

LPC Weekly Report

Friday, December 17 2021



**Highlights for LPCs:**

**Senior Housing Trends 2021 Review:** Love & Company has released a comprehensive review and introspection on current and future [senior housing trends](#) – mostly geared towards Life Plan Communities – that includes thoughtful commentary and insights from many thought leaders in the field. [Here](#), we summarize the key findings of the report.

**LeadingAge article explaining Phase 4 Provider Relief Payments:** This [article](#) went out to members today in the Need to Know newsletter and explains the methodology HRSA used in calculating the payments and what providers can expect as an average payment. In response to some of your inquiries, HRSA has not published a list of providers who will receive Phase 4 payments starting tomorrow.

**Resources for Hiring Afghan Refugees.** Here is [an article](#) on our interview today with Krish O'Mara Vignarajah of Lutheran Immigration and Refugee Service. She provided resources and information for LeadingAge members interested in hiring Afghan refugees. She also directed interested employers to the TENT.org [U.S. Employers' Guide to Hiring Afghan Refugees](#).

**Number of childless older adults is increasing.** Declines in marriage and fertility are starting to be reflected in the lives of aging adults, according to a [press release](#) today from the US Census Bureau. Approximately 16.5% of Americans over age 55 have no children, according to a report released by the Census Bureau at the end of the summer, [Childless Older Americans: 2018](#). Childless older adults have higher levels of personal net worth and educational attainment and are less likely to have a disability. Aging services providers should keep an eye on this increasing trend; fewer sons and daughters means there will be fewer informal caregivers available to help childless older adults in the coming years.

**COVID-19 Related Updates:**

**Update on Legal Challenges to CMS Interim Final Rule.** We have two updates today after the Eighth Circuit and Fifth Circuit Courts of Appeals decisions earlier this week. The updates involve the separate cases filed individually by the states of Texas and Florida, respectively.

- **Texas**— After the Fifth Circuit eliminated the injunction on the CMS vaccine mandate for 26 states that were not part of the Louisiana litigation, the federal district court in Texas revisited Texas's challenge to the CMS vaccine mandate. The Texas court entered a preliminary injunction enjoining the CMS mandate for communities in Texas.

We have a tie --- the Texas injunction means that the CMS vaccine mandate is paused in 25 states and in effect in another 25 states. Injunctions are now in place in the following states: Texas, Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, Ohio, Missouri, Nebraska, Arkansas, Kansas, Iowa, Wyoming, Alaska, South Dakota, North Dakota, and New Hampshire.

- **Florida**– Florida has petitioned for a “rehearing en banc” of the Eleventh Circuit Court of Appeals decision refusing to enjoin the CMS vaccine mandate pending appeal. The motion asks for the full court to overrule the three-judge panel’s order denying Florida an injunction pending appeal. The Eleventh Circuit as a whole is more conservative than the three-judge panel that denied Florida’s request for an injunction pending appeal. Florida’s motion for rehearing en banc will delay it seeking relief from the U.S. Supreme Court, likely putting it after applications from the federal government seeking to fully stay the Missouri and Louisiana district court’s preliminary injunctions.

***Barring any changes from CMS, the CMS Memo QSO 22-04, issued on December 2<sup>nd</sup>, is still in place***, which states that they will not enforce the interim final rule while there are court-ordered injunctions in place prohibiting enforcement of the provisions: <https://www.cms.gov/files/document/qso-22-04-all.pdf>. LeadingAge reached out to CMS for clarity. They report they are “reviewing the court decisions and evaluating next steps.” We will keep you updated if/when we hear any additional response from CMS or any updates on the legal challenges.

### ***Advocacy Alerts and Hill News:***

**Action on Build Back Better Unlikely Before January.** The second top Democrat in the Senate, Democratic Whip Senator Durbin, signaled today that they plan to revisit Build Back Better in January. He deferred to Senator Schumer to make official announcements but confirmed what many observers feared to be the case.

**Senate Finance Committee releases Build Back Better Title.** Last weekend the Senate Finance Committee released its 1180-page [draft provisions](#) for Build Back Better, covering Medicare, Medicaid, tax and other provisions in its jurisdiction. Here is a quick topline list of provisions affecting nursing homes and other post-acute providers. High points in the Senate Finance draft for LeadingAge members:

- There is a big good change in the bill – the requirement that CMS implement minimum staffing ratios has been eliminated, while the study to determine if there should be minimums has been retained and CMS is now directed to report to Congress on its conclusions, starting in 2025 and every 5 years thereafter.
- However, the requirement that beginning in 2024 both SNFs and NFs must have an RN on duty 24/7 has been retained. While we did not success on our arguments that this requirement should be subject to a real study and that it is not feasible in parts of the country, there is a provision that could help fund new staff. “Grants to Improve Staffing and Infection Control” provides \$800M beginning in 2024 to states to provide wage or benefit enhancements or improve and develop training and career development opportunities and/or expand staffing for nursing staff that care for Medicaid recipients.
- The second grant that members need to be aware of is the Nursing Home Worker Training Grant provision, approximately \$1.7B – directed at non-RN workforce (direct care workers, HH, hospice, LPNs). Again, opportunity to work with states.
- The special focus facility program is expanded with funding to CMS to increase total SNFs in the program to 3.5% (recall that hearing several years ago revealed that CMS kept the program at a very low number because it had not been funded, with big waiting list), and creates a mandatory on-site consultation program (but no new penalties), which was included in a bill LeadingAge supports, the Nursing Home Reform and Modernization Act of

2021, and is the first time Congress has recognized the importance of not focusing on punishment as the first response to poor performance.

- The bill also includes funds to CMS to improve the survey system, including training, tools, tech assistance and funding to state agencies to improve surveys – a little disappointing as no focus on consistency or alternative ways of looking at ensuring compliance, like the consultation program for SFFs...
- There are 2 additional reporting requirements – resident assessment data and direct care staffing data – that will be subject to 2% penalty for inaccurate reporting from FY 2026-2031 (the reporting requirements aren't new, the implications for inaccurate reporting are).
- Another positive: the bill retains the HCBS expansion we support -- this is another critical opportunity for state partners to ensure that their state applies for an HCBS Improvement Grant – extensive work will be needed to identify current and future needs, especially around workforce and expanding opportunities for Medicaid recipients – the benefit is a 6% FMAP increase, with additional 2% for states that support self-directed care and the self-directed workforce. Really critical source of funds to enhance direct care workforce
- Other provisions – Money Follows the Person demonstration program is permanently extended, as are protections against spousal impoverishment for Medicaid home-based recipients; and the Independence at Home demonstration program is also made permanent.

### ***News from LeadingAge:***

**The Global Ageing Network Releases Report on COVID-19 Vaccine Distribution for Elder Care.** What lessons can be learned from an examination of national policies on and approaches to the COVID-19 vaccine distribution in long-term care settings? How might that information better protect older adults and prepare the global community for future crises? [The Global Ageing Network](#) set out to answer those questions in early 2021 and today released a new report, sponsored by [Standards Wise International](#), [COVID-19 Vaccination Distribution in Elder Care: A Cross Cultural Snapshot](#). Today at 4 p.m. ET, join the Global Ageing Network for a webinar with principal investigator Dr. Emi Kiyota, who will share the report's key findings about the effectiveness of COVID-19 vaccine acquisition and distribution to aging service providers in 12 countries. We look forward to a lively discussion and hope you can join! [Click here to join the webinar](#) at 4 p.m. ET.