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PATRICK MALONE & ASSOCIATES

Better Healthcare Newsletter from Patrick Malone

This issue of our newsletter is personal for me. More than 40 years ago, when I was a young medical reporter at the Miami Herald, I first encountered our nation's broken system of disciplining dangerous doctors and protecting patients.

It's still broken, I'm sorry to say.

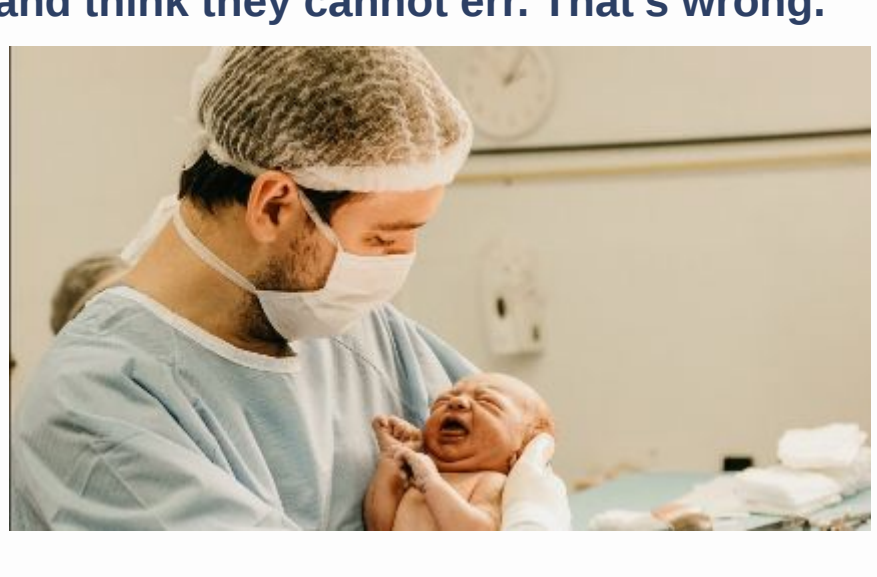
And it's broken in the same ways and for a lot of the same reasons that existed in the 1970s when a team of reporters that I was part of published an award-winning series of articles called "dangerous doctors."

Our regulatory bodies - especially the boards in every state that have the power to keep or revoke a doctor's license to practice medicine -- are still under-funded, under-motivated, under in a lot of ways that expose patients to unnecessary risk of serious harm.

The vast majority of doctors are dedicated, competent, careful human beings. But then there are the others...

For the sake of our safety — especially when we are most vulnerable while seriously ill or injured and in doctors' care — it is vital to understand the key reasons -- at least five of them -- as to how and why physicians put patients at high risk and harm them.

1. Many of us put doctors on a pedestal and think they cannot err. That's wrong.



Popular media, with soap operatic portrayals of them, strives to show that doctors have many ordinary shortcomings. Still, a lot of us can't set aside a positive bias. We admire doctors, notably now because of the valiant care many doctors have provided during the coronavirus pandemic. Public opinion polls show that doctors consistently rank high for the trust we put in them and the quality of their work.

Alas, doctors are human, and research shows they are all too fallible. In pre-pandemic times, experts found that medical errors claimed the lives of roughly 685 Americans per day — more people than died of respiratory disease, accidents, stroke, and Alzheimer's. That estimate came from researchers led by a professor of surgery at Johns Hopkins. Medical blunders have only worsened as the pandemic overwhelmed the U.S. health care system, reported Becker's Hospital Review, an industry news outlet:

"Health care workers are burned out and exhausted from juggling pandemic-related stressors and additional burdens linked to workforce shortages for more than two years. These issues pose serious consequences for employees and patients, as numerous studies link clinician burnout and stress to an increased likelihood of medical errors. The full picture of how Covid-19 has affected patient safety is still unclear, but emerging data on health care-associated infections and other forms of patient harm suggest significant lapses have occurred amid the pandemic.

"The number of serious patient safety incidents reported to The Joint Commission jumped in 2021, reaching the highest annual level seen since the accrediting body started publicly reporting them in 2007. The organization received 1,197 reports of sentinel events last year [incidents that result in death, permanent harm, or severe temporary harm], up from 809 in 2020."

As for doctors' role in determining the fundamental causes of what may be wrong with us, the Society to Improve Diagnosis in Medicine provides disconcerting data. These researchers, health care providers, advocates, and others who seek to improve practices in the field to benefit patient safety, report this of misdiagnoses:

Every nine minutes, someone in a U.S. hospital dies due to a medical diagnosis that was wrong or delayed. Roughly one in 10 patients with a serious disease is initially misdiagnosed. Diagnostic errors affect an estimated 12 million Americans each year and likely cause more harm to patients than all other medical errors combined. Misdiagnoses boost medical costs through unnecessary tests, malpractice claims, and costs of treating patients who were sicker than diagnosed or didn't have the diagnosed condition.

2. Patients cannot rely on doctors or hospitals to police professional ranks

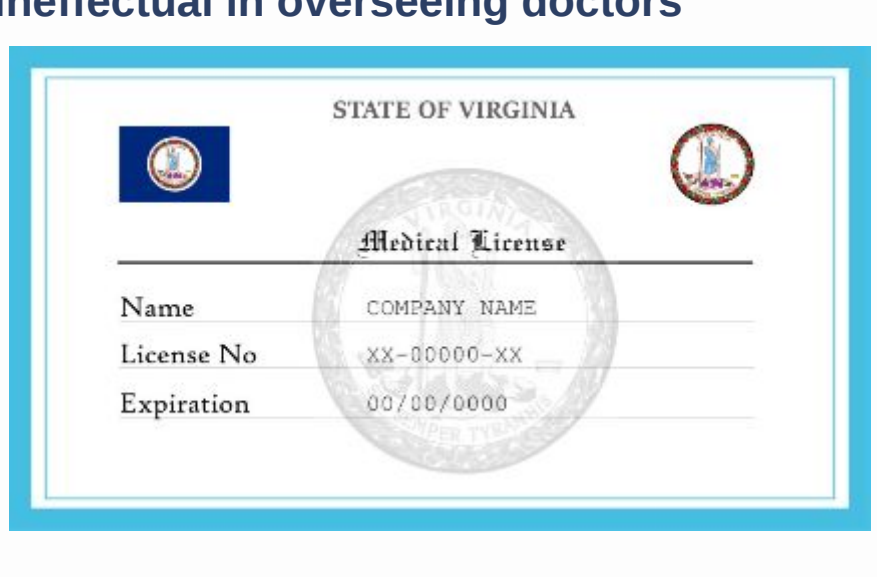
In a perfect world, doctors would be among the first to report peers for mistakes, impairment, or incompetence. It doesn't occur as it should even though ethical duties require such.

Researchers have found that doctors worry, incorrectly and excessively, about malpractice lawsuits and fear getting mired in sorting out others' messes. They fret that they will subject themselves to colleagues' harsh reactions if they break an unspoken bond of peer silence. A handful of cases that have gotten widespread media coverage show that doctors and hospitals will stay silent about negligent, abusive, and poor-performing doctors hoping, instead, that with professional nudging the bad actors will just move on.

Besides providing peer oversight, doctors also are supposed to be scrutinized by hospitals granting them practice privileges. But hospitals can be both too lax in investigating doctors and, at the same time, bogged down in laborious processes that administrators hope will shield themselves from the possibility of lawsuits by patients or doctors over "negative credentialing," news reports on ghastly serial malpractice cases have shown.

Doctors and hospitals, by the way, may point to institutional "morbidity and mortality conferences," formal sessions in which doctors gather and dissect why treatments and procedures failed, as an important way to improve medical care and safeguard patients. While hundreds of hospitals, and especially academic medical centers, may run the sessions, many stopped them during the pandemic, and it is unclear when or if they will resume.

3. State boards have grown ever more ineffectual in overseeing doctors



Critics call it a relic of the past. But this country leaves it to each of the 50 states to determine their own requirements for its doctors to be licensed to practice medicine. The boards that also are supposed to take public complaints, investigate them, and punish doctors for wrongdoing happen to be made up mostly of, yup, doctors.

CBS News spent a year investigating medical licensing authorities nationwide, reporting that they claim their main focus is patient safety. But they act otherwise — chiefly to protect doctors and to go easy on punishing miscreants. Consumer Reports found this to be true in its investigations, and the Los Angeles Times reached similar infuriating conclusions in its deep dig on California's medical board.

The doctors who get off light and keep their licenses do so despite the serious harm they inflict on patients, the news reports show. Patients have endured bungled surgeries, wires and other materials left in their bodies, toxic combinations of drugs prescribed for them, and sexual misconduct.

Few doctors show up with formal sexual abuse complaints by patients in a national database that is supposed to catalog physician wrongdoing, the nonprofit advocacy group Public Citizen has found. The group further found that doctors against whom there are such complaints too often (in 38% of cases) kept licenses and continued to practice. Scandal after scandal involving universities and sexual abuse by doctors of female and male students — athletes and those using school health services — have shown how medical boards suspended or revoked M.D. licenses far too late, after dozens and even hundreds of young people were victimized.

Critics have ripped licensing boards nationwide for allowing themselves to be politicized during the pandemic, failing to rein in doctors who have spread extreme disinformation and anti-science hokum. Extremist doctors largely appear to have skated by medical board oversight while promoting, without evidence or even in opposition to research and established standards of care, prescription drugs and other treatments debunked for Covid-19.

4. Problem doctors don't stop, they move

When doctors get in trouble for repeated malpractice on patients, too many of them just mosey down the road and practice elsewhere. That's because the professional licensing system is a state-by-state patchwork, with a lax and unworkable national reporting system.

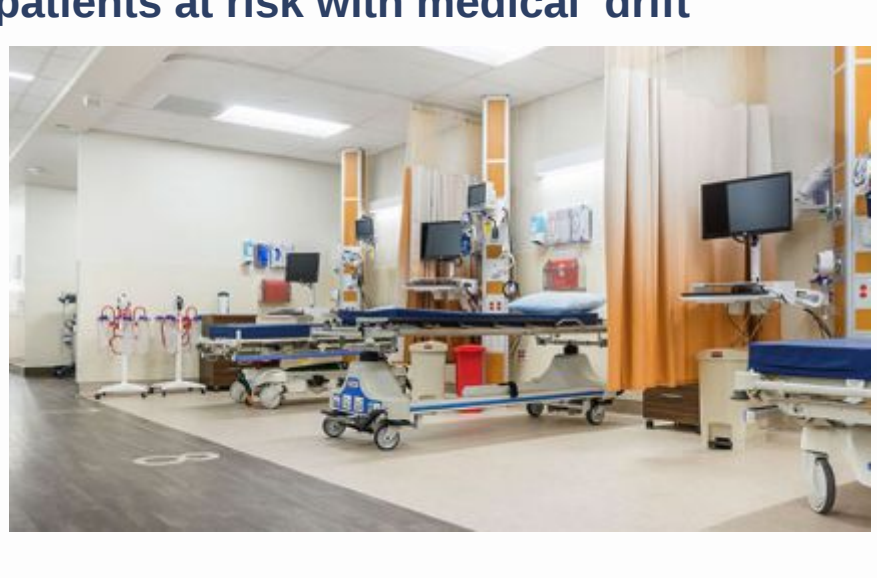
The Milwaukee Journal-Sentinel and MedPage Today dug into medical board records across the country to find at least 500 hop-scotching and problematic practitioners. They included a Colorado doctor whose care of a multiple sclerosis patient caused four other MDs to complain to the state medical board when the patient died in 2011. The board and the doctor agreed he was "permanently inactivating" his license in 2014, meaning he can't ever get it back. But the doctor also practiced in Florida, where he worked with no restrictions, despite malpractice lawsuits from seven other patients in two states, all accusing him of MS misdiagnoses. Reporters also found a New York plastic surgeon who had sex with a patient and had his license suspended for three years. He was permanently ordered to have a chaperone present whenever treating any female patients in the Empire State. But he operated free of medical restrictions in Wisconsin. There he was appointed to an endowed chair at the University of Wisconsin-Madison, funded in part by billionaire Diane Hendricks, a patient and major political contributor to Gov. Scott Walker.

How can doctors so easily skip consequences of their wrongdoing just by moving? Critics, including the consumer rights group Public Citizen, blame the National Practitioner Data Bank, a creaky 30-year-old system. It is supposed to help inform hospitals and state boards about problem doctors, the investigation found.

But as reporters have found, "it has never been available to the public, provides only portions of troubled medical backgrounds, and even state medical boards rarely turn to it." Further, as Public Citizen and others have found, the database likely falls far short in capturing grievous wrongs committed by doctors due to underreporting of key information by hospitals and others. Half of all hospitals have not made any reports at all to the database in two decades, Public Citizen has reported. Part of this problem is rooted in big disciplinary disparities among state medical boards, with the consumer group finding many low rates while a few act with rigor.

By the way, risky doctors' moves may not involve much geography at all. In one infamous case, an orthopedic surgeon whose work was so egregious that prosecutors finally charged him criminally eluded consequences of his misconduct for a while by moving around hospitals in a metro area. In another much-publicized case, also involving a problem orthopedist, he skirted oversight by moving only a few miles away — across the border to a neighboring state. Stanford researchers also found that doctors with multiple settlements in malpractice lawsuits too often left big practices for smaller ones, perhaps with two or three others. That poses problems because that means the problem doctors likely had less collegial oversight and support — and greater responsibilities.

5. Once doctors are licensed, some put patients at risk with medical 'drift'



Doctors deserve a ton of credit for putting in years of hard work to earn medical degrees and then to qualify for licenses in the state(s) where they practice. It also is true, though, that some of them "drift," providing or supervising medical services in which they have scant training.

This challenging situation has its roots in medical history and current economics. In days of yore, small-town general practitioners needed to provide a vast array of care — from delivering babies to performing surgeries and managing complex, chronic conditions. So the law recognized that a licensed M.D. could practice just about any type of care from head to toe and in between. Over time, though, doctors specialized and set up boards to certify members who underwent extended periods of training and supervised practice in various fields. Hospitals respected physician groups' higher standards and insisted that doctors be board certified to provide specific treatments within their walls. Doctors, though, have drifted from the high bar, partly, perhaps, for patient convenience and because it can be profitable for them to do so.

Because many states allow it, doctors may perform procedures for which they may not be "board certified." They may argue, instead, that they have taken short courses, in person, or online, or gone to conferences to acquire new expertise. They also may medically supervise others in performing certain procedures allowable under the oversight of anyone who is a licensed M.D. In some states, an obstetrician-gynecologist or a psychiatrist might provide medical oversight for facilities offering cosmetic treatments.

Hospitals also have become so pricey that practitioners have moved to less costly sites. USA Today and the Kaiser Health News service have raised significant questions about the safety and quality of care at free-standing surgical centers, where the drive for profits can leave patients vulnerable to harm, including problems with anesthesia and the facilities' inability to assist patients when emergencies happen. (See the nightmare with comedienne Joan Rivers.)

The Leapfrog Group, a national watchdog organization of employers and other purchasers focused on health care safety and quality, has begun to rate surgical centers for safety and quality, just as it has hospitals. The group has reported that 60% of surgical procedures occur on an outpatient basis now. Leapfrog has raised concerns that its surveys show "gaps in the education, training and national certifications of clinicians" working in surgical centers and hospital outpatient facilities, notably in whether medical staff have the advanced expertise to treat surgical patients who need emergency rescue. Maryland and the District of Columbia cracked down on med spas after infections — including a death — occurred among patients.

IN THIS ISSUE

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Patients cannot rely on doctors or hospitals to police professional ranks

State boards have grown ever more ineffectual in overseeing doctors

Problem doctors don't stop, they move

Once doctors are licensed, some put patients at risk with medical 'drift'

Looking for great doctors? Put them under microscope to ensure they have right stuff

Ignore the lawyer-bashing propaganda. Malpractice lawsuits help protect patients

BY THE NUMBERS

2%

Percentage of doctors who account for 40% of medical malpractice claims. These problem physicians too often become 'frequent flyers,' racking up not one or two but three or more suits in which claims require payment.

250,000

Estimated annual deaths researchers blamed, in pre-pandemic times, on medical errors. This meant that mostly preventable harms were the No. 3 leading killer of Americans, trailing only heart disease and cancer.

Zero

Half of U.S. hospitals have filed zero reports of discipline against doctors on their staff in the last 20 years, even though required by federal law.

$100 million

Estimated annual waste in U.S. health care system attributable to unnecessary testing and misdiagnoses.

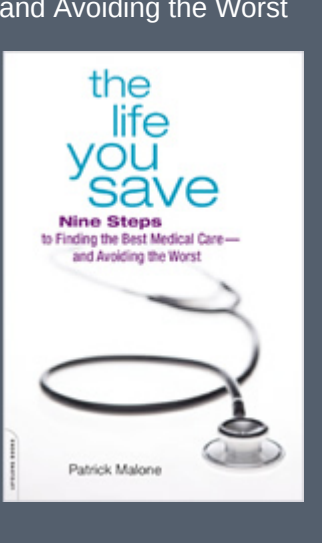
QUICK LINKS

Our firm's website

Read an excerpt from Patrick Malone's book:

The life you save

Nine Steps
to Finding the Best Medical Care —
and Avoiding the Worst



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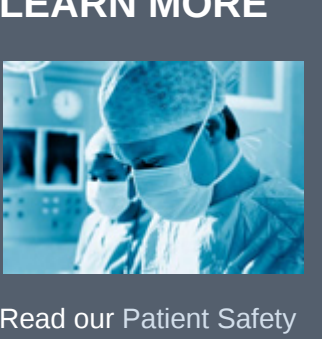


Read our Patient Safety Blog, which has news and practical advice from the frontlines of medicine for how to become a smarter, healthier patient.

Join our Mailing List

PAST ISSUES

Looking for great doctors? Put them under microscope to ensure they have right stuff

When it comes to your health and your doctor, caveat emptor. Ask questions, lots of questions, about the background, credentials, and capacities of your physician.

The Federation of State Medical Boards might be one place to start to learn about doctors' backgrounds, beginning with the group's site DocInfo.org, which can be accessed by clicking here.

To learn more about a doctor's license, patients may need to check websites operated by various states and jurisdictions. The District of Columbia licensing site is available by clicking here, while the Maryland site can be found by clicking here, and the Virginia site can be reached by clicking here.

To check on which medical specialty boards have certified a doctor, patients can start with the information provided by the American Board of Medical Specialties, whose lookup process can be found by clicking here.

ProPublica, the Pulitzer Prize-winning investigative news site, offers a valuable resource for patients wanting to learn more about their doctors. It can be accessed by clicking here.

When choosing a doctor, it can be helpful to ask people you trust. Dig in for specifics, including about others' experiences in scheduling with the doctor, how much time she typically spends with patients, and her personality and professionalism. Does the doctor keep appointments, or does he often run late and make people wait? Does she seem patient or harried? Is this doctor expensive, and what kind of support or assistance does she provide for patients in dealing with medical billing? Are his offices conveniently located and pleasant enough to visit? What's the plan if you need urgent, emergency, or after-hours care?

When you visit, does the doctor intimidate or scare you? Is he condescending and impatient? Or does she seem warm and compassionate? Does your doctor talk and listen to you or spend too much time jotting notes and staring at a computer screen? Does the doctor order a lot of tests and procedures and are these repeated each time you visit? Do you get a careful, clear explanation of any treatment or prescription medications? If you express concern about the cost of any part of your care, how does your doctor respond? What kind of follow-up does the doctor and her staff show?

You may find that doctors in your area practice in certain medical groups or at specific hospitals or academic medical centers. You may find more information about the doctors and practices or hospitals on their websites. You may not need care at the costliest, most glitzy hospital in town, and you should zealously investigate each place at which you receive care.

By the way, when checking out doctors, don't hesitate to develop written lists of questions for them for your visit. If you're undergoing a procedure, you'll want to know how often and regularly a doctor performs it — studies show that this can be beneficial to patient outcomes. You also may want to dive deep with your doctor about her background and experience in treating specific conditions, especially if they are chronic and will require long-term attention.

Ignore the lawyer-bashing propaganda. Malpractice lawsuits help protect patients.

Doctors, hospitals, insurers, and politicians spend a lot of time trying to frighten the public about medical malpractice lawsuits. This is nonsense.

As other parts of this newsletter make clear, the flaws abound in the supposed safeguards for patients. Malpractice cases, in contrast, are rare. They provide a crucial way for patients to get redress for substantial harms committed against them and to deal with what can be the costly, substantial, long-term support they will need as a result of injuries caused by bad care.

The suits also give victims a real sense of closure and justice. Further, they spotlight what may be huge shortfalls in medicine, whether with systemic flaws that others can't or won't address, or with bad doctors — professionals who are demonstrably incompetent, negligent, abusive, or impaired. The bad doctors do great harm and too often keep skating past their due reckoning.

Contrary to the persistent hand-wringing about an avalanche of malpractice cases jamming the civil justice system, particularly state courts where such actions usually are filed, "Medical malpractice cases represented only 0.14% of state *civil* caseloads in 2017. This rate is consistent with [National Center for State Courts] data from the previous five years," the Center for Justice and Democracy at New York Law School has found. Even when patients suffer medical harms, or even if they die as a result, malpractice suits don't routinely follow, as the CJ&D briefing says, reporting on research by a team of Johns Hopkins experts.

Stanford University researchers examined 60,000 payments over a decade for malpractice claims against more than 50,000 doctors. They found a tiny slice of doctors rack up a disproportionate share of repeated malpractice claims. They describe these M.D.s as "frequent flyers."

Profs. David Studdert and Michelle Mellloound found that 2% of physicians accounted for 40% of the paid malpractice claims over a 13-year period. Further, in the report of their study in the New England Journal of Medicine, they offered details on doctors who lose, and keep losing, malpractice cases due to problem care:

"Among physicians with paid claims, 84% incurred only one during the study period (accounting for 68% of all paid claims), 16% had at least two paid claims (accounting for 32% of the claims), and 4% had at least three paid claims (accounting for 12% of the claims)."

In baseball, it's three strikes and you're out, right? But the researchers found that too many repeat offenders in medicine — and remember, please, that it is not easy for patients to win malpractice suits — keep practicing, albeit alone or in smaller doctor groups. Not good.

Here's also what the independent, academics observed about malpractice cases:

"Physicians often curse malpractice litigation for being random. While it's true that not all medical malpractice claims signal poor-quality care, they are far from random. Repeated claims against a practitioner, in particular, are an important signal of patient safety risk. Regulators and the companies that provide physicians with liability insurance should be paying closer attention to this signal. We're finding that the more we learn about these practitioners, the clearer that imperative becomes."

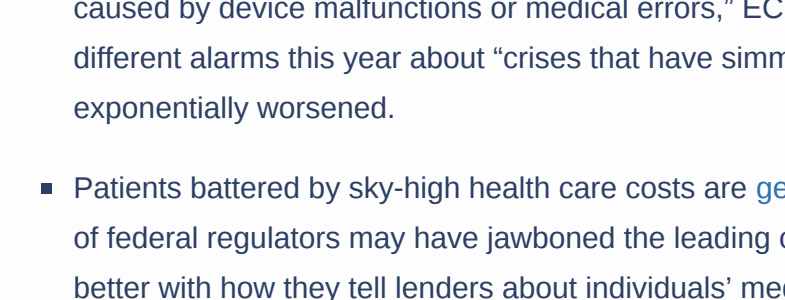
Recent Health Care Blog Posts

Here are some recent posts on our patient safety blog that might interest you:

- Women suffer significant, sustained damage from head traumas inflicted on them during domestic abuse, and victims themselves, doctors, law enforcement, and too many others have underestimated the severity of this problem. Here is the harsh reality of too many women's terrifying experiences, as reported in a tough-to-read but important New York Times magazine article that quotes, among others, Eve M. Valera, an associate professor of psychiatry at Harvard University and a leading researcher on traumatic brain injuries among survivors of domestic violence: "The Centers for Disease Control and Prevention estimates that one in five women in the United States experience severe intimate-partner violence over the course of their lifetimes, resulting in physical injuries, most commonly to the head, neck and face. Concussions are likely to appear with alarming regularity. Every year, hundreds of concussions occur in the [National Football League]; thousands occur in the military. Valera's estimated number of annual brain injuries among survivors of domestic abuse: 1.6 million.
- The Biden Administration has put the owners and operators of nursing homes and other long-term care facilities on notice that they must make major, desperately needed changes in the way they operate and that they will face much more and tougher oversight by federal regulators.These reforms — prompted by the coronavirus pandemic and the 200,000 estimated deaths in long-term care facilities of elderly, ailing, and disabled residents — will not occur overnight and already are getting big push back from the industry.
- One of the largest, most important health care systems in the country has plans in the works for a huge revamp, including shutting down many of its big, aging hospitals or slashing services there, shifting to smaller clinics, and refocusing its caregiving to parts of the country where its patients live. Taxpayers will want to pay attention to these plans because they will pay tens of billions of dollars for them — likely with gratitude. That's because this reimagined system provides care to millions of current and past U.S. service personnel and their families and is best known as the VA, aka the Department of Veterans Affairs, the Washington Post reported.
- The coronavirus pandemic and the wrenching demand this public health nightmare has put on the U.S. health care system and its people have become such a worry that staffing shortages and workers' mental health have become top safety concerns in 2022. That is the evidence-based view of ECRI, aka the nonprofit Emergency Care Research Institute. It has provided rigorous research to the public and parties in health care to better safeguard patients and their medical care for more than a half century. The organization issues a Top 10 annual list of patient safety concerns, which is "typically dominated by clinical issues caused by device malfunctions or medical errors," ECRI reported. But the group is raising different alarms this year about "crises that have simmered, but [that] Covid-19 exponentially worsened.
- Patients battered by sky-high health care costs are getting a bit of promising news: One set of federal regulators may have jawboned the leading credit reporting agencies to deal better with how they tell lenders about individuals' medical debt and its significance for their hiring, renting, borrowing, and more. And another set of federal regulators may be getting closer to rolling back one of the largest Medicare premium increases in recent memory. Still, those receiving medical services, especially on an urgent or emergency basis, may need to mind their p's and q's to ensure they don't get hit with supposedly banned surprise bills.

HERE'S TO A HEALTHY 2022!

Sincerely,



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