



Workforce Policy Weekly: Recap of LeadingAge 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 LeadingAge Director of Workforce Strategy and Development, Jenna Kellerman, 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 Staffing Proposed Rule Clears OMB; Abt Study Presents Options with No Clear Thresholds. The Office of Management and Budget completed its review of CMS's proposed nursing home minimum staffing rule on August 29, clearing the way for CMS to release the proposal to the public. As of August 31, the rule had not been released to the Federal Register. The [nursing home staffing study](#) conducted by CMS contractor Abt Associates was mistakenly released on the CMS website, then removed by CMS on August 29 ahead of the imminent release of the staffing standard proposed rule. The study (linked above) remained 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](#).

- **Editor's Note and Update on CMS Rule:** This edition of our Workforce Policy Weekly (recapping policy news from Aug. 25-31) was finalized for distribution to members on the morning of Sept. 1, simultaneously with CMS's release of the proposed nursing home staffing standard. See this [CMS Fact Sheet](#), which provides a summary, and this [statement from LeadingAge President and CEO Katie Smith Sloan](#) concerning the proposal. LeadingAge will be sharing updates and analysis with our members and State partners about this significant development through our standard communications channels.

DOL Proposes Significant Increase to the Salary Level Needed for White Collar Overtime Exemption.

On August 30 the U.S. Department of Labor's Wage & Hour Division released a proposed rule that would revise the federal regulations under the Fair Labor Standards Act (FLSA) relating to exemption from overtime pay requirements for executive, administrative, and professional employees (known as the "white collar" overtime exemption). This [DOL website](#) provides a link to the proposal and a Frequently Asked Questions document.

Background: As a reminder, for an employee to fall within the exemption three conditions must be met: (1) the employee must be paid a salary, meaning a predetermined and fixed amount; (2) the person must be paid a weekly salaried amount that is equal to or greater than a level specified in the regulations, which currently is \$684 per week (\$35,568 per year); and (3) the person must primarily perform executive, administrative, or professional duties, as defined in DOL Department’s regulations.

What is Being Proposed: DOL’s proposed rule would significantly increase the FLSA regulation’s standard salary level from \$684 to \$1,059 per week, or from about \$35,500 to about \$55,000 per year for a full-time employee. It would also increase the total annual compensation requirement for highly compensated employees from \$107,432 to \$143,988; and automatically update these earnings thresholds every three years with current wage data. DOL is not proposing any changes to the standard duties test.

Next Steps: A 60-day comment period will open upon publication of the proposed rule in the Federal Register, which is expected soon. LeadingAge is preparing a detailed summary of the proposal, and we will work with members in the weeks ahead to analyze the proposed rule’s impact and develop comments for submission to the Department of Labor.

CMS clarifies interpretation of hospice MFT and MHC; advocacy will continue. In the proposed CY2024 Physician Fee Schedule Rule, for which comments are due Sept 11, CMS is proposing to implement a provision from the Consolidated Appropriations Act, 2023 that allows marriage and family therapists (MFTs) and mental health counselors (MHCs) to serve on the hospice IDG in the role that a social worker plays. Our understanding from the authors of the provision is that the utilization of MFTs and MHCs were meant to be options for hospice organizations not a requirement in addition to having a social worker on the IDG. The language in the proposed rule was confusing on this point and LeadingAge planned to comment for clarification. On August 30th’s open door forum, CMS clarified that their interpretation and what they are proposing is that hospices will need to have all three disciplines – SW, MFT, and MHC – available. Only the social worker would need to be directly employed. We do not agree with this interpretation and will be follow up with the Congressional authors and commenting on the rule to CMS regarding this discrepancy. We will keep members posted on this issue.

Member-Exclusive GUIDE Webinar Answers Many Questions About Model Participation – RECORDING COMING SOON: Nearly 90 LeadingAge members learned more about the new [Guiding an Improved Dementia Experience \(GUIDE\) 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.

Last Week’s Workforce Weekly Update. Here is the August 25, 2023 [Workforce Policy Update](#).