

Friday, March 10 2023

Highlights for LPCs:

NEW ACTION ALERT: Tell Congress to Eliminate the 3-Day Hospital Stay Requirement. Federal law requires an inpatient hospital stay for three consecutive days before Medicare will cover a patient's care in a Skilled Nursing Facility (SNF), a requirement that has become antiquated and onerous in the nearly 60 years since Medicare was enacted. The 3-day qualifying hospital stay requirement was waived in 2020 during the pandemic. During the waiver, Medicare beneficiaries who otherwise qualified for SNF care received it regardless of spending any specific amount of time in the hospital. With the public health emergency set to end on May 11, now is the time to take legislative action to permanently fix this unnecessary requirement. [Write to your member of Congress today!](#)

Employee Retention Credit: Resources from FORVIS. Our partners at FORVIS have shared a couple very helpful resources related to the ERC: a free [webinar](#) on applying the ERC to LTC settings, and an [article](#) on how to satisfy the IRS requirements for documentation and substantiation. The webinar's relevant highlights for members include how to evaluate whether a government order applies; specific examples of partial suspension of business operations (e.g., CMS orders restricting visitors, third party service providers, and occupancy;) and how to show a measurable decline that satisfies "nominal impact," such as a decline in census or patient days. Additionally, the webinar talks about how to claim the PPP and ERC correctly for the same eligible quarters, and the importance of including healthcare benefits paid into the wage calculations. The article, entitled "Checking ERC Claims Before the IRS Does," offers helpful, concrete preparatory steps providers can take ahead of an IRS audit, what the IRS is looking for (eligibility, documentation of substantiation and corrections to adjusted income tax returns,) and the kind of documentation the IRS looks for in an audit (e.g., payroll journals, amount of employee wages paid, evidence of significant decline in gross receipts, etc.) and what to do if an employer has already filed and needs to amend a return. Both resources offer members additional insights into the ERC application process for LTC providers and answer key questions members pose frequently about the IRS and the risk of audit. FORVIS is a national accounting firm that specializes in healthcare services accounting and is a Bronze partner of LeadingAge.

Medical / COVID-19 Related Updates:

LeadingAge Supports Permanent Approval of Paxlovid. FDA's Antimicrobial Drugs Advisory Committee asked for comments on Pfizer's application to approve Paxlovid as a new drug. It is currently approved for use under the PHE's Emergency Use Authority. FDA particularly asked LeadingAge to comment because officials there wanted the Committee to hear about the experiences of providers. LeadingAge submitted comments on March 9 supporting the application and citing examples provided by members of our Clinical Advisory Group. We will provide a copy of the final comments in tomorrow's nightly update.

COVID Test Kits Still Available For Aging Services Providers – Will Continue After May 11 End of PHE. Since February, LeadingAge providers across the continuum of care have been ordering free COVID-19

test kits from LeadingAge, through an arrangement with the U.S. Department of Health and Human Services. More information and the easy order form are located [here](#). LeadingAge Members have asked if tests will still be available after the end of the Public Health Emergency on May 11. The answer is YES. HHS and White House officials have clearly stated that arrangements related to tests, vaccines, and treatments are separate from the timing of the end of the PHE. A separate portal, arranged in coordination with LeadingAge, is available for HUD 202 providers, [here](#).

Advocacy Updates and Hill News:

President Releases 2024 Budget. On March 9 the White House released and sent to Congress its [FY 2024 budget](#) summary, accompanied by a series of fact sheets. Program and funding details will be released on Monday, March 13. The President's budget is never enacted as is by Congress, but it is considered a good indication of the Administration's vision and policy direction/priorities. The proposed budget preserves Medicare's solvency by raising taxes for high income individuals. Several provisions in the budget indicate support for aging services providers and the people who use aging services, such as increased funding for more HUD Section 202 homes and an expansion of funding for Medicaid home and community-based services. Elements appear to support expansion of HRSA training programs for certain aging services professionals. Some relevant highlights include:

- ***Housing.*** The budget request seeks to increase funding for key affordable housing programs, including new Section 202 Supportive Housing for the Elderly homes, new Project-Based Rental Assistance contracts, new vouchers, and additional HOME funding compared to FY22 funding levels. The request also seeks to almost triple tax expenditures for the Low-Income Housing Tax Credit and makes improvements to this program, including addressing right of first refusal issues and reducing the private activity bond financing requirement from 50 to 25%.
- ***Home and Community-Based Services.*** The President's budget includes an ongoing commitment to expanding home and community-based services by proposing an \$150 billion investment over 10 years with specific mention of supporting the workforce. We are pleased that the President is continuing his commitment to expanding access to these vital services which include home care, assisted living, adult day, and other vital services that allow those who choose to remain in the community. This proposal mirrors the Better Care Better Jobs Act that was reintroduced in the House and Senate last month; take action to support the bill [here](#).
- ***Nursing Homes.*** The President requests \$566 million for the discretionary CMS Survey and Certification Program, nearly a 40 percent increase above enacted funding, for nursing homes and other facilities' health and safety inspection surveys. Although additional funding is allocated for survey and certification, there is no information included in the budget summary on additional funding for nursing homes to comply with survey requirements or for other uses. The budget summary also noted a robust agenda to "improve the safety and quality of nursing home care, including efforts to improve ownership transparency; address the backlog of complaint surveys and provide adequate funding to conduct nursing home inspections; increase the inspection of low-performing nursing homes via the special focus facilities program; and expand financial penalties for substandard facilities," but provided no additional information or budget marks for these activities.
- ***Workforce.*** The budget summary indicates an awareness of the healthcare workforce crisis and includes some anticipated requests for increases in some existing programs. Specifically, the President requests \$49.5 million more than the \$350 million enacted last year for nursing education programs. A similar increase is also included to expand Registered

Apprenticeship opportunities. Family caregiver programs are targeted for relatively small increases.

- **Immigration.** The budget requests \$7.3 billion for the Office of Refugee Resettlement (ORR) to help rebuild the Nation’s refugee resettlement infrastructure and support the resettling of up to 125,000 refugees in 2024. Further, it includes a request for \$865 million for United States Citizenship and Immigration Services to process an increasing asylum caseload, reduce the historically high immigration benefit request backlog, support the Citizenship and Integration Grant Program, and improve refugee processing to advance the Administration’s goal of admitting 125,000 refugees.
- **Department of Labor.** The President calls on Congress to require all employers to provide paid sick days. The proposed budget would provide resources to administer and support wage and benefit requirements, address the classification of independent contractors, and increase penalties for labor law violations. The budget would expand access to paid Family and Medical Leave through a program administered by the Social Security Administration.

Again, this is just the first move in a long and complex set of discussions and negotiations that will determine the actual budget for the federal government next fiscal year.

Aging Committee Hearing, Highlights Direct Care Workers Shortage, and the Chairman’s New Bill to Address Medicaid HCBS and Support for Caregivers. On March 9, the Senate Special Committee on Aging held a hearing, “Uplifting Families, Workers, and Older Adults: Supporting Communities of Care” which examined the economic benefit of investing in Medicaid home and community-based services, improving the direct care workers shortage and the caregiver crisis. During the hearing, Committee on Aging Chairman Bob Casey (D-PA), unveiled a new bill, the *HCBS Access Act*, which includes an expansion of home-and-community based (HCBS) services sorely needed to ensure that older adults can receive services across the care continuum. It also increases the Medicaid Federal Medical Assistance Percentage (FMAP) for HCBS to 100%. To receive the enhanced match, states must enhance, expand, or strengthen HCBS services. Additionally, it provides \$2 million dollars a year for 5 years, for the Administration for Community Living to establish a Technical Assistance Center for building the direct care workforce, and allocates \$1 billion dollars, over five years, for Direct Care Workforce Competitive grants. An article will be written to share additional details on the hearing.

Older Adults 50+ Are Half of Nation’s Homeless Population. On March 8, the Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Housing, Transportation, and Community Development held a hearing, “The Federal Strategic Plan to Prevent and End Homelessness.” Witnesses were Jeff Olivet, Executive Director, U.S. Interagency Council on Homelessness, and Dr. Richard Cho, Senior Advisor for Housing and Services, HUD. Mr. Olivet called homelessness a “life-and-death public health crisis” and said that, over the course of a year more than 1.2 million people experience homelessness. “Older Americans—who face the same rising housing costs as everyone else, but often with fixed incomes and rising health needs—are one of the fastest-growing groups of people experiencing homelessness. Single adults over 50 now make up half of the homeless population, and if nothing changes in the next 15 years, Harvard University estimates that an additional 2.4 million seniors in the U.S. will have no access to affordable housing. Further, adults who experience homelessness age faster than their housed peers, with elevated rates of serious, chronic, and often avoidable medical conditions, Mr. Olivet said. Dr. Cho testified that communities have housing intervention resources for every veteran experiencing homelessness; for families with children, communities have resources for only one of every three such families; for other individuals, communities only have housing interventions for one of every 7 individuals who need one. Watch the hearing [here](#).

LeadingAge Co-signs Letter Opposing Proposed Immigration Services Fee Schedule Changes.

LeadingAge joined other health and long-term care services and support organizations to send a March 6 letter to the Department of Homeland Security on its [proposed](#) increases to immigration and naturalization benefit request fees charged by the U.S. Citizenship and Immigration Services (USCIS). Twenty national organizations signed the letter. With 1 in 4 direct care workers born outside of the U.S., the letter reiterates LeadingAge's strong support of our nation's immigrants who make up a large portion of the long-term care workforce. The "increased fees could take a toll on long-term care communities that rely heavily on immigrants to care for their residents," the letter says. The letter asks USCIS to consider implementing operational changes to save costs and offers ideas for consideration. Additionally, the letter urges USCIS to focus on ways to expediate immigrant visa processing to bring much-needed health care workers to the U.S. and requests USCIS continue its work to address delays in the "file transfer" associated with premium processing of I-140 Immigrant Petitions for Registered Nurses. The letter can be accessed [here](#).

OSHA Convenes Small Business Panel for Review of Possible Workplace Violence Rule. On March 1 the Occupational Safety and Health Administration (OSHA) formally convened [a Small Business Advocacy Review \(SBAR\) panel to obtain feedback about a possible future rule relating to prevention of workplace violence in healthcare and social assistance settings](#). OSHA has not formally issued a proposed rule at this stage, but it has developed a framework relating to workplace violence prevention – specifically, violence perpetrated by patients, clients, and visitors toward employees – that shows its thinking about what a proposed rule could include in the future. OSHA's initial framework would apply to a wide range of healthcare and aging services settings, including home health agencies, assisted living, life plan communities, and nursing homes. The initial framework also includes a category called "social assistance" settings, which appears to include adult day services. The panel is made up of staff from OSHA, the Small Business Administration, and the White House Office of Management and Budget. Representatives of small businesses and small governmental jurisdictions will also participate – a group that will include several representatives of aging services providers, including a LeadingAge member. The SBAR panel will hold meetings in March 2023 and generate a report by May 1. Any interested parties may submit comments to OSHA, and LeadingAge will seek input from our members about the issues and alternatives OSHA is considering. We will provide additional information and analysis soon.

News from LeadingAge

[Celebrate! Your Career in Aging – New Resource from LeadingAge.](#) In this 7-minute QuickCast, Jenna Kellerman shares several social media resources and activity ideas that LeadingAge members can use during March 26 - April 1 to celebrate Careers in Aging Week.

LeadingAge Leadership Summit. We often hear from LeadingAge members that there is little time for future planning due to navigating day-to-day operations, keeping up with change, and addressing ongoing challenges. The [LeadingAge Leadership Summit](#) gives members the much-needed time to step back and come together to think big(ger) and creatively build a stronger, sustainable, and resilient future in aging services. [Read more about the keynote speakers, 75 diverse voices, and 30+ sessions that will inspire at the 2023 Leadership Summit.](#)