



Hospice Weekly: Recap of LeadingAge Updates

April 21, 2023

Policy Update Calls – Mental Health Post-Pandemic. On **Monday, April 24 at 3:30 PM ET**, Mark SooHoo, Health Lead at Meteorite and Health Action Alliance, will join us to talk about the recent publication, "[Three Years of COVID-19: Lessons Learned and Next Steps for Employers](#)". We'll talk about important findings reported in the publication, such as employers reporting a continued need to prioritize mental health following a surge in reported levels of psychological distress during the pandemic and about the lasting impact of lost workdays. Most important we'll talk about what providers can do moving forward to ensure workplaces are healthy and robust. You can also find previous call recordings of every 3:30 LeadingAge call [here](#). Note that to access recordings of the calls you need a LeadingAge password. Any staff member of any LeadingAge member organization can set up a password to access previous calls and other members-only content.

After a Year of LeadingAge Advocacy, HHS Makes Home Health and Hospice Ownership Data Available to the Public. In support of the President's Executive Order on promoting competition and the Administration's commitment to transparency, the U.S. Department of Health and Human Services (HHS) [is releasing ownership data](#) for all Medicare-certified hospice and home health agencies. For the first time, anyone can now review detailed information on the ownership of more than 6,000 hospices and 11,000 home health agencies certified to participate in the Medicare program on the Centers for Medicare & Medicaid Services (CMS) website. For the last year, LeadingAge provided feedback to CMS on this issue in the FY2023 Hospice Proposed Rule, CY2023 Home Health Proposed Rule, and the CY2023 Outpatient Prospective Payment Proposed Rule. Specifically, LeadingAge asked "CMS to make data on mergers, acquisitions, consolidations, and changes of ownership public for Medicare certified home health and hospice agencies."

CMS Announces New Comparative Billing Reports for Hospices. In April, CMS will issue a Comparative Billing Report (CBR) on Medicare Part B claims for hospice care. Hospices are expected to use this data-driven report to compare their billing practices with those of their peers across the nation. Providers are advised to look for an email from cbrpepper.noreply@religrouppinc.com to access these reports. CMS will also host a webinar for hospices on the CBR Wednesday, May 3 from 3:00 – 4:00 PM ET. Interested hospices can register [here](#). If you are unable to attend, you can view a previously recorded webinar [here](#). Last year a report from the Office of Inspector General found Part B billing for hospice enrolled beneficiaries had significantly increased over the last several years. In the FY2023 Hospice Wage Index Proposed Rule, CMS shared analysis on Medicare Part B claims for hospice care and several questions were included in the rule's Request for Information on this topic.

New QuickCast Available on Hospice and the PHE. [What The End of the Public Health Emergency Means for Hospice Providers](#). In this 14-minute QuickCast, Katy Barnett provides an overview of how the end of the COVID-19 public health emergency will impact waivers, interim final rules, vaccines, testing, and treatments.

The End of the PHE: Implications for Medicare Stakeholders. On April 25, from 3:30 – 4:30 PM ET, CMS will host a webinar on the implications of the May 11 End of the Public Health Emergency for Medicare

providers, facilities, and beneficiaries. CMS recommends reviewing: What do I need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency; Current Emergencies Page; and the Coronavirus Waivers and Flexibilities pages for additional information. You can register [here](#) and you'll receive the Zoom link for the webinar.

Did you Miss Our Hospice Survey Webinar? Check out the Replay on the Hub! [Hospice Survey: What's Changing and How to Prepare](#). A detailed overview of the new survey process for hospice providers and how agencies will have to change the way they prepare for surveyors. Free for LeadingAge members!

FDA Announces Changes to COVID Vaccine Guidelines and Eligibility. The FDA has announced important changes to COVID vaccine guidelines and eligibility for the general U.S. population, as well as for special categories such as young children, older adults, and immunocompromised persons. Drs. Robert Califf and Peter Mark briefly outlined these key changes in an April 20 webinar. The Emergency Use Authorization has been extended for both the Moderna and Pfizer updated bivalent formulations of the COVID vaccine for a period of five years. Henceforth, only the updated bivalent formulations may be used for vaccinations, and **only one (1) administration of this updated vaccine is needed to be "up to date."** Generally, individuals who are already "up to date" do NOT need to have the updated vaccine to continue to be "up to date." Those who have NOT completed their original vaccine series OR have never been vaccinated will have to have one (1) administration of the updated vaccine to be "up to date."

Special categories of administration were next addressed. For those aged 65 or older (or immunocompromised), there is evidence that the immune response to COVID wanes after four months; therefore, they are considered up to date if they have had one bivalent dose. But they are eligible for another dose of the updated bivalent vaccine four months following their last shot. For children, those who are younger than 5 and receiving Pfizer, or younger than 6 and receiving Moderna will still need the same initial series and dosage, but using the updated bivalent formulation. Individuals with specific questions or who fall outside of the special categories are encouraged to consult their primary care physician. This is not a "new" vaccine and has been in use since September 2022. However, it is NOT considered a booster, but rather is a modified formulation to adjust to the current strains of COVID, and it will become the single-vaccine standard for becoming "up to date."

White House Executive Order and Fact Sheet on Caregivers. Today in a Rose Garden ceremony, the President signed an [Executive Order](#) summarizing his Administration's caregiver actions and proposals; Katie Smith Sloan was among the invited guests. A Fact Sheet – "[Biden Harris Administration Announces Most Sweeping Set of Executive Actions to Improve Care in History](#)" released earlier in the day outlined key measures included in the Executive Order. This [LeadingAge article](#) summarizes the Fact Sheet and its implications for LeadingAge members. The set of initiatives released today repeats and consolidates prior budget requests and announcements and adds some new ones. LeadingAge supports the President's proposed \$150 billion expansion of Medicaid home and community-based services funding, including a focus on supporting the HCBS workforce. We question the White House notion that there is a way to leverage Medicaid funds to ensure there are sufficient workers to provide care in HCBS settings. Importantly, the fact sheet includes a statement that the Administration will add regulations and requirements to staffing mandates (which are not yet issued) and withhold Medicare SNF funding for nursing homes that do not retain staff. (It is essential to point out that this implies a new requirement; in fact, the policy of using SNF value-based purchasing to reward SNFs that retain staff has already been proposed.) Overall, LeadingAge is concerned that White House materials continue to frame the debate

as “either/or” when talking about HCBS and nursing home funding, when both are needed. Further, we continue to point out that the workforce crisis remains the most challenging issue in long-term care and it will not be solved without comprehensive immigration reform. We will continue to report on follow up activities.

No Change in CDC/CMS Masking Requirements. CMS requirements for masking in nursing homes continue to refer to and be dependent on CDC county transmission levels. One of the most frequent questions we hear is whether that is changing with the end of the Public Health Emergency. Unfortunately, at present, the answer is no; the requirement is not changing.

We have not been made aware of any coming changes to recommendations, including recommendations for masking. Even after the public health emergency ends, nursing homes will still be required to follow the CDC recommendations as an “accepted national standard” per the Infection Control requirements, which state that the infection prevention and control program must be based on an accepted national standard.

In conversations with CDC, rather than talking about relaxing recommendations, they’re encouraging providers to consider how the mitigation strategies that were put in place over the past 3 years had a positive impact on infection control beyond COVID-19 (for example, we had a year or so where we essentially skipped flu season). The message we keep hearing is, “The PHE is ending but COVID is not.”

LeadingAge members from around the country are reporting that hospitals in their area seem to be relaxing masking requirements. When we ask CMS the response is that hospitals should not be doing that. LeadingAge will continue talking with CMS and CDC about the requirement and its impact on providers of nursing home services and the residents they serve and care for.

Elder Justice Act Reauthorization Introduced in House and Senate. On April 19, the *Elder Justice Reauthorization and Modernization Act of 2023* was introduced in the House and Senate. The bill builds on the Elder Justice Act by dedicating \$4.5 billion in funding through FY2027 for existing programs, as well as for three new programs to strengthen the long-term care workforce, address medical-legal needs, and respond to social isolation. The funding for new and existing programs includes:

- \$1.6 billion for post-acute and long-term care worker recruitment and retention;
- \$1.9 billion for Adult Protective Services functions and grant programs;
- \$232.5 million for long-term care ombudsman program grants and training;
- \$500 million to support linkages to legal services and medical-legal partnerships; and
- \$250 million to address social isolation and loneliness.

The bill’s introduction was led by House Ways & Means Committee Ranking Member Richard E. Neal (D-MA), Senate Finance Committee Chairman Ron Wyden (D-OR), Senate Special Committee on Aging Chairman Bob Casey (D-PA), and Co-Chair of the House Elder Justice Caucus Congresswoman Suzanne Bonamici (D-OR). A summary of the bill can be found [here](#). A section-by-section summary of the bill can

be found [here](#). The legislative text of the bill can be found [here](#). Bipartisan sponsorship will be needed to move the bill forward. In addition, it is important to note that the fate of this proposal is connected to the larger debate about the debt ceiling/budget cuts.

Don't Miss It: ERC Office Hours. Calling all LeadingAge members who have decided to pursue the Employee Retention Credit; we are hosting a panel of experts from Venable law firm, CliftonLarsonAllen and Forvis to answer your questions about the complexities you've encountered in navigating the ERC. ERC Office Hours will be held on Tuesday, April 25 from 3:30 - 4:30 PM ET; please email [@Dee Pekruhn](#) to register and receive the Zoom link. All members are welcome; this session is specifically tailored to those who have already pursued and/or filed for the ERC.

PRF Late Reporting Requests for Reporting Period 4 Opens – April 17. The Health Resources and Services Administration (HRSA) sent notices to providers recently who failed to report on their Provider Relief Fund (PRF) payments for Reporting Period 4 (covers payments from July 1 – December 31, 2021). These notices describe the extenuating circumstances under which they can request the opportunity to submit a late report. Late reporting requests will be accepted through April 28, 11:59 PM ET. If the request is approved, providers will be required to submit their RP4 reports between May 15 and June 2. None of these dates will be extended. Providers must first be registered in the [PRF Reporting Portal](#) and the request is to be submitted via a [DocuSign form](#). Additional details on late reporting can be found [here](#).

The End of the PHE: Implications for Medicare Stakeholders. On April 25, from 3:30 – 4:30 PM ET, CMS will host a webinar on the implications of the May 11 End of the Public Health Emergency for Medicare providers, facilities, and beneficiaries. CMS recommends reviewing: What do I need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency; Current Emergencies Page; and the Coronavirus Waivers and Flexibilities pages for additional information. You can register [here](#) and you'll receive the Zoom link for the webinar. In addition to the Home Health and Hospice QuickCasts immediately above, the LeadingAge Learning Hub has a QuickCast on "[The End of the PHE: Considerations for Nursing Homes](#)," featuring an overview by Jodi.

New GAO Report on Opioids' Impact on Older Workers. A [new report by the Government Accountability Office \(GAO\)](#) provides a detailed examination of the relationship between labor force participation rates and substance use. The GAO's report, "*Older Workers: Opioid Misuse and Employment Outcomes*," was requested by Senators Tim Scott (R-SC), Susan Collins (R-ME), Bob Casey (D-PA). It builds on the efforts of the Senate Special Committee on Aging to support older Americans in the workforce. Although the labor participation rate among Americans age 50 and older increased significantly in the years prior to the pandemic, the GAO findings show that older adults who misuse opioids are much less likely to be employed than their peers. According to the GAO, when compared with all older adults age 50 and older who did not misuse opioids, older adults who misused opioids were an estimated 22% less likely to be in the labor force (either employed or actively seeking work); older adults in the labor force who misused opioids were an estimated 40% less likely to be employed; and, employed older workers who misused opioids were twice as likely to have experienced periods of unemployment.

LeadingAge Submits Comments to FTC on Proposed Non-Competes Rule. LeadingAge on April 19 submitted [comments](#) to the U.S. Federal Trade Commission concerning a [proposed rule](#) that would prohibit employers from entering into non-competition agreements with workers. In its explanation of

the proposed rule, the Commission noted that, where an employer is exempt from coverage under the Federal Trade Commission (FTC) Act, the employer would not be subject to the rule, such as an entity that is not “organized to carry on business for its own profit or that of its members.” This essentially relates to what authority the Commission has under the FTC Act with respect to certain matters, and we asked in our letter for the FTC to include this confirmation of exemption for nonprofits in any final rule. We also shared brief comments recommending that the Commission tailor its proposal if it proceeds to issue a final rule, rather than taking a one-size fits all, categorical approach.

Home Care Workforce Has Not Kept Pace with Growth of HCBS. In an April 19 “ahead of print” release, the journal Health Affairs posted an article on some research findings showing that between 2008 and 2020 the number of HCBS recipients grew at a faster pace than the number of workers who serve them. As a result, the number of home care workers per 100 HCBS residents declined by 11.6% between 2013 and 2019, with preliminary evidence showing likely declines in 2020 as well. Improving access to HCBS will require new workforce investments, the researchers – Amanda Kreider and Rachel Werner -- concluded. The abstract can be viewed [here](#).

Speaker’s Debt Ceiling Conditions Would Damage Aging Services. On April 19, House Speaker Kevin McCarthy (R-CA) released his “Republican Plan to Address the Debt Ceiling,” the 320-page [Limit, Save, Grow Act of 2023 Act](#). The proposal describes specific items Speaker McCarthy is seeking in exchange for raising the debt ceiling. In a [statement](#), Speaker McCarthy says the plan shows that “House Republicans are taking action to lift the debt limit, limit government spending, save taxpayers money, and grow the economy.” The bill would cap federal discretionary spending, which include spending on HUD housing programs and Older Americans Act programs, to the FY22-enacted level (a \$180 billion cut compared to the FY23 enacted funding level) and then cap increases to 1% a year through 2033. Such a roll-back in funding could be devastating to programs serving older adults like affordable housing programs, which need annual increases just to serve the same number of people. The bill would also “claw back billions of dollars in unspent COVID money that has sat for 2 years,” prohibit the “student loan giveaway to the wealthy,” and repeal funding for new IRS agents and for new clean energy tax credits. The bill would also require “adults without dependents earn a paycheck and learn new skills,” including by increasing the threshold for the age-related exemption from work requirements in the Supplemental Food and Nutrition Program (SNAP) from 50 to 56 years old. Current federal law requires able bodied adults without dependents younger than 49 years old on SNAP to participate in work, training, or education for 20 hours a week; the bill raises that to 56 years old. The proposal, Speaker McCarthy said, will “protect and preserve Medicare and Social Security because more people will be paying into it.” President Biden has said he does not want conditions placed on raising the nation’s debt ceiling. Speaker McCarthy hopes to bring his bill to the House floor for a vote the week of April 24.

MedPAC Advisors Need More Data to Judge Telehealth Outcomes. On April 14, LeadingAge Staff attended MedPAC’s April public meeting session on telehealth quality, access, and cost in advance of a Congressionally mandated report on telehealth due in June. Although the advisory panel noted that expanded telehealth access during the pandemic increased access to care, the impacts on care quality and cost couldn’t be determined due to specific data limitations and the unknown impacts of COVID-19 on the results of their analysis. Many of the panelists also noted the lack of distinction between various technology services under the telehealth definition, including remote patient monitoring (RPM) and chronic care management (CCM), all of which needs to be studied at a more granular level. Congress extended access to expanded telehealth services through 2024 in the FY23 government spending bill.

Meanwhile, the panelists said the committee hopes to offer more guidance as better data becomes available. [More information on MedPAC's public meeting schedule can be found here.](#)

Letter to Senate Appropriators from 42 Lawmakers Seeking \$4.6 Billion in OAA Funding. The Senate HELP Committee Chairman Bernie Sanders (D-VT) has once again led efforts to send a letter to the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education leadership, urging an increase in funding for programs authorized under the Older Americans Act (OAA). The letter is requesting \$4.63 billion in funding for OAA programs and services in fiscal year (FY) 2024. In total, 42 Senators signed the letter, requesting additional funding to address the increased demand for and cost of OAA-related services. OAA programs provide vital services for over 11 million seniors across the country which includes providing congregate and home-delivered meals, transportation services, family caregiver support, activities that promote socialization and wellness at senior centers and employment and community service opportunities for low-income seniors. Additionally, increased OAA-related funding could support an increase in funding allocated to ACL's Direct Care Workforce Center and Competitive Grants. This program is authorized in Title IV of the OAA, in coordination with the Secretary of Labor, to carry-out the demonstration of new strategies for the recruitment, retention or advancement of direct care workers. If at least \$8 million in funding is appropriated, ACL would begin with demonstrations that could prove the concept of what approaches were effective. You can access the letter [here](#).

Last Week's Hospice Weekly Update. Here is the April 14, 2021 [Hospice Update](#).