



Home Health and Hospice Weekly: Recap of LeadingAge Updates

December 20, 2021

LeadingAge Coronavirus Update Calls. All Update Calls are at 3:30pm ET. Hear from a LeadingAge member who wrote a book about his pandemic experience! And, learn about LeadingAge's Leaders of Color Network. **On Monday, December 13**, Deke Cateau, CEO of AG Rhodes in Georgia and a LeadingAge Board Member, will join the call to talk about his book *Brush Fire* and share an update on activities related to the Leaders of Color Network. **On Wednesday, December 15**, we will dive more into some workforce solutions for our members and we are excited that Krish O'Mara Vignarajah, President & CEO, Lutheran Immigration and Refugee Service (LIRS), will join us to talk about workforce opportunities in the aging services field. Ms. Vignarajah will discuss the LIRS publication, *U.S. Employers' Guide to Hiring Refugees*, and highlight potential opportunities for LeadingAge members to hire Afghan refugees. If you haven't registered for LeadingAge Update Calls, [you can do so here](#).

Medicare Sequestration and PAYGO. The Senate is in the process of passing the House bill (now S. 610) that postpones Medicare sequestration until April 2022 and then reduces it from 2% to 1%, and waives implementing PAYGO cuts until 2023. The bill also addresses the debt ceiling, allowing for passage of legislation by majority vote in the Senate thereby preventing a default on the federal debt. Agreement between Majority Leader Schumer and Minority Leader McConnell guaranteed sufficient Republican votes to pass "cloture" (the first step toward passing a bill in the Senate, otherwise known as the filibuster vote) and thereby paving the way to passage of the bill itself. This is a critical victory for Medicare providers who faced up to a 6% cut in rates.

Immigration Advocacy. LeadingAge joined with other LTC organizations to urge the State Department to prioritize and process immigration visas for healthcare workers. Our efforts were highlighted in an [article](#) in *US News*, which unpacked the challenges facing US employers who have committed to hiring specific health care workers and the workers who are waiting. We continue to push State to address this urgent need.

A conversation with Dr. Katelyn Jetelina on the Omicron Variant: On December 6, 2021, Dr. Katelyn Jetelina, Assistant Professor at University of Texas Health and Founder of "Your Local Epidemiologist" joined us on the LeadingAge Coronavirus Update Call. Dr. Katelyn Jetelina provided updates and analysis on the new treatments for COVID-19 and how Omicron may impact vaccines and boosters. The interview summarized is [here](#).

New CDC Funding Opportunity: Strengthening Healthcare IPC and Improving Patient Safety. On December 3, 2021, CDC's National Center for Emerging and Zoonotic Infectious Diseases published a new notice of funding opportunity (NOFO), CK22-2203: Strengthening Healthcare Infection Control and Prevention and Improving Patient Safety in the United States. Health care organizations may apply for funding to advance the design, delivery, and effectiveness of IPC training, education, and competency assessment to improve healthcare worker IPC practice and increase health department ability to

support healthcare IPC and outbreak response. Information on this NOFO and the application process can be found [here](#). An informational webinar on the NOFO is scheduled for January 12, 2022, from 3 – 4:30pm ET; click [here](#) to register for the webinar.

Ziegler Reports Stats on the Future of HCBS. Ziegler’s latest edition of Z-News features an [article](#) on the future of HCBS. Forty-five percent of multisite organizations in the 2021 [LZ200](#) offer HCBS services, along with 18% of single site operators. Many start out their HCBS programs – usually home care or home health – by offering services to residents before venturing into the complexities of offering services to the broader community. HCBS programs are established either through acquisition or are homegrown; strategic decisions here depend heavily on the local market. Post-pandemic, more organizations report plans to enter into the HCBS segment; Ziegler projects that HCBS services will not compete with skilled nursing services on the same campus.

Build Back Better is coming into shape. We understand from Senator Schumer’s office that pieces of the bill will continue to be released, and that it is possible that the Banking Committee draft will be made public tonight along with the CBO score. This is the committee responsible for the HUD provisions, so we will know soon if there has been an increase in funding from the House bill. We have not seen an announcement about the Senate Finance and HELP Committees language so we wait. All this means that our [Action Alert](#) is critical, and we encourage/urge members and their supporters to continue to take action.

Congressional attention to vaccine mandates. The Senate passed [S.J. Res.29](#), a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "COVID-19 Vaccination and Testing; Emergency Temporary Standard". This resolution would prohibit OSHA from issuing regulations imposing vaccine mandates on employers with 100+ employees. It is not clear if the House will take up the resolution, and Pres. Biden has indicated he will veto it if it passes both Houses. This is the rule currently being litigated and stayed by the federal courts.

How did a vaccine mandate work out in a large multistate provider organization? [Here’s](#) an article about the update Call interview with Nate Schema, President and CEO of the Evangelical Lutheran Good Samaritan Society. Nate talked about Good Sam’s requirement that all staff be vaccinated – the mandate was announced in July and effective November 1. Across 12,000 employees in 22 states, two percent of staff left the organization over the mandate. However, many returned, as other employers imposed mandates too. In addition, new nurses were attracted to Good Sam because of the mandate. Nate made the point that the workforce crisis and vaccine mandates are, in his view, separate issues.

FROM THE ADMINISTRATION:

- 1. Public Education Campaign for Boosters:** Dr. Murthy outlined the increased need to both inform people that they are eligible for their booster shot and educate people on the benefit of receiving a booster shot. Dr. Murthy announced that the Administration has “created a booster information toolkit and distributed it far and wide. And we’re gearing up to share versions in Spanish, Mandarin, Cantonese, Vietnamese, Korean, Tagalog, Haitian Creole, Arabic, and Russian.”
- 2. Free At-Home Testing:** President Biden announced that health insurers must cover the cost of at-home testing. President Biden commented, for those not covered by private insurance, the Administration will make available free tests at thousands of convenient locations for people to

pick up. President Biden stated, “The bottom line: This winter, you’ll be able to test for free in the comfort of your home and have some peace of mind.”

3. **Use of Masks to Control the Spread of SARS-CoV-2:** CDC [updated their guidance on the use of masks](#) to control the spread of SARS-CoV-2. Specifically, data were added from studies published since the last update. These studies address the association of mask wearing with new infections, including infections related to SARS-CoV-2 variants of concern. All these studies demonstrated a benefit. Furthermore, a section was added on mask wearing among children.

Tips for Commenting on CMS Vaccine Mandate: We have prepared a new resource to assist members in submitting comments on the CMS Vaccine Mandate. Check it out [here](#). Remember, the CMS vaccine mandate applies to several LeadingAge member types: home health, hospice, ICF-IID, nursing homes, and PACE. Despite the current hold on implementation, the comment period for the rule remains unchanged and comments are due January 4, 2022 at 5pm ET. LeadingAge will host a call on Friday, December 10 at 2pm ET for all members to discuss the rule and solicit feedback for comments.

CMS increases state flexibility in setting financial eligibility for HCBS. Today CMS released a [State Medicaid Director \(SMD\) letter](#) clarifying that states have the option to target and tailor income and resource disregards for individuals who are eligible for or seeking home and community based services (HCBS). The SMD letter explains the new flexibility, provided under “the construction rule” to expand eligibility and provides details on how states can utilize it to expand coverage of HCBS under their Medicaid programs. The construction rule is contained in several recently enacted federal laws. The SMD letter represents a significant change in HCBS policy to support states in promoting more equity across HCBS and institutional eligibility requirements.

Update on Legal Challenges to CMS Interim Final Rule and OSHA Emergency Temporary Standard. **
Both the CMS Rule and OSHA ETS are still subject to preliminary injunctions and not enforceable at this time.

CMS CHALLENGES

Texas Suit: After holding oral argument last week, the district court in the Northern District of Texas decided to stay the lawsuit because the CMS mandate is already stayed in Texas as a result of the Louisiana district court’s injunction.

Florida Suit: The Eleventh Circuit (2-1 decision) declined to impose an injunction pending appeal in Florida’s challenge. The court of appeals’ one-page order simply stated that Florida “failed to make the requisite showing for an injunction pending appeal.” The practical import of the Eleventh Circuit’s order is minimal, because the CMS mandate is still enjoined in Florida as a result of the 40-state injunction issued by the Louisiana district court.

Louisiana Suit: The federal government filed its reply in support of its motion to stay the Louisiana district court’s injunction in the Fifth Circuit, meaning that the motion is now fully briefed. We expect a decision soon on whether the Fifth Circuit will stay the Louisiana district court’s injunction and anticipate that the losing side will ask the U.S. Supreme Court to step in.

Missouri Suit: The Eighth Circuit has set a briefing schedule on this appeal. The Biden administration’s appellate brief is due by January 10, 2022, thus making it quite unlikely that the Eighth Circuit would issue a decision on the merits before the vaccine mandate’s original effective dates of December 5, 2021 and January 4, 2022.

OSHA ETS CHALLENGES

In the consolidated OSHA litigation, the Sixth Circuit Court of Appeals issued an order last Friday that denied motions to transfer the case back to the Fifth Circuit or to the D.C. Circuit. The order also denied an expedited briefing schedule on the merits, reserving the right to set out a schedule that is not rushed given the number of parties and legal arguments put forward.

The Sixth Circuit will review OSHA's motion to dissolve the stay while pending the appeal with the close of briefing set for Friday, December 10, 2021. We anticipate a decision on the stay relatively quickly after the briefs are filed, but do not know the timeframe for a decision on the merits yet as noted above.

The Global Ageing Network Launches COVID-19 Vaccination Rollout Report. Mark your calendars for a webinar on Wednesday, December 15 at 4 p.m. ET as the Global Ageing Network releases its latest report, "Cross Cultural Snapshot of the Vaccine Distribution: A Provider Perspective." Principal investigator Dr. Emi Kiyota will share the report's key findings about the effectiveness of COVID-19 vaccine acquisition and distribution to aging service providers in 12 countries. We look forward to a lively discussion and hope you can join! To register, [contact Shannon Davis](#) for the ZOOM conference details.