

In this Industry Update you will discover:

1. "COVID Liability Tops 2021 Legislative Agendas in Several States"
- **MCKNIGHT'S SENIOR LIVING NEWS, 2/17/2021; pg. 1**
2. "LTC Continues to Focus on Operator Support as Occupancy 'Is Close to or has Hit Bottom'"
- **MCKNIGHT'S SENIOR LIVING NEWS, 2/22/2021; pg. 2**
3. "Doctors and Nurses Personally Delivering COVID-19 Vaccines to Homebound Seniors Nationwide"
- **MCKNIGHT'S SENIOR LIVING NEWS, 1/25/2021, 2/9/2021; pg. 4**
4. "Shut Out of Federal Covid-19 Vaccine Program, Holiday Retirement Builds Its Own Network"
- **SENIOR HOUSING NEWS, 2/9/2021; pg. 5**
5. "More Senior Living Providers Impose Staff Mandates As Covid-19 Vaccination Lags"
- **SENIOR HOUSING NEWS, 2/16/2021; pg. 6**



COVID Liability Tops 2021 Legislative Agendas in Several States

Written by: Kimberly Bonvissuto

2/17/2021

COVID liability laws are topping the 2021 priority lists for legislators in at least three states.

Alabama Gov. Kay Ivey (R) signed Senate Bill 30 into law last week, implementing COVID-19 immunity measures for assisted living communities, specialty care assisted living communities and other facilities and healthcare providers [licensed](#) by the state Department of Public Health or Department of Mental Health.

[SB30](#) also provides civil immunity for businesses, educational entities, churches, governmental entities and cultural institutions — absent "wanton, reckless, willful or intentional misconduct" — from actions taken in response to the coronavirus pandemic. The liability provisions are retroactive to March 13, 2020, and run through Dec. 31.

"While the impact of COVID-19 has been felt across the country and around the world, we remain committed to helping Alabamians and Alabama businesses get back on their feet and our state moving forward," Ivey said in a [statement](#). "We are ensuring that our state will continue to grow our diverse economy, and we are protecting our existing businesses from any frivolous lawsuits due to COVID-19."

A bill before the Missouri Legislature would provide COVID liability protections to assisted living communities and nursing homes and their frontline healthcare workers, as well as other workers and settings, in an effort to save them from "opportunistic lawsuits filed due to COVID-19," according to sponsor state Sen. Tony Luetkemeyer (R-Parkville). Those protections do not apply to "recklessness or willful misconduct."

[SB 51](#) was identified as a "critical priority" for the state. Luetkemeyer said the bill "strikes the appropriate balance of holding truly bad actors accountable while ensuring business owners are able to safely reopen and not fear lawsuits in shutting them down."

“This legislation will provide Missouri’s small businesses the confidence to reopen so our economy can thrive again, while also ensuring our brave first responders and healthcare heroes will not be punished for their good-faith efforts to combat the pandemic,” Luetkemeyer said in a [statement](#). “Our state’s medical professionals and first responders have worked long and difficult hours, putting themselves and their families at risk, rendering care during the pandemic. These people truly are heroes, and they should not worry about getting sued for doing their duty.”

The bill was adopted by the Senate following 15 hours of debate.

In Nebraska, Sen. Tom Briese (R-Albion) introduced the [COVID-19 Liability Protection Act](#), which provides broad immunity for assisted living communities and other businesses facing lawsuits connected with the coronavirus pandemic.

Opponents say Nebraska already has barriers to frivolous lawsuits, whereas proponents say it will help the state recover from the economic fallout from COVID-19. As with similar measures, there are exemptions for incidents of “gross negligence or willful misconduct.”

Protections would be effective immediately and apply one year following the end of the COVID-19 state of emergency.



LTC Continues to Focus on Operator Support as Occupancy 'Is Close to or has Hit Bottom'

Written by: Kimberly Bonvissuto

As the pandemic continues to create a “somewhat uneasy road” for the senior living industry, real estate investment trust LTC Properties will continue providing support to its operators while balancing its commitments to its shareholders, CEO Wendy Simpson said Friday during a fourth-quarter and full-year 2020 earnings call.

Squeezed margins, move-in challenges, labor exhaustion, decreasing length of stay, home health care growth and holds on elective surgeries are creating challenges to long-term care operators, she said.

“We do believe industry census is close to or has hit bottom,” Simpson said. “As the current vaccines — and a third from Johnson & Johnson — become more widely available and utilized, visitation opens up, communities and facilities continue to aggressively market their services, and consumer confidence in these settings improves, we should see the current census stabilize and even improve,” Simpson said.

Although unsure when the industry will fully recover from the effects of the pandemic, Simpson said that LTC’s focus remains on supporting its operators.

“We can continue to provide support to our operators, if needed, and take advantage of investment opportunities as they arise without placing undue strain on LTC,” she said. “The need for senior care hasn’t abated, and states in which we have some of our highest concentration of properties are also states with the highest projected increases in the 80-plus population cohort over the next 10 years.”

Support provided by the REIT has included \$689,000 in rent deferrals and \$360,000 in abatements to three private-pay senior living operators in 2021, as well as reduced 2021 rent escalations by 50% for eligible operators. On the whole, LTC collected 98% of its contractual rent and mortgage interest in the fourth quarter.

Senior Lifestyle portfolio

During the first quarter of 2021, LTC transitioned 11 assisted living communities in Illinois, Ohio and Wisconsin from Senior Lifestyle to other operators after the Chicago-based operator fell behind on rent payments during the pandemic.

Six of those communities — five in Ohio and one in Illinois — were transferred to Lawton, MI-based Randall Residence, which LTC began working with in 2019. With the addition of the six communities comprising 344 units, Randall now operates eight LTC properties in Ohio and Illinois.

The other five communities, comprising 374 units in Wisconsin, were transferred to Chicago-based Encore Senior Living. Encore is a major player in Wisconsin, and executives said the move emphasized LTC’s strategy to partner with strong regional operators.

Of the 12 remaining communities in the Senior Lifestyle portfolio, Chief Investment Officer Clint Malin said that LTC will transfer five and sell three by the end of the second quarter. Of the four remaining communities, one is being closed and sold for an alternative use; LTC will continue to evaluate options for the other three.

Senior Lifestyle paid \$3.9 million of its \$4.7 million in contractual rent due the fourth quarter. As of Dec. 31, the operator has a delinquent rent balance of \$1 million, according to LTC. The operator also has not paid rent in 2021.

2021 growth

Weatherly Court by Fields Senior Living in Medford, OR, came online in September after its opening was delayed by the pandemic. Occupancy was at 23% as of Feb. 15, up from 10% in October.

Malin said that, for now, LTC will focus on smaller investments while building new and existing relationships that will serve the REIT into the future.

“When we are confident we can complete deals at the right price for the right return, we will use our liquidity to provide strong regional operators with the growth capital they need,” he said.

“As a company that has always viewed its operators as partners, and a company that has worked hard to build a balance sheet capable to withstanding the very type of crisis through which we have been managing, LTC is ready and able to continue enhancing its portfolio, diversifying its investments and generating new opportunities to allow us to continue to serve as a growth partner of choice — as a REIT done differently,” Simpson said.

(New article on next page)



Shut Out of Federal Covid-19 Vaccine Program, Holiday Retirement Builds Its Own Network

Written by: Tim Regan

2/9/2021

With there being between 2 million and 4.4 million older homebound adults, many with multiple chronic conditions, several medical centers and health organizations are sending doctors and nurses to apartment buildings and private homes to [vaccinate homebound seniors](#) against COVID-19, Kaiser Health News reported.

The organizations include Boston Medical Center; Wake Forest Baptist Health in NC; fire department paramedics in Miami Beach, FL; a visiting nurse service in East St. Louis, MO; and Geisinger Health, serving central and northern Pennsylvania. Nationally, the Department of Veterans Affairs has provided more than 11,000 vaccines to veterans who receive primary medical care at home. While nursing home patients were recognized early on as a priority group for vaccines, the Centers for Disease Control and Prevention only recently offered [guidance](#) on serving the population of homebound seniors.

“This is a hidden group that’s going to be overlooked if we don’t step up efforts to reach them,” said Steven Landers, M.D., president and CEO of Visiting Nurse Association Health Group, which provides home health and hospice care to more than 10,000 people in New Jersey, northeastern Ohio and southeastern Florida. His organization plans to launch a pilot home vaccination program for frail homebound patients in coming days.

William Dombi, president of the National Association for Home Care & Hospice, agreed that older adults living at home have been left behind.

“There is no distribution of vaccines to our members, and there has been no planning surrounding meeting the needs of the people we serve,” he told the news outlet.

(New article on next page)

 **SENIOR HOUSING NEWS**

Shut Out of Federal Covid-19 Vaccine Program, Holiday Retirement Builds Its Own Network

Written by: Tim Regan

2/9/2021

In late December, many senior living providers began holding or scheduling their first vaccine clinics. But for most of Holiday Retirement's senior living communities, that wasn't the case.

With 252 independent living communities and seven assisted living communities across the U.S., the Winter Park, Florida-based operator is among the largest in the country, and No. 3 in Argentum's 2020 Largest Providers Report. But that scale didn't translate into vaccine clinics for most of those communities for one big reason: independent living was left out of the Pharmacy Partnership for Long-Term Care Program, which only prioritizes nursing homes and assisted living communities for vaccine distribution.

Holiday had first sought to participate in the program with pharmacy partner CVS, and Chief People Officer Karen Sheean expected the process to work similar to a flu shot clinic. But the company was informed in late December that independent living communities weren't included in the initial vaccine prioritization list, and that it wouldn't be able to schedule clinics through the program after all.

"Once we got that information, we weren't quite sure at the time: does that mean forever, and we'll never be part of it? Or will we come back and be prioritized later?" Sheean told Senior Housing News. "We never really got a clear answer."

By Jan. 3, the company had settled on a different strategy for obtaining Covid-19 vaccines for its residents: contacting local governments, emergency services and even grocery store pharmacies to see if they are willing to include Holiday's residents in their vaccination efforts.

"It's a little crazy at times, and it would have been so much easier to have Walgreens or CVS do this like we've done flu clinics," Sheean said. "But since we were taken out of that program, this is what we've had to do."

But as crazy as the process can be, it has garnered results for Holiday and its more than 30,000 residents. As of Feb. 8, Holiday had scheduled or completed vaccine clinics at 122 of its 259 communities, and the company has made it a goal to complete the process at all of its communities by the end of the month.

"Sometimes we have to be a little scrappy to get what we want," Sheean said.

Cold calls

Getting vaccines into the arms of Holiday's residents is a team effort that includes everyone, from CEO Lilly Donohue to the provider's local community teams.

The effort involves making calls to anyone who might have a supply of Covid-19 vaccines. That includes emergency service providers, such as fire departments; county health departments; and small local pharmacies, such as the ones attached to Kroger, Wegmans or Albertsons grocery stores.

At the community level, small teams made up of general managers, sales leaders and office managers are picking up the phone and hunting for vaccines. The company also has a team aiding the effort at its corporate support center.

“In the old sales world, when you needed to get leads or make sales, you’d have a team that would have some hype around it, and you’d be figuring out who’s got the lead, who’s made a call, who’s had a contact,” Sheean said. “We’re actually doing that this week for the rest of our communities who haven’t been able to get a ‘yes’ to have somebody come do this.”

Often, the person on the other end of the line isn’t familiar with the senior living industry and its nuances. So, Holiday’s effort includes education about independent living and the product type’s resident profile.

“You tell people it’s an average age of 82, that [residents] don’t have kitchens in their apartments, that they are eating in common spaces, that we help them with activities and transportation — once they hear that, they say, ‘Geez, why weren’t you guys in this program?’” Sheean said. “But we say ‘That’s why we need your help,’ and that’s how we’re getting all of the yeses.”

Holiday has set up the vast majority of its clinics onsite at its communities, Sheean said. In the instances where vaccine providers can’t travel to the community, Holiday is booking group appointments and sending its residents in chartered buses to get vaccinated.

“The nurse gets on the bus, everybody is socially distanced and has their paperwork, and then the nurse gives the shots right on the bus,” Sheean said.

For anyone receiving the vaccine, there are no out-of-pocket costs. For Holiday, there are some added expenses related to scheduling staff for the clinics and transporting residents to them.

“We believe the additional cost has been well worth it to provide access to the vaccine as quickly as possible,” Sheean said.

At the end of the day, going this route is far from efficient, and Sheean stressed she would choose Walgreens or CVS “all day long” if either of those companies could commit to the effort.

“But I just don’t think that’s going to happen, or it’s going to happen much later,” Sheean said. “It’s just too important ... and we owe it to our residents and our staff to try to get this for them.”

SENIOR HOUSING NEWS

More Senior Living Providers Impose Staff Mandates As Covid-19 Vaccination Lags

Written by: Tim Regan

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When the first doses of the Covid-19 vaccine arrived in senior living communities late last year, residents rolled up their sleeves with gusto. But the same was not true for the industry’s workers.

And that has not changed in the roughly two months since then, according to a recent National Investment Center for Seniors Housing & Care (NIC) survey of 84 senior housing and skilled nursing operators across the U.S. While an average of about 80% of the surveyed operators' residents have received at least their first dose of the Covid-19 vaccine, just 50% of staff had done the same.

That wide gap between resident and staff vaccination rates has prompted some senior living providers to make getting the vaccine a condition of employment, barring some exemptions. These include [Bloomfield, New Jersey-based Juniper Communities](#) and [Louisville, Kentucky-based Atria Senior Living](#), which were among the very first large operators to do so.

Today, that list now includes Silverado Senior Living. And there are other providers that plan to set their own mandates in the future, including Hickory, North Carolina-based ALG Senior and Aegis Living, which is headquartered in Bellevue, Washington. Additionally, there are some companies that have not set mandates, but also have not ruled out making vaccines mandatory for workers at a later date. These include Winter Park, Florida-based Holiday Retirement and Forth Worth, Texas-based Civitas Senior Living.

This is not to say that mandates are the only way to achieve high rates of staff vaccination. For example, about 80% of the Belmont Village workforce has been vaccinated, without a mandate in place, CEO Patricia Will said recently on an [SHN+ TALKS appearance](#). Aegis also has a high staff vaccination rate on a company-wide basis, but President Kris Engskov noted that some communities have higher rates while others have lower rates.

Whether to implement a mandate is a tricky decision, and there clearly is no industry consensus on the right approach. Other sectors — including [airlines](#) and [retail](#) — also are debating whether to impose mandates or offer certain incentives for workers to get vaccinated.

But time is of the essence.

For Silverado CEO Loren Shook, boosting vaccination rates sooner rather than later is important — doubly so when taking into account Covid-19's new genetic variants, some of which [are spreading rapidly across the globe](#).

“We know there will be more variants coming, and we don't know what those will look like,” Shook told Senior Housing News. “So, it is incumbent upon us as leaders in the company to make the hard decision that ... you have to be vaccinated to work here.”

‘We don't have a choice’

Although the senior living industry is seeing lower vaccination rates among its workers, it's also not unique in this regard.

A new study of 11,460 skilled nursing facilities from the Centers for Disease Control and Prevention (CDC) found that while a median of 77.8% of residents had received their first Covid-19 dose as of Jan. 17, a median of just 37.5% of staff members had done so.

Some of that has to do with the sheer amount of misinformation regarding the vaccine, what it's made of and its effects. Other times, it's a matter of senior living workers simply not wanting to go first.

For Silverado, education efforts and leading by example have led to a mixed bag of results, and vaccination rates for staff generally run between 50% to 80% at the company's more than 20 communities.

“That's not good enough,” Shook said.

So, starting March 1, getting a Covid-19 vaccine will be a condition of employment, barring exemptions for medical or religious reasons. And this isn't the first time the company has made a vaccine mandatory. Silverado also made the most recent flu vaccine a condition of employment for workers, and now those vaccination rates are nearing 95%.

"We don't have a choice," Shook said. "It's one tool we have that can help people stay alive."

While setting a vaccine mandate might cause some Silverado staff to leave, Shook also believes prospective hires will be more discerning about places of employment that can guarantee high levels of vaccination.

Other senior living providers have committed to making the vaccine mandatory, but not right away. For instance, Aegis President Kris Engskov said the provider plans to make the vaccine a condition of employment, but only when more doses are available.

"When you can take a letter right from Aegis and walk into a CVS and say, 'Hey, I need to get the vaccine,' and it'll be available, that is I think when we can mandate it," Engskov told SHN.

That's not to say Aegis has seen low rates of vaccinations among workers. In fact, Engskov said an average of about 85% of the company's staff have received their first dose so far, with some variation from one community to another. The company's educational efforts are a driving force behind that high vaccination rate.

"We're working with the handful of folks that are still concerned for whatever reason," Engskov said. "We're dispatching an expert to go meet with that team and help them understand how the vaccine works and ... really leaning in to make sure they get all the information they need."

But while Aegis' education efforts are paying off now, Engskov also believes having a mandate in place will help the provider stay current with vaccinations as new and potentially unvaccinated workers come aboard.

"A really important part of what we offer is protection," Engskov said. "If we don't have all of our team vaccinated, that feels like we're not doing everything we can to protect [residents]."

ALG Senior is also planning to issue a vaccine mandate in the future similar to what it has already done with flu clinics in the past.

"We are currently working to address logistical concerns with vaccine availability, such as when and how new hires will be able to receive their vaccine after our scheduled clinics are completed," an ALG spokesperson told SHN. "As vaccine availability increases in time, we will determine when and how the mandate is issued."

Wait and see

While providers are encountering challenges in educating and motivating staff to get vaccinated, the majority of providers still have not made the vaccine mandatory, according to NIC.

But there are some who are considering it. For example, while Holiday Retirement has not required Covid-19 vaccines among workers [as it's built its own distribution network](#), the provider has also not ruled out doing so in the future.

Holiday's decision hinges partly on the availability of vaccine supplies, according to Holiday's chief people officer, Karen Sheean.

“We can’t even answer that question until I can rest assured that every one of our communities and our associates have a place to get the vaccine,” Sheean told SHN.

The company’s current vaccination rate among associates is around 45%, and that rate will likely trend closer to 50% by the time most employees have gotten their second doses.

“What we would look toward are CDC recommendations on mandating [the vaccine], and what happens within the broader senior living industry,” Sheean told SHN.

Civitas is another provider that has not mandated vaccines for workers, but is open to doing so in the future. Though it varies by community, about half of the community’s associates on average have already received their first Covid-19 vaccine dose.

“The hesitancy is more just the unknown,” Civitas COO Misty Miller told SHN. “They want to get it, they’re just not sure they want to get it right now.”

In the meantime, the company is incentivizing workers to roll up their sleeves by offering them two days of paid time off and entering them into a money raffle once they’ve completed their second doses.

Silervado’s Shook says he has so far only heard of a small number of providers that are also setting vaccine mandates. But, he believes that vaccine mandates will at some point hit critical mass and have widespread adoption within the industry.

“I think it’s important for the industry to see there’s one more operator doing this,” Shook said. “I think most will at the end of the day.”