ncal National Center for Assisted Living

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U.S. House Passes Tort Reform, Senate Action Uncertain

The U.S. House of Representatives in March voted to limit the monetary damages that courts can award in medical malpractice cases. If enacted into law, HR 5 would set a $250,000 cap on noneconomic damages, or pain and suffering, awarded to plaintiffs in medical malpractice cases.

The bill, which was approved 229 to 196, would not limit economic damages such as lost wages, medical costs, or funeral expenses but would limit punitive damages to twice the amount of economic damages awarded, or $250,000, whichever is greater. At press time, S 607, a companion to HR5, had been introduced in the U.S. Senate, but its fate was far more uncertain. Without the support of at least 60 senators, the proponents would not be able to overcome a potential filibuster.

"The U.S. Senate is the linchpin that will ultimately determine the success or failure of what amounts to the most important pro-patient legislative initiative of the 108th Congress," said Charles Roadman II, MD, CNA, president and chief executive officer of the American Health Care Association (AHCA) and National Center for Assisted Living (NCAL).

Meanwhile, the nation's state legislators have also addressed tort reform in Florida, New Jersey, Nevada, Alabama, Texas, Arkansas, and Georgia. In Florida and Texas, legislators debated capping the punitive damages; in New Jersey, the state Senate passed a $300,000 cap on punitive damages, but passage was unlikely in the state Assembly. In Nevada, the state Senate Judiciary Committee debated the addition of exemptions to the $350,000 cap on noneconomic malpractice damages imposed last October.

In Pennsylvania and West Virginia, state lawmakers were forced to address the issue as physicians halted elective surgeries or threatened to stage walk-outs in protest of ever-higher liability

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Salary Survey Shows Slight Gains For Assisted Living Staff

The national median salary in 2002 for an assisted living administrator increased more than 7 percent over 2001, to $51,501, according to the fifth annual "Assisted Living Salary and Benefits Report," published by Hospital & Healthcare Compensation Service (HCS). The 2001 median salary was $47,986.

The report covers 14 management and 23 nonmanagement positions and breaks out data by for-profit and not-for-profit status, revenue size, unit size, geographic region, and state. Also covered are 22 benefits, turnover rates by department, and projected salary increases for 2003.

According to the report, the national median salary for administrators in facilities with revenue greater than $2.5 million was $55,000, compared with $49,905 in facilities with revenue less than $2.5 million. The average bonus paid to an assisted living administrator was 12 percent of salary. The survey also noted that directors of nursing earned about $53,300 annually, while registered nurses' salaries averaged $41,269.

HCS published the 224-page report with support from the National Center for Assisted Living (NCAL) and in cooperation with the American Association of Homes and Services for the Aging. NCAL members can order the report at the reduced rate of $195. To order, call (201) 405-0075 or visit www.hhcsinc.com/.

For benefits, the survey showed that nonmanagement employees average 19 paid days off after one year of service and 23 paid days off after five years of service. Management staff earn an average of 17 paid days off after one year of service and 21 days after five years of service. The survey also covers jury duty pay, educational assistance, life and health insurance and length of breaks.

Inside Focus

State Houses Address Regulation, Tort Reform

Iowa, Texas, and Hawaii are dealing with substantive assisted living issues this year. In Iowa, the legislature is working to make permanent the temporary changes to assisted living residence regulation and oversight made by the governor last year. Legislators in Texas have introduced a number of bills related to liability insurance for assisted living facilities. Hawaii lawmakers are addressing a perennial issue of increasing the safety of residents in adult residential care homes by allowing for unannounced inspections. The issues may be different in each of these states, but the overall message is the same: Assisted living is a priority.

Iowa

Various state agencies and trade associations are working together to make permanent the temporary assisted living regulation and enforcement reorganization that took place in April 2002. As reported in September 2002 *Focus*, Iowa Gov. Tom Vilsack (D) moved complaint investigation, certification, and recertification responsibilities to the Department of Inspections and Appeals (DIA). The move was made after the *Des Moines Register* reported that the Department of Elder Affairs (DEA), the former regulatory agency for assisted living facilities, failed to respond to complaints about poor care. Since that time, the governor's office, DEA, DIA, consumer groups, and trade associations have worked together to draft legislation to make these changes permanent.

"This is definitely a priority for the governor," notes Mariette Brodeur, health policy advisor to Gov. Vilsack. Since the reorganization, the governor's office has worked with DEA and DIA to revise current codes regarding rules and regulations. "The Department of Elder Affairs was designed to be an advocate for seniors," says Brodeur. "Its main purposes are advocacy, policymaking, and information sharing." It did not have the capacity to conduct inspections. Further, maintaining rulemaking and enforcement in one department presented a potential conflict of interest.

In mid-February, DEA presented to the state House study bill 152, which was created in consultation with groups such as the Iowa Center for Assisted Living (ICAL) and Iowa Association of Homes and Services for the Aging. The bill provides for regulation of assisted living by DEA and oversight by DIA. "There is a lot of fine-tuning that needs to be done," says Jenny Knust, ICAL's director of assisted living, "but we don't anticipate any major departure from the temporary changes already in place."

Knust notes that while most assisted living facilities are on board with the regulatory and oversight changes, some are concerned that the changes will lead to increased regulation. One proposed change that ICAL opposed is an across-the-board extension of the level of care waiver for assisted living facilities. This would mean abandoning the 30-day waiver currently used to allow a resident who requires an advanced level-of-care to stay in an assisted living facility on a case-by-case basis. Although ICAL would have preferred to keep the current 30-day waiver, Knust admits they agreed to compromise and accept changes, which included a six-month waiver. DIA assured legislators and providers that it would be frugal in granting the six-month waivers. "Currently assisted living facilities use the social model of care. Extending the level-of-care waiver moves them closer to a medical model of care, which has the potential to make assisted living look more like a nursing facility," Knust explains. "Assisted living providers don't want that."

Another level-of-care bill has recently been introduced. Rep. Mark Smith (D) proposed legislation that would allow assisted living tenants the right to an administrative law review appeal in the event the state felt they required a level of care higher than appropriate for assisted living. "Hopefully, the legislature will be able to address assisted living facilities so that there are more clear guidelines that protect consumers, allow them to make choices in their lives, and allow these facilities to continue to [be] available," he said.

For now, the proposed reorganization codification is still being considered by the state's House Human Resources Committee. Despite describing the bill as "an important piece of policy that should be moved this year," Mark Haverland, director of DEA, sees that the "squabbling over jurisdiction and level-of-care may impact the legislature."

Texas

In Texas, the tort reform issue continues to dominate the assisted living landscape. According to the U.S. Department of Health and Human Services, lawsuits against long term care facilities have increased significantly in the past few years, especially suits against nursing facilities in Texas and Florida. Both the number and size of plaintiff payments have increased dramatically, which has created considerable volatility in the liability insurance market. Although most of the suits have been filed against nursing facilities, assisted living facilities are finding it increasingly difficult to secure liability coverage as insurers pull out of Texas.

Texas legislators are considering several bills that address liability insurance for assisted living facilities. The sponsor of two liability insurance bills and chair of the House Civil Practices Committee, state Rep. Joe Nixon (R) says that "frivolous medical lawsuits and unlimited awards for mental anguish and pain and suffering damages have driven liability insurance companies out of Texas." As a result, he says, many health providers, including assisted living facilities, cannot afford the increase in professional liability insurance premiums or purchase the necessary insurance at any price.

In response to this issue, one of Nixon's measures adds assisted living facilities to the list of health care providers under the Medical Liability and Insurance Improvement Act and includes new provisions relating to settlement offers, the payment of health care and medical expenses, limitations on claims, expert reports, payments for future losses, and more. According to Nixon, this bill is intended to curb medical lawsuit abuse in Texas.

Two companion measures provide coverage for both for-profit and not-for-profit assisted living facilities under professional liability insurance and the Texas Medical Liability Insurance Underwriting Assn. The association, commonly referred to as the Joint Underwriting Association (JUA), was created in 1975 to cover health care providers that could no longer find liability insurance coverage in the normal insurance market. According to the Texas Department of Insurance, all insurers writing liability insurance policies in the state must participation in the JUA and, when necessary, pay assessments to cover its deficits.

Hawaii

Elder care is a perennial issue in the Hawaii legislature. Already this year, state legislators have introduced more than 35 assisted living bills in the House and Senate. While the bills address myriad issues, the topic of unannounced inspections of adult residential care homes has grabbed the attention of both the legislature and the media. The issue is included in at least three bills and amended into others.

In Hawaii, the term "adult residential care home" (ARCH) includes any facility that provides 24-hour living accommodations for a fee to adults unrelated to the family providing the care. The residents must need minimal assistance in activities of daily living, but cannot require the services of a nursing facility. Consequently, these homes are subject to less regulation compared with assisted living and nursing facilities, including that inspections are scheduled by month and day. Many legislators and consumer advocates want that policy changed.

State Rep. Marcus Oshiro (D), who introduced legislation addressing the inspection issue, stated in his justification report that announced inspections allow disreputable ARCH operators to temporarily change their practices to maintain certification. The Department of Health has unsuccessfully sought to institute unannounced inspections for three years. A draft of the rule change was delivered to the governor's office in October but has not received approval. Since the governor's office changed hands in the November election, there is no timeline for action. "Hawaii's elderly can no longer wait for the proposed rules to be adopted," Rep. Oshiro says. "It is necessary for the legislature to take affirmative action on this issue by establishing an inspection scheme that will promote the health, welfare and safety of Hawaii's elderly population residing in ARCH facilities."

Adding to the discussion, the *Honolulu Advertiser* recently ran a three-part series detailing numerous cases of elder abuse and neglect in adult residential care homes. This series listed unannounced inspections as one of the causes leading to neglect in the homes. The *Advertiser* articles also affected the legislature. "The morning paper's 'expose' on the issue has helped focus attention," said Sen. Rosalyn Baker (D), who has also introduced legislation addressing unannounced inspection.

If the legislature doesn't act, residents may be able to rely on the Hawaii Department of Health, which proposed new administrative rules for ARCHs this month. Among the proposed changes is a rule that allows for unannounced inspections.

National Assisted Living Week 2003 Theme Announced

Mark your calendar for NCAL's annual celebration of assisted living: National Assisted Living Week! From Sept. 7 to 13, 2003, assisted living residences across the nation will design activities for residents, family, staff, and community around the theme, *Sharing Life's Treasures.*

The theme presents many opportunities for staff, residents, and families to concentrate on appreciating residents' memories, contributions, and the dreams they still pursue. The theme serves as a reminder that, at any age, we must take time to share the treasures we find along life's pathway.

Established in 1995 by NCAL, the celebratory week spotlights the critical role assisted living facilities play in helping our nation's elderly live as independently as possible while enjoying a meaningful quality of life. The week is also a time to recognize the caring spirit of staff and celebrate the exceptional involvement of families, volunteers, and the community in the care of residents.

To assist residences in planning a successful week, NCAL will develop a planning guide and product catalog. These resources will help administrators educate the public about long term care, the option of assisted living, and services available. The planning guide will be mailed to NCAL members this summer. Nonmembers can call (202) 898-6325 to have the free guide mailed. Information will also be available online at www.ncal.org.

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insurance premiums. West Virginia lawmakers and Democratic Gov. Bob Wise enacted changes, including caps on lawsuit damages.

Liability insurance costs are forcing at least one assisted living residence to close. The Meadows, an assisted living residence near Tallahassee, Fla., is due to cease operations on May 31 due to an inability to get adequate liability insurance. "It was something we had not wanted to do," says Terry Ralston, general manager for Liberty Healthcare, which operates the Meadows. "We just got to the point where we could not afford to stay open."

Liability Costs Mount, New AON Study Finds

General and professional liability insurance rates for long term care providers jumped 143 percent in 2002, or about

Higher Jury Awards Drive Soaring Insurance Rates

$130,000 more than the 2001 annual rates, according to the latest actuarial analysis completed by AON Risk Consultants.

AON, which serves as a consultant for AHCA and NCAL, reported that the average nationwide loss cost per lawsuit in 2002 was $2,880 per occupied bed. Driving those costs upward was the size of the average general and professional liability (GL/PL) claim, which rose to its highest level ever, reaching about $200,000 in 2002. By contrast, the average claim was $63,500 in 1991.

For its 2002 study, AON analyzed financial data supplied by facilities that operate 480,000 beds in skilled nursing, independent living, assisted living, home health, and rehabilitation facilities. This represents 26 percent of the long term care beds in the United States.

Roadman noted that the soaring GL/PL costs are reducing access to medical care for seniors and people with disabilities as well as increasing costs for the American taxpayer. "At a time when the nation's health care system is serving more seniors under mounting federal and state budget pressure, it is bad public policy to allow an ever-increasing amount of scarce Medicaid dollars to go toward paying higher lawsuit costs, not toward improving the care of the nation's poorest, most vulnerable seniors and persons with disabilities," he said. "The U.S. taxpayer is involuntarily footing the bill to subsidize the few at the expense of the many."

According to the AON study, general and professional liability rates are growing fastest in Florida and Texas. Insurance costs in Florida have risen to nearly $12,000 per bed, while costs in Texas are at $6,300 per bed. But other states like Arkansas (73 percent increase), California (36 percent increase), Mississippi (35 percent increase), and Alabama (27 percent increase) are seeing similar year-to-year spikes in the cost of GL/PL. With current costs in these states ranging from $4,400 to $6,200 per bed, the authors of the study write, "it won't take long at these annual trend rates to reach Florida levels" of liability insurance costs.

AON also found that the cost of lawsuits is steadily eating into Medicaid reimbursement funds. GL/PL claims have absorbed $6.38, or 21 percent, of the $30.69 increase in Medicaid reimbursement from 1995 to 2002. On a per diem basis, the cost increased as a

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Accreditation Organizations Merge

For the aging services field, the merger of two accrediting organizations could bring a renewed focus on high-quality standards and the creation of a stronger and larger accreditation body. CARF, a Tucson, Ariz.-based organization that accredits a wide range of human services providers, merged with the Continuing Care Accreditation Commission (CCAC) in February. CCAC accredits facilities in the aging services continuum, including more than 340 assisted living residences. CARF currently accredits 23 assisted living residences, as well as adult day services, medical rehabilitation, and other providers.

CCAC, previously a division of the American Association of Homes and Services for the Aging (AAHSA), identifies organizations that meet or exceed its standards of excellence for governance, finance, strategic planning, health, and wellness. "The new CARF-CCAC entity will reinforce the value of accreditation and raise the bar for quality of care and services," said William Minnix Jr., president and chief executive officer of AAHSA.

For assisted living providers, the merger will not alter the accreditation process for either organization. CCAC will remain based in Washington, D.C., and continue its twice-a-year evaluation process for prospective candidates and rigorous annual review of all accredited organizations. CARF will accredit organizations with its surveyors for one- and three-year time periods.

For more information, visit www.ccaconline.org or www.carf.org.

Fourth-Quarter Earnings Reports

Assisted Living Concepts

Portland, Ore.-based Assisted Living Concepts showed continued improvement in its fourth-quarter results for 2002 with a net profit of $225,000. This compares with a net loss of $47.7 million for the quarter ending Dec. 31, 2001.

Revenue increased $2.3 million, to $37.9 million for the three months ending Dec. 31, 2002, from the comparable period in 2001. All figures are based on same-store operations for the company's 167 residences and do not include results for five residences sold in September and 11 held for sale in December.

For the full year ended Dec. 31, 2002, Assisted Living Concepts incurred a net loss of $4.4 million, as compared with a net loss of $63.9 million for the year ended Dec. 31, 2001. Assisted Living Concepts owns, leases, and operates 178 assisted living residences with 6,883 units in 14 states.

Sunrise Assisted Living

Driven by high occupancies and lower interest expenses as a result of paying off debt, McLean, Va.-based Sunrise Assisted Living reported an 83 percent increase in its fourth-quarter earnings for 2002. Sunrise posted earnings of $20.3 million for the 2002 fourth quarter, compared with $11.1 million in the same period a year ago.

The company also expects profits to rise by 10 to 14 percent this year. Sunrise, which recently sold 11 facilities and purchased others from Marriott International, expects in 2003 to increase by 30 to 35 the number of facilities it operates, excluding the Marriott deal. The Marriott transaction is expected to lower 2003 earnings by about 10 cents per share.

The fourth-quarter results were boosted by Sunrise's sale/long-term manage back program, which resulted in higher income, reduced interest expense as a result of a $174 million reduction in debt, and lower depreciation and amortization expenses. The company also reported significant increases in revenue, with net income for year-end 2002 at $505.9 million, an 18 percent increase over 2001 revenue of $482.2 million.

On March 28, Sunrise assumed management of 126 operating properties in 29 states with resident capacity of 23,157. With the closing of the transaction, Sunrise now operates 335 communities with a resident capacity of about 40,000 and a staff of 28,000. Estimated revenue managing the properties will exceed $1.5 billion.

Capital Senior Living Corp.

For fourth quarter 2002, Dallas-based Capital Senior Living Corp. reported net income of $4.7 million, a 70 percent increase over the same period in 2001. This resulted from a reduction in debt of $32.2 million and favorable interest rates.

The company also reported that recently opened seniors communities were leased at 76 percent occupancy, compared with 60 percent occupancy a year ago. Stabilized communities held an average occupancy rate of 93 percent.

The company is currently reviewing its purchase options relating to four Triad partnerships with which it has developed and managed 12 seniors living communities in lease-up.

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percentage of the Medicaid reimbursement from 2 percent in 1995 to 7 percent in 2002.

And larger jury verdicts and claim settlements are increasing the average size of the losses. According to the study, about 42 percent of the claims reported from 1995 to 2000 are greater than $50,000. In six states—Alabama, Arkansas, California, Florida, Mississippi, and Texas—the percentage of claims greater than $50,000 was 54.3 percent, compared with 27.6 percent for all other states combined.

The full text of the AON study is available on the research section of the AHCA Web site at www.ahca.org.

Sales Price Plunges For Assisted Living Units

After rising for five straight years, the average price paid per unit for assisted living facilities dropped by more than 23 percent in 2002, according to a report published by Irving Levin Associates, a New Canaan, Conn.-based research firm that tracks the seniors housing market.

The average sales price paid for assisted living facilities in 2002 was approximately $65,200 per unit, according to the "Senior Care Acquisition Report." The average per unit sales price in 2001 was $85,500. The median price paid per unit in 2002 was $61,000, the same as in 2000 but 23 percent below the median price in 2001.

"The sharp decline in prices reflects the abundance of distressed properties sold during 2002 and not a collapse of the overall assisted living market," stated Stephen Monroe, the report editor and Irving Levin partner. The 100-page report, which costs $549, contains statistics on the nursing facility, assisted living, and retirement housing merger and acquisition market and transaction information on each publicly announced seniors housing acquisition in 2002. To order the report, call (800) 248-1668.

Joseph Damico has been elected to the Manor Care Board of Directors. He is a founding partner/operating principal of RoundTable Healthcare Partners in Lake Forest, Ill., a private equity firm. His 25-year career in the health care includes work with Allegiance Corp., Baxter International, and American Hospital Supply Co.

Sherri Bernier has been named executive director of Laurel Gardens at Fairway Crossing in Glastonbury, Conn. The 52-unit assisted living community is specially designed for residents with memory impairments, including people with Alzheimer's disease.

Daisy Schmidt, a former nursing facility social worker, has been named long term care ombudsman for northeast Indiana. She will respond to issues raised by residents living in licensed residential, assisted living, and nursing facilities.

Sunrise Assisted Living of West Babylon, N.Y., has named **Linda Cody** and **Marc Simmans** as directors of community relations. They will be responsible for sales, marketing, and administrative functions.

Dennis Bartelme was named director of marketing and admissions for Jennings Place, an assisted living community in Cleveland, Ohio, for individuals with Alzheimer's disease.

Classic Residence by Hyatt, the seniors living affiliate of Hyatt Corp., has named **Susan Simmons** director of accounting and **Nancy Herbert** director of human resources for its recently opened community in Aventura, Fla. Simmons will be responsible for payroll, resident billing, and accounts payable and receivable. Herbert will be responsible for employee recruitment, training, and benefits.

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