photo, the lovely Edith is enjoying quality time with the center's monthly visitor and wonder horse Amos. Johnson knew she had to capture the moment after Edith could barely contain her excitement when Amos walked in.

"I took this photograph to capture the elated emotions Edith had when she initially saw Amos," Johnson recalled. "For me, this picture represents how much love both Edith and Amos have to share with others."

Third place went to The Rehabilitation Center at Jupiter Gardens for the photo, "Lighting the Menorah," taken by Justin Lavian, the center's director of concierge services and assistant administrator.



This photo shows Frances, a beloved resident and center entrepreneur, lighting a menorah in the center's community area. Frances is known for the beautiful beads she sells to raise money for supplies in the center's activity center. "The light on her face was brighter than the menorah itself," said Lavian, who works to ensure that the center's residents are fully satisfied with their stay. "You could just tell she was reliving a very dear part of her childhood."

The annual photo contest is open to photographers who live, work, or volunteer in an FHCA member care center or who work for an FHCA associate member. Winning photographers receive a \$50 Visa gift card. Submissions depict daily life in a care center, including health-related services, activities, and events.

The winning photos will be displayed during the FHCA Annual Conference & Trade Show, July 15-19, 2018, at The Diplomat Beach Resort in Hollywood, Fla. To view all the entries from FHCA's 2018 Photo Contest, visit the News section of FHCA's website at [www.fhca.org](http://www.fhca.org). ♦

# Balancing autonomy and safety

By Kim Broom

*Balancing autonomy and safety is one of the biggest challenges for an assisted living facility (ALF) to manage for the individual resident. When a resident moves into an ALF, what are the initial preconceived ideas that the resident and family have about what kind of oversight and support the resident needs? Often times, the resident may be capable of more independence than the family acknowledges. The family may have unrealistic expectations that the resident will change their preferred routine to fit the ALF daily agenda. Families will sometimes insist their loved one is involved in every activity scheduled when, in fact, their loved one would prefer to quietly crochet in her room.*

There are also times the family does not recognize that the behaviors they are describing to ALF staff indicate a need of memory care support. Families are looking through the eyes of love and stress and do not always see the obvious behaviors clearly. A family member may tell you that on a regular basis, her mother calls the police at night because she thinks someone is in her home, but then denies that this behavior is possibly related to dementia. The resident's 1823 may reveal symptoms or a diagnosis of dementia but the family is in denial. Balancing these issues can be challenging.

As always, there is no simple, one-line answer to these challenges. However, there are some principles that can be used consistently. Start with education from the initial meeting with the resident and family. It is true you are "selling" your facility, but you have the obligation to be realistic in meeting the resident's and family's needs. It is true that we live in a "Disney World" type society where we hope everything is going to be wonderful, but the reality may not be great when you analyze the individual's person-centered care unless you do so purposefully.

Educate the potential residents and families on their choices and remind them they help by communicating when you miss something. If you assume the resident knows he can have his breakfast at 10:00 a.m. instead of 7:30 a.m., he may have to change his routine and preferred meal time without knowing. Facility rules do apply, but are those rules so restrictive that person-centered care cannot be realized? Person-centered care is recognizing that each resident has the right to autonomy to whatever extent is possible.

Educate your staff specific to residents having choices and being individuals. Create a culture of choices in which residents can thrive. A staff member who recognizes resident choice can create a more pleasant experience for residents who do not have

cognitive impairment and the same for residents who do. Some residents are not safe to manage their own medication needs but can maintain some autonomy when they choose to take their bedtime medications at 10:00 p.m. instead of 8:00 p.m.

When a resident or family presents a situation to you as the administrator, do you review the situation to determine if the resident has had their abilities promoted or taken away? Often it happens that staff, with all goodness of heart, actually overdo for a resident and unintentionally take some of the resident's independence away. As residents decline over time, we should be providing more support, but choices should not be diminished because a resident is more dependent. It just means we shift what questions we ask. Maybe a resident can no longer bathe himself independently, but we can make sure that he bathes in his preferred manor. Showers, tub baths and bed baths all have the same end result, but the choice of arriving at the end result belongs to the resident.

This concept starts with administration and leadership. Residents lose so much of their independence when they need assisted living care. Have you asked the questions to yourself and your staff if the way you provide care promotes autonomy, or does it just get the tasks done? Take time to review your process of educating potential residents and families. How do you teach person-centered care to your staff? Autonomy versus safety will always be a challenge, but don't forget that we take care of people and they both matter. ♦



*Kim Broom is FHCA's Director of Clinical & Regulatory Services. She can be reached at [kbroom@fhca.org](mailto:kbroom@fhca.org).*

## Guidelines on smoking for skilled nursing centers

rights should also be protected to the greatest extent possible.

- **Cognitive status and supervision** - In many cases involving fires in skilled nursing centers, the issue of adequate supervision is most often cited as the reason for smoking-related fires. Residents with deficits or recent changes in memory and/or judgement need to be assessed to determine how much supervision they will require when smoking. Residents with cognitive deficits will typically require more supervision when smoking than residents who do not have cognitive deficits. In addition, residents who are cognitively intact and, on the surface, appear they can smoke with little supervision may require more supervision if they are prone to provide smoking materials to residents who would typically require a high level of supervision when smoking. Supervision may also include evaluation of whether the resident can retain their own cigars, cigarettes, matches, lighters, etc., or if the center should retain these items to distribute for use upon request. If the resident is deemed safe to smoke alone and retain smoking materials, the materials must be kept from residents who would not be safe, such as in a fireproof lock box.
- **Oxygen-enriched atmospheres (areas)** - precautions must be taken in oxygen-enriched atmospheres. Oxygen-enriched atmospheres include areas in which an oxygen delivery device has been connected to a flowmeter and the flowmeter is in the "on" mode, i.e. resident receiving oxygen via nasal canula, oxygen mask or other delivery device. According to the NFPA-99, once a device is connected to the flowmeter, the measures listed (below) would need to be followed:
  - **9.6.1.1 Elimination of Sources of Ignition.** It is very important that visitors be informed of a center's policies so as not to jeopardize the safety of patients, other visitors, and staff through prominent posting of signs.

- **9.6.2.1.1** Smoking materials (matches, cigarettes, lighters, lighter fluid, tobacco in any form) shall be removed from patients receiving respiratory therapy and from the area of administration. A policy on smoking should be developed for the entire center to avoid confusion and to generally reduce the hazard from smoking.
- **9.6.1.1.2** No sources of open flame, including candles, shall be permitted in the area of administration.
- **9.6.3.2.1** In health care facilities where smoking is not prohibited, precautionary signs readable for a distance of 5 feet shall be conspicuously displayed wherever supplemental oxygen is in use and in aisles and walkways leading to that area; they shall be attached to the adjacent doorways or to building walls or supported by other equipment.
- **9.6.3.2.2** In health care facilities where smoking is prohibited, and signs are prominently (strategically) placed in all major entrances, secondary signs with "NO Smoking" language shall be required.
- **NFPA-99 Chapter 3, Definitions section 3.3.13** defines area of administration (as noted above) as: "Any point within a room within 15 ft (4.3m) of oxygen equipment or an enclosure containing or intended to contain an oxygen-enriched atmosphere."

Therefore, according to NFPA-99 guidelines, smoking materials and any other source of ignition should be kept at least 15 ft. (4.3 m) away from an oxygen-enriched atmosphere such as a resident receiving oxygen via nasal canula, oxygen mask or other delivery device.

Providing a safe and healthy environment for residents, visitors and employees is the goal of every provider, and using the regulatory guidance to develop the smoking policies will ensure success of that goal.◆

## Want to stay up-to-date on FHCA news, events and activities?



Follow FHCA on Twitter at [www.twitter.com](http://www.twitter.com)

[FHCA](http://www.twitter.com) or become a fan of Florida Health Care

Association on Facebook at [www.facebook.com](http://www.facebook.com).



# UPCOMING EVENTS



Some meetings noted herein may also carry CE credits.  
Additional information and registration  
can be found at [www.fhca.org](http://www.fhca.org).

## CONTINUING EDUCATION/TRAINING

### JULY

*July 15-19, 2018*

#### **FHCA 2018 Annual Conference & Trade Show**

The Diplomat Beach Resort  
Hollywood, FL

### AUGUST

*August 14-16, 2018*

#### **FHCA RAI-MDS-PPS Bootcamp**

Hawthorne Health and Rehab of Brandon  
Brandon, FL

## AMERICAN HEALTH CARE ASSOCIATION EVENTS

Learn more about these events at [www.ahcancal.org](http://www.ahcancal.org).

### JUNE

*June 4-5, 2018*

#### **American Health Care Association/National Center for Assisted Living Congressional Briefing**

Washington, DC

### OCTOBER

*October 7-10, 2018*

#### **AHCA/NCAL 69th Annual Convention & Expo**

San Diego, CA

## WELCOME NEW MEMBERS

### ASSOCIATE MEMBERS

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Treasurer Island**

**Bioness, Valencia, CA**

**Centris Information Services, Longview, TX**

**Clorox-Petrone Associates, L.C., Port Orange**

**CureCompanion, North Brunswick, NJ**

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**Facility Support Company, West Palm Beach**

**Filmop USA, Conroe, TX**

**Gentell, Bristol, PA**

**i-Tech Support, Inc., Ocoee**

**Mission Health Communities LLC, Tampa**

**Ogletree Deakins, Tampa**

**SmartLinx Solutions, Edison, NJ**

**Staywell, Tampa**

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**Services, St. Petersburg**

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**UNIMD Scrubs LLC, Miami**

**Upside Services, Miami Beach**

# good news

florida health care association around the state



## Spirit of a Leader

FHCA Executive Director Emmett Reed (right) recently presented before the American College of Health Care Administrators in Orlando, where the Florida Chapter of ACHCA honored him with the Spirit of a Leader Award.

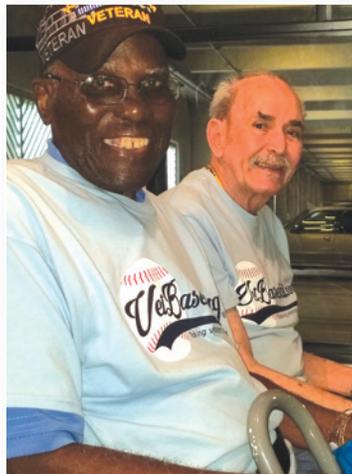
## National Skilled Nursing Care Week

The team at Desoto Health and Rehab in Arcadia show off their wacky hair as part of NSNCW activities.



## Take Me Out to the Ballgame

InSight Provider Group recently partnered with Vetbaseball, Inc. to take residents from the Alexander Nininger State Veterans Nursing Home to watch the Miami Marlins take on the LA Dodgers.



## NHA Runs for Office

Former District XVI President and nursing home administrator Todd Truax is running for Florida Congressional District 19. Todd states that "he has been a dedicated social servant for the past 20 years working to ensure quality healthcare and social services for seniors, the disabled and those in recovery throughout southwest Florida."



## Welcome to Our Team

FHCA recently welcomed Kendall Brockett as the newest member of the team. Kendall will work in the Communications Department as the Marketing & Communications Assistant and can be reached at [kbrockett@fhca.org](mailto:kbrockett@fhca.org).

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## EDGE INFORMATION MANAGEMENT INC.

Since becoming an approved service corporation company for FHCA in 1993, Edge has helped over 250 FHCA members meet their background screening requirements and kept them informed of pertinent legislative issues. Edge offers a variety of background checks including: drug screening, fingerprints, criminal, sexual offender, license verifications and references. Contact Laura Aguiar at (800) 725-3343 ext. 60 or by email at [info@edgeinformation.com](mailto:info@edgeinformation.com), or visit [www.edgeinformation.com](http://www.edgeinformation.com) for more information.



## HEALTHCARE SERVICES GROUP

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## HPSI PURCHASING SERVICES

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## SENIOR CRIMESTOPPERS

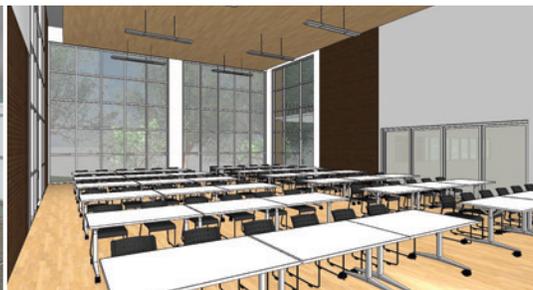
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# 2018 Annual Conference & Trade Show

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**Adam Goodman** is The Victory Group's principal creative and communications strategist, producing award-winning work for candidate, corporate and advocacy campaigns. Goodman provides regular commentary for FOX News, CNN, and MSNBC. He will guide you through communicating in the current and crazy world.



**Alison Levine** served as team captain of the first American Women's Everest Expedition, climbed the Seven Summits and skied to the North and South Poles. Hear from this history-making adventurer who understands what it takes to lead teams through challenging situations.

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Don't forget 2018 is a renewal year for licensed administrators, make sure to get all the CE hours needed before the deadline.



To register, reserve your hotel room or learn more about  
FHCA's 2018 Annual Conference & Trade Show,  
visit [www.fhcaconference.org](http://www.fhcaconference.org).

## July 15-19, 2018

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