



PACE Weekly: Recap of LeadingAge Updates

November 19, 2021

LeadingAge Coronavirus Update Call – only Monday next week. On Monday, November 22, at 3:30 PM ET we will welcome back Tina Sandri, CEO of Forest Hills in Washington, D.C. Tina will talk about how her organization has been working to quickly implement the new CMS visitation guidance while planning for the holidays. She will also talk about her organization's continuing efforts to educate on vaccination and success with boosters. **We will not be having our call on Wednesday, November 24** (the day before Thanksgiving) and will be back on Monday, November 29 to talk with Sue diRosario, director of support services for Methodist Conference Home in Rockland, ME, on her organization's success in hosting booster clinics in Maine. If you haven't registered for LeadingAge Update Calls, [you can do so here](#).

House Votes on Build Back Better. On Friday, November 19, the House voted to pass the Build Back Better Act. The Senate is expected to take it up the week of December 6. In between Thanksgiving and December 6, the Senate must contend with other hot-button items like fiscal year 2022 appropriations, for which funding runs out on December 3, and scrub the House's Build Back Better bill for compliance with the arcane rules of the reconciliation process, and iron out some remaining substantive issues like paid family leave and state and local tax deductions. We expect Senate Majority Leader Chuck Schumer to bring a somewhat revised version of Build Back Better to the Senate floor the week of December 6. As the bill is still in flux, LeadingAge is asking stakeholders to continue to reach out, particularly to your Senators, to increase the bill's funding for HUD's Section 202 Housing for the Elderly program and protect the bill's other investments in workforce and Medicaid Home and Community Based Services. LeadingAge's alert is [here](#).

Latest on the Legal Challenges to CMS IFR and OSHA ETS.

- *CMS Interim Final Rule Challenges (CMS IFR remains in effect):* Florida has now filed a [lawsuit](#) challenging the CMS Interim Final Rule (IFR) mandating vaccinations for certain providers. There are now four lawsuits currently filed in federal courts, which are located in the Eastern District of Missouri, Western District of Louisiana, the Northern District of Texas, and Northern District of Florida, respectively. Unlike with the OSHA ETS, there are **no court orders** staying or providing relieve from the implementation and enforcement of the CMS IFR. The CMS IFR **remains in effect** unless and until we get a ruling from any of the courts hearing these challenges. The judge in the Louisiana case has ordered an expedited briefing schedule that requires the parties to file their briefs by December 1, 2021. We have not seen any of the other courts set a schedule to hear any motions yet, but that can change at any time. That is what we know at this point, but this will be a fluid situation for some time so stay tuned (and stay patient).
- *OSHA ETS Challenges (OSHA ETS stayed pending further decisions):* The 6th Circuit Court of Appeals is the venue for all the legal challenges to the OSHA Emergency Temporary Standard (ETS). Yesterday, one of the plaintiffs challenging the OSHA ETS filed a motion to have the case heard *en banc*, which means by all the judges of the 6th Circuit Court of Appeals, rather than by a 3-judge panel that is usually randomly assigned to each case. The

court ordered OSHA to respond to that petition by November 23rd. After that date, the court will decide whether to proceed with a full panel of judges or a 3-judge panel to hear the arguments on the merits of the challenges. Then, the court will set the timeline for the submission of briefs for each party and likely order an oral argument before issuing a decision. Given these developments, that likely puts any decision on the merits of the case at least two weeks out at the earliest. In the meantime, the 5th Circuit Court of Appeals order staying the implementation of the ETS remains in place. The stay **prohibits OSHA from implementing the ETS** until a further court decision. OSHA acknowledged such on their [website](#) this week and confirmed that they will not take any actions to implement or enforce the ETS until a further decision by the 6th Circuit Court of Appeals.

“Wearing masks, regular vaccine boosters, and other precautions are likely to be our new normal.” So said Dr. David Fairchild, Chief Medical Officer for MinuteClinic and Senior Vice President and Associate Chief Medical Officer for CVS Health, on the LeadingAge Coronavirus Update Call today. See this [article](#) for the whole interview, in which Dr. Fairchild talked about vaccines, hesitancy, boosters, and the safety of COVID vaccines for children.

Mortgage Costs Can Result in Healthcare Rationing. New research released November 15 sheds light on a housing issue that likely impacts many more parts of the aging services continuum than affordable housing. The report gives us new data on the share of older adults holding a mortgage and the value of the debt those with mortgages after age 65 are holding. The Joint Center for Housing Studies of Harvard University research says that, between 1989 and 2016, the share of homeowners 65 and older with outstanding mortgages doubled, and the outstanding loan-to-value ratio, the amount of mortgage debt owed, tripled from 13 to 39%. Considering how much home equity dovetails with older adults’ decisions and options for housing and services choices, all aging services providers should be aware that the trends of more people retiring with a mortgage and of those still-held mortgages values being higher than ever are clearly continuing. The research however takes this one step further and looks at prescription spending by older adults holding a mortgage by measuring health spending before and after a household paid off its mortgage. The researchers found households aged 50-64 spent nearly 50% more on out-of-pocket pharmaceuticals after paying off their mortgage. In contrast, households 65 or older did not significantly change their out-of-pocket spending on pharmaceuticals after they paid off their mortgages. The researchers posit Social Security and Medicare subsidies available to households around age 65 increased their ability to afford both health and housing. To reduce healthcare rationing by 50-64 year old people, the researchers recommend additional subsidies to reduce the cost of older adults’ healthcare or housing, or to increase their income. Read the Joint Center’s research [here](#).

CMS QRP deadline approaching. SNF QRP and MDS data for April 1 – June 30 (Q2) of CY 2021 are due by 11:59 PM ET on November 15, 2021. The list of measures is at [this website](#).

CDC Recommends Use of Johnson & Johnson’s Janssen COVID-19 Vaccine Resume: The CDC has [updated their information on use of the Johnson & Johnson’s Janssen COVID-19](#). The CDC has updated frequently asked questions on the use of Johnson & Johnson’s Janssen COVID-19

Resource for COVID-19 Vaccine Policies Required by CMS Rule: As we noted during the November 11 Virtual Update, there are 10 processes that must be addressed in organization policies. We have developed this resource to help keep track of the processes that are required, with a few tips for developing, combining, and/or cross-referencing policies. Check out this resource [here](#).

HHS Monoclonal Antibody Distributions. [Here](#) is today's notice of the allocation of monoclonal antibodies by state from the Federal COVID Response Team; the cycles (each weekly report) are usually for one week but this cycle (10) covers two weeks since Thanksgiving is next week.

Vaccine Mandates: New CMS and OSHA Rules: Virtual Update Recording Available. On November 11, LeadingAge policy experts held a 90-minute briefing explaining the Interim Final Rules by the Centers for Medicare and Medicaid Services (CMS) and the Occupational Safety and Health Administration (OSHA) mandating COVID-19 vaccinations for organizations with more than 100 staff and all staff in CMS-certified settings. Listen to the briefing and download the presentation materials here: [Vaccine Mandates: New CMS and OSHA Rules](#). Stay informed about vaccine mandate developments with the [latest information, tools, and resources](#).

Member Profile: "Students are the Future of Senior Living" Our workforce crisis isn't only about retaining experienced frontline workers; it's also about attracting the next generation of staff and demonstrating the great career options in long-term services and supports. [Here's the story of one LeadingAge member](#) working with local high schools to give low-income students a promising start in our field, by offering CNA training, paid internships, mentoring, and meaningful jobs with a future.