



Nursing Home Weekly: Recap of LeadingAge Updates

February 4, 2022

LeadingAge Coronavirus Update Call, Monday, February 7, 3:30 PM ET. In the quest for the most reliable data and trends to track the pandemic, Dr. Ali Mokdad and his team at the University of Washington's Institute for Health Metrics and Evaluation has been proven right time and again. He will return to the LeadingAge Update Call on Monday to talk about where we are and what's next. His recent public remarks are pointing to an optimistic trend. Join us Monday to hear the details. If you haven't registered for LeadingAge Update Calls, [you can do so here](#).

CDC Updates Nursing Home Recommendations: CDC has released the anticipated updates to nursing home recommendations. Read them [here](#). Recommendations are impacted by CDC's recent update to language around vaccination status. As you recall, CDC has officially changed their vaccination language and considerations related to vaccination status to "up to date" to reflect individuals who have received all recommended COVID-19 vaccinations for which they are eligible. This impacts testing and quarantine following exposure. Asymptomatic residents who are not up to date must quarantine and submit to a series of 2 tests following admission, readmission, or "close contact" exposure. Asymptomatic residents who are up to date are not required to quarantine but must still submit to testing.

Staff Testing Requirements in Nursing Homes: The release of updated nursing home recommendations from CDC has thrown nursing home testing into a bit of upheaval. As you recall, CDC has officially changed their vaccination language and considerations related to vaccination status to "up to date" to reflect individuals who have received all recommended COVID-19 vaccinations for which they are eligible. With this language adopted into the updated nursing home recommendations, this means new recommendations around testing of staff. CDC now recommends routine screening testing based on community transmission rates for all staff who are not up to date with COVID-19 vaccinations. This conflicts with existing CMS requirements, which state that routine screening testing is to be completed on unvaccinated staff and staff who have completed a primary series ("fully vaccinated") are exempt from routine screening testing. We have confirmed with CMS that **nursing homes should continue to follow the latest CMS guidance on testing requirements**, available [here](#). This means that, until further notice, nursing homes may continue to test only unvaccinated staff for routine screening testing and staff who have completed a primary vaccine series, regardless of whether they have received a recommended booster for which they are eligible, may be exempt from routine screening testing. It is unlikely that this discrepancy will last long, however, and we will likely see CMS moving to reconcile the differences between CDC recommendations and CMS requirements soon.

CDC Updates Recommendations for Duration of Isolation and Precautions: CDC has released updated recommendations for the duration of isolation and precautions in individuals with SARS-CoV-2 infection. As before, symptomatic individuals who are not immunocompromised, regardless of vaccination status, continue isolation and precautions for 10-20 days after exposure depending on the severity of illness.

For individuals who are moderately to severely immunocompromised, CDC now recommends a test-based strategy to determine the duration of isolation and precautions. Read more [here](#).

Are we heading toward endemicity? Dr. Monica Gandhi thinks it is looking good for the US. England and Denmark have already moved to calling COVID an endemic. Read all her informative and mostly optimistic comments in this [article](#), summarizing our interview with her on Wednesday's Update Call.

NEW from CMS. CMS has updated the nursing home visitation FAQs. You'll find them as an attachment at the end of [this memo](#). Updates include new information on improving air flow and air quality during nursing home visitation and an announcement that nursing homes may apply for CMP funds to assist with improving air flow and air quality for visitation. Additionally, CMS clarifies state requirements for testing of visitors:

- If a state requires testing of nursing home visitors prior to the visit, the nursing home should comply with the requirement.
- The nursing home must provide the test and testing.
- If the nursing home is unable to provide the test and testing, the visit must be permitted to take place.

CMS National Nursing Home Stakeholder call. CMS hosted a national nursing homes stakeholder call Wednesday. Information was provided on CMS and CDC updates as described above. CMS also addressed the vaccine mandate. The vaccine mandate is now in effect nationwide. This [timeline](#) shows the compliance dates for each state. This [infographic](#) helps determine which provider settings are subject to the mandate. Additionally, CMS addressed common questions:

- Are nursing homes required to maintain vaccination documentation on-site for contractors? No. Nursing homes must know the vaccination status of contractors and must be able to access documentation as needed, but are not required to maintain documentation on-site.
- Are N95s (or other respirators) required for unvaccinated staff as source control? No. Unvaccinated staff are not required to wear N95s for source control. However, a nursing home may choose to require unvaccinated staff to wear N95s for source control as an "additional precaution" per the vaccine mandate rule.
- Are nursing homes required to implement all "additional precautions" outlined in the rule guidance memos? No. Nursing homes should strive to implement as many additional precautions as they can and should use a layered approach that seeks to mitigate transmission and spread, but they are not required to implement specifically the additional precautions outlined in the memos.

Sign On Letter for FY22 Funding. LeadingAge joined a national letter calling on Congress to enact an omnibus fiscal year 2022 bill as soon as possible. The current Continuing Resolution (CR) is funding all federal programs at FY21 levels until February 18. If Congress cannot agree to FY22 appropriations bills, it is possible the CR could be in effect for all of FY22. This would be disastrous for HUD affordable housing and other agency's programs, which require increased funding from one year to the next to simply serve the same number of households. "Whether serving health, education and training, child

welfare, nutrition, substance use disorders, housing or other needs, appropriated programs cannot meet today's demands with yesterday's inadequate funding," the letter signed onto by LeadingAge says. Aging services stakeholders are [urged to also join the letter](#). The letter is coordinated by the Coalition on Human Needs and has a sign on deadline of February 9.

Weekly HHS Therapeutics Update. In the [weekly presentation on the status, availability, and distribution of therapeutics](#), HHS officials described plans for distribution of antivirals over the next 2-4 weeks. They included a segment on equity, during which they shared a [list](#) of 200 HRSA funded health centers across all states that will receive direct allocations (not through state or territorial health departments) of oral antiviral products.

USCIS Responds With New Guidance on Expedited Renewals for Employment Authorization

Applications at USCIS. On December 3, 2021, LeadingAge joined the American Health Care Association (AHCA) and several long-term care organizations in sending another a Coalition [letter](#) to the U.S. Department of Homeland Security and the U.S. Citizenship and Immigration Service (USCIS), around the healthcare industry workers who are impacted by processing times when they are seeking Employment Authorization Documentation (EAD) renewal applications.

EADs, otherwise known as a work permit, are granted when an individual has a pending Immigration Petition for Permanence. The card permits non-citizens to legally work in the United States for a U.S. employer and it must be tied to an underlying status. For example, individuals may apply for a work permit because they have a pending work visa application.

In response to the concerns raised in the December 3 Coalition letter, and others within the healthcare worker community, we received [positive news from the USCIS](#). Effective immediately, healthcare workers who have a pending EAD renewal application, or an EAD that expires in 30 days, or has already expired, can request expedited processing of their EAD application. To determine whether an individual is a qualifying healthcare worker, the USCIS website now has information available at: <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>. Applicants can also request expedited processing by calling the USCIS Contact Center at (800) 375-5283.

Becerra responds to LTC Coalition Request that HHS Release Additional PRF Quickly: LeadingAge along with other senior service organizations sent a [letter](#) on August 10, 2021 to the President and HHS Secretary Becerra and Deputy Secretary Andrea Palm explaining the need to get the remaining Provider Relief Fund payments into the hands of struggling aging services providers. We received a reply this week from HHS. Secretary Becerra's [letter](#) basically restates the current state of affairs that HHS/HRSA is distributing the remaining PRF as quickly and equitably as possible while trying to preserve program integrity. It does not say anything about the Biden Administration advocating for additional funds or even distributing the remaining PRF dollars faster.

FROM HHS: FDA Approves Second COVID-19 Vaccine: Tuesday, the U.S. Food and Drug Administration [approved a second COVID-19 vaccine](#). The vaccine has been known as the Moderna COVID-19 Vaccine;

the approved vaccine will be marketed as Spikevax for the prevention of COVID-19 in individuals 18 years of age and older. Spikevax meets the FDA's rigorous standards for safety, effectiveness and manufacturing quality required for approval. Moderna COVID-19 Vaccine [has been available under emergency use authorization \(EUA\)](#) for individuals 18 years of age and older since December 18, 2020.

Updates to CMS Vaccine Mandate Survey documents for nursing homes. Last week, CMS updated the Vaccine Mandate Survey documents for Nursing Homes. The updates are effective as of January 27, 2022. There are new items on the entrance conference worksheet that need to be produced within 4 hours of entrance including a vaccine matrix that may be used for the mandatory task of infection control. CMS has outlined the surveyor steps they will follow during a nursing home annual or focused infection control survey. The links below will open to the main CMS page where the zip files can be accessed; look for the date of January 2022 for the updates.

- **LTC Survey Process Revisions:** <https://www.cms.gov/files/document/revision-history-ltc-survey-process-documents-and-files-updated-01282022.pdf>
- **Entrance Conference Worksheet and Staff Matrix Survey Resources January 2022 (1/25/22) (ZIP) :** <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes>

Congressional Hearings Addressing COVID-19 Price Gouging Scheduled this Week. Last week, LeadingAge and several LTC organizations sent [a joint letter](#) to the White House COVID-19 Response Team coordinator requesting the federal government to look into exorbitant nurse staffing agency rates. More than 200 Members of Congress sent a similar [letter](#) to the White House requesting federal agencies investigate staffing firms conduct and pricing.

This week in Congress, Senator Richard Blumenthal (D-CT), Chair of the Senate Commerce Subcommittee on Consumer Protection, Product Safety, and Data Security convened a hearing titled, "Stopping COVID-19 Fraud and Price Gouging," on Tuesday, February 1, 2022. This hearing will allow the FTC to address ongoing consumer price gouging scams that have resulted during the COVID-19 pandemic, and proposals to strengthen FTC enforcement against unfair and deceptive practices. Witnesses will include Samuel Levine, Director, Bureau of Consumer Protection, Federal Trade Commission.

The House Energy and Commerce Committee Chairman Frank Pallone, Jr. (D-NJ) and Consumer Protection and Commerce Subcommittee Chair Jan Schakowsky (D-IL) announced the Consumer Protection and Commerce Subcommittee held a legislative hearing on Wednesday, February 2 "Pandemic Profiteers: Legislation to Stop Corporate Price Gouging." This hearing considered legislation (H.R. 675) to empower the Federal Trade Commission and state attorneys general with the enforcement tools they need to effectively go after price gougers. It is unclear whether this hearing addressed issues specific to temporary staffing agencies but it is possible the tools discussed will be applicable. LeadingAge submitted questions specific to temporary staffing agencies which we hope will be included.

LeadingAge and CAST Join Over 300 Stakeholders to Ask Congress to Create Permanent Comprehensive Telehealth Reform. LeadingAge and its Center for Aging Technologies (CAST), joined 336 of the nation's health care provider and patient organizations, in sending a [letter to Congress](#) urging their leadership in facilitating a pathway to permanent comprehensive telehealth reform. The letter outlines recommendations that would provide sufficient time for Congress and the Administration to

authorize the continuation of all current telehealth waivers through December 31, 2024, instead of the HHS Secretary's waiver authority for telehealth that could expire immediately upon expiration of the public health emergency (PHE). It also calls for HHS to complete all feasible evaluations related to telehealth by fall 2023 and combine findings into a single dashboard with recommendations to inform permanent telehealth legislations. The final request is for Congress to pass evidence-based telehealth legislation for implementation in 2024.

Did you know? LeadingAge tracks state legislation related to aging services in an easy to use format. The beginning of a new year marks the beginning of the work of many state legislatures. Knowing that legislators are often interested in initiatives in other states that are supported by stakeholders, LeadingAge members frequently ask about proposed and enacted legislation in other states. Our [State Legislation Tracker](#) is updated nightly, based on activities across all the states related to COVID, workforce, and key provider settings across the continuum. It may be just what you need when meeting with state policy makers.

Reminder: Applicability of \$15 Minimum Wage for Federal Workers and Contractors. The White House released a [statement](#) on the January 30, 2022, effective date of directives from a 2021 [Executive Order](#) that employees working on federal contracts and federal employees earn a \$15 per hour minimum wage. As a reminder to aging services providers, participating in Medicare, Medicaid, or having a HUD housing or services contract does *not* equate to you being a federal contractor. Exceptions are certain Veterans Affairs contractors. The directives resulting from the Executive Order will result in pay increases to \$15 an hour for more than 300,000 employees of federal contractors over the coming year.

Court of Appeals Upholds Ability to Challenge Observation Status. The Second Circuit Court of Appeals has [affirmed](#) a federal court decision from 2019 that allows Medicare beneficiaries to challenge their hospital "observation" status and the resultant benefit coverage determinations. The court noted that reclassifying patients from "inpatient" to "observation" status without affording them an appeal process violates their due process rights. The issue at the heart of the case is the "three day stay" requirement for a patient to receive Medicare benefits for a subsequent nursing home stay after hospitalization. If a patient is placed on "observation" status rather than being admitted, they do not qualify for the Medicare nursing home benefit. The 2019 decision ruled that Medicare beneficiaries have the right to appeal an "observation" status reclassification to determine if they were "formally admitted" and eligible for the resultant nursing home coverage. This is good news for Medicare beneficiaries and nursing homes who often take individuals who think they have Medicare coverage for part of a nursing home stay, but do not under the "three day stay" rule. This case has been litigated for over a decade and we will continue to follow to see if HHS files an appeal to the U.S. Supreme Court.

Nursing Home Advisory Group: The Nursing Home Advisory Group met last week for the monthly call. Read a summary of the call and policy updates [here](#) or access it on the [LeadingAge Member Community](#). The Nursing Home Advisory Group meets on the last Tuesday of each month. Email Jodi Eyigor jevigor@leadingage.org for more information.

NEW Workshop—Opening Doors to Aging Services: Messaging That Moves Perceptions. This virtual workshop will prepare LeadingAge members to use research-based messaging to boost awareness and build confidence in providers across the aging services sector. Participants will learn how to use the messages developed for Opening Doors to Aging Services, including applying the messaging framework, employing the most effective messengers, and using and sharing the LeadingAge Language Guide. Thursday, February 17, 2-3:30 pm. [Registration for this live, virtual workshop is open now.](#)

LeadingAge.org Relaunch Snap Survey. LeadingAge is excited to be launching a new website later this year. To learn how LeadingAge.org can best serve our members, we need to hear from you! [Please take a minute to complete this 4-question survey.](#)

Reimagining Long-Term Care. To inform the evolving discussion and improve long-term care, [the entire February 2022 issue of the Journal of Post-Acute and Long-Term Care Medicine](#) will be available and downloadable without cost throughout 2022. The February issue is devoted to evidence-based papers and recommendations to guide reimagination of the long-term care workforce, societal issues, models of care, financing, payment, regulation, and services. Check out the article co-written by Robyn Stone, LeadingAge's Senior Vice President of Research and Co-Director of the LeadingAge LTSS Center @UMass Boston, "[The Inevitability of Reimagining Long-Term Care.](#)"