



Nursing Home Weekly: Recap of LeadingAge Updates

December 10, 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.

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.

Screening Process for Nursing Home Visitation: CMS confirmed that they are accepting CDC's updated recommendations for screening individuals prior to entering a healthcare facility (read CDC guidance [here](#)). "Active screening" requiring the presence of a live person is no longer required for entry into nursing homes or other healthcare settings. These settings now have the option to implement screening through electronic monitoring or other systems in which individuals self-report before entering the setting. Screening may be completed on-site or prior to arrival. The nursing home or healthcare setting must have a process in place to identify and properly manage any staff or visitors who meet any of the following criteria:

- A positive viral test for SARS-CoV-2
- Symptoms of COVID-19
- Meeting CDC criteria for [quarantine](#) or [exclusion from work](#)

CFPB Webinar to explain resources. The Consumer Financial Protection Bureau will host a free webinar on Tuesday, December 14 at 3:00 PM ET to highlight new CFPB resources and initiatives. The webinar is intended for stakeholders in aging services to support them in helping older consumers and their families. Featured speakers are Deborah Royster and Michael Herndon. Here are details:

[Join the webinar](#)

No pre-registration required!

Event Number: 2763 473 0604

Event password: OAWebSeries22! (62932737 from phones)

Audio Conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

Dial In: 1-404-397-1590

Access code: 2763 473 0604

If you have questions for us or need additional information, contact olderamericans@cfpb.gov.

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.