

LPC Weekly Report

Friday, April 21 2023

Highlights for LPCs:

NIC Executive Summary Survey Released. The National Investment Center released their latest [Executive Summary survey](#), which focused primarily on rising costs, resident acuity and workforce challenges. Survey respondents indicated that the biggest challenges facing their organizations were rising operating costs (92%), staff turnover (88%) and recruiting new caregivers and community staff (82%.) In a related question, more than half of respondents reported that incoming resident acuity level was higher than it was a year ago; not one survey participant reported that acuity had declined. When asked why residents were joining the community with higher-than-previous acuity levels, the frequently-cited reasons were that residents are waiting longer to move-in, had delayed needed medical treatment due to the pandemic, or had an acute medical episode that necessitated a move. In terms of occupancy leads, 77% of single site operators reported higher leads volumes, and 92% of multisite operators that have ten or more properties reported the same increase in leads volumes. Staff retention had reportedly declined since last year; only 30% of organizations have retained more than 80% of their new hires after one month, and only 7% reported that they had retained more than 80% of their employees after one year. Rising interest rates have had the greatest impact on organizations' ability to recapitalize existing properties, as well as the ability to purchase new properties. This was attributed in part to creditors' increasing hesitancy to partner on funding projects, along with the rising cost of debt. Notably, most respondents in this survey were for-profit operators (61%); only 29% were solely not-for-profit organizations.

Registration Open: Webinar on LPC [Financial Stability](#). Join LeadingAge and a panel of experts including Ziegler, Greystone and other thought leaders for an in-depth overview of current market forces, lessons learned from distressed communities, and what it means for life plan communities on May 18 at 3pm ET. Life Plan Communities are weathering the storms of inflation, skyrocketing operational costs, workforce shortages, supply chain interruptions, occupancy and cash flows challenges and ever-evolving consumer demands. In this webinar, we will review current market forces, discuss cautionary and inspirational lessons-learned from case studies on distressed communities, and gain a deeper understanding of the challenges ahead for Life Plan Communities - and how to navigate those challenges.

LPC April Member Network. Please mark your calendars for the next LPC Member Network call on Thursday, April 27, 2pm ET (waiting room opens at 1:45pm ET.) Our panel of experts, including both members and their architect/ design firms, will discuss 'the business case for going green.' We'll also hear some 'teasers' about incentives available for sustainability projects under the Inflation Reduction Act. All members are welcome; please email [Dee Pekruhn](#) to register.

Don't Miss It: ERC Office Hours. Calling all LeadingAge members who have decided to pursue the Employee Retention Credit; we are hosting a panel of experts from Venable law firm, CliftonLarsonAllen and Forvis to answer your questions about the complexities you've encountered in navigating the ERC. ERC Office Hours will be held on Tuesday, April 25th from 3:30 - 4:30 PM ET; please email Dee

(DPekruhn@leadingage.org) to register and receive the Zoom link. All members are welcome; this session is specifically tailored to those who have already pursued and/or filed for the ERC.

PRF Late Reporting Requests for Reporting Period 4 Opens – April 17. The Health Resources and Services Administration (HRSA) sent notices to providers recently who failed to report on their Provider Relief Fund (PRF) payments for Reporting Period 4 (covers payments from July 1 – December 31, 2021). These notices describe the extenuating circumstances under which they can request the opportunity to submit a late report. Late reporting requests will be accepted through April 28, 11:59 PM ET. If the request is approved, providers will be required to submit their RP4 reports between May 15 and June 2. None of these dates will be extended. Providers must first be registered in the [PRF Reporting Portal](#) and the request is to be submitted via a [DocuSign form](#). Additional details on late reporting can be found [here](#).

Medical / COVID-19 Related Updates:

The End of the PHE: Implications for Medicare Stakeholders. On April 25, from 3:30 – 4:30 PM ET, CMS will host a webinar on the implications of the May 11 End of the Public Health Emergency for Medicare providers, facilities, and beneficiaries. CMS recommends reviewing: What do I need to Know? CMS Waivers, Flexibilities, and the Transition Forward from the COVID-19 Public Health Emergency; Current Emergencies Page; and the Coronavirus Waivers and Flexibilities pages for additional information. You can register [here](#) and you'll receive the Zoom link for the webinar. In addition to the Home Health and Hospice QuickCasts immediately above, the LeadingAge Learning Hub has a QuickCast on "[The End of the PHE: Considerations for Nursing Homes](#)," featuring an overview by Jodi.

FDA Announces Changes to COVID Vaccine Guidelines and Eligibility. The FDA has announced important changes to COVID vaccine guidelines and eligibility for the general U.S. population, as well as for special categories such as young children, older adults, and immunocompromised persons. Drs. Robert Califf and Peter Mark briefly outlined these key changes in an April 20 webinar. The Emergency Use Authorization has been extended for both the Modern and Pfizer updated bivalent formulations of the COVID vaccine for a period of five years. Henceforth, only the updated bivalent formulations may be used for vaccinations, and **only one (1) administration of this updated vaccine is needed to be "up to date."** Generally, individuals who are already "up to date" do NOT need to have the updated vaccine to continue to be "up to date." Those who have NOT completed their original vaccine series OR have never been vaccinated will have to have one (1) administration of the updated vaccine to be "up to date." Special categories of administration were next addressed. For those aged 65 or older (or immunocompromised), there is evidence that the immune response to COVID wanes after four months; therefore, they are considered up to date if they have had one bivalent dose. But they are eligible for another dose of the updated bivalent vaccine four months following their last shot. For children, those who are younger than 5 and receiving Pfizer, or younger than 6 and receiving Moderna will still need the same initial series and dosage, but using the updated bivalent formulation. Individuals with specific questions or who fall outside of the special categories are encouraged to consult their primary care physician. This is not a "new" vaccine and has been in use since September 2022. However, it is NOT considered a booster, but rather is a modified formulation to adjust to the current strains of COVID, and it will become the single-vaccine standard for becoming "up to date."

No Change in CDC/CMS Masking Requirements. CMS requirements for masking in nursing homes continue to refer to and be dependent on CDC county transmission levels. One of the most frequent questions we hear is whether that is changing with the end of the Public Health Emergency. Unfortunately, at present, the answer is no; the requirement is not changing.

We have not been made aware of any coming changes to recommendations, including recommendations for masking. Even after the public health emergency ends, nursing homes will still be required to follow the CDC recommendations as an “accepted national standard” per the Infection Control requirements, which state that the infection prevention and control program must be based on an accepted national standard.

In conversations with CDC, rather than talking about relaxing recommendations, they’re encouraging providers to consider how the mitigation strategies that were put in place over the past 3 years had a positive impact on infection control beyond COVID-19 (for example, we had a year or so where we essentially skipped flu season). The message we keep hearing is, “The PHE is ending but COVID is not.”

LeadingAge members from around the country are reporting that hospitals in their area seem to be relaxing masking requirements. When we ask CMS the response is that hospitals should not be doing that. LeadingAge will continue talking with CMS and CDC about the requirement and its impact on providers of nursing home services and the residents they serve and care for.

New GAO Report on Opioids’ Impact on Older Workers. A [new report by the Government Accountability Office \(GAO\)](#) provides a detailed examination of the relationship between labor force participation rates and substance use. The GAO’s report, “*Older Workers: Opioid Misuse and Employment Outcomes,*” was requested by Senators Tim Scott (R-SC), Susan Collins (R-ME), Bob Casey (D-PA). It builds on the efforts of the Senate Special Committee on Aging to support older Americans in the workforce. Although the labor participation rate among Americans age 50 and older increased significantly in the years prior to the pandemic, the GAO findings show that older adults who misuse opioids are much less likely to be employed than their peers. According to the GAO, when compared with all older adults age 50 and older who did not misuse opioids, older adults who misused opioids were an estimated 22% less likely to be in the labor force (either employed or actively seeking work); older adults in the labor force who misused opioids were an estimated 40% less likely to be employed; and, employed older workers who misused opioids were twice as likely to have experienced periods of unemployment.

COVID Vaccine Updates. FDA met on April 18 and authorized changes to COVID vaccines. Monovalent vaccines are no longer authorized. A single bivalent vaccine has been authorized for primary series vaccination. Individuals 65 years and older and individuals with immunocompromise have been authorized to receive a second bivalent booster, but individuals under age 65 and who are not immunocompromised are not authorized for additional bivalent boosters at this time. The CDC met on April 19 to review these authorizations and make accompanying recommendations. It is anticipated that recommendations will be consistent with FDA’s authorizations; however, we note that authorization and recommendation for second bivalent boosters does not mean that these are required to be considered up to date. We await more information from CDC. We also note that FDA and CDC intend to meet in June to further discuss the future of COVID vaccination, including the possibility of switching to an annual immunization schedule.

Advocacy Updates and Hill News:

LeadingAge Submits Comments to FTC on Proposed Non-Competes Rule. LeadingAge on April 19 submitted [comments](#) to the U.S. Federal Trade Commission concerning a [proposed rule](#) that would prohibit employers from entering into non-competition agreements with workers. In its explanation of the proposed rule, the Commission noted that, where an employer is exempt from coverage under the Federal Trade Commission (FTC) Act, the employer would not be subject to the rule, such as an entity

that is not “organized to carry on business for its own profit or that of its members.” This essentially relates to what authority the Commission has under the FTC Act with respect to certain matters, and we asked in our letter for the FTC to include this confirmation of exemption for nonprofits in any final rule. We also shared brief comments recommending that the Commission tailor its proposal if it proceeds to issue a final rule, rather than taking a one-size fits all, categorical approach.

White House Executive Order and Fact Sheet on Caregivers. This week, the President signed an [Executive Order](#) summarizing his Administration’s caregiver actions and proposals; Katie Smith Sloan was among the invited guests. A Fact Sheet – “[Biden Harris Administration Announces Most Sweeping Set of Executive Actions to Improve Care in History](#)” released earlier in the day outlined key measures included in the Executive Order. This [LeadingAge article](#) summarizes the Fact Sheet and its implications for LeadingAge members. The set of initiatives released today repeats and consolidates prior budget requests and announcements and adds some new ones. LeadingAge supports the President’s proposed \$150 billion expansion of Medicaid home and community-based services funding, including a focus on supporting the HCBS workforce. We question the White House notion that there is a way to leverage Medicaid funds to ensure there are sufficient workers to provide care in HCBS settings. Importantly, the fact sheet includes a statement that the Administration will add regulations and requirements to staffing mandates (which are not yet issued) and withhold Medicare SNF funding for nursing homes that do not retain staff. (It is essential to point out that this implies a new requirement; in fact, the policy of using SNF value-based purchasing to reward SNFs that retain staff has already been proposed.) Overall, LeadingAge is concerned that White House materials continue to frame the debate as “either/or” when talking about HCBS and nursing home funding, when both are needed. Further, we continue to point out that the workforce crisis remains the most challenging issue in long-term care and it will not be solved without comprehensive immigration reform. We will continue to report on follow up activities.

Letter to Senate Appropriators from 42 Lawmakers Seeking \$4.6 Billion in OAA Funding. The Senate HELP Committee Chairman Bernie Sanders (D-VT) has once again led efforts to send a letter to the Senate Appropriations Subcommittee on Labor, Health and Human Services, and Education leadership, urging an increase in funding for programs authorized under the Older Americans Act (OAA). The letter is requesting \$4.63 billion in funding for OAA programs and services in fiscal year (FY) 2024. In total, 42 Senators signed the letter, requesting additional funding to address the increased demand for and cost of OAA-related services. OAA programs provide vital services for over 11 million seniors across the country which includes providing congregate and home-delivered meals, transportation services, family caregiver support, activities that promote socialization and wellness at senior centers and employment and community service opportunities for low-income seniors. Additionally, increased OAA-related funding could support an increase in funding allocated to ACL’s Direct Care Workforce Center and Competitive Grants. This program is authorized in Title IV of the OAA, in coordination with the Secretary of Labor, to carry-out the demonstration of new strategies for the recruitment, retention or advancement of direct care workers. If at least \$8 million in funding is appropriated, ACL would begin with demonstrations that could prove the concept of what approaches were effective. You can access the letter [here](#).

Speaker’s Debt Ceiling Conditions Would Damage Aging Services. On April 19, House Speaker Kevin McCarthy (R-CA) released his “Republican Plan to Address the Debt Ceiling,” the 320-page [Limit, Save, Grow Act of 2023 Act](#). The proposal describes specific items Speaker McCarthy is seeking in exchange for raising the debt ceiling. In a [statement](#), Speaker McCarthy says the plan shows that “House Republicans are taking action to lift the debt limit, limit government spending, save taxpayers money, and grow the economy.” The bill would cap federal discretionary spending, which include spending on HUD housing programs and Older Americans Act programs, to the FY22-enacted level (a \$180 billion cut compared to

the FY23 enacted funding level) and then cap increases to 1% a year through 2033. Such a roll-back in funding could be devastating to programs serving older adults like affordable housing programs, which need annual increases just to serve the same number of people. The bill would also “claw back billions of dollars in unspent COVID money that has sat for 2 years,” prohibit the “student loan giveaway to the wealthy,” and repeal funding for new IRS agents and for new clean energy tax credits. The bill would also require “adults without dependents earn a paycheck and learn new skills,” including by increasing the threshold for the age-related exemption from work requirements in the Supplemental Food and Nutrition Program (SNAP) from 50 to 56 years old. Current federal law requires able bodied adults without dependents younger than 49 years old on SNAP to participate in work, training, or education for 20 hours a week; the bill raises that to 56 years old. The proposal, Speaker McCarthy said, will “protect and preserve Medicare and Social Security because more people will be paying into it.” President Biden has said he does not want conditions placed on raising the nation’s debt ceiling. Speaker McCarthy hopes to bring his bill to the House floor for a vote the week of April 24.

Partnering with the Chamber of Commerce on the LIBERTY Campaign. LeadingAge is a cosigner of the U.S. Chamber of Commerce’s **Legal Immigration and Border Enforcement Reform This Year (LIBERTY) Campaign**, letter to call upon Congress to enact measures this year to improve the border and our legal immigration system and request that Congress take action on bipartisan compromises that would break the current immigration reform gridlock. The letter is in line with the LeadingAge policy agenda. Last week there were 303 signatories; Chamber leaders are aiming for 400. (We will share the letter once it is final.)

The LIBERTY Campaign priorities include:

- Increasing the human, physical, and technological resources along the southern border and at our ports of entry;
- Sensibly reforming our nation’s asylum laws;
- Instituting modern, effective, and efficient employment verification reforms;
- Significantly increasing the annual quotas for employment-based immigrant and nonimmigrant visas;
- Expanding the scope of essential worker programs, specifically allowing employers to meet temporary labor needs in non-seasonal jobs;
- Creating new visa options for international students, entrepreneurs, and other high-demand workers to help American employers meet their critical workforce needs.

House Judiciary Committee Schedules Markup on Proposed Legislation to Address Asylum Eligibility, Limit Parole Authority, and Revamp the Employment of Undocumented Workers. On April 19, at 10 AM ET, the House Judiciary Committee will markup the "[Border Security and Enforcement Act of 2023](#)." House Republicans released the draft immigration legislation on April 17. It would tighten asylum eligibility, crack down on the employment of undocumented workers, and expand migrant family detention. The 137-page [proposed bill](#) represents the legislative response to high levels of migration on the U.S.-Mexico border from House Republicans, who have made border security a focal point of their new majority.

The bill would limit the Biden administration’s use of an authority known as parole, which allows the federal government to give migrants temporary permission to live and work in the U.S. The bill states that parole should not be granted “according to eligibility criteria describing an entire class of potential parole recipients.” Parole has provided the legal authority for programs like the Deferred Action for Childhood Arrivals program, or DACA, as well as programs to help Ukrainians fleeing Russia’s invasion.

The bill also takes aim at employers that hire undocumented immigrants, including by ramping up requirements for them to electronically verify that their employees have permission to work in the U.S.

Additionally, the bill would revive several programs to significantly limit asylum eligibility for migrants traveling to the U.S.-Mexico border. It would restrict eligibility from migrants who have traveled through another country enroute to the U.S. and had not first attempted to seek protection in the other country, among other provisions.

Elder Justice Act Reauthorization Introduced in House and Senate. On April 19, the *Elder Justice Reauthorization and Modernization Act of 2023* was introduced in the House and Senate. The bill builds on the Elder Justice Act by dedicating \$4.5 billion in funding through FY2027 for existing programs, as well as for three new programs to strengthen the long-term care workforce, address medical-legal needs, and respond to social isolation. The funding for new and existing programs includes:

- \$1.6 billion for post-acute and long-term care worker recruitment and retention;
- \$1.9 billion for Adult Protective Services functions and grant programs;
- \$232.5 million for long-term care ombudsman program grants and training;
- \$500 million to support linkages to legal services and medical-legal partnerships; and
- \$250 million to address social isolation and loneliness.

The bill's introduction was led by House Ways & Means Committee Ranking Member Richard E. Neal (D-MA), Senate Finance Committee Chairman Ron Wyden (D-OR), Senate Special Committee on Aging Chairman Bob Casey (D-PA), and Co-Chair of the House Elder Justice Caucus Congresswoman Suzanne Bonamici (D-OR). A summary of the bill can be found [here](#). A section-by-section summary of the bill can be found [here](#). The legislative text of the bill can be found [here](#). Bipartisan sponsorship will be needed to move the bill forward. In addition, it is important to note that the fate of this proposal is connected to the larger debate about the debt ceiling/budget cuts.

News from LeadingAge:

April is Fair Housing Month. HUD's [Office of Fair Housing and Equal Opportunity \(FHEO\)](#) have released a free refresher training video to raise awareness of federal fair housing policies and laws. View the 54-minute "back to basics" video [here](#).