

Highlights for LPCs:

OSHA Withdraws Vaccination and Testing Emergency Temporary Standard. In light of the recent U.S. Supreme Court decision enjoining the enforcement of the OSHA Vaccination and Testing Emergency Temporary Standard (ETS), OSHA has officially [withdrawn](#) the ETS. This ETS applied to all employers with 100 or more employees and required businesses to implement a vaccine mandate or weekly testing option for all employees. However, OSHA noted, “although OSHA is withdrawing the vaccination and testing ETS as an enforceable emergency temporary standard, the agency is not withdrawing the ETS as a [proposed rule](#). The agency is prioritizing its resources to focus on finalizing a permanent COVID-19 Healthcare Standard.” This will effectively end all the ongoing litigation challenging the Vaccination and Testing ETS. OSHA standards take much longer to enact than CMS proposed rules (typically 6+ years), but we will continue to monitor any developments.

COVID-19 Related Updates:

CMS Issues Memo Outlining SURVEYOR Vaccination Expectations. You read that right. CMS issued a memo today outlining its expectations regarding vaccination of surveyors. Read it [here](#). Surveyors performing federal oversight, including state survey agencies (SSAs) and accrediting organizations (AOs), are expected to be vaccinated for COVID-19. Similar to certified providers, SSAs / AOs must also have a process for requesting and evaluating exemptions from COVID-19 vaccination based on medical contraindications or religious objections. Surveyors who are neither vaccinated or nor exempted from vaccination should not be part of on-site survey teams. Unvaccinated surveyors may participate in off-site records reviews, survey preparation, etc. While surveyors who have been granted exemption will be permitted to join on-site survey teams, these individuals will be subject to additional precautions as determined by the state such as mandatory testing, re-assignment or work modifications. CMS states clearly that compliance with this expectation is the role of the SSA or AO. As such, **providers may not request proof of vaccination or exemption as a condition of entry**. Questions or concerns related to surveyor vaccination should be referred to the SSA or AO. The memo and expectations are effective 30 days from today.

CMS Updates the Dates in Mandate FAQ. Last week, CMS made changes in the [Frequently Asked Questions](#) document that implements the vaccination mandate for health care workers. The changes provide the deadlines for both groups of states, those who were in the group covered immediately by the Interim Final Rule and those who were required to comply after the Supreme Court ruling that all states would have to implement the IFR. As a reminder, the states that were formerly enjoined have a phase 1 deadline of February 14 and phase 2 deadline of March 15.

Additional Precautions for Unvaccinated Staff: There has been much confusion lately over whether an N95 is required for unvaccinated staff under the new CMS vaccine mandate. The CDC continues to recommend universal source control for staff at all times in nursing homes as follows:

Source control options for HCP include:

- A NIOSH-approved N95 or equivalent or higher-level respirator OR

- *A respirator approved under the standards used in other countries that are similar to NIOSH-approved N95 filtering facepiece respirators (note: these should not be used instead of a NIOSH-approved respirator when respiratory protection is indicated) OR*
- *A well-fitting facemask.*

In an email from CMS, we have been informed of the following:

Since N95 masks are not required in all situations in the nursing home, use of an N95 by unvaccinated staff in situations where an N95 is not normally required would be considered an additional precaution that could be used. Use of a well-fitting facemask would not be an additional precaution since the current recommendation is for all healthcare staff to wear source control.

This would seem to indicate an expectation that unvaccinated staff wear, at a minimum, an N95 or other approved respirator for general source control at all times as an “additional precaution”.

CDC Definition of “Up to Date”: With the rise of the omicron variant, CDC began talking about vaccination status in a new way, using the phrases “up to date” and “not up to date”. This has created quite a bit of confusion, particularly as guidance for isolation / quarantine and return-to-work has utilized these phrases. We were able to clarify with CDC this week that an individual is “up to date” if they have received ***all recommended doses of COVID-19 vaccine for which they are eligible***. This means:

- An individual who has completed a primary series and received a booster is ***up to date***.
- An individual who has completed a primary series and is not yet eligible for a booster is ***up to date***.
- An individual who has completed a primary series and is eligible for a booster but has not received the booster is ***not up to date***.

Advocacy Alerts and Hill News:

LeadingAge Co-signs Letter to the White House on Staff Agency Price Gouging. On January 25, 2022, LeadingAge along with several national long-term care and health care organizations, sent a [coalition letter](#) to the White House COVID-19 Response Team Coordinator, Jeffrey Zients, asking the White House to address anticompetitive price gouging practices with certain nurse-staffing agencies. The letter reiterates how COVID-19 has presented unprecedented and difficult challenges for the entire health and long-term care system and one of the biggest issues faced by all our providers across the country is the dire workforce shortages. Yet, our organizations are hearing countless examples of how nurse-staffing agencies are charging exorbitant prices to desperate health providers that simply need workers. The letter also points out, many long-term care and health care providers are paid through the Medicare and Medicaid programs, thus it is the taxpayers who are shouldering these huge price tags. And, ultimately, this price-gouging is not sustainable for providers under the current reimbursement system structure. Also, groups (such as LeadingAge in October 2021) previously urged the Federal Trade Commission to investigate this conduct as a violation of our antitrust or consumer protection laws, and have yet to receive a response from the agency.

Members of Congress Also Call on the White House to Address Nurse Staffing Agencies Price Gouging, Also, on January 25, 2022, Reps. Peter Welch (D-VT) and Rep. Morgan Griffith (R-VA) led 195 bipartisan members of Congress in a letter to White House COVID-19 Response Team Coordinator, calling on the White House to enlist one or more federal agencies to investigate exorbitant price increases by nurse-staffing agencies during the COVID-19 pandemic. The letter addresses the specific strain on hospitals who rely on nurse-staffing agencies are experiencing. Rep. Welch, Rep. Griffith and many Members of Congress have received reports in their districts of nurse-staffing agencies charging rates that are

double or triple their pre-pandemic rates, while taking 40% or more of the amount charged to local hospitals for themselves. The full letter is available [here](#). We are meeting with members of Congress to be clear that it's not just hospitals; long-term care providers are having the same problem.

LeadingAge letter to President Biden seeking immediate COVID relief for aging services providers.

LeadingAge sent a [letter to President Biden](#) asking for immediate relief for aging services providers who have been on the frontlines of the nation's battle against the pandemic for more than two years. LeadingAge continues to press for key provisions contained in the House-passed Build Back Better legislation, but this letter to the President is intended to support his request for additional, immediate help. We asked for: funding for emergency payments of \$2,000 to every frontline worker across the continuum who has worked at least six months; funding for a \$5 an hour raise for every frontline worker across the continuum; \$8-10 billion in additional Provider Relief Funds; a testing system dedicated to aging services; a supply of therapeutics dedicated to aging services; extension of pandemic waivers after the Public Health Emergency ends to support a smooth transition out of the emergency; and support for affordable senior housing. The letter was featured in the Washington Post today.

LeadingAge letter to CMS Administrator Brooks-LaSure seeking delay in posting of nursing home staffing data.

CMS's current plan is to start posting nursing home staffing data on Care Compare with the tomorrow's update. Today LeadingAge sent a [letter to CMS](#) advocating to delay the posting of data on nursing home staffing and the implementation of staffing quality measures. While we support transparency around the staffing issues facing nursing homes and other providers, we have heard overwhelming feedback about the poor timing of this latest move by CMS that will do nothing beyond unnecessarily subjecting nursing homes to public scrutiny and criticism over a problem that impacts all sectors at this time.

News from LeadingAge:

Your Stories Matter: We've Updated the Story Collector. The [LeadingAge Story Collector](#) makes it easy to tell your stories of innovation and impact. This week, the Story Collector has been updated with new questions about resident and client engagement. How do you build a rich and inclusive culture with the people you serve? How has your messaging to residents, clients, families, and staff changed? What lessons about engagement, transparency, and communication have you learned, and how are you putting them to work? Visit the [Story Collector](#), powered by LeadingAge Gold Partner Greystone, to share!

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.](#)

Registration Open: 2022 Leadership Summit. Today's aging services environment requires smart, dynamic leadership—and now is the time to invest in the innovative strategies that put us on a course toward a stronger future. [Register today for the 2022 LeadingAge Leadership Summit](#) on March 28-30 in Washington, DC. (Attended the Summit before? You know firsthand how valuable this event is for aging services leaders. We're gathering testimonials to help promote the Summit to new attendees. [Share your thoughts!](#))

