

MDS Alert

Industry News You Can Use: From Hurricanes to Décor to Cybersecurity, Be Prepared For End-Of-Year Realities

HHS Responds to Hurricane Aftermath.

The U.S. Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR) has provided new resources for hurricanes through Technical Resources, Assistance Center, and Information Exchange (TRACIE).

The resources include information on everything from evacuating healthcare facilities to combatting mold to retaining and caring for staff in the aftermath of a hurricane.

TRACIE has other resources available as well, including information pertaining to other kinds of natural disasters, utility failures, volunteer management, and recovery planning.

Find the hurricane-specific information, as well as a list of other available resources, here:
<https://asprtracie.hhs.gov/hurricane-resources>.

Tread Lightly with Holiday Decorations

The end of the year is the most nostalgic and sentimental time of year for many people, regardless of which holidays they celebrate. But staff and residents may feel overwhelmed and undervalued if their workplace and home reflect the celebrations of a particular holiday - especially if it's not a holiday in whatever religion or traditions they practice.

Plus, there's court precedent to consider, as nursing facilities are workplaces.

"Employers who plan to decorate common work areas should strive to avoid the appearance of endorsing one religion over another," says **Stephane J. Lowe**, an associate at **Liebert Cassidy Whitmore**, a California law firm, on the firm's blog.

"Employers who wish to decorate the workplace should use nonreligious, winter-themed decorations such as snowflakes, snowmen, candy canes, holly, and gingerbread houses," she suggests.

Whatever your facility chooses, there may always be risks of alienating a staff member or a resident.

"In determining whether a public entity's holiday and seasonal display that attempts to include all types of religions and beliefs conforms with the Establishment Clause, federal courts consider three factors:

- (1) "whether the display is noncoercive;
- (2) "whether the display does not give a direct benefit to religion in such degree to establish or tend to establish religion; and
- (3) "whether the display conveys a message to the reasonable observer that the combined display was an effort to acknowledge cultural diversity," Lowe says.

For more information on this ruling, see [American Civil Liberties Union of New Jersey ex rel. Lander v. Schundler](#).

Important: Mistletoe is never appropriate for a workplace.

States Surpassing Federal Law in Patient Privacy

If your state's laws regarding privacy are more stringent than those under the HIPAA Privacy Rule, following the HHS Office for Civil Rights (OCR) guidance will do your facility more harm than good. And even though it may seem like an extra step in compliance planning, it is essential for you to review and integrate your state's requirements into your protocols on protecting and securing patients' protected health information (PHI).

"Luckily, a good job with HIPAA compliance can provide a good framework for compliance with all of the state laws an entity could be subject to," says **Jim Sheldon-Dean**, founder and director of compliance services for **Lewis Creek systems LLC** in Charlotte, Vermont.

Put these five extra steps in your plan to ensure your compliant with state regulations:

- "Coordinate a review of applicable local laws," advises Sheldon-Dean.
- Check with your EHR vendor to ensure state requirements are met as well as federal ones.
- Analyze the differences between state and federal rules for encryption, breach notification and timelines, and personal information, covering both sets of standards in your plan.
- Evaluate and implement state policies that protect specialty-specific sensitive information that may extend beyond HIPAA.
- "Add the necessary pieces and changes to your existing privacy and security policy and procedure set," stresses Sheldon-Dean.

It's better to be safe than sorry and cover all your bases in regard to your state's laws. "Many of these rules call for the same precautions, safeguards, and procedures, and it's better to make your existing privacy documents more robust instead of creating parallel policies and procedures for each rule or law," Sheldon-Dean explains.

OIG Creates Additional Medicare Fraud Strike Forces

Opioid abuse may not be first and foremost on your radar, but you should still be aware of the two additional Medicare Fraud Strike Forces the **U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG)**. The new areas of focus include the mid-Atlantic region, covering Philadelphia and Newark, New Jersey, and Appalachia, which will be based in Nashville, Tennessee, and Cincinnati/Northern Kentucky, according to an OIG release.

"First established in March 2007, Strike Force teams currently operate in the following areas: Miami, Florida; Los Angeles, California; Detroit, Michigan; Houston, Texas; Brooklyn, New York; Baton Rouge and New Orleans, Louisiana; Tampa and Orlando, Florida; Chicago, Illinois; Dallas, Texas; Washington, D.C.; Newark, New Jersey/Philadelphia, Pennsylvania; and the Appalachian Region," the OIG website says.

Though home health agencies have been frequently caught in the Medicare Fraud Strike Force crosshairs, nursing facilities are not immune. In October 2018, a licensed professional nurse who formerly worked at an Iowa nursing home was charged with stealing pain medications from residents.

"In a plea agreement, [the suspect] admitted that, in November 2016, while employed at the Cedar Falls Health Care Center, a nursing home in Cedar Falls, Iowa, she used her patients' identities to obtain controlled substances, specifically pills containing hydrocodone, by accessing her patients' prescribed medications and diverting those pain pills to herself. [Her] victims were each long-term residents of the nursing home who had chronic pain, and they were both on Medicare at the time. To cover up her scheme, [she] destroyed an original medication log, placed it in a trash can, and replaced the log with a false medication log," says a release from the **Department of Justice U.S. attorney's office in the Northern District of Iowa**.