



Nursing Home Weekly: Recap of LeadingAge Updates

February 11, 2022

LeadingAge Update Calls next week. Surges and ups and downs with COVID through a medical director's eyes. And how are we doing? What's been the impact of the pandemic on our mental health and what we can we do about it? All calls are at 3:30 PM ET. On Monday, February 14, LeadingAge member and clinical advisory group member, **Dr. Noah Marco**, Medical Director of the LA Jewish Home will talk about his community's efforts to keep COVID-19 out, dealing with surges, the impact of isolation on residents, and his organization's successful efforts to increase staff and resident booster rates. Mental health of residents and staff is top of mind for LeadingAge members. **On Wednesday, February 16,** we will welcome Johns Hopkins professor **Melissa deCardi Hladek** to talk about her recent research on how we are coping with COVID-19 and what we can do to help manage stress during these trying times. If you haven't registered for LeadingAge Update Calls, [you can do so here](#).

Louisiana Federal Court Denies Attempt to Amend Complaint Against CMS Vaccine Mandate (for now). Last week 16 states filed a motion to [amend their complaint](#) in their legal challenge against the CMS IFR with the vaccine mandate. The states alleged that circumstances have changed dramatically because the Delta variant has largely disappeared and has been replaced by the Omicron variant, which is "largely undeterred by the vaccines." They also highlighted the crisis in the healthcare labor market, changes in guidance from the CDC allowing COVID positive employees to return to work, and the CMS requirement for state surveyors to get vaccinated as justifications for allowing the filing of the amended complaint.

The judge in the Western District of Louisiana issued an "indicative ruling" noting that the Fifth Circuit Court of Appeals currently has jurisdiction over the matter that was previously filed so it cannot grant the motion to amend the complaint. However, if the Fifth Circuit ever remands the case back to the district court, the court would grant the motion to amend the complaint, but only with regards to the Surveyor Vaccine Mandate and its alleged violation of the Anti-Commandeering Doctrine.

[Here](#) is a copy of the decision. While we don't expect the Fifth Circuit Court of Appeals to rule on the appeal soon or for the case to be remanded back to the Louisiana district court, we will continue to monitor.

Out February 10: NIC Wave 37 Survey Results. Encouraging news from the [NIC Wave 37 Survey](#). Overall, the survey found that the omicron surge had very little effect on both the move-ins and move-outs of IL, AL, SNF and Memory Care providers. Nursing homes, who reported the greatest changes in occupancy, attributed a decline in admissions to other factors, such as lack of available staff, fewer hospital discharges due to COVID, and the winter holidays. Not surprisingly, staffing shortages remain at the top

of the list of current challenges for seniors housing providers, with nearly 100% of respondents listing this as a major concern, including 81% of multisite organizations. Most are backfilling vacancies with overtime hours, and 79% are using staffing agencies as well – mostly to fill nursing positions. Finally, projections for operating margins in the next six months were increasingly optimistic, with the majority of providers (56%) expecting increases between 1% - 10%. Rising occupancy rates and increases in accounts receivable were expected to offset the downward pressures of rising wages, insurance premiums and the ongoing cost of infection control measures. The next survey (Wave 38) will include questions about providers' support of a federal investigation into anticompetitive practices by temp agencies, following the joint letter that was sent in January to the FTC.

It's That Time! State of Seniors Housing Survey for LPCs, AL, and Memory Care. Since 1992, The *State of Seniors Housing* survey has widely disseminated financial performance data for seniors housing. The 2022 *State of Seniors Housing* Survey is [here](#). Please forward this survey to the appropriate individual in your organization to complete in its entirety. More details are [here](#). Please submit completed surveys to colleen.blumenthal@healthtrust.com by close of business Monday, March 21, 2022. Questions about the survey should be directed to Colleen Blumenthal of HealthTrust at (941) 363-7502 or at her email address noted above. The American Seniors Housing Association (ASHA), National Investment Center for Seniors Housing & Care (NIC), **LeadingAge**, Argentum, and National Center for Assisted Living (NCAL) thank our members for your participation in this important annual research study.

Booster rates on Care Compare. Nursing home staff and resident booster rates are now displayed on Care Compare. The rates are displayed alongside primary series vaccination rates on the provider's page and include state and national rates for comparison. These rates are calculated from your weekly NHSN data submissions.

CMS Memo to States – Survey to the Extent of Requirements: CMS issued a memo today to states advising them to survey to the full extent of requirements. Read the memo [here](#). While some states have discussed not surveying on the CMS vaccine mandate, this memo seems to indicate that a state's decision will not safeguard the provider. CMS has promised that if a state fails to survey to the full extent of requirements, remedial actions will be taken including hiring contractors to complete the job. Providers should be prepared to demonstrate compliance with the CMS vaccine mandate according to the appropriate implementation dates. A state-by-state run-down of these dates is available [here](#).

The Dignity Act Proposes New Comprehensive Immigration Reform. Rep. Maria Salazar (R-FL) and 35 Republican members of Congress, unveiled comprehensive legislation to address America's immigration crisis. The proposal, "The Dignity Act," (section by section summary [here](#)) offers solutions to authorize a new border security enforcement system, creates a new pathway to citizenship for undocumented immigrants (Dreamers, TPS and DACA recipients) living in the U.S. illegally. The legislation would allow undocumented immigrants in the U.S. to work in the U.S. at a cost of \$1,000 annually for up to 10 years – as part of the earned pathway to legal status. The money raised would fund workforce training and apprenticeships to help U.S. citizens looking for work or transitioning to different careers.

To help ensure small and seasonal businesses can fulfill their labor needs, the bill addresses the H2-B Temporary Worker- nonagricultural workers visa program. It amends the duration of stay under the program, which currently allows foreign workers up to one to three years, in the case of a one-time event. The bill would exempt returning workers from any one of the three previous fiscal years from counting against the annual numeric limit cap on the number of visas that are issued.

The bill also creates a new year-round H2-A temporary agricultural Guest Worker program. It removes

the “seasonal” requirements on the H2-A program, expanding it to year-round labor and ensuring there are no visa caps on any agricultural industry. It remains unclear what path exists to pass this legislation, particularly under a Democrat-controlled Congress this year.

Update: Vaccine Mandates by State. We have updated our [article](#) to reflect that Illinois will begin to require healthcare workers to get booster shots, with the first deadline set for March 15 2022. Now, there are seven states who have this requirement for healthcare workers: California, Connecticut, Illinois, Massachusetts, New Jersey, New Mexico, and New York.

Slight recovery of staff in health care; not yet in long-term care. The [number of employees in “nursing and residential centers”](#) increased steadily since these numbers were first reported – until 2020, when the number began dropping precipitously; it has not turned around yet. For [employees in health care](#), the number dipped in 2020 and almost immediately began climbing back. These findings were released today by FRED – Federal Reserve Economic Data, an online resource and offshoot of the St. Louis Federal Reserve Bank. LeadingAge members already know what the “nursing and residential” graph looks like in real life, but the graphic confirms visually how the employment situation looks.

Letter to HHS on LTC access to therapeutics. LeadingAge joined AHCA, AMDA, and ASCP in sending a [letter](#) to HHS’s lead official on therapeutics distribution requesting a targeted allocation of oral therapeutics to residential LTC settings. Currently these treatments are sent from the federal government to the states; the states determine how to allocate and distribute them. Most states use commercial pharmacies. The letter describes anecdotally and with data the unequal distribution of therapeutics to older adults living in congregate settings, attributable in large part to access issues; LTC pharmacies do not receive doses of oral therapeutics.

House Passes CR Through March 11. The House passed the third Continuing Resolution (CR) of fiscal year 2022. This latest CR must now be passed by the Senate and signed into law by February 18, when the current CR expires. The CR funds government programs absent regular FY22 appropriations bills but at FY21 levels. According to reports, House and Senate leadership are close to reaching a deal on overall spending for defense and nondefense programs, paving the way for the 12 individual spending bills to be completed by a new March 11 deadline. “We are very close to an agreement and I am eager to move this process forward. I have every expectation that we can finalize a framework in short order and then work together to fill in the details and enact an omnibus,” House Committee on Appropriations Chair Rosa DeLauro (D-CT) said in a statement upon the CR’s passage.

Verifying inspectors: Throughout the pandemic, there have been a number of new quality improvement and support initiatives launched by CMS, the QIOs, public health, and others. While these initiatives are generally communicated beforehand to providers, providers are right to be cautious. Please let us know of any “suspicious activity” members may experience. In the meantime, CMS recommends the following for providers to safeguard themselves and the residents they serve:

- Document the name of the individual and the specific agency they are representing.
- Request a copy of the individual’s agency ID.
- Obtain a phone number to call and confirm the individual’s position and authority.

Congressional Research Service report on Provider Relief Fund. The Congressional Research Service released an update to its report, “[The Provider Relief Fund: Frequently Asked Questions](#).” In addition to clear, simple background information on PRF authorities and allocations to date, the updated report includes current reporting requirements and information about Phase 4 funds.

Senate HELP Subcommittee Holds Hearing on Health Care Workforce Shortage Model Programs. The Senate Committee on Health, Education, Labor and Pensions (HELP) held a Subcommittee hearing, “Recruiting, Revitalizing & Diversifying: Examining the Health Care Workforce Shortage” on February 10, 2022. The subcommittee is hoping to begin a conversation about the “long-term forward-looking” workforce development investments they can make to recruit, retain and upskill the health care workforce, as well as increasing diversity. According to the subcommittee staff they want to highlight programs that are working particularly well on the ground that they think could serve as a model for how to look at this issue.

LeadingAge submitted questions and encouraged the subcommittee to address the staffing crisis aging services providers are experiencing, and the need for Congress to provide immediate relief to those who provide care for older adults.

Key Senate Telehealth Extension Bill Introduced. Senators Catherine Cortez Mastro (D-NV) and Todd Young (R-IN), introduced legislation, the *Telehealth Extension and Evaluation Act*, ([bill summary here](#)) that would extend the Medicare telehealth waivers for two more years after the end of the COVID-19 public health emergency (PHE). The bill sponsors and several stakeholder organizations are pushing to include this legislation in a spring funding package, or possibly with the continuing resolution set to expire in less than two weeks.

The *Telehealth Extension and Evaluation Act* is an extensive bill. Several practitioners, FQHCs and rural health clinics, that were provided with expanded telehealth flexibilities during the PHE would be allowed to continue these flexibilities for two years post PHE. The bill would require HHS to study the impact of the pandemic telehealth flexibilities to better inform Congress’ work to make telehealth flexibilities permanent using comprehensive cost and data. The study should include the effects of changes to telehealth under the Medicare and Medicaid programs during the COVID-19 emergency. Specifically, the number of telehealth visits (audio-only and video visits, and in-person visits), disaggregated by service type (i.e., mental health, primary care). Additionally, the study should review any changes in utilization over the course of the PHE, and geographic data on both the patients utilizing telehealth services and the corresponding providers offering telehealth services. HHS would make available to Congress an interim report one year after passage of the bill, and a final report 18 months after the expiration of the PHE.

The *Telehealth Extension and Evaluation Act* is similar to a House bill (H.R.6202), introduced in December 2021. The bills also support recommendations included in a sign-on letter sent to Congressional leadership last week, urging a temporary telehealth extension before taking up permanent legislation to expand access in 2024. LeadingAge and its Center for Aging Services Technologies (CAST), joined 336 of the nation’s health care provider and patient organizations, in signing this letter.

BCAT Offers Family Matters Discussions. As a free resource to family members of those living in congregate aging services settings, the BCAT is offering this series of “Family Matters” presentations. LeadingAge has provided material for the March event on transition in the continuum of care. This may be helpful for providers to share with family members as an additional support and aide to understanding the aging services field. This [flyer](#) gives more detail and information on how to register.

How to Strategize for a Stronger Workforce. Every day, aging services organizations juggle the multiple challenges of dwindling staff, growing financial strain, and an unrelenting pandemic. If these issues are

affecting you, explore new resources on the [LeadingAge Learning Hub](#) that can help address workforce struggles your organization may be facing. Free to access for LeadingAge members.

- [Culture Driven Recruitment \(New!\)](#)
In this 27-minute QuickCast, Denise Boudreau highlights ways organizations can be more intentional about assessing their culture to positively impact recruitment efforts.
- [Tips to Improve Employee Retention](#)
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.
- [Re-Ignite Your Organizational Culture](#)
In this 32-minute QuickCast, Donna Cutting details eight recruitment and retention strategies LeadingAge members can implement to strengthen their workforce culture in today's environment.

Register Now! 2022 Leadership Summit. The LeadingAge Leadership Summit is back. This event is among the most valuable networking events in aging services—bringing together providers, business firms, and policy experts over three days of keynotes, education sessions, and VIP discussions. Register today for the [2022 LeadingAge Leadership Summit](#) on March 28-30 in Washington, DC.