Nursing Home Weekly: Recap of Leading Age Updates

September 1, 2023

LeadingAge Policy Update Calls; all calls are at 3:30 PM ET. It all comes down to workforce and retention of staff is key. **No call on Monday, September 4. LeadingAge will be closed for Labor Day.**

Building on our August 30 conversation on retention, **on Wednesday, September 6**, we'll be joined by **Gretchen Berlin, RN**, Senior Partner at McKinsey & Company who will talk about her recent study focusing on reimagining the nursing workload and finding time to close the workforce gap. More workforce! On a recent call both our guest and Jenna talked about connecting younger kids with aging services early. The James L. West Center for Dementia Care has a program that engages middle school students in care. **Kristie Boiles,** who created and runs that program, will join us on **Monday, September 11** to talk about it. Join us for this fruitful conversation.

Members and other interested individuals can sign up to join LeadingAge's Policy Update calls here. You can also find previous call recordings of every 3:30 LeadingAge call 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.

Nursing Home Minimum Staffing Standards Proposed Rule Released The proposed minimum staffing standards for nursing homes were released to the Federal Register on September 1 and include a 24/7 RN requirement and minimum standards for RN and nurse aide staffing. Requirements include a phase-in and exemptions but will cost an aggregate $40.6 billion over 10 years. The rule also includes enhanced requirements for Facility Assessments and transparency in Medicaid cost reporting. Read more here.

Nursing Home Staffing Proposed Rule Clears OMB; Abt Study Presents Options with No Clear Thresholds. The nursing home staffing study conducted by CMS contractor Abt Associates was mistakenly released on the CMS website, then removed on August 29 ahead of the imminent release of the staffing standard proposed rule. It is publicly posted on the Kaiser Health News site. While the study analyzed multiple sources of both qualitative and quantitative data, authors were unable to draw decisive conclusions on thresholds for minimum or optimal staffing levels. Instead, options for potential staffing standards were presented with estimates for implementation costs and estimates for potential Medicare cost savings. Learn more here. The Office of Management and Budget completed review of the proposed rule on August 29 but as of August 31, the rule had not been released to the Federal Register.

HHS Recommends Adjustment to Marijuana Classification Under Federal Law: Report. The U.S. Department of Health and Human Services (HHS) on August 29 sent a letter to the U.S. Drug Enforcement Agency (DEA) recommending that marijuana be reclassified from a Schedule I drug to a Schedule III drug under the Controlled Substances Act, according to a report from Bloomberg. While this recommendation does not change the legal status of marijuana under federal law, nor does it bind the DEA to make a scheduling change, it reflects that HHS, including its Food & Drug Administration, has taken action in response to an October 2022 statement from President Biden on marijuana reform, in which the President directed HHS and the U.S. Department of Justice (which houses the DEA) to initiate an administrative process "to review expeditiously how marijuana is scheduled under federal law." As

noted in the Bloomberg article, Schedule III drugs are considered as less dangerous than Schedule I substances and can be obtained legally with a prescription. A reclassification would not resolve all conflicts between federal and state laws regulating use of marijuana for medical or recreational purposes, but HHS's recommendation is a significant development. DEA, which has final authority on the issue of rescheduling, will now undertake its own review, and we will continue to follow this evolving story.

Aging in Place: A Look at NORCs. This week, the Benjamin Rose Institute on Aging, together with the Elder Justice Coalition, hosted an informational webinar on Naturally Occurring Retirement Communities. At least 24 states are building multi-sector plans for aging, and central to many of these plans is support for HCBS and the promotion of healthy aging. Challenges to health aging, on a macro level, that were discussed included elder abuse, neglect, and exploitation; malnutrition; falls; and social isolation and loneliness. One piece of legislation that both the Institute and Coalition are working on is the passage of the Elder Justice Reauthorization and Modernization Act, that proposes more funding for APS and LTC Ombudsman programs, increases staffing in nursing homes, and funds a grant program to help AAAs combat isolation. The ABCs of a NORC were then presented, including the general rules of thumb that a NORC: 1) is 40% comprised of persons aged 65 or better; 2) is not a planned retirement community; and 3) has opportunities for coordinated services, amenities or public programs that can improve elders' quality of life. A NORC also is usually located in a compact geographic area, has identifiable boundaries or neighborhoods, and has the potential for economic development. When surveyed, the vast majority of people living in a NORC said that they felt the benefits of their community included not having to leave their home, having more contact with neighbors, having better access to help when needed, and being able to help others. The panelists then gave examples of communities around the country that do, and do not, meet the criteria of a NORC. For more detail, the recording will be available here.

Member-Exclusive GUIDE Webinar Answers Many Questions About Model Participation – RECORDING COMING SOON : Nearly 90 LeadingAge members learned more about the new dementia care model from experts at the Center for Medicare and Medicaid Innovation on the August 30 LeadingAge member-only webinar. The webinar included more than 40 minutes of Q &A where CMMI staff answered questions important to LeadingAge member aging services providers. CMMI clarified how the monthly model payments will work and which additional services can be billed, who can serve as the care navigator and "dementia proficient" clinician on the interdisciplinary team, who is responsible for identifying beneficiaries for the model. The webinar recording will be available exclusively to LeadingAge members within the next 7 days on the LeadingAge Learning Hub. Members interested in possibly applying for the model are encouraged to submit their Letter of Intent by the September 15 deadline. The application is expected to be released in the fall.

Stay Cautious for the Fall Respiratory Disease Season. CDC shared their Respiratory Disease Season Outlook on a partners information session on August 30 to discuss predictions for the 2023-2024 respiratory disease season. CDC predicts a moderate COVID wave and typical waves of flu and RSV this respiratory disease season but warns that a strain on the healthcare system could be possible depending on various factors. CDC warns that though individual diseases may peak at different times, the respiratory disease season as a whole will likely peak higher than pre-pandemic seasons. COVID severity is likely to be consistent with last year's severity, but timing of a peak is unknown and both severity and peak will depend on factors such as vaccine uptake and appearance of immune-escaping variants. Flu is predicted to be within the typical range of severity but CDC warns flu season could peak early this year. RSV is anticipated to be typical in severity, but CDC warns it is challenging to anticipate RSV severity and

peak due to a lack of data and models at this time. Other factors, such as RSV vaccine uptake, will also have an impact. LeadingAge encourages members to work with your pharmacy partners to ensure you are able to offer vaccination for all three diseases in your communities.

CMS SELECTS FIRST DRUGS FOR MEDICARE PRICE NEGOTIATION. On August 29 the U.S. Department of Health and Human Services (HHS) announced a highly-anticipated initial list of drugs that will be subject to price negotiation between CMS and drug manufacturers. The Inflation Reduction Act of 2022 requires HHS to negotiate directly with participating manufacturers of selected drugs covered under a Medicare Part D plan (including a Medicare Advantage Prescription Drug plan under Medicare Part C) and, eventually, Medicare Part B. LeadingAge will prepare a longer article summarizing how CMS intends to implement this program, but for today we wanted to share some high-level information with members:

1. **What are the goals of the program?** The goals are to increase accessibility and affordability of prescription drugs for Medicare enrollees, including a reduction of out-of-pocket costs for beneficiaries, reduce the rate of growth in Medicare drug spending, and improve the financial sustainability of the Medicare program as a whole.

2. **What drugs qualify for price negotiation?** The law authorizes Medicare to directly negotiate drug prices for certain high expenditure, single source Medicare drugs covered under either Part B or Part D, and only drugs for which there is no generic or biosimilar competition. It is important for members to note that Medicare Part A drugs are not specified to be part of this program.

   This Fact Sheet identifies the 10 Part D drugs selected for the first phase of the program and how CMS arrived at its decision. These selected drugs accounted for about 20% of total Part D gross covered prescription drug costs between June 1, 2022, and May 31, 2023, which is the time period used to determine which drugs were eligible for negotiation.

3. **When will negotiations begin and when will the established prices take effect?** Oct. 1, 2023, is the deadline for participating companies that manufacture the 10 Part D drugs initially selected for the negotiation program for 2026 to choose whether to sign agreements to participate in the negotiation. The manufacturers of selected drugs that wish to business with Medicare and Medicaid will be required to participate or face financial penalties. The negotiation period will end Aug. 1, 2024, and the negotiated maximum prices for these 10 drugs will be effective in 2026.

   It remains to be seen whether all will go according to CMS's plan, however, because a number of manufacturers, including several who make a drug that CMS selected for the initial list, as well as the U.S. Chamber of Commerce, have filed lawsuits challenging the legality of the negotiation program.

4. **Will the program expand to include other Part D and Part B drugs?** Yes. In future years, CMS will select for negotiation up to 15 more drugs covered under Part D for 2027, up to 15 more drugs for 2028 (including drugs covered under Part B and Part D), and up to 20 more drugs for each year after that, as outlined in the Inflation Reduction Act.

CMS Contractor Hosts Listening Session on Expanding SNF QRP Data Pool. CMS contractor Acumen LLC hosted a listening session on August 29 to solicit feedback on potentially expanding the pool of data from which SNF Quality Reporting Program (QRP) data is collected. This expansion would mean collecting data for SNF QRP on all residents receiving skilled services regardless of payer type as opposed

to the current policy of collecting data only for skilled services covered under Medicare Part A Fee-for-Service. For those who missed the listening session or who wish to provide additional feedback, Acumen will accept written comments until September 28 at SNF-Listening-Session-2023@acumenllc.com on the following topics:

1. Defining the population: Using the definition of skilled services outlined in Chapter 8, Section 30.2 of the Medicare Benefit Policy Manual, would it be feasible to identify residents requiring an MDS assessment for purposes of the SNF QRP? If not, what problems would you encounter? How do plans other than Medicare "skilled services"? Are there other considerations to be aware of?
2. Identifying the population: Would adding an item to the MDS such as that used for LTCH assessments for beneficial for providing information on the resident's source of payment for services received in the SNF? Who is primarily responsible for filling out this information on the MDS? Do you have any suggestions for how CMS could ensure the payment information collected is accurate? Are there other considerations for changes to the MDS that would be necessary to accommodate an all-payer proposal?
3. MDS burden for all-payer proposal: What percentage of your total stays do you estimate combine the 5-day and comprehensive assessments? What percentage of your non-Medicare FFS residents admitted for skilled services of <14 days are you already completing a 5-day assessment for? Do other payers require portions of the MDS to be filled out for them regardless of the length of the resident's stay? Do other payers have an assessment tool other than the MDS that they require you to complete when residents are admitted for services?
4. Changes in levels of care: What kinds of changes in service level should an all-payer policy consider? Would there be benefits of having payer source and quality data reported on all your residents when changes in level of care happen within your SNF?

FEMA Webinar on Preparedness for Providers of Aging Services. The Federal Emergency Management Agency (FEMA), along with the HHS Administration on Community Living (ACL) and the Substance Abuse and Mental Health Services Administration (SAMHSA) offer providers of services to older adults a webinar to help them prepare to continue critical services, even during disasters. The webinar, set for September 6 from 10:30 AM – Noon ET, will cover continuity of operations, preparedness planning for older adults, disaster mental health issues, and case studies. All interested stakeholders are invited and may register here.

CDC/FDA Offer Hints on Virus Countermeasures in Advance of the Fall. CDC officials briefed the media on August 24 about vaccines and other countermeasures to combat COVID, RSV, and influenza. The CDC Advisory Committee on Immunization Practices (ACIP) is set to meet on September 12 to decide whether to recommend updated COVID vaccines, so it is expected that the FDA will approve new COVID vaccines soon. FDA approval must be complete before ACIP meets. If all proceeds smoothly, CDC leaders anticipate vaccine rollout will begin by mid-September. Vaccines will likely be monovalent, targeting a single strain. Of particular note to LeadingAge provider members, older adults and individuals with immunocompromising conditions will be able to get a second dose of vaccine this year, for the first time. Regarding tests, it was reported at the Thursday briefing that HHS still has significant supply of tests that it is shipping to "schools, libraries, long-term care facilities, and other distribution points."

Last Week's Nursing Home Weekly Update. Here is the August 25, 2023 Nursing Home Update.