

POLICY ACCOMPLISHMENTS – 2020

The Coronavirus pandemic, with its particularly devastating effect on people over age 65, has shone a spotlight on the important role of aging services across the nation. Policymakers took note. Despite early focus on acute health care settings, members of Congress and Administration quickly realized they needed help – data, information, quick feedback, and “stories” – from LeadingAge and the Visiting Nurse Associations of America (VNAA)/ElevatingHOME (EH) members across the continuum.

We activated our grassroots network to put pressure on Congress to Act for Older Adults. Through many calls to action and two National Days of Action, over 11,434 advocates have sent 51,531 messages to Congress urging COVID-19 relief programs and funding.

Further, we facilitated 62 virtual Congressional meetings, enabling 112 members to tell their stories during these meetings with Senators, Representatives and Congressional staff.

Our advocacy, both alone and in coalition with other organizations, has produced policy results in on Capitol Hill and in the halls of the Administration. Members of Congress and Executive Branch officials reach out to LeadingAge and VNAA/EH because they know we are the trusted voice for aging; they seek input from mission driven, consumer focused providers across the aging continuum.

This document summarizes key advocacy “wins” in the form of legislation enacted and introduced and regulatory relief and other administrative actions that supported LeadingAge and VNAA/EH members in their essential, heroic work throughout the pandemic.

Affordable Housing

Achieved:

- **\$250 million in relief for HUD-assisted, affordable senior housing in the CARES Act**, including a \$10 million set-aside for Service Coordinators. Relief funds cover pandemic-related allowable expenses and additional subsidy to cover tenant income decreases.
- **Eviction moratorium for nonpayment of rent** via the CARES Act (through July 24) for federally-assisted renters, and then a CDC declaration (through December 31) for all renters nationwide.
- **HUD policies to defend affordable senior housing residents and staff** from COVID-19, including initial suspension of all physical inspections, issuance of HUD Notice allowing electronic files and signatures, self-certification for interim income certifications, extension of Capital Needs Assessment deadlines, and owner access to reserves for non-traditional uses.

- **HUD policies specific to needs of older adult residents**, including eventual release of HUD's COVID-19 Supplemental Payments, CSP bump-up for 62+ communities and those with Service Coordinators, de-prioritization in re-start of physical inspections for 62+ communities, "light touch" Management and Occupancy Reviews, and vacancy payments consideration.
- **HUD allocation of \$10 million from the CARES Act** to grant-funded Service Coordinator programs in affordable senior housing to offset COVID-19 costs.
- Publication of CDC's *Considerations for Owners and Operators of Multifamily Housing Including Populations at Increased Risk for Complications from COVID-19*, which was the first **joint HUD/CDC COVID guidance and included significant contributions from LeadingAge**.
- **First ever Section 202 Project Rental Assistance Contract conversion** to Section 8 Project-Based Rental Assistance, in October 2020, as authorized by HUD's Rental Assistance Demonstration, of which LeadingAge led the campaign to authorize in 2019 for the preservation of 202/PRAC homes. The first ever conversion was by a LeadingAge member.
- First awards for **new Section 202 homes** (1,100 of them) since funding was restarted in fiscal year 2017 after six years of zero funding for new Section 202 homes. The vast majority of the awards went to LeadingAge members.

Introduced

- **Introduction of the Emergency Housing Assistance for Older Adults Act (S 4177, HR 6873), for \$1.2 billion dollars in relief for affordable senior housing providers** (broad COVID relief, \$300 million for new Service Coordinators, and \$50 million for wifi in residents' units). The bills' COVID relief and \$300 million for Service Coordinators passed the House as part of the HEROES Act.
- **Introduction and House passage of HR 7616, the HUD FY21 appropriations bill**. The bill includes key LeadingAge asks: expansion of new homes under HUD's Section 202 program, full renewal funding, and extension of the 40-site Integrated Wellness in Supportive Housing (IWISH) demonstration.
- **Introduction and House passage of the Moving Forward Act (HR 2)**. This broad infrastructure bill would provide \$2.5 billion for HUD's Section 202 program for new housing, as well as expansion of the Low Income Housing Tax Credit program.
- **Introduction and House passage of the Emergency Housing Protections and Relief Act (HR 7301)**. The bill includes all affordable housing-related portions of the House-passed HEROES Act, including several hundred million for affordable senior housing relief and \$300 million for new Service Coordinators.

Nursing Homes

Achieved

- **Nursing home quality study originated by LeadingAge – and funded.** The John A. Hartford Foundation and the Commonwealth Fund funded a \$1M consensus study by the National Academies of Science, Engineering and Medicine formerly IOM. The panel was named in September; members will conduct an in-depth study of nursing home quality and implementation/enforcement to update/re-imagine its seminal 1986 study that led to the Nursing Home Reform Act (OBRA 1987). Prior to this foundation funding commitment, the proposal, which LeadingAge originated and advocated for passed the House of Representatives as part of the Labor-HHS FY 2021 Appropriations, H.R. 7614/7617.
- Specific **allocations of funding for nursing home strike teams and for extended care**, COVID-only facilities, included in the CARES Act, PL 116-136
- **Reopening and Visitation:** Policies implemented by CMS to safely and strategically reopen nursing homes to the surrounding community. Policies allowed for the reunification of families and residents, increased access to contracted services including hospice care and rehab therapy, and the reintegration of staff and services previously deemed non-essential.
- **Testing support. CMS-3401-IRC Interim Final Rule with Comment defined and required a national testing strategy for nursing homes.** The introduction into regulation was supported by **allocations of point-of-care testing instruments and testing supplies** provided to all certified nursing homes from Department of Health & Human Services.
- **Infection Control Training.** COVID-specific infection control training made available free of charge to all nursing homes with training modules differentiated for front-line staff and management-level staff.
- **Survey and Certification paused, modified.** Nursing Home Compare (Medicare Care Compare) ratings held constant and infection control survey data isolated to accommodate unique COVID-19-related challenges impacting nursing home inspections, quality measures, and staffing.
- **PPE Supply addressed, in part.** Personal protective equipment distributed by Federal Emergency Management Agency (FEMA) to all certified nursing homes to provide temporary relief during extreme nation-wide shortage. Strategies for the optimization of personal protective equipment provided by Centers for Disease Control & Prevention (CDC) and adopted by CMS to provide guidance during and in anticipation of widespread PPE shortage.
- **Public Health Emergency 1135 Waivers.** Blanket waivers requested by LeadingAge were issued to reduce documentation and operational burden to nursing homes.
- **Consistent national reporting and new data source.** The National Health Safety Network (NHSN) was implemented to collect and report COVID specific data from nursing homes. The streamlined reporting has allowed governmental agencies to have an accurate picture of nursing home COVID data specifics.

- **Civil Monetary Penalties (CMP) Funding to support COVID response.** The Centers for Medicare and Medicaid (CMS) has made CMP funds available to nursing homes for technology purchases to combat social isolation. In addition, another allocation of CMP funds may be applied for a nursing home to purchase visitation environment products.
- **Vaccine Plan for residents.** Health and Human Services rolled out a plan for nursing homes to be on the front line of receiving the Coronavirus vaccine. The partnership with CVS and Walgreens will allow nursing homes to benefit from a complete delivery and implementation program.

Introduced:

- **SAFE To Work Act, S. 4317,** establishing federal liability standards for COVID related litigation. LeadingAge is a member of a coalition of LTC organizations advocating in support of liability protections recognizing the unique and significant impact of COVID, a novel, highly infectious virus on older persons and the communities in which our members are situated, where there have been no clear treatment protocols, limited testing, lack of a vaccine, and other challenges. LeadingAge co-signed several letters in support of targeted liability protection that would include aging services providers, and this issue was included in several virtual Hill meetings.
- **Emergency Support for Nursing Homes and Elder Justice Reform Act of 2020, S. 4182,** establishing standards for COVID-specific nursing homes, reauthorizing the Elder Justice Act, and providing additional reporting requirements and studies. LeadingAge provided information to Sen. Grassley's staff to address issues related to this legislation, which combines COVID with the results of the elder abuse hearings held by Senate Finance Committee in the summer of 2019.
- **Protecting Our Seniors from the Pandemic Act, S. 3772,** and directing HHS to develop, submit, and allocate funding to advance a plan for efficiently building testing capacity for facilities serving significant populations of individuals aged 65 and older, in consultation with providers and front line workers, allocating \$10 Billion for testing and support. This bill, introduced by Sen. Tim Scott (R-SC), reflects and supports LeadingAge's position.
- **Nursing Home COVID-19 Protection and Prevention Act of 2020, S. 3768,** which provides \$20 Billion to implement COVID-specific nursing homes. LeadingAge provided comments and recommendations to Sen. Casey's staff as the bill was being developed.
- **Elder Justice Reauthorization Act of 2020, S. 4555/H.R. 8079,** reauthorizing the Elder Justice Act and appropriating funds for FY 2021. This addresses one of LeadingAge's top priorities for 2020.
- **RUSH Act of 2020, S. 3447/H.R. 6209,** authorizing risk-based Medicare demonstration program for selected nursing homes and emergency physicians, utilizing telehealth to reduce unnecessary hospital re-admissions. LeadingAge and CAST provided advice and recommendations to Sen. Thune and Sen. Cardin's staff in support of this legislation.

- **The HEROES Act**, H.R. 6800, passed by the House of Representatives on May 15, 2020, contained a number of provisions that LeadingAge had advocated for, especially the Heroes Fund for essential workers; LeadingAge provided comments and recommendations to Senate leadership as this provision was being developed.

Home and Community-Based Services/Hospice/Home Health

Achieved:

- **Delay of the HCBS Settings Rule compliance deadlines have largely been pushed back by a year**, including the date for final compliance by states as well as deadlines related to heightened scrutiny for providers.
- **Testing support.** Home health agencies and hospice organizations are included in the federal distribution of COVID antigen test kits.
- **Passage of the Home Health Planning Improvement Act in the CARES Act** which created a permanent legislative change allowing nurse practitioners, certified nurse specialists, and physicians assistants to order and certify home health services.
- **Public Health Emergency 1135 Waivers - hospice.** Hospice organizations have been granted many 1135 waiver flexibilities that LeadingAge, ElevatingHOME, and the Visiting Nurse Associations of America (VNAA) requested including around the comprehensive assessment, audits, the use of telehealth and telecommunication technology.
- **Public Health Emergency 1135 Waivers – home health.** Home health agencies have been granted many 1135 waiver flexibilities that LeadingAge, ElevatingHOME, and VNAA requested including around the initial and comprehensive assessment, the homebound requirement, and the use of telehealth and telecommunication technology.
- **PACE flexibilities granted.** Programs of All-Inclusive Care for the Elderly (PACE) organizations have been granted flexibilities via enforcement discretion to account for the pandemic including guidance related to relaxing existing requirements, the use of remote technology, and the provision of overnight care.
- **Adult day retainer payments.** In many states, Medicaid-funded adult day services and home care providers were given retainer payments and were authorized to provide services by telehealth/remote technology as a result of CMS approval of HCBS waiver emergency amendments.
- **Older Americans Act reauthorized.** Enacted the Supporting Older Americans Act of 2020 which reauthorizes the Older Americans Act (OAA) for five years. Funding levels include a 7 percent increase in 2020, and a 6 percent increase annually for the remainder of the authorization through 2024.

- **Meals for adult day participants.** The USDA Child & Adult Care Food Program was amended to allow Adult Day Services providers to access home-delivered meals (Families First Coronavirus Response Act).
- **Emergency food supply for older adults.** Allocated \$250 million in emergency supplemental funding to the Administration on Community Living (ACL) for OAA food and nutrition programs for older adults to have access to nutrition and critical services (Families First Coronavirus Response Act).
- **HCBS funding increased.** The CARES Act included an additional \$200 million for home and community based services under Title III-B of the OAA and an additional \$480 million for nutrition programs under Title III-C.

Introduced:

- **Introduction of the bipartisan, bicameral COVID-19 Hospice Respite Care Relief Act of 2020 (S.4423/H.R.8322)** which would allow hospices to have increased flexibility in providing respite care during emergencies. LeadingAge and VNAA/EH conceptualized this bill and worked with offices through the process of development and introduction.
- **Introduction of the bipartisan, bicameral Home Health Emergency Access to Telehealth (HEAT) Act (S.4854/H.R.8677)** which would provide home health agencies the ability to receive reimbursement for providing telehealth visits with appropriate guardrails to protect patients and families. The HEAT Act would put home health agencies on par with all other health care providers with regards to flexibility during the ongoing and future public health emergencies which is critically important for the older adults and those home health agencies who serve them. LeadingAge and VNAA/EH provided technical assistance throughout the process of developing the legislation.
- **Introduction of H.R. 5821, the Helping Our Senior Population in Comfort Environments (HOSPICE) Act and S.2807 the Hospice Care Improvement Act.** These are the Congressional responses to the 2019 Office of Inspector General (OIG) reports on hospice surveys. These bills are not identical but both make changes around survey frequency, transparency, and remedies. LeadingAge and VNAA/EH provided technical assistance throughout the process of developing these bills.
- **Introduction of H.R.7006 Improving Care in Home Health Agencies Act** which will allow for documented verbal orders for home health agencies during emergencies.
- **The HEROES Act, H.R. 6800,** passed by the House of Representatives on May 15, 2020, contained a number of provisions that LeadingAge had advocated for, including a **targeted, ten percentage point increase in the federal share of Medicaid home and community-based services (HCBS)** and to send state aging agencies an additional \$100 million for OAA programs.

Workforce

Achieved:

- **Reauthorization of education and training grants** relating to the Geriatrics Academic Career Awards (GACA) and the Geriatrics Workforce Enhancement Program (GWEP), received a \$40.7 million authorization for FY 2021 – 2025, s part of the CARES Act.
- The **Health Professions Opportunities Grant (HPOG) were reauthorized** through November 20, 2020 at current funding levels as part of the CARES Act. The program was amended to allow SNFs and nonprofits to be included as eligible entities for the program. HPOG provides training to Temporary Assistance for Needy Families (TANF) program recipients for various allied health occupations, which includes home health aides and CNAs.
- **Public Health Emergency 1135 Waivers.** CMS put several workforce-related blanket waivers in place during the pandemic, including: establishing a basic care aide position; reducing training requirements for paid feeding assistants; and reducing CNA in service training requirements and clinical hours needed for certification.

Introduced:

- **The HEROES Act**, H.R. 6800, passed by the House of Representatives on May 15, 2020, contained a number of provisions that LeadingAge had advocated for, including pandemic hazard pay for all essential workers (\$13 dollars per hour on top of normal wages (up to \$10,000)) and temporary easing of certain immigration-related restrictions to allow immigrant health care workers to assist in the fight against COVID-19.
- **Direct Creation, Advancement and Retention of Employment (CARE) Opportunity Act (S. 2521/H.R. 4397)**, which allows the Department of Labor to award grants to recruit, retain and provide advancement opportunities for direct care workers.
- **The Fairness for High-Skilled Immigrants Act (S. 3770/H.R. 1044)**, that would eliminate the per-country caps on job-based green cards.
- **The Healthcare Workforce Resilience Act (S. 3599/H.R. 6788)**, would allow as many as 40,000 unused immigrant visas to be awarded to nurses and physicians to come to the U.S. during the Covid-19 national emergency.

Telehealth

Achieved:

- **The Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020** removed the geographic restrictions on telehealth, allowed the home to be an originating site during the public health emergency (PHE), and allowed more flexibility in the type of modality

allowable for video-audio connections (e.g. allowing the use of FaceTime or other smartphone technology).

- The **CARES Act** made the following changes:
 - Allowed for all practitioners that can bill Medicare for their professional services may also furnish and bill for telehealth services during the PHE;
 - Allowed the use of telephone (audio-only) for certain services;
 - Allowed for the hospice face to face recertification to take place via telehealth during the PHE;
 - Allowed for telehealth visits to be included in the home health plan of care; this change is proposed to be made permanent in the FY2021 Home Health PPS Payment Rule. This does not include payment for the services, just allowance for inclusion in the plan of care; and
 - Created the COVID-19 telehealth program which provided 200 million dollars through the Federal Communications Commission (FCC) to help health care providers provide connected care services to patients at home or in other mobile locations in response to COVID-19.

- **Public Health Emergency 1135 Waivers.** CMS made the following changes under blanket waivers:
 - Expanded the services that can be furnished via telehealth;
 - CMS is allowing telehealth to be furnished by providers without a prior existing relationship with a patient – i.e. telehealth can be billed for new or existing patients;
 - Hospices are permitted to conduct all visits, as clinically appropriate via telecommunications technology while a patient is on the routine home care level of care during the PHE; and
 - CMS waived the requirement that physicians and non-physician practitioners perform in-person visit for nursing home residents and if appropriate, allow them to be done via telehealth.

Introduced:

- A number of bills, including H.R. 7663 **The Protecting Access to Post-COVID-19 Telehealth Act of 2020**, S. 4375 **The Telehealth Modernization Act, S.2741/H.R. 4932 The CONNECT for Health Act of 2019**, and the **Health, Economic Assistance, Liability Protection and Schools (HEALS) Act** have been introduced that would make permanent or extend some of the telehealth flexibilities enabled by the PHE.

- **H.R. 7659/S.4840 Ensuring Parity in MA for Audio-Only Telehealth Act of 2020** which would allow for the inclusion of certain audio-only diagnoses in the determination of risk adjustment in Medicare Advantage and PACE.

- **The Reducing Unnecessary Senior Hospitalizations (RUSH) Act of 2020** (S. 3447 / H.R. 6209) was reintroduced. It would allow all nursing homes to use telehealth models to improve care, such as by reducing unnecessary hospitalizations.
- There were several bills introduced that addressed **televisitation in nursing homes** and other settings, including the Facilitating Virtual Visitation for Nursing Home Residents Act of 2020 (H.R. 6885); the Emergency Support for Nursing Homes and Elder Justice Reform Act of 2020 (S. 4182/H.R. 8114); the Heroes Act (H.R. 6800); and the Take Responsibility for Workers and Families Act (H.R.6379).

Other

Achieved:

- **Provider Relief Fund**, part of the CARES Act and subsequent additional legislation, allocated billions of dollars to aging services providers to cover pandemic related costs for operations, testing, PPE and staffing.
 - LeadingAge successfully advocated to have HHS **include private pay facilities** (including nursing homes and assisted living) be eligible for relief funds
 - **HHS reopened the portal so Medicare providers could get a full 2%** of patient service revenue payment and others who had not yet received funds were able to apply (e.g., Change of Ownership situations)
- **PPP Flexibility Act**. Extended application deadline to allow more prospective borrowers to access loans and provided greater flexibility with respect to how borrowers can spend loan funds.
- **Main Street Lending Partnership**, part of the CARES Act. Loan program expanded by Federal Reserve Board to include not-for-profit borrowers
- LeadingAge worked in tandem with members to push back **and stop the implementation of the Medicaid Fiscal Accountability Rule (MFAR)**. This proposal would have cost aging service providers and impacted the tax implications for our CCRC/Life Plan members. CMS withdrew the proposed rule in September after advocacy from LeadingAge with both Congress and CMS.
- Worked with a coalition of national associations and state association partners to enact **state civil liability protections for aging services providers relating to COVID-19 claims**. Nearly half the states have enacted some sort of protections and we are still advocating on the federal level.
- The **CARES Act temporarily froze Medicare sequestration** from May 1, 2020 to December 31, 2020. This allowed Medicare provider members to obtain a pay increase of 2% for this period of time.