Home Health and Hospice Weekly: Recap of LeadingAge Updates

January 14, 2022

NO CORONAVIRUS UPDATE CALL ON MONDAY, MARTIN LUTHER KING, JR. DAY.

Hospice HOPE tool recruitment. CMS and Abt Associates are currently testing a draft standardized hospice patient assessment instrument called Hospice Outcomes & Patient Evaluation (HOPE). CMS has decided to expand the HOPE Beta Test, and **we are seeking additional Medicare-certified providers to start training and data collection in late January or early February.** Data collection will continue at least through July 2022.

CMS and Abt are asking for your assistance to reach out to hospices in your network and the state associations with this opportunity. We are seeking **mid-to-large size hospices with sufficient registered nurse, social worker and chaplain staffing** to conduct joint visits to complete in-person assessments with some of their patients in addition to usual care. This flyer explains the joint visits and may be helpful for hospices to review as they consider participation.

Medicare-certified hospice providers in any state are eligible to participate, but we are interested especially in recruiting hospices from states where we currently have no participants, listed (alphabetically) here:

- Alabama, Alaska, Arkansas, Florida, Georgia, Hawaii, Indiana, Kentucky, Mississippi, Missouri, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, and Wyoming.

More than one hospice branch/office in one organization may participate.

Hospice providers interested in participating should email the Abt HOPE Testing team at HOPETesting@abtassoc.com and provide their: ***Hospice name, mailing address and CCN***; and a ***Contact name, email address and phone number***. The Abt team will recruit hospices on a rolling basis until we have reached the desired sample size or until January 20, 2022.

CMS Interim Final Rule Allowed to Proceed Nationwide, but OSHA Emergency Temporary Standard Blocked. The US Supreme Court issued decisions today on the legal challenges to the OSHA Vaccination and Testing Emergency Temporary Standard (ETS) and the CMS Interim Final Rule (IFR). **LATE BREAKING NEWS: CMS posted a press release Thursday stating that timelines that apply to providers in the states that were required to move ahead with implementing the IFR on December 28 are not changed.** We have learned that CMS is planning to post a memo tomorrow updating its recent guidance and describing plans to move forward with efforts to enforce the IFR nationwide as these cases work their way through the lower courts. The language in the press release does imply that there will probably be new timelines that apply to the states that were previously not implementing the IFR due to the injunction.

CMS IFR May Proceed Nationwide

In a 5-4 decision (Roberts, Kavanaugh, Breyer, Sotomayor, and Kagan) the court stayed the injunctions in place in the Louisiana and Missouri cases that challenged the CMS IFR. Thus, CMS can move forward and enforce the IFR nationwide while the legal challenges make their way through the Fifth (Louisiana case) and Eighth (Missouri case) Circuit Court of Appeals, respectively.

The majority found that the CMS IFR fit within the authority granted to the Secretary of HHS by Congress:

> Congress has authorized the Secretary to impose conditions on the receipt of Medicaid and Medicare funds that "the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services." 42 U. S. C. §1395x(e)(9). COVID–19 is a highly contagious, dangerous, and—especially for Medicare and Medicaid patients—deadly disease. The Secretary of Health and Human Services determined that a COVID–19 vaccine mandate will substantially reduce the likelihood that healthcare workers will contract the virus and transmit it to their patients. 86 Fed. Reg. 61557–61558. He accordingly concluded that a vaccine mandate is "necessary to promote and protect patient health and safety" in the face of the ongoing pandemic. *Id.*, at 61613.
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> The rule thus fits neatly within the language of the statute. After all, ensuring that providers take steps to avoid transmitting a dangerous virus to their patients is consistent with the fundamental principle of the medical profession: first, do no harm. It would be the "very opposite of efficient and effective administration for a facility that is supposed to make people well to make them sick with COVID–19." *Florida* v. *Department of Health and Human Servs.*, 19 F. 4th 1271, 1288 (CA11 2021).

OSHA ETS Blocked

In a 6-3 decision, the court granted a stay of the OSHA ETS and prohibited OSHA from enforcing the ETS pending further legal proceedings in the Sixth Circuit Court of Appeals.

The Court found that OSHA overstepped its authority in issuing such a broad ETS:

> Applicants are likely to succeed on the merits of their claim that the Secretary lacked authority to impose the mandate. Administrative agencies are creatures of statute.They accordingly possess only the authority that Congress has provided. The Secretary has ordered 84 million Americans to either obtain a COVID–19 vaccine or undergoweekly medical testing at their own expense. This is no "everyday exercise of federal power." *In re MCP No. 165*, 20 F. 4th, at 272 (Sutton, C. J., dissenting). It is instead a significant encroachment into the lives—and health—of a vast number of employees. "We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance."….
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> There can be little doubt that OSHA's mandate qualifies as an exercise of such authority.
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> The question, then, is whether the Act plainly authorizes the Secretary's mandate. It does not. The Act empowers the Secretary to set *workplace* safety standards, not broad public health measures. ….. Confirming the point, the Act's provisions typically speak to hazards that employees face at work. See, *e.g.,* §§651, 653, 657. And no provision of the Act addresses public health more generally, which falls outside of OSHA's sphere of expertise.

The practical effect of this will be that OSHA will not be able to enforce the ETS while the legal proceedings make their way through the courts. Because the case will take time to make it through the judicial process and the OSHA ETS only lasts six months, it will likely not be enforced in its current form as it will expire before it makes it way back to the Supreme Court.

We will wait to see how OSHA responds to this decision and how they plan to proceed.

CDC COCA Call Summary. The CDC hosted a call for all stakeholders to review the December 23, 2021 changes to both the healthcare and non-healthcare isolation and quarantine guidance. CDC experts also shared updates on Omicron's transmissibility, severity, and penetration of the current vaccines and therapeutic treatments. The rationale for shortening the isolation and quarantine periods was explained, and clarification was given that the healthcare guidance applies to ALL healthcare settings and ONLY nursing homes have separate, setting-specific guidance. For a summary and links to resources, see our article.

Save the Date – Feb. 2, 1:00 PM ET – LeadingAge HRSA Provider Relief Reporting Webinar: LeadingAge is offering a webinar on Wednesday, February 2 at 1:00 PM ET that will feature presenters from the Health Resources and Services Administration PRF Team providing guidance on Provider Relief Fund reporting topics with a focus on the new reporting on Nursing Home Infection Control funds received in 2020. More details including registration will be available next week.

Congressional Update. Advocates are working on the assumption that Build Back Better on a very temporary hold. If the package does move forward, we know it will look very different than the House-passed bill. Right after next week's Congressional recess, and presumably after voting rights bill is done, we could see a big push on two fronts: why the package is needed, and the consequences of NOT securing the bill's new resources. The three weeks between next week's recess and the February 18 end of the current continuing resolution could give Congress the time it needs to get the bill done. If the bill survives, the size and scope of issues in BBB are expected to be scaled down. We are also focused on FY22 appropriations. If we do not have a final FY22 bill and are left with FY21 funding for all of FY21, it is unlikely there'll be enough funding for any new Section 202 awards and we'd be very worried about the ability of HUD to fully renew HUD rental assistance contracts with only FY21 resources, for example. The White House has pushed back the release of its FY23 budget request from the traditional first Monday in February to the first week of March, when the president will deliver the state of the union. Meanwhile, another COVID relief package is under discussion. The White House is expected to present a covid relief package to congress that includes funding for testing, vaccines, therapeutics, and to keep schools safe.

Senators King and Casey Introduce Legislation that Makes Investments in Aging Services Research, Evaluation and Innovation. Yesterday, Senators Angus King (I-ME) and Bob Casey (D-PA) introduced legislation that makes research to improve aging programs a priority. The *Innovations in Aging Act* makes investments in the Administration for Community Living (ACL) Research, Demonstration and Evaluation Center for the Aging Network (the Center). These resources would help the Center identify best practices and evaluate the impact of the services provided by the aging services network on older adults' health and independence.

The *Innovations in Aging Act* is the second bill that's been introduced as a stand-alone proposal to uplift and support the Older Americans Act (OAA) provisions included in the House-passed Build Back Better Act. The legislation would allow ACL to build on the OAA achievements, and support evidence-based

evaluations that allow older adults to age in place in their communities. The Center's research and evaluations could address: home delivered meal programs; aging services network technical assistance and trainings; and innovative projects designed to integrate programs and services that support older adults, including those with Medicare and Medicaid providers and community-based organizations.

Supporters of the *Innovations in Aging Act* include: LeadingAge, National Council on Aging, Gerontological Society of America, Lutheran Services in America, Meals on Wheels, Alzheimer's Impact Movement and the Alzheimer's Association.

Senator King's press release on the introduction of the *Innovations in Aging Act* is available here

CMS Stakeholder Call. [For all stakeholders, not one specific provider type.] On Tuesday, January 18 from 1:00 – 1:45 PM ET, CMS will hold a Stakeholder Call to acknowledge the legacy of Dr. Martin Luther King, Jr. Administrator Brooks-LaSure will provide feedback on the CMS Strategic Vision and key accomplishments in 2021, as well as look at goals for the year ahead. More information and the link to register are here.

HRSA PRF Webinars: The Jan. 12 webinar provided information on PRF reporting targeted at those providers who will be reporting for the first time in period 2. Nicole will be sharing information from this webinar and the one being held tomorrow, Jan. 13, for returning reporters on our upcoming member calls. Today's session was recorded. Providers may need to register for the webinar in order to listen to the recording. This webinar walks providers through registering in the reporting portal and provides an overview of what data will be reported on each screen in the portal. It includes tips on how to access the portal and save data as providers go along. It also shares information on key resources with a special shout out to the Reporting Portal User's Guide which takes providers through the portal requirements step by step and the Portal Worksheets, which help providers gather the information they will need to submit in the reporting portal. The full complement of reporting resources can be found here.

Interview with David Grabowski. Here is an article summarizing our interview on today's Update Call with David Grabowski, Professor of Health Policy, Harvard Medical School. Among other things, Dr. Grabowski, who was on the National Academies of Sciences, Engineering, and Medicine Nursing Home Panel, said the report is in the final review phases and is expected out in February or March (if all goes according to plan).

ACL Vaccination Resources. The Administration on Community Living today publicized a "vaccine cheat sheet" with vaccination resources for older adults, CDC guidance, detailed vaccine information, and national hotlines for older adults and their advocates.

Making Sense of CDC Recommendations: Interview with Dr. Nimalie Stone. Here is an article about our interview on Monday's Update Call with Dr. Nimalie Stone, Senior Advisor for Long-Term Care Partnerships, Division of Healthcare Quality Promotion, Centers for Disease Control and Prevention. Nimalie emphasized that nursing homes should be looking at the recommendations related to healthcare providers, rather than the general public. The healthcare guidance is more conservative, she noted, because the population healthcare workers care for is more vulnerable than the general public. She also advised that other providers (who do not offer nursing home services) should use their judgment about whether or not to use the healthcare recommendations. She further described some of the workforce staffing mitigations provided by CDC to address workforce shortages.

CMS IFR Infographic. CMS also sent us a useful infographic to help members figure out if they are subject to the provisions of the IFR. It can be found at: https://www.cms.gov/files/document/covid-19-health-care-staff-vaccination-requirements-infographic.pdf

Therapeutics. We are still looking for information on the need for therapeutics and any access challenges members are facing. Please email Ruth (RKatz@LeadingAge.org), Janine (JFinck-Boyle@LeadingAge.org), and/or Mollie (MGurian@LeadingAge.org) with anything you are hearing about therapeutic access and need across the continuum.

FROM HHS:

1. **FDA Shortens Interval for Booster Dose of Moderna COVID-19 Vaccine to Five Months.** On Friday, the U.S. Food and Drug Administration amended the emergency use authorization (EUA) for the Moderna COVID-19 Vaccine to shorten the time between the completion of a primary series of the vaccine and a booster dose to at least five months for individuals 18 years of age and older. Read the CDC Media Statement here'

2. **COVID Data Tracker Weekly Review.** On Friday, CDC released their weekly review from the COVID Data Tracker. COVID-19 cases continue to increase rapidly across the United States. This surge is driven by the Omicron variant, which CDC's Nowcast model projects may account for approximately 95% of cases. On January 5, 705,264 new cases were reported, more than doubling the January 2021 peak. The entire country is now experiencing high levels of community transmission. Hospitalizations are also on the rise. While early data suggest Omicron infections might be less severe than those of other variants, the increases in cases and hospitalizations are expected to stress the healthcare system in the coming weeks.

Guidance on Coverage of At Home Tests by Insurance. HHS and DOL issued guidance today for coverage of at home tests by insurance. Private insurance must cover up to 8 tests per month per person. If your health plan provides for direct coverage, they will be free at point of sale or you will be eligible for reimbursement. Direct coverage means that your insurance company set up a network of providers (both in person and on line). Insurers are incentivized to do this because if they do so, they can limit reimbursement of the test's costs for in network tests to $12 per individual test. If they do not have a network, they must reimburse the full cost of the tests. If your plan has a network and you buy a test outside of the network, you can still be reimbursed up to $12 per test.

Medicaid and CHIP must cover at home tests with no cost sharing. Medicare FFS cannot cover at home tests but will continue to cover PCR and antigen tests when ordered by a health professional. There are a number of distribution points that are offering tests for free such as at FQHCs, RHCs, and through the new website that will be up shortly. Medicare advantage plans may offer coverage and payment for at home tests, so Medicare advantage members are encouraged to check with their plans to understand coverage and payment by their plan.

The guidance can be found at: https://www.cms.gov/newsroom/press-releases/biden-harris-administration-requires-insurance-companies-and-group-health-plans-cover-cost-home and FAQS can be found at: https://www.cms.gov/files/document/11022-faqs-otc-testing-guidance.pdf

Provider Relief Fund Updates. HRSA has now said that ARP Rural and Phase 4 payments will continue to be issued throughout the first quarter. Reportedly, it is manually reviewing 25,000 applications for risk mitigation purposes resulting in the delay. On another note, HRSA has updated its PRF website

indicating that providers who have filed a bankruptcy petition or are involved in a bankruptcy proceeding must "immediately notify us". This can be done via email and must include: the name the bankruptcy is file under, the docket number and the district where it is filed. This information can be submitted to PRFbankruptcy@hrsa.gov. There was a rumor that providers in bankruptcy would have their Medicare payments garnished to pay back the PRF but according to HRSA there is no truth to that rumor.

On PRF reporting for the second reporting period, HRSA has indicated that providers can choose a different lost revenue calculation for the 2nd report than used in the 1st report (this is a change in previous policy and the implications are not yet clear but LeadingAge will be seeking more info from HRSA). The reports for period 2 will also contain several pre-populated fields, which is a definite time saving positive. However, HRSA is allowing providers to update some of these fields under certain circumstances and with appropriate justification. Again, we will seek additional input on whether this would allow providers to restate some previously reported data.

Opening Doors to Aging Services Workshop: January 27, 2022. Mark your calendars for a 90-minute workshop on implementing the research-based communications strategies and messages behind Opening Doors to Aging Services. You'll learn how to deploy the best tactics to introduce aging services to the public, strengthen your social media, website and media relations, and get access to an array of communications templates to support your work. Register for the live January webinar now! (And don't miss the prerequisite, free, QuickCast series on the initiative.)

Registration Open: 2022 Leadership Summit. Today's aging services environment requires smart, dynamic leadership—and now is the time to invest in the innovative strategies that put us on a course toward a stronger future. Register today for the 2022 LeadingAge Leadership Summit on March 28-30 in Washington, DC.

Tips to Improve Employee Retention. Attracting and retaining employees has arguably never been more challenging. In this 9-minute QuickCast, Cara Silletto outlines how aging services providers can begin to think differently about the new hire experience and help reduce unnecessary employee turnover. *Free to access for LeadingAge Members*.