

INTERLOCUTOR

FALL 2022

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NEWS FROM THE DFW HOSPITAL COUNCIL

What can we do to help stop hospital violence?

One minute of silence held in honor of **Jackie Pokuaa** and **Annette Flowers** of Methodist Dallas

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PLUS

DFWHC's 74th Annual Awards Luncheon
DFWHC's Hospital Economic Impact Report



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Steve Love President/CEO Dallas-Fort Worth Hospital Council

Wishful thinking or not?

AS THE MAJOR LEAGUE BASEBALL SEASON was winding down, I recently visited Atlanta with my eight-year-old grandson Owen to attend the playoff series between the Atlanta Braves and the New York Mets. The Braves swept the Mets but unfortunately, they would not advance to the World Series.

During the games, I would make comments to Owen such as, "I hope this batter hits a homerun," or "We need to turn a double-play." In most cases, I was usually wrong. In the final game of the series, Owen turned to me and said "Pa Pa, you wish for things that probably are not going to happen."

I had to laugh because he was so right. On the plane ride home, I considered Owen's remark and how it might also apply to my job in healthcare. Immediately, I was reminded of Medicaid expansion in Texas, or the lack thereof. The Affordable Care Act was passed in 2010 expanding Medicaid. In June 2012, the Supreme Court ruled Medicaid expansion was an option left up to the states.

The federal government funds 90 percent of the expansion. And yet we continue to pay federal income taxes for funding Texas steadfastly refuses to accept. Because of this unfortunate decision, we are helping to fund expansion in other states such as Oklahoma, Arkansas and Louisiana, but not for our own residents.

This fact has always surprised me. The state has foregone billions of dollars to assist some of our most vulnerable Texans. Because of this adverse decision, Texas leads the nation with approximately 20 percent of our population having no health insurance.

Several economic studies have determined Medicaid expansion makes sound business sense and our state is suffering tremendous losses in quality of life and economic impact because of its continued insistence in maintaining this perplexing form of independence.

Medicaid expansion can assist with prevention and earlier intervention in chronic illnesses and supports a healthier and more productive workforce. Additionally, patients can receive medical treatment in the right setting at a lower cost rather than utilizing overwhelmed emergency departments.

The majority of states in the U.S. understand these advantages and have expanded Medicaid. Only a handful of states, including Texas, have not taken advantage of this outstanding opportunity that will surely improve the health of approximately 1.5 million of our residents.

We thank our legislative leaders for their public service as they prepare for the upcoming session in January. We hope they will keep an open mind about the positive economic and healthcare impact that would result from Medicaid expansion in 2023. Now is the time to help our most vulnerable Texans but, as my grandson Owen said, I might be wishing for things that are probably not going to happen. I will continue to wish otherwise.

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EDITORIAL

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are appreciated.

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INTERLOCUTOR 1: one who takes part in dialogue

2: one in the middle of a line who questions end people and acts as leader

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Konica Minolta congratulates this year's Dallas-Fort Worth Hospital Council's awards honorees.

To learn more about how Konica Minolta supports healthcare's digital transformation contact Tylenthia Porter (Ty), Senior Sales Manager. Konica Minolta, 972-656-5622, tporter@kmbs.konicaminolta.us



THE EARLY REPORTS on the morning of Saturday, October 22 were equal parts horrifying and tragic. A domestic argument in the labor and delivery department of **Methodist Dallas Medical Center** escalated into deadly gunfire, with two hospital employees, **Jackie Pokuaa**, 45, a social worker, and **Annette Flowers**, 63, a registered nurse, killed.

Both victims died trying to help a patient, a new mother being violently pistol-whipped by the man accused of the shooting. Investigators said the shooting suspect was a parolee given permission to visit his girlfriend after she gave birth to their child. While visiting his girlfriend, and with their newborn in the room, the parolee accused the woman of infidelity, striking the mother multiple times before Pokuaa and Flowers arrived on the scene.

Sgt. Robert Rangel, a police officer who happened to be on the same floor, fired once wounding the shooter in the leg as he attempted to leave the room. After a brief standoff, the shooter surrendered.

"The Methodist Health System Family is heartbroken at the loss of two of our beloved team members," Methodist executives said in a statement. "Our entire organization is grieving this unimaginable tragedy. During this devastating time, we want to ensure our patients and employees that Methodist Dallas Medical Center is safe, and there is no ongoing threat. Our prayers are with our lost co-workers and their families, as well as our entire Methodist family. We appreciate the community's support during this difficult time."

The Dallas-Fort Worth Hospital Council (DFWHC) announced it would

observe one minute of silence on Wednesday, October 26, from 12:00 noon to 12:01 p.m. in honor of Pokuaa and Flowers, asking member hospitals and community members to join in the silent memorial.

"This is our way of offering our prayers and condolences to the two healthcare employees who tragically lost their lives as well as to their families and fellow employees," said **Stephen Love**, president/CEO of DFWHC. "It's also an opportunity to create awareness of the increasing workplace violence in our hospitals. Our healthcare heroes have been dealing with this dangerous increase for a very long time."

The gesture served as a moment for North Texans to reflect on the loss of the two caregivers along with the growing rate of workplace violence in hospitals that has increased since the onset of the COVID-19 pandemic.

"During the one-minute time frame, we asked everyone to focus on two important thoughts," Love said. "First, offer prayers and condolences to Jackie Pokuaa and Annette Flowers and to their families. Second, we need to ask ourselves, 'What can we do to help stop this violence?'"

Incidents of workplace violence have been steadily increasing since before the pandemic, and the rate of 12.7 violent events per 10,000 full-time workers is about three times greater for nurses than all other professions, according to the U.S. Bureau of Labor Statistics.

A recent Press Ganey report showed that, on average, two nurses were assaulted every hour in the second quarter of 2022. That translates to about 57 assaults per day across the U.S.

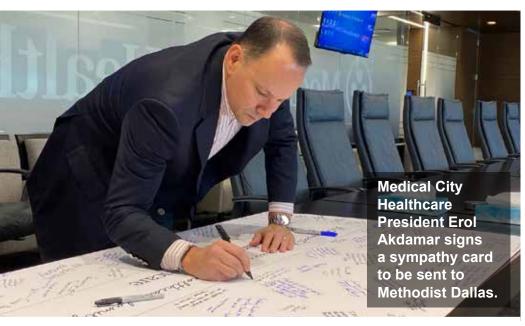
"Our hearts are broken," said **Dr. Serena Bumpus**, RN, CEO of the

Texas Nurses Association. "This is

unacceptable. No person should fear



Threats of workplace violence or actual violence against healthcare workers make it impossible to continue to provide quality patient care. This is an issue we can no longer ignore.





for their life for merely going to work, especially a nurse or healthcare worker whose passion is to help others heal. We hope our legislators understand that we need to protect our healthcare workers."

Love said DFWHC fully supports the recent legislation Safety from Violence for Healthcare Employees (SAVE) Act (H.R. 7961).

"It is very similar to federal legislation where it is a crime to attack an airport worker or flight attendant," Love said. "We want the same protection for healthcare workers. Threats of workplace violence or actual violence against healthcare workers make it impossible to continue to provide quality patient care. This is an issue we can no longer ignore."

Flowers had been a nurse at Methodist Dallas for more than 14 years. Raised in Mesquite, Texas, she graduated from North Mesquite High School in 1977 and went on to obtain her nursing degree from El Centro College. She is survived by her children, Treyci and husband, Ryan, Ralph, Sarah and Kelly; four grandchildren, Riley, Maci, Bailey and Penelope; brother, Melvin Prince and numerous nieces, nephews, cousins and a large extended family.

Pokuaa graduated from UT Arlington in 2019 with a master's degree in social work. She completed her degree specializing in mental health and substance misuse and was a social case worker at Methodist Dallas. Originally from Ghana, she moved to the U.S. more than 20 years ago. She is survived by her mother and son.

"Stories continue to emerge in the U.S. regarding healthcare workers facing violence in the workplace," Love said. "New laws should be enacted and harsher penalties enforced against those who would harm our healthcare heroes." ■











74th ANNUAL AWARDS LUNCHEON

October 21, 2022 Irving Convention Center

A LIFETIME of Service

photos by Jerry McClure







THE DFW HOSPITAL COUNCIL (DFWHC) would like to thank all participants and attendees during its 74th Annual Awards Luncheon on Friday, October 21 at the Irving Convention Center. The event hosted more than 500 attendees with Hall Render and Forvis serving as the top sponsors.

Recipients include:

- Congresswoman Eddie Bernice Johnson with the Distinguished Health Service Award;
- Dorothy DeBose of JPS Health Network as the Kerney Laday, Sr. Trustee of the Year:
- Patrick Brown of Methodist Charlton Medical Center as the Young Healthcare Executive of the Year.

Jessica Long, one of America's most decorated Paralympic champions, served as keynote speaker.

"We were thrilled to host the Annual Awards Luncheon in person for the first time since 2019," said **Stephen Love**, president/CEO of DFWHC. "It was great to be able to visit with so many friends and we were honored to award this year's recipients who have contributed so much to North Texas healthcare."

Johnson and Long both received standing ovations. John Liddle, news anchor at KRLD 1080 AM, performed the National Anthem. Jon Roth, CEO of Dallas County Medical Society, and Kathryn Keaton, program director at Tarrant County Medical Society, provided the invocation and benediction.

This year's Master of Ceremonies was Blake Kretz, DFWHC chair and president of Texas Health Arlington Memorial Hospital. Becky Tucker, DFWHC's chair-elect and senior vice president of channel integration at Texas Health Resources, introduced the keynote speaker.

VIPs in attendance included Kerney Laday, Jr.; Charlie Powell, former Distinguished Health Service Award recipient; Ruben Esquivel, former Distinguished Health Service Award recipient; and John Creecy, former Kerney Laday, Sr. Trustee of the Year.

Nominees of the Young Healthcare Executive award in attendance included **Graham Torres** of Children's Health; **Josh Kemph** of Medical City Healthcare; Francesco Mainetti of Parkland Health; and Jennifer Chavez of Texas Health Resources. They were presented awards noting their 2022 nomination. ■

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Sunday's at 1:00 and 7:00 pm, CST

The Human Side of Health Care



with Stephen Love (left) and Thomas Miller.





















THE DFW HOSPITAL COUNCIL (DFWHC) RADIO program "The Human Side of Healthcare" is broadcast on a weekly

basis through 2022 on KRLD 1080 AM.

Hosted by DFWHC President/CEO Stephen Love and KRLD's **Thomas Miller**, the program has showcased the activities of North Texas hospitals while providing crucial COVID-19 updates.

You can listen to past broadcasts online at Spotify, Apple Podcasts, Google Play, Stitcher, YouTube and iHeart Radio.

Guests during the fall have included:

- Katie Afflerbach, Parkland Health;
- Jessica Aguilar, JPS Health Network;
- Dr. Olaide Ajayi, Texas Health Harris Methodist Fort Worth;
- Dr. Anita Bhansali, Texas Health Harris Methodist Fort Worth;
- Dr. Dante Burgos, Medical City McKinney;
- Dr. John Christoforetti, Texas Health Hospital Frisco;
- Dr. Matthew Fiesta, Texas Health Harris Methodist Fort Worth;
- Dr. Kimberly Goodspeed, Children's Health;
- Mary Harrell, Medical City Dallas;
- Janet St. James, Medical City Healthcare;
- Dr. Curtis H. Johnson, Medical City North Hills;
- Dr. Fuad Khan, Parkland Health;
- Dr. Shyam Kishan, Medical City Children's Hospital;
- Dr. Brian Lima, Medical City Heart Hospital;
- Christina Mintner, Parkland Health;
- Eric Nadel, Hall-of-Fame baseball announcer;
- Crystal Perry, Medical City Denton;
- Liz Petty, Parkland Health;
- Dr. Alan L. Podawiltz, JPS Health Network;
- Ryan Reid, Parkland Health;
- Dr. Michael Siah, Texas Health Presbyterian Hospital Dallas;
- Laura Sonefeld, Cook Children's;
- **Deputy Fire Chief Brian Staples**, Mesquite Fire Department;
- Dr. Jason Terk, Cook Children's;
- Dr. Brandie Williams, Texas Health Harris Methodist Stephenville;
- Katherine Yoder, Parkland Health. ■

Your feedback is welcome. For information, please do not hesitate to contact radio@dfwhc.org.

Around DFWHC

NTX hospitals provide economic impact of \$38 billion

A REPORT RELEASED OCTOBER 17 by the Dallas-Fort Worth Hospital Council (DFWHC) shows healthcare to be one of the most prominent contributors to the North Texas economy with an economic impact of \$38.4 billion, a \$7.7 billion increase from a similar study conducted by DFWHC in 2017.

The study was commissioned by DFWHC's Board of Trustees, made up of executives from North Texas hospitals, and created by **Ann K. Peton**, director of the National Center for Rural Health Works (NCRHW) and the National Center for the Analysis of Healthcare Data.

"We were impressed by the significant increase and impact for North Texas over the past five years," said **Stephen Love**, president/CEO of DFWHC. "Such a positive economic impact is extraordinary, especially when considering the challenges facing hospitals over the past two years during the COVID-19 pandemic."

Titled "The Economic Impact of the Member Hospitals of the Dallas-Fort Worth Hospital Council on the State of Texas and the Dallas-Fort Worth Area," the study detailed the numbers generated by 90 DFWHC-member hospitals in North Texas with \$26.1 billion in labor income, \$5.9 billion in retail sales and \$6.4 billion in taxes. DFWHC-member hospitals also generated 372,988 jobs in 2022, an increase from 295,138 in 2017.

Numbers from the study trended ahead of a recent U.S. Bureau of Labor Statistics' report in 2020 projecting healthcare to add 2.6 million jobs over the next decade, with Nurse Practitioner positions increasing 45.7 percent. Inspired by an aging baby-boomer population and a higher prevalence of chronic conditions, the estimates were the highest of any employment sector in the U.S.

Hospital systems and hospitals participating included Baylor Scott & White Health, Kindred Healthcare, Medical City Healthcare, Methodist Health System, Texas Health Resources, Children's Health, Cook Children's Health Care System, JPS Health Network, Parkland Health, Scottish Rite for Children and UT Southwestern University Hospitals.

"These numbers show North Texas hospitals do much



more than just provide medical services," said Peton. "The employment and income generated and the ripple effect throughout the economy are enormous. The study clearly demonstrates that DFWHC-member hospitals are major players in economic development in Texas."

Using a modeling methodology created by NCRHW that measures the business transactions of all industries within a hospital's area, DFWHC's region and in the state, the study measures the economic contribution of the hospitals and their employees' spending while calculating the jobs and income created as a secondary effect.

"Hospitals act as economic engines and generate huge financial impacts to the community," Love said. "In many cases, they are one of the largest employers in a community. Economic developers frequently seek manufacturing and high technology industries that will create new jobs. The activities of the DFWHC-member hospitals are attracting these industries and must be recognized as a large contributor to the economy."

According to Love, policies should be adopted to encourage the economic impact generated by hospitals to ensure continued economic growth for North Texas.

"The continuation of the Medicaid 1115 Waiver and much-needed Medicaid expansion will improve coverage, access and outcomes for many Texans," he said. "Therefore, these initiatives must be given careful consideration in Austin and Washington, D.C. so hospitals can continue this beneficial economic impact."

For information, contact DFWHC at 972-719-4900. ■

INDIA

Chamber of Commerce Conference

DFW HOSPITAL COUNCIL (DFWHC)

President/CEO Stephen Love served as a panelist during the U.S. India Chamber of Commerce's "Wellness and Workplace Conference" on September 23 at the Renaissance Dallas Addison Hotel.

Love joined James Springfield, president of Blue Cross Blue Shield of Texas, and Dr. Sylvia Trent Adams, executive vice president and chief strategy officer at the University of North Texas Health Science Center, as they discussed "Market Dynamics Shaping the Future of

Healthcare."

U.S. Surgeon General **Dr. Vivek Murthy** served as keynote speaker. An additional panel discussion, "Mental



Health and Society," included Dr. Madhukar Trivedi, a distinguished chair in mental health at UT Southwestern; Brent Christopher, president of the Children's Health Foundation; and Kenneth Hersh, president/CEO of the George W. Bush Presidential Center. ■

Fall educational webinars have been posted online



AS AN EDUCATIONAL SERVICE to our members, the DFW Hospital Council co-hosts monthly webinars with its Associate Members. These webinars are complimentary to members and are posted online. A list of the most recent 2022 webinars are listed below.

August 5, 2022

"Ransomware in Healthcare: Prepare, Detect, Respond" - DFWHC/Critical Insight

Panel included John Delano of CHRISTUS Health; Fred Langston of Critical Insight; and Jake Milstein of Critical

https://www.youtube.com/watch?v=kPo6bhUOkpw

September 29, 2022

"Improving Provider Practice Outcomes"

- DFWHC/UT Arlington

Panel included Dr. Charles Johnson, Director of Academic Advising at UT Arlington; and Dr. Mari Tietze, Myrna Pickard Endowed Professor at UT Arlington. https://www.youtube.com/watch?v=fNsJGT CTOg

For info, contact **Chris Wilson** at **chrisw@dfwhc.org**. ■

Around DFWHC

In Memoriam: Ron Rittenmeyer 1948-2022

IT WAS WITH GREAT SADNESS the DFW Hospital Council (DFWHC) learned of the passing of former Tenet Healthcare CEO Ron Rittenmeyer on October 11 at the age of 75. Rittenmeyer led Tenet, a Dallas-based health system, from 2017 until he stepped down as chief executive in 2021.

Under his leadership, he ushered in a new era for the hospital chain, pushing the company into ambulatory surgery center space. In 2020, Tenet inked a \$1.1 billion deal to expand its already sizable surgery center footprint through USPI. Although Tenet has been known as a hospital operator, its ambulatory surgery center footprint is now more than six times larger than its hospital portfolio.

Rittenmeyer's resume includes stints outside of healthcare. He spent 20 years at PepsiCo's Frito-Lay division and served on numerous boards throughout his life, including at IQVIA Holdings, Inc. and Cox School of Business at Southern Methodist University.

In 2019 and 2020, Ron was named to *Modern*



Healthcare's list of the 100 Most Influential People in healthcare. He has also received The Best CEO for Small Cap Healthcare award by Institutional Investor, the Outstanding Healthcare Executive award from D CEO Magazine and was recognized as one of the Most Admired CEOs in North Texas by The Dallas Business Journal.

He was a regular attendee at DFWHC's Annual Awards Luncheon. He will be missed. ■

JPS breaks ground on new psychiatric center



JPS HEALTH NETWORK on October 26 officially broke ground on a new JPS Psychiatric Emergency Center (PEC) to treat patients experiencing mental health crisis. The facility is part of the JPS Bond Package approved by voters to expand and modernize facilities.

Representatives from the Tarrant County

Commissioners Court, JPS Board of Managers and the City of Fort Worth joined JPS executives, healthcare providers, and other team members for a special Groundbreaking Ceremony at the JPS Main Campus.

The new facility will be approximately 80,000 square feet and will increase the number of patient care spaces from 30 to about 90. JPS is building the PEC facility on the southwest side of campus, along Allen Street at South Jennings Avenue.

The first component of this project will be the connector building between the new PEC and the current behavioral health hospital, Trinity Springs Pavilion. Plans are to begin construction by the end of the year and the project is anticipated to take 18 to 24 months to complete.

"With this new Psychiatric Emergency Center, JPS will be able to redefine our point of mental and behavioral health access and support the growing healthcare needs in Tarrant County," said **Dr. Karen Duncan**, JPS president/ CEO. "Our new facilities will ensure that we will continue to provide high quality healthcare for everyone."

Armstrong named new president of **BUMC** at Dallas

KYLE ARMSTRONG WAS NAMED president of Baylor University Medical Center on September 1, Baylor Scott & White Health's flagship academic medical center in Dallas. He had been serving as interim president since April, having been appointed to chief operating officer of the medical center in January 2020.

Armstrong was also named president of the health system's North Texas Central Region, which includes Baylor University Medical Center, Baylor Scott & White Medical Center – Waxahachie and Baylor Scott & White Heart and Vascular Hospital - Dallas.

"Kyle's guidance through the COVID-19 pandemic demonstrated what an extraordinary leader he is," said Pat Currie, president of hospital and clinic operations of Baylor Scott & White. "His commitment to advancing the Mission of our organization will ensure he builds on Baylor University Medical Center's legacy of service," she added. Baylor University Medical Center, nationally



recognized for patient care, medical education and research, includes multidisciplinary medical teams who serve patients travelling from across the country to receive care. Medical specialties include oncology, transplant, advanced gastrointestinal and esophageal disease, neurology and neurosurgery, orthopedics and more.

Armstrong is a former recipient of the DFW Hospital Council's Young Healthcare Executive of the Year Award and presently serves on its Board of Trustees.

Walker named new CEO at Medical City Lewisville

JOHN WALKER WAS **NAMED** chief executive officer at Medical City Lewisville, starting October 17.

Prior to this role. Walker served as chief operating officer at Medical City Denton since 2017 where his steady leadership, focus on exceptional quality, dedication to physician collaboration and colleague support, and



vision for strategic growth contributed to facility-wide enhancements. During his tenure, the Level II Trauma

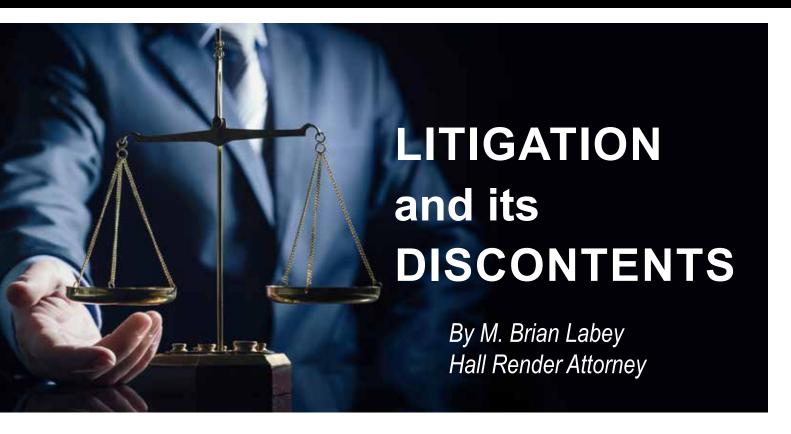
Center earned recognition for outstanding patient care and quality, including a Leapfrog Group "A" safety rating.

"John has a proven record of healthcare leadership and knowledge of our North Texas landscape with a dedication to providing superior and compassionate patient-centered care for our community," said Erol Akdamar, president of Medical City Healthcare. "I am confident that he will lead Medical City Lewisville to the next level of healthcare excellence."

Walker began his career with Medical City Healthcare in 2011 as an administrative resident at Medical City McKinney. In 2016, he was promoted to Medical City Dallas, where he served as associate administrator.

He holds a Master of Science in Healthcare Administration from Trinity University and a Bachelor of Business Administration in finance from Texas Tech University.

Associate Members



PARTIES TO LITIGATION ARE OFTEN DISMAYED by

its costs. Attorney fees alone can motivate the payment of handsome settlements even in meritless cases, and litigation costs tend to make traditional litigation unavailable, impracticable or uneconomical as a tool for individuals and organizations if substantial funds are not available or if the dispute is not worth many hundreds of thousands of dollars.

Jerome K. Jerome's comedic travelogue, *Three Men on the Bummel*, published in the year 1900, places in the mouth of one of the characters the following statement: "If a man stopped me in the street and demanded of me my watch, I should refuse to give it to him. If he threatened to take it by force, I feel I should, though not a fighting man, do my best to protect it. If, on the other hand, he should assert his intention of trying to obtain it by means of an action in any court of law, I should take it out of my pocket and hand it to him, and think I had got off cheaply."

Litigation is—and perhaps has always been—a troublesome, unpredictable drain on time, energy and money. Yet it is sometimes also unavoidable. A terminated employee is free to sue, and it may be difficult for a court to discern, prior to prolonged discovery (if ever), a

meritorious case from a meritless one.

In the context of employment disputes, careful attention should be devoted to avoiding litigation in the first place while at the same time preparing for that contingency. De-escalation and relationship management can sometimes deter lawsuits. Some studies have found that a physician's apology for a medical error tends to reduce the risk of litigation. Similar emotional dynamics may be at play in the employment context.

This is not to suggest that an apology for termination is a good idea—in most cases, it is not—but only that the state of the departing employee's emotions may impact whether a lawsuit is brought, and the employee's emotions might be quite different depending on how a termination is handled. Terminations for cause are more likely to be sustained by courts and arbitrators when they are supported by abundantly clear documentation. It is often cost-effective, in contentious terminations at least, to involve legal counsel before a lawsuit has been filed to minimize the risk of litigation, to obtain a release of claims in exchange for severance or other benefits and/or to pursue pre-litigation mediation.

But if litigation does come, here are some important pointers for how to minimize and mitigate the misery:

This article was submitted by Hall Render. For information, please contact Chris Wilson at chrisw@dfwhc.org.

Consider alternate dispute resolution strategies for particular cases, and think about contractually mandating such procedures.

- Encourage your counsel to discuss with you creative solutions. Hopefully, attorneys are always seeking creative solutions, but it can't hurt to encourage creativity through an actual discussion. There will rarely be any "silver bullet" to solve litigation woes, but there are numerous ways, besides those mentioned below, that certain aspects of litigation can be rendered less costly.
- Consider the value of cordial relations—between counsel at least, if not between the parties. A basic level of trust and collegiality between counsel can make it easier to resolve discovery disputes, pursue settlement discussions and conduct trials without having to go to the judge at every third step. Collegiality can be oil in the joints of litigation machinery. Therefore, employers should consider whether taking a hardnosed approach in a given case will really save money in the long run.
- Be open to settlement. Litigation involves a cost. According to economic theory, a rational party should be willing to pay nearly the amount of that cost, if necessary, to avoid that cost, as long as doing so does not create additional risk/loss/expense or eliminate potential benefits, and sunk costs are irrelevant. Of course, settling can create additional risk and may eliminate the potential for certain benefits (such as producing favorable precedent, clarifying the law or recouping costs after a victory). The suggestion here is not that a party should ignore valid considerations, but only that a party should not foreclose settlement by an emotionally-driven insistence that they are in the right.



- Consider alternate dispute resolution strategies for particular cases, and think about contractually mandating such procedures. Mediation, arbitration and interesting combinations of these (sometimes called "med-arb") may in particular instances provide a more efficient means of resolving disputes than traditional litigation. "Med-arb" is a strategy where the mediator attempts to negotiate a settlement and then becomes the arbitrator who decides the case if mediation fails. To a certain extent, employers can contractually require employees to utilize these alternate strategies rather than litigation when a dispute arises. Employers may also be able to contractually define the dispute resolution process.
- Be deliberate about whether to demand a jury trial. Plaintiffs often leave defendants no option; but, if a jury is not demanded by the other side, do not automatically elect a jury trial. Jury trials are somewhat more complex and therefore more timeconsuming and expensive than bench trials (trials to a judge). The prospect of a bench trial may even favorably alter the way a court views summary judgment motions.

While litigation is sometimes unavoidable and usually painful, there are often ways to avoid or reduce the expense and unpleasantness entailed by the process. If you have any questions, please reach out to:

- Brian Sabey at 720-282-2025 or briansabey@hallrender.com; or
- Your primary Hall Render contact.

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Associate Members



THE CENTERS FOR MEDICARE & MEDICAID SERVICES

(CMS) issued a Federal Register notice in June pertaining to the CMS-2552-10 Hospital and Health Care Complex Cost Report, and included proposed changes to Medicare Cost Reporting instructions. This notice contains many of the same proposals from 2020 plus revisions to the Exhibit templates and, in some cases, instructions revised from the previous proposal.

Background

CMS previously issued a Federal Register notice on November 10, 2020, related to form CMS-2552-10 with a 60-day public comment period. In a supporting statement to the June notice, CMS said that due to the number of public comments plus some administrative issues, it was unable to process responses, and the form expired. The notice invited comments through July 22, 2022, on CMS's intention to collect information from the public.

Supporting Documents

A downloadable zip file containing the full set of documents associated with the most recent federal register notice is available on the CMS website under the PRA Listing Section. Files include:

- CMS-2552-10. Instructions from Chapter 40
 Hospital and Hospital Health Care Complex
 Cost Report Form CMS-2552-10 in Medicare Provider
 Reimbursement Manual;
- CMS-2552-10. Crosswalk summarizing the changes and information to be collected;
- CMS-2552-10. Cost Report Form (P240f) containing a draft of CMS Form 2552-10 which reflects the proposed changes;
- CMS-2552-10. Supporting Statement A (30-day) detailing CMS reasoning and justification for new information collection.

There are also select sections of Electronic Code of Federal Regulations (eCFR):

- eCFR_413.17;
- eCFR_413.20;
- eCFR_413.24.

Proposed Medicare Cost Report Changes

The Federal Register notice highlights changes to the PRM cost reporting instructions and changes to the cost

Article was submitted by Moss Adams. For information, please contact Chris Wilson at chrisw@dfwhc.org.



reporting form. These changes include updates to current worksheets instructions and new worksheets. The affected sections of the cost reporting form are summarized below.

information reported for uncompensated and indigent care pertain to the entire hospital complex.

Worksheet S-2, Part I

Worksheet features a new Exhibit 3A with a listing of Medicaid eligible days for Medicare Disproportionate Share Hospital (DSH) eligible hospitals.

Effective with cost reporting periods beginning on or after October 1, 2018, hospitals were required to submit a listing supporting Medicare DSH eligible days claimed in the cost report at the time of submission. Failure to do so would result in the rejection of the cost report. However, CMS offered no standardized format for submitting the required data. That will change.

In addition to revisions in reporting Medicare DSH eligible days' data on Worksheet S-2, Part I, lines 24 and 25, columns 1-6, CMS now presents a standardized format to submit the patient-level detailed info. This can be found in the new Exhibit 3A and is required for cost reporting periods beginning on or after October 1, 2022.

Patient-level detail is required for each category of days reported on lines 24 and 25, columns 1 through 6. The new exhibit, found on page 56 of the CMS PRM Chapter 40, has 18 data points including eligibility data.

Worksheet S-2, Part II

For cost reporting periods beginning on or after October 1, 2022, hospitals are now expected to submit Exhibit 2A, a listing of Medicare bad debts. If applicable, a separate Exhibit 2A should be submitted for each provider number in the health care complex and separated by inpatient and outpatient as well. Also, the exhibits should distinguish between dually eligible crossover accounts and non-dually eligible accounts.

Worksheet S-3 Part I

An update adds Line 34 to report temporary expansion COVID-19 Public Health Emergency (PHE) acute care information.

Worksheet S-10: Proposed Instructions

CMS has revised the Worksheet S-10 instructions. The S-10 worksheet will have a Part I and Part II. Part I will follow the current reporting instructions where the

New Part II

This will report a subset of that information for only inpatient and outpatient services billed under the hospital CCN. This part focuses on data collection for uncompensated care; the instructions direct lines 2-19 shouldn't be completed for the new worksheet. These revised instructions would go into effect with cost reporting periods beginning on or after October 1, 2022.

Worksheet S-10: Exhibit 3B

This worksheet has a new Exhibit 3B listing for charity care. For cost reporting periods beginning on or after October 1, 2018, hospitals were required to submit a listing supporting charity care claimed in the cost report. Failure to do so would result in the rejection of the cost report. However, CMS offered no standardized format for submitting the required data. For cost reporting periods beginning on or after October 1, 2022, Exhibit 3B represents the new standard format for reporting charity care amounts claimed in the cost report.

Potential Challenges and Considerations

It's anticipated that CMS will likely release a final notice. Additional reporting requirements could bring up challenges for providers depending on their current cost reporting practices. Providers that rely on Medicaid payment as documentation for inclusion in the Medicare DSH calculation now face the issue of having to report detailed Medicaid eligibility information on worksheet S-2—including state eligibility codes—in the new exhibit 3A for all patients.

We're Here to Help

For information about how these proposed changes will affect your organization and Medicare cost reporting efforts, contact:

- jonathan.mason@mossadams.com;
- jesse.vo@mossadams.com.

You can also visit the Moss Adams Provider Reimbursement page.





SPECIVES

INSIGHTS & INSPIRATION IN HEALTHCARE MARKETING



few years ago, I had a healthcare client ask me why the advertising campaign we had created for him was so successful. He noticed most of his new patients were telling him the same thing in terms of their takeaway of the campaign. The messaging he was hearing from patients was not incorporated within the advertising itself. But unbeknownst to him, it was.

The mystery of great advertising

Let me explain how this happened. An organization consists of many attributes - some are tangible, some are intangible. But they all can't be tied for first place. When consumers are exposed to advertising,

more than one or two key points. As such, it is extremely important to initially develop a strategy which identifies the most unique selling point of a brand. To do so, brand discovery and competitor research must be performed. This intelligence guides us to a strong brand strategy that will uniquely position the organization within the market.

When done correctly, a strategically based brand conveys more than the words it delivers. It consists of more than the products or services of the organization. It delivers an authentic voice and personality of the brand. A consumer's take away will include subliminal messaging that goes beyond just words. It will be the style and delivery of the talent (on-camera person or voiceover). It will be the background music and sound effects. It will be the lighting and overall feel that comes across. This is the secret sauce.

It thrills us when our clients convey a mystery which we can easily resolve. Reach out if you have never experienced this. We would love to create a successful campaign for you.



About the author

Mark Wyatt Founder & CEO, Agency Creative mwyatt@agencycreative.com



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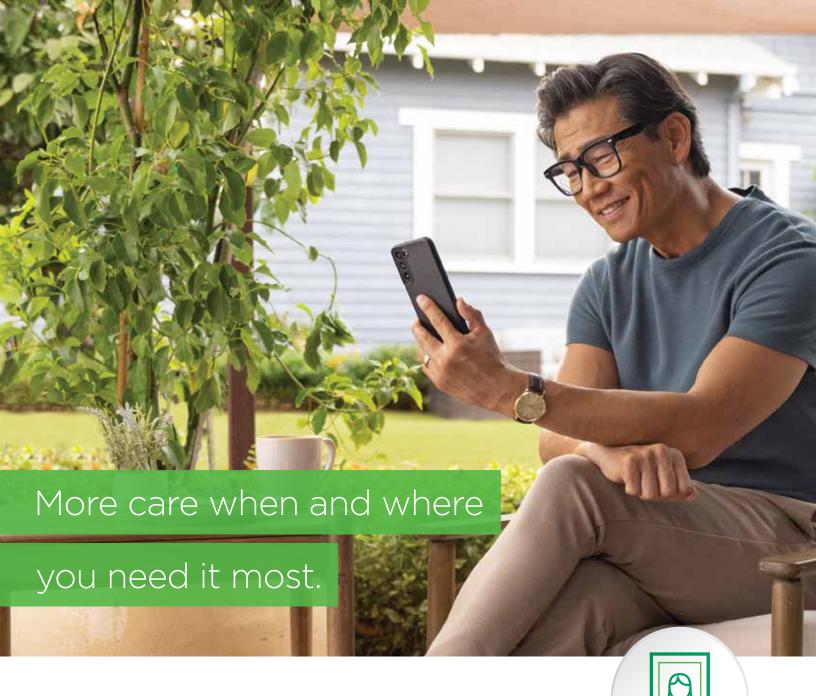
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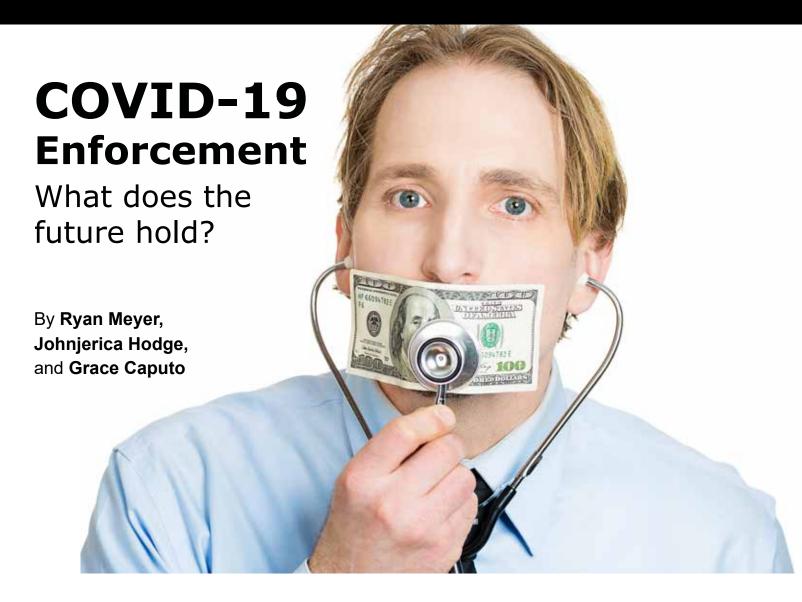


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ALMOST AS SOON AS the Federal Government began disbursing unprecedented funds to combat the COVID-19 pandemic, allegations of misuse, misappropriation and fraud began to be publicized.

As a result, the government has deployed a number of resources to investigate the improper use of those funds. The most recent of these efforts is the Department of Justice's (DOJ) COVID-19 Task Force, which was announced by **Attorney General Merrick Garland** in May 2021. Most importantly for healthcare providers, the Task Force includes representatives from U.S. Health and Human Services and intends to build off of both DOJ and HHS increasing use of "big data" to identify potential areas of non-compliance for enforcement.

Unlike so many Government initiatives, the Task Force seems to have just as much as bark. The Task

Force recently announced its first significant COVID-19 enforcement action—criminally charging 21 defendants across the country stemming from their alleged role in health care fraud schemes related to COVID-19.

The Government alleged that more than \$149 million was billed falsely to federal programs because of those schemes. In fact, thus far, the Government has seized more than \$8 million in cash and other proceeds. The alleged schemes included offering COVID-19 testing to persuade patients to provide certain information and saliva or a blood sample; that information was then allegedly used to submit false claims to Medicare. Another set of defendants were alleged to have billed for telemedicine visits that did not occur and to have ordered unnecessary tests in return for access to telehealth patients. The Government also filed charges

Katten

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against manufacturers and distributors who created fake COVID-19 vaccination cards and records.

In addition to the criminal charges, several administrative actions were also filed against providers who participated in fraudulent schemes related to treating COVID-19. Charges have also been filed against individuals providing false information to obtain COVID-19 relief funds and the financial institutions that facilitated the provision of those funds.

The Task Force's initial takedown also highlighted DOJ's increased focus on "holding individuals accountable." Attorney General Garland has repeatedly emphasized that the DOJ's first priority in investigations is to prosecute individuals who "commit and profit from corporate malfeasance."

To further ensure individuals are held accountable, **Deputy Attorney General Monaco** recently announced a restoration of prior guidelines, stating that companies must provide the DOJ with all non-privileged information about individuals involved or responsible rather than those "substantially involved" for the misconduct at issue in order to be eligible for cooperation credit.

In addition, prosecutors are now directed to consider all prior corporate misconduct—regardless of whether the misconduct is similar to the conduct at issue in the investigation.

This recent action represents a significant expansion of healthcare-related COVID-19 enforcement. Previously, enforcement in this space had been relatively limited, though increasing over the course of the last year. The first two COVID-19 related healthcare fraud enforcement actions involved the bundling of COVID-19 tests with other medically unnecessary add-on tests.

More recently, the DOJ charged pharmacy owners with using COVID-19 emergency override billing codes to bill Medicare for \$30 million worth of cancer medication that was never purchased by, prescribed to, or dispensed to patients.

In February 2021, DOJ brought the first criminal charge in the country involving the Provider Relief Fund, which was created as part of the CARES Act to provide direct payments to healthcare providers for lost revenue and expenses because of COVID-19. Similarly, in April 2021, a Colorado physician was indicted for misappropriating nearly \$300,000 he obtained though the



Provider Relief Fund and the Accelerated and Advanced Payment Program, which, like the Provider Relief Fund, provides necessary funds to impacted healthcare providers to facilitate cash flow during a national emergency.

Moving forward, it is almost certain that DOJ's enforcement activities will continue to expand, especially on the civil side. DOJ has repeatedly emphasized that it will use the False Claims Act to aggressively pursue COVID-19 related healthcare fraud cases and it has also urged whistleblowers to come forward with knowledge of any COVID-19 related misconduct.

As early as March 2021, DOJ was already noting an uptick in qui tam lawsuits and whistleblower reports, which are sure to have further increased over the last year. Moreover the scope of potential qui tam lawsuits is far broader than most healthcare entities are used to— Provider Relief Funds and PPP loans are also subject to False Claims Act Enforcement.

For the tens of thousands of recipients of COVID-19 relief, the years to come are likely to be full of anxious moments as the Government launches civil and criminal investigations related to the largest governmental relief programs since the New Deal. While the Government will of course not be able to investigate every healthcare entity that received COVID-19 funds, the long limitations on the relevant statutes (up to 10 years), the myriad possible mistakes that can be converted into "violations," and the incentives for regulators and whistleblowers to "catch" the "bad guys," all likely amount to an aggressive enforcement posture for years to come.

In such an atmosphere, proactive compliance measures are key to ensure that investigations do not morph into enforcement.

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Jennifer Miff President, DFWHC Foundation Senior Vice President, DFWHC



How to contact us 972-717-4279 info@dfwhcfoundation.org

In Memoriam - Donald R. Smith

IT IS WITH A HEAVY HEART that I share that Donald R. Smith, CEO of Texas Healthy at Home, passed away suddenly October 17. Don was a tireless advocate to our North Texas Community and his energy and enthusiasm for improving the lives of North Texans will be sorely missed.

Christina Bartha, Interim CEO of Texas Healthy at Home (TH@H) says, "Don's big heart and entrepreneurial spirit were appreciated across the country. He embodied the TH@H mission, which is to 'lead the creation of an integrated health and human service delivery system that addresses social needs, improves care outcomes, and enables Texans to live at home with dignity and independence.' In many ways, TH@H is Don's legacy, as are the many friends and associates who remain inspired by his passion for making life better for older adults and their caregivers."

Prior to joining Texas Healthy at Home, Don retired from United Way of Tarrant County in May 2021, where he served for 16 years as Executive Director of the Area Agency on Aging.

Leah M. King, president/CEO of the United Way Tarrant County shares, "Our community lost a staunch advocate recently with the sudden passing of Don Smith. For those of us fortunate enough to work alongside Don, there was no mistaking his focus. He was relentless in his pursuit of improving the lives of older adults. His focus on accessing resources, expecting initiatives to be evidence-based and the desire to innovate are only a few of the numerous hallmarks of his legacy."

Don worked many times over the years with the Dallas-Fort Worth Hospital Council Foundation, in particular when we worked together helped support the Texas Health Community Impact (THCI) program.

Catherine Oliveros, Vice President, Community Health Improvement at Texas Health Resources, has known Don for many years and added her thoughts. "I met Don soon after I moved to Texas and he hired me as deputy director of programs at Area Agency on Aging. Don was a visionary and taught me, an operations person, how to be comfortable with creativity, ideation and risk-taking. I honestly believe that my experience at the AAA helped prepare me for my career journey, and I am grateful to Don for that."

Don's leadership to improve the lives of aging populations will be remembered for many years to come. We thank him for his service, friendship, and mentorship across North Texas. We will miss him very much. ■



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Foundation Mission

Inspire continuous improvement in community health and healthcare delivery through collaboration, coordination, education, research and communication.

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As the trusted "go to" resource, inspire collective improvement of health and healthcare outcomes.

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15th Annual Patient Safety Summit tops more than 500 attendees over four days

THE DFW HOSPITAL COUNCIL (DFWHC)

FOUNDATION'S 15th Annual Patient Safety Summit wrapped up its four weekly sessions on September 29. Total attendance for the event topped 500, with additional sessions hosted September 8, 15 and 22.

"It's been a great year for the Patient Safety Summit," said Patti Taylor, event coordinator and the DFWHC Foundation's director of quality and patient safety. "Since the pandemic began two years ago, this event has been virtual and we have been pleasantly surprised about the reach outside of the DFW region. With this new online format, we were able to reach hundreds of additional hospital employees perhaps too busy to leave their facility."

This year's Summit was themed "Strength and Courage in the Year of the Tiger," and was highlighted by Keynote Speaker Laurel Braitman's appearance on September 8 when she discussed "The Mental Health Benefits of Storytelling for Healthcare Professionals."

Additional sessions included:

- "Civilian Response to an Active Shooter" with Lieutenant Robert Johnson, Sr., Dallas County Hospital District Police Department;
- "Easy Solutions to Support Holistic Patient Care" with Dr. Eduardo Luna;
- "Layers of Protection for Patient Safety" with Lindsey Galli, Director of Education at PFCCpartners;
- "Three Safety Stories to Share and Celebrate" with Catherine Dunham, Brenda Slade, Nancy Gardner, Carrie Pierce and Rami McKeel.

This year's Platinum Sponsors included Methodist Health System, Texas Health, The Joint Commission and UT Southwestern. Silver Sponsors included Abbott and ACHE of North Texas.

For information, please contact Patti at ptaylor@ dfwhcfoundation.org.

Around DFWHC Foundation



IQSC Data Summit set for Jan. 25-26

THE DFW HOSPITAL COUNCIL (DFWHC) FOUNDATION will host its 6th Annual Information and Quality Services Center's (IQSC) Data

Summit on January 25-26, from 9:00 a.m. to 12 noon on both days. The theme for this year's virtual event is "The Powerful World of Data."

This year's keynote speaker will be **Dr. James Zimring**, author of the book "Partial Truths." In his book, Dr. Zimring argues that many of the mistakes the human mind consistently



makes boils down to misperceiving fractions. He says we see slews of statistics that are essentially fractions, such

as percentages, probabilities, frequencies and rates, and we tend to misinterpret them. Zimring will explore the counterintuitive reason that these flaws might benefit us, demonstrating that individual error can be highly advantageous to problem solving by groups.

Zimring is the Thomas W. Tillack Professor of Experimental Pathology at the University of Virginia School of Medicine. He is also the author of the 2019 book "What Science Is and How It Really Works." Zimring has an MD and also a PhD in Immunology, both awarded from Emory University, and has published over 165 research articles in his field of study.

"We're very excited to host Dr. James Zimring at this year's summit," said **Theresa Mendoza**, director of data services at the DFWHC Foundation. "He will bring a unique and fascinating perspective to our event and we are looking forward to his presentation."

Registration, session and agenda details are being planned and will be available in November. For additional information, please contact Theresa at **tmendoza@ dfwhcfoundation.org**.

Foundation hosts first live event since 2020 with Sepsis Educational Series



THE DFW HOSPITAL COUNCIL (DFWHC) FOUNDATION hosted its first in-person event since 2020 with its complimentary Sepsis Educational Series "Addressing Sepsis: Mapping Out Best Practices in DFW" on August 31 at Methodist Dallas Medical Center.

The four-hour event attracted more than 100 attendees. Topics included:

- "Sepsis & Geography," Madi Crawford, PhD, UNT Alum researcher Social Vulnerability and Septicemia in Texas Counties 1980-2019;
- "Dallas and Tarrant County Data vs State and National Data," Ryan Reid, BSN, RN, Parkland Health and Kathy Watts, JPS Health Network Sepsis Coordinator;
- "Avoiding Roadblocks: CMS Maternal Sepsis Standards and Case Studies," Meagan Peters, Senior Clinical Quality Program Manager, Parkland Health and Carrie Hood, BSN, RN, CNML, Sepsis Coordinator for Baylor Scott & White – Lake Pointe;
- "Navigating the Way Home: Post-Sepsis Syndrome," Jessica Aguilar, Clinical Sepsis RN, JPS Health

Network;

• "The Final Destination" Dr. Leslie Cler, FACP, CPE Chief Medical Officer, Methodist Dallas Medical Center.

"It was a great event with excellent speakers," said Patti **Taylor**, director of quality and patient services at the DFWHC Foundation. "We would like to thank Methodist Dallas Medical Center for hosting today's sessions and especially members of the Sepsis Strike Force for their valuable coordination work."

This was the fifth educational event hosted by the Sepsis Strike Force in 2022. Coordinated by Taylor, the collaborative was formed in 2017 with the intention to provide evidence-based clinical guidelines, protocols, guidance and best practices. The group's membership includes representatives from Baylor Scott & White Health, Children's Health, Cook Children's, JPS Health Network, Methodist Health System, Parkland Health, Texas Health Resources and UT Southwestern.

For questions, please contact Patti at **ptaylor@** dfwhcfoundation.org.

Around DFWHC Foundation

Foundation hosts "Building Better Outcomes" webinar on Sept. 20



THE DFW HOSPITAL COUNCIL (DFWHC) FOUNDATION hosted the complimentary webinar "Building Better Outcomes: Models to Enhance Patient Care for Older Adults" on September 20.

Speakers included **Donna Fletcher**, BSHA, Geriatric Program Coordinator, NICHE Coordinator at UT Southwestern Medical Center; **Michelle Roberson**, Nurse Manager, Acute Care of Elders Unit at UT Southwestern Medical Center; and **Laura McEntire**, LCSW, Senior Director, Health Systems at the Alzheimer's Association.

Target audience for the event included Chief Nursing Officers and healthcare professionals in Quality, Diversity, Population Health, Post-Acute Care and Social Work.

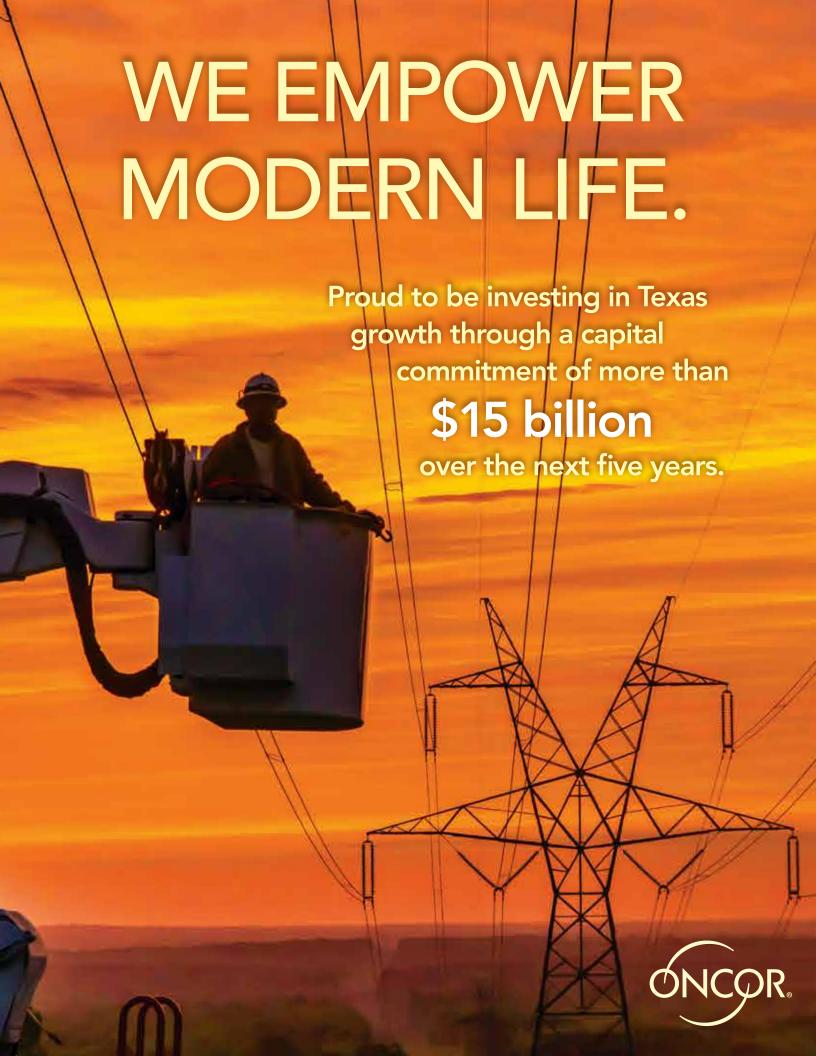
The DFWHC Foundation is supporting the effort to

engage hospitals in this model to provide better care for older adults. North Texas hospitals were encouraged to send a representative to the meeting.

The webinar assisted attendees with starting the process of equipping their organization to better serve older adults and their families. Strategies included:

- Enhance patient care;
- Improve quality metrics;
- Improve post-acute care transitions;
- Increase workforce satisfaction.

For information, contact **Patti Taylor** at **ptaylor@ dfwhcfoundation.org**. ■





Danny Davila Director, FCRA Regulatory Risk & Consumer Compliance Advisor GroupOne Background Screening

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The ROI of a Background Report

IN THIS ERA OF USING DATA to influence decisions and establish benchmarks, a question that still holds intrigue is how does one measure a return on investment (ROI) for background reporting services? To obtain a clearer picture of how the background report fits within talent acquisition, we have a couple of points to consider.

The request can only begin once the job offer is made and accepted. The background report is complete once all requested information is investigated, compiled and the report is returned to the client.

Factors impacting ROI would be time, cost, labor and mitigation during the production of a background report. Sometimes, a determination is made by talent acquisition to conduct background reports internally to reduce costs. The cost of performing these tasks must be weighed against the option of outsourcing. In addition to labor costs, a talent acquisition department may incur regulatory and legal risks by performing the work inhouse. It's not uncommon to need at least two to three fulltime employees focused on background reports.

Additional factors include separation costs, which range from salaries incurred, the time/labor expended on training and expenses incurred with transitioning out of the system. And that's just the beginning.

Inevitably, a good background screening program is established to prevent harm and ensure your workplace has vetted and qualified employees. The consequence of having a limited background screening service could result in negative outcomes that would have a significant financial impact on an organization's performance. In addition, your company's reputation could be damaged making it difficult to recruit new talent.

One method of determining ROI is to assess the value of avoiding numerous bad hiring decisions. Assume an average background check performed by a third party is \$65.00 and over 12 months, a firm submits 100 names with the total cost \$6,500. At least 10% of the reports come back with adverse action, which may include criminal history or possible sanctions. The action of running these pre-employment screens and avoiding the bad hire would save more than the background check expenses.

The risks of not conducting thorough pre-employment background screenings is far more expensive than the cost of a safe and productive workplace.



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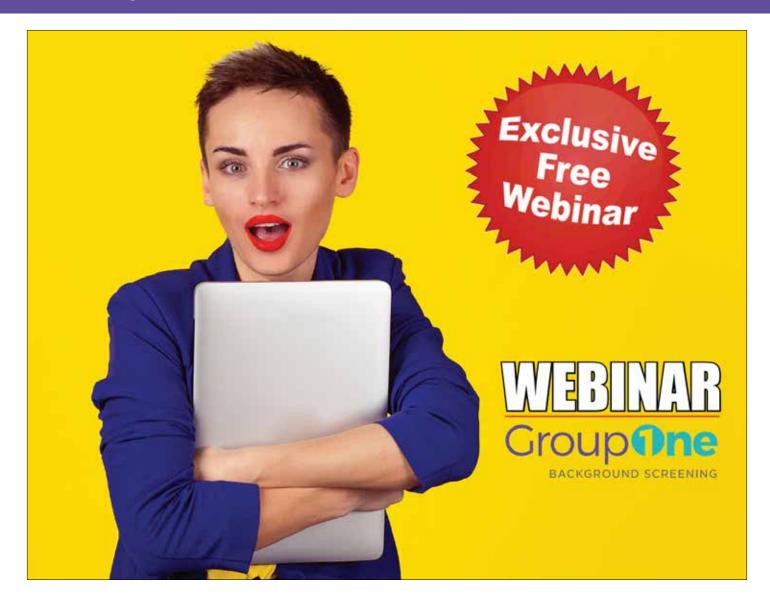
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Group**One** REPORT



GP1 webinar "Tips for Employment Verifications" set for November 10

NEED A FEW TIPS on employment verifications? GroupOne Background Screening will continue its 2022 webinar series with "Ordering Tips for Employment Verifications" on Thursday, November 10 from 2:00-3:00 p.m., CST.

This complimentary live event will be an interactive discussion with two of our finest experts in GroupOne, David Graves, our famous HR Guru and Sales Representative; and Steve Fischer, our gifted Business

Operations Specialist.

This team of accomplished background screening maestros will provide advice on how to save money and time while improving your company's safety. They will also be available to answer any questions you might have.

You can register at https://register.gotowebinar.com/ register/3983238583618776332.

For information, contact Chris Wilson at chrisw@ dfwhc.org or 972-719-4900. ■

Group One REPORT

NFL Player lowers boom on activist

But was it legal?

TO SAY THESE DAYS ARE SCARY PUBLIC TIMES is

probably an understatement. Headlines detailing school shootings, unruly airline passengers and hate crimes are enough to put anyone on edge. So, when an unknown person runs onto a football field carrying a pink smoke bomb, who knows what he's up to?

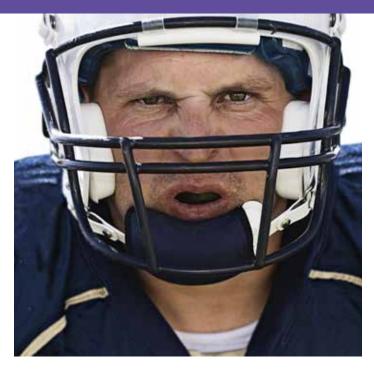
If you've seen the video from an October 3 NFL game between the Los Angeles Rams and the San Francisco 49ers, security men are trying to chase down an energetic trespasser trailing a plume of peculiar pink smoke. When he veers towards the sideline, Rams' linebacker Bobby Wagner lowers the boom, with a little help from teammate Takkarist McKinley. Let us state without reservation, it was a hard hit. Pow! But was it legal?

Thankfully, the man was harmless, for the most part. He was an animal rights activist making a statement. Evidently, Direct Action Everywhere (DAE), the radical animal rights group behind the stunt, was protesting animal cruelty. According to DAE, similar protests have taken place at a Buffalo Bills' game in September and a Minnesota Timberwolves' contest in April. We're still not sure what the pink smoke bomb symbolizes. But the incident raises issues regarding employee safety.

Wagner knew none of this when he decided to lower his shoulder and take the man out while security was having trouble cornering him – the action inspiring huge cheers from the crowd.

The protestor has since filed an assault complaint with the Santa Clara police describing the incident as a "blatant assault." But was Wagner's conduct justified under a theory of self-defense or defense of others?

Granted, an unruly fan charging the field for publicity is not a threat, but during this troubling era, how do you



know for sure? The protester was an unauthorized person running across the field waving an unknown smoking device. In addition, he resisted attempts to stop him.

As Wagner stated, you never know the intruder's intentions or whether they are carrying a weapon. In California, self-defense or defense to others is a valid reason for assault if an individual believes he or someone else is in imminent danger. But please note, one may only use the amount of force necessary.

As the video shows, a security detail was unsuccessfully attempting to stop the man. Let's get real, if you run onto a football field during an NFL game, it should be reasonably expected that you could be tackled and suffer injury. In addition, such publicity stunts can create genuine threats to the safety of players, security and even attendees.

If a person is engaging in constitutionally protected activity such as protesting, sometimes there are exceptions. But for protestors repeatedly targeting a business such as an NFL game, the constitution will not necessarily protect their actions.

In this case, DAE threatened the safety of players and NFL employees in pursuit of their "revolutionary" goals, so it appears Wagner blasting the protestor through the earth's crust to its molten core was justified. Now, if the violent action had continued after the protestor was prone and handcuffed, well, then we have an entirely different ballgame!

Are employers liable for workers' off-duty crimes?

THIS PAST SUMMER, a Dallas County, Texas jury slapped Charter Communications with \$7.375 billion in damages. The Goff v. Holden & Charter Communications, LLC verdict is exceptional due to its size, and because it penalized Charter for an employee's criminal conduct while off-duty.

Generally, an employer can be held liable for an employee's misconduct within the course and scope of their work. Negligence can apply when the employer unreasonably failed to prevent wrongdoing, even if it occurred while the employee was off the clock.

The reasons that Charter was held liable provide important lessons for employers on preventing workplace violence, especially if employees visit customers in their

In 2019, Roy Holden, a Charter cable technician, visited 84-year-old Betty Thomas for a service call. The next day while off-duty, Holden drove a company van back to her home where he robbed and murdered her. He was arrested, pleaded guilty, and is serving life in prison. Thomas' family sued Charter, alleging that gross negligence caused her death.

Charter seemed well-positioned to defend itself—after all, Holden wasn't on the job when he committed his crimes, and the company had run a criminal background check. But as the trial proceeded this past summer, plaintiffs presented evidence that Charter failed to take critical steps that might have prevented this tragedy.

When Charter hired Holden, it failed to verify his prior employment history. While Charter did run a criminal background check and found nothing, the testimony at trial showed that industry standards for this kind of position required both employment verification and a criminal background check.

If Charter had applied that standard, it would have learned Holden was fired from other jobs for misconduct including forgery and unprofessional workplace conduct.



By failing to conduct adequate due diligence, Charter made an unfortunate employment decision and exposed itself to massive liability.

Employers should protect themselves against such liability with robust background check processes that meet or exceed industry standards. This is especially important when employees visit customers where they are most vulnerable—in their homes.

The second of Charter's critical mistakes came after it hired Holden. The plaintiffs showed that in the days leading up to Thomas's death, the company failed to act on a series of red flags before sending Holden into customers' homes.

Nine days before the murder, Holden begged a supervisor for money. The supervisor refused and did not report it. Eight days before the murder, Holden broke down at work after his wife left him. And just a few days before the murder, he misused a company van.

Plaintiffs presented evidence showing that Charter should have identified Holden as a potential threat based on these red flags, as shown by industry standards and its own policies. If Charter had recognized these risk factors and removed his access to the van, it might have prevented Thomas' death.

Employers and HR directors should take notice and evaluate their own background check and workplace violence prevention programs to see if they pass muster. If not, it's time to act. The lives of employees and customers might just depend on it.



It's easy to be amazed by all the advancements in modern medicine. But at its core, the practice of medicine is about *people*.

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