Nursing Home Weekly: Recap of LeadingAge Updates

November 5, 2021

LeadingAge Coronavirus Update Calls. ***All calls next week will, as always, cover the full COVID-19 policy environment for aging services providers; in addition, we'll include special focus on what the new CMS and OSHA rules mean for various provider settings and types and try to answer additional questions that are coming up related to the vaccine mandate rules.***

What's been the financial impact of COVID on aging services providers? Even more important, what can we expect going forward? How are vaccine booster clinics structured and what's happening when providers offer them? On **Monday November 8 at 3:30 PM ET, Amy Castleberry, Managing Director at Ziegler,** will discuss Ziegler's most recent CARF Financial Ratios & Trend Analysis and talk about how providers can use the benchmark data in the report to plan for the future. On **Wednesday, November 10 at 3:30 PM ET, Julia Coit, Epidemiologist, and Emily Levine, Chief of Staff, of LeadingAge member 2Life** will join us to discuss their organization's plans and experience setting up COVID-19 booster clinics. They will answer your questions on how to prep for these clinics and also how to market them to residents and staff. If you haven't registered for LeadingAge Update Calls, you can do so here.

Vaccine mandate rules released Thursday morning. The CMS Medicare and Medicaid Omnibus Health Care Staff Vaccination interim final rule AND the OSHA COVID-19 Vaccination and Testing; Emergency Temporary Standard interim final rule were posted simultaneously this morning. The CMS rule applies to ALL Medicare and/or Medicaid certified providers (regardless of number of employees) except physician offices. The OSHA rule applies to employers with a total number of employees that is 100 or greater. Providers who meet the requirement to comply with both rules should focus on complying with the CMS rule. Both allow time for a ramp up to a final compliance deadline of January 4, 2022. Both allow exemptions for medical or religious reasons and require testing for those who are exempt. The OSHA rule allows a testing option in lieu of the mandated vaccination; CMS dos NOT have such an option. Here is an article on the CMS interim final rule and here is an article on the OSHA interim final rule. In addition, here is a Q&A document from CMS. OSHA/DOL has provided this FAQ document and a recorded webinar on the rule.

Historic Workforce Allocations, Immigration Provisions in Latest Build Back Better Act. The updated version of H.R. 5376, the Build Back Better Act, sent to the House Rules Committee on November 3, maintains most of bill's previous iterations' allocations and durations for programs that address the long-term care (LTC) workforce crisis as well as immigration-related provisions. There are two additional positive changes included in the Build Back Better Act: $20 million is allocated for Palliative Care and Hospice Academic Career Awards; and, $500 million (instead of an earlier bill iteration's $300 million) in funding allocated to carry out nontraditional apprenticeship programs for high numbers of individuals with disabilities or non-traditional apprenticeship populations. Here is an article on the workforce allocations and immigration provisions of Build Back Better.

House passes Protect Older Job Applicants Act. Thursday the House passed the Protecting Older Job Applicants Act, which protects older job applicants during the hiring process, thus bringing protections

for older workers in line with the protections afforded other workers. The bill was supported by LCAO, and Katie Smith Sloan is quoted in the sponsor's press release on behalf of LCAO and LeadingAge, saying ""Age discrimination is pervasive and stubbornly entrenched. Older job applicants often face barriers during hiring when employers circumvent anti-age discrimination laws. The House passage of the Protect Older Job Applicants Act, which clarifies that older workers seeking a job should be protected from discrimination throughout the employment process, is an important step toward the goal of ensuring older adults' ability to seek and obtain paid work." The bill passed 224-200 and now goes to the Senate. At this point there is not a companion bill in the Senate.

Immigration Policy in Build Back Better Act. The Build Back Better Act framework, reported by the House Committee on the Budget on October 28, 2021, would help restore immigration related proposals that would: provide temporary protections and a work permit to undocumented immigrants; expedite a pathway to green cards, through a visa recapture program; and allocate funds to the USCIS to alleviate the green cards application backlog and the temporary work protections permits. As Congress closes in on a final Build Back Better bill, the immigration provisions remain in flux, since they must comply with the "Byrd rule," which (very generally) prohibits non-spending and non-savings provisions from being included in a reconciliation package. Here is an article that provides an overview of the provisions, and how they fit into the LeadingAge immigration policy agenda.

LeadingAge Requests State Department Prioritize Immigrant Visas for Nurses. LeadingAge signed on to a letter to Secretary of State Antony Blinken to request the U.S. Department of State (DOS) take specific actions to prioritize immigrant visas for nurses who have approved petitions from the U. S. Citizenship and Immigration Services but are stalled at the DOS. The letter also requests the DOS implement several recommended solutions to expedite the interviews for these qualified international nurses. A final letter will be circulated next week.

LeadingAge co-signed an August 30, 2021, letter to the DOS, co-signed by 10 long-term care and post-acute care providers, requesting Secretary Blinken prioritize the entry of foreign-trained nurses and health care workers into the United States. The DOS made an announcement on September 13, 2021, instructing embassies and the National Visa Center (NVC) to consider the visa applications on an expedited basis for individuals who are going to be employed for health care positions that will work on pandemic response.

CDC Strike Team Briefing. Most LeadingAge state partners and policy staff participated in a meeting convened by CDC this week to discuss the new nursing home strike team initiative. The meeting was convened by the Hartford Foundation and included presentations by four people involved in state strike teams and related activities. Here is an article about the meeting. The funds have been disbursed to state/local health departments and CDC is strongly encouraging partnering with LTC stakeholders such as LeadingAge leaders in each jurisdiction to ensure the projects conducted using the funds are relevant and helpful to nursing homes and other LTC residential providers.

CMS revision of managed care enrollment actions among nursing home residents. CMS informally shared an update of its 2015 guidance related to managed care enrollment of nursing home residents. Some of the regulatory citations needed to be updated so CMS took the opportunity to make the document more balanced and inclusive of other programs that weren't in the original document, such as PACE. This guidance is intended to clarify that only a beneficiary or the beneficiary's authorized or designated representative can request enrollment in or voluntary disenrollment from a Medicare health or drug plan. Here is the link to the revised guidance; it does not constitute new policy.

From HHS:

1. **COVID-19 Booster Shots:** Dr. Fauci highlighted the effect of booster shots, specifically Moderna, on the level of neutralizing antibodies, which correlates with protection. Dr. Fauci reviewed multiple studies showing the impacts of booster shots, including a paper that was released three days ago that looks at a cohort of over 720,000 individuals who received the third shot boost. Dr Fauci commented that "the data was rather dramatic: a 93 percent lower risk of hospitalization, a 92 percent lower risk of severe disease, and an 81 percent lower risk of death."
2. **ACIP Evidence to Recommendations for Use of an Additional COVID-19 Vaccine Booster Dose:** CDC released information and evidence regarding the use of an additional COVID-19 vaccine booster dose . During September-October, 2021, the FDA amended the COVID-19 vaccine EUAs to allow for booster doses of Pfizer-BioNTech, Moderna, or Janssen COVID-19 in persons who completed primary vaccination with these vaccines, as well as use of each of the available COVID-19 vaccines as a heterologous (or "mix and match") booster dose in eligible individuals following completion of primary vaccination with a different COVID-19 vaccine. Furthermore, CDC released additional information and evidence specifically regarding the ACIP recommendation for use of an additional COVID-19 vaccine dose in immunocompromised people. Additional background information supporting the Advisory Committee on Immunization Practices (ACIP) recommendation on the use of additional or booster doses of COVID-19 vaccine can be found in the relevant publication of the recommendation referenced on the ACIP website.
3. **ACIP's Interim Recommendations for Additional Primary and Booster Doses of COVID-19 Vaccines:** The CDC released an *MMWR* on the Advisory Committee on Immunization Practices' (ACIP) interim recommendations for additional primary and booster doses of COVID-19 vaccines in 2021. In the United States, three COVID-19 vaccines are approved or authorized for primary vaccination against COVID-19. The Advisory Committee on Immunization Practices issued recommendations for an additional primary mRNA COVID-19 vaccine dose for immunocompromised persons and a COVID-19 vaccine booster dose in eligible groups. Health care professionals play a critical role in COVID-19 vaccination efforts, including for primary, additional primary, and booster vaccination, particularly to protect patients who are at increased risk for severe illness and death.
4. **FDA Investigation of Imported Medical Gloves:** The FDA is investigating certain imported medical gloves that appear to have been reprocessed, cleaned or recycled and sold as new. The FDA has determined that many foreign manufacturers and shippers of medical gloves have failed to consistently provide medical gloves of adequate quality for distribution in the United States. The FDA recommends that health care facilities and providers do not purchase or use imported medical gloves from companies included on Import Alert 80-04 Surveillance and Detention Without Physical Examination of Surgeon's and Patient Examination Gloves and report any problem with medical gloves.

HHS Monoclonal Antibody Distributions. Here is this week's allocation of monoclonal antibodies by state from the Federal COVID Response Team.

This is our moment. Now is the time to tell our story. Board Chair Carol Silver Elliott inspired us all to reset the narrative and "tell our story," during her address at the Annual Meeting + EXPO. Opening Doors to Aging Services, a new LeadingAge initiative, provides strategies and messages to do that! This long-term, national-local initiative seeks to raise awareness and increase understanding of the aging services sector. It is founded on robust research from which complete strategic communications

guidance and messaging was crafted. OpeningDoors.org is a one-stop shop for members and others in the field to access the initiative's assets. Visit today!