



Workforce Policy Weekly

October 14, 2022

NO COVID UPDATE CALLS ON THE WEEK OF OCTOBER 17 – WE WILL BE AT LEADINGAGE’S ANNUAL MEETING. On **Monday, October 24, at 3:30 PM ET**, **Taryn Williams, U.S. Department of Labor Assistant Secretary for Employment**, will talk about resources her office has developed for employees who have Long COVID. In addition, we’ll discuss what DOL is doing to support employers who in turn can support the changing mental health needs of workers. On **Wednesday, October 26, at 3:30 PM ET**, **Dr. Michael Barnett of the Harvard T.H. Chan School of Public Health**, will join the call for a conversation about COVID and people over age 65. In addition, we’ll ask him about his work on the increased need for mental health services and barriers to access, including his focus on particular concerns in rural areas. If you haven’t registered for LeadingAge Update Calls, [you can do so here](#). You can also find previous call recordings [here](#). Note that to access recordings of the calls you need a LeadingAge password. Any staff member of any LeadingAge member organization can set up a password to access previous calls and other “members only” content.

Supreme Court Declines to Hear Appeal in Case Concerning Arbitration Agreements. On October 3, the United States Supreme Court denied a request to hear an appeal of a decision upholding a CMS rule relating to the use of arbitration agreements in nursing facilities and skilled nursing facilities. In 2019 CMS issued a final rule establishing standards (42 CFR § 483.70(n)) that facilities must meet if entering into a binding arbitration agreement with a resident, including that a facility may not require a resident to sign the agreement as a condition of admission. A group of facility operators challenged the rule in federal court, asserting that CMS did not have the authority to issue the rule because it violated the Federal Arbitration Act. Both the U.S. District Court for the Western District of Arkansas and the Eight Circuit U.S. Court of Appeals declined to invalidate the regulations, finding that that the agency had not exceeded its authority. In May 2022 the facilities filed a petition asking the Supreme Court to hear the case. Following review of the parties’ submissions, the Court denied the petition, leaving the Eight Circuit decision to stand and the rule intact. See [Northport Health Services of Arkansas, LLC, dba Springdale Health and Rehabilitation Center, et al., Petitioners v. Department of Health and Human Services, et al.](#)

Department of Labor Proposed Rule on Classifying Employees, Independent Contractors. DOL has published a proposed rule, [Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#), in the October 13, 2022, issue of the *Federal Register*. The proposed rule provides an analytical framework for determining whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). This distinction is important because FLSA’s minimum wage and overtime pay protections do not apply to independent contractors. The advanced copy of the proposal showed the Department intends to rescind a previously-issued 2021 Independent Contractor Status rule and, among other changes, restore a “totality-of-the-circumstances” analysis to determining whether a worker is economically dependent upon an employer for work versus being in business for themselves. Written comments should be submitted on or before November 28. LeadingAge will analyze

the proposed rule and its impact for aging services providers and share additional information in the weeks ahead.

CNA Training Waivers. Several states have applied for CNA training waivers due to backlogs in training and testing. (LeadingAge is keeping track [here](#)). While these new waivers were introduced in relation to the original nurse aide training federal blanket waiver and individuals hired prior to the waiver's termination on June 6, 2022, nurse aide training and testing backlogs also impact individuals hired after June 6, 2022, and currently working as nurse aides. CMS has confirmed to LeadingAge that the new waivers also apply to individuals hired after June 6, 2022, if the state or nursing home has been granted a waiver and training/testing backlogs prohibit these individuals from meeting training/testing requirements for certification within 4 months. Remember that individuals working under these waivers must continue attempts to complete training/testing and waivers are time-limited, ending with the expiration of the public health emergency or expiration of the new waiver, whichever comes first.

States Legislatures Taking Steps to Address Direct Care Wages. LeadingAge has compiled information on how State legislatures are addressing wages for the direct care workforce. We examined the different approaches state legislatures have used in recent years to increase wages. We also included state examples to illustrate the approaches. [Here's](#) the link to our findings. Please email Eram (eabbasi@leadingage.org) if you have any questions.

CMS Response to LeadingAge Letter on Staffing and Quality in Nursing Homes. After the President's introduction of a nursing home quality initiative in the State of the Union address on March 1, LeadingAge sent [a letter](#) to President Biden on March 11, outlining the need for an all of government solution to address the staffing crisis, take an evidence based approach to quality improvement, and fund quality care in the nation's nursing homes. LeadingAge received a reply dated September 30, from CMS Administrator Chiquita Brooks-LaSure. The reply reiterates CMS's commitment to improving the quality and safety of nursing homes, noting that throughout the pandemic CMS placed nursing homes at the center of its efforts. Linking to the White House fact sheet on the nursing home quality initiative, the letter describes that plan. Specifically, LeadingAge asked that fewer resources be devoted to high performing nursing homes and more to those that are poor performers; Administrator Brooks-LaSure said that would not be possible without statutory change. Interestingly, the request that other federal departments participate in efforts to promote change in nursing homes, was not addressed in the letter from the CMS administrator.

EWA Webinar: Key Member Reports on Workforce and Caregiving. On October 11, LeadingAge participated in an Eldercare Workforce Alliance (EWA) webinar titled, "Key Member Reports on Workforce and Caregiving." The panelists at the session highlighted important reports on workforce data, shortages, career ladders, job quality and family caregiving. Panelists included: Amy York, Executive Director, EWA; Jenna Kellerman, Director of Workforce Strategy and Development, LeadingAge; Sam Brooks, Director of Public Policy, Consumer Voice; Amy Robins, Director of Advocacy, PHI; Traci Wilson, Director, Research, USAging; and Mike Wittke, Vice President, Policy & Advocacy, National Alliance for Caregiving. EWA is an alliance committed to addressing our nation's eldercare workforce crisis by building a caring and competent workforce. LeadingAge is an EWA member. You can view a recording of the webinar, here: <https://www.viddler.com/v/4a7e29d5>, and the slides can be accessed here: <https://bit.ly/3SVvPsW>

HRSA Geriatric Academic Career Awards (GACA) Webinars. Last month, the U.S. Health Resources and

Services Administration (HRSA), released its funding [announcement](#) for the Geriatric Academic Career Awards (GACA) Program. The GACA program supports the career development of junior faculty as academic geriatricians or academic geriatrics specialists and is open to accredited health professions schools or graduate programs, health administration and behavioral health programs, and Tribes and tribal organizations are also eligible. Applications are open until November 3, 2022. Interested applicants can view HRSA's recent webinars on tips for applying for the GACA program, which are available, [here](#).

Older Adults and Our Workforce Need Our Help. Hurricane Ian continues to cause damage, severe flooding, and critical situations for LeadingAge member communities. Our thoughts are with all members and their residents, staff, and families in the storm path and hope there is no further impact. [Please consider a donation to the LeadingAge Disaster Relief Fund](#), as 100% of all donations will go directly to members and their staff. The need for food, water, and other supplies is immense. Thank you to the individuals that have already donated.

Sign-up to Host an Intern in the 2023 LeadingAge Summer Enrichment Program. LeadingAge has opened registration for the 2023 [Summer Enrichment Program](#), which promotes diversity, equity, and inclusion in a 10-week immersive internship. Undergraduate and graduate students across the country would have the opportunity to obtain real-world experience in aging services. [Interested in hosting an intern?](#) Contact Christy Kramer, Vice President of Student Engagement and Workforce Partnerships, ckramer@leadingage.org.

Call for 2023 Annual Meeting Sessions is Open. Save the date! Proposals for the [2023 LeadingAge Call for Sessions](#) must be submitted by December 5. If you want to present on stage to hundreds of aging services experts and providers, submit your original session idea for the opportunity to present at the 2023 LeadingAge Annual Meeting + EXPO in Chicago, IL from November 5-8, 2023. [Learn more and submit your proposal](#).