



## Nursing Home Weekly: Recap of Leading Age Updates

September 8, 2023

**LeadingAge Policy Update Calls; all calls are at 3:30 PM ET.** On a recent call both our guest, Darcie Baggott and LeadingAge's Jenna Kellerman talked about connecting younger kids with aging services early. LeadingAge member 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.

Students participating in medical, nursing, and therapy programs rarely identify working with the geriatric population as a primary goal. Two key elements that have been associated with improving students' openness to pursuing a career in geriatrics are increased clinical education opportunities with older adults and rigorous program curricula covering geriatric competencies outlined by professional organizations. Join us on **Wednesday September 13** to hear from Jessica Dunn, Director of Clinical Education at Seton Hall University talk about the barriers related to staffing and retention as well as best practice strategies to improve recruitment, retention, and engagement of quality geriatric practitioners.

Social isolation and loneliness have been associated with an increased risk of dementia and premature mortality from all causes. The pandemic has exacerbated the loneliness issue, but it has also increased acceptance of virtual engagement to meet social needs. Join us on **Monday September 18** to hear from Meghan Young, Associate Director for Opening Minds through Art (OMA) at the Scripps Gerontology Center, Miami University. She will talk about a new virtual tool has been developed to engage older and younger adults in meaningful conversations and fun activities.

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.

**Proposed Staffing Rule Resources; Tool to Estimate Impact on Every Nursing Home, States.** On September 7, more than 400 members of LeadingAge participated in a Town Hall on the proposed CMS staffing standards. The [PPT deck from the Town Hall](#), detailing the proposed rule, high level concerns, and LeadingAge advocacy, and the Excel spreadsheet to estimate the impact of the proposed rule (if finalized) on each individual nursing home in the country are posted along with many other related resources on the LeadingAge website [serial post on staffing ratios](#). The first tab on the spreadsheet uses recent data to depict important data points including the number of nurses, aides, and LPNs and the percentage increase needed (if more will be needed). The second tab uses the same data to show state level staffing and additional staff needed to meet ratios.

**MedPAC 2023-24 Work Plan Focus on MA Impacts on Medicare and Its Beneficiaries.** The Medicare Payment Advisory Commission (MedPAC) met on September 7 to review a draft of a [chapter on Medicare Payment Policy](#) and to review the [work](#) they will undertake for 2023-2024. MedPAC staff identified 5 reports it will issue in 2024 related to Medicare Advantage (MA), including looking at plan consolidation impacts, D-SNP quality, and standardizing MA benefits. One report that will be of particular interest to LeadingAge members is MedPAC's examination of access and quality in MA.

Specifically, they will compare MA plan performance on ambulatory care sensitive hospitalizations, plan networks, prior authorizations, and claims denials. Several MedPAC commissioners stressed the importance of their work examining how these plans work for frail, seriously ill and nursing home beneficiaries. Other commissioners noted the need to: understand the impact of plan consolidation not just on a national level but also the effects at a more local level, include plan outcomes for the beneficiaries they serve and provider satisfaction with MA. New commissioner ***Tamara Konetzka*** ***advocated for a better understanding of how MA plans could better serve nursing home residents.*** MedPAC chair, Michael Chernew, did note that the goal of these reports is not to issue new recommendations in this cycle but about data collection on these issues to understand the situation. LeadingAge will continue to monitor the Commission's work in the coming year.

**HHS Issues Proposed Rule to Protect People with Disabilities from Discrimination.** A new [proposed rule](#) from the Department of Health and Human Services' Office of Civil Rights would mandate that treatment decisions are not made based on preconceptions of a person's disability by any program receiving funding from HHS. This rule would update critical sections of regulation pertaining to Section 504 of the Rehabilitation Act of 1973. Comments on the proposed rule are due Monday, November 13. More specifically, the proposed rule would:

1. Ensure that medical treatment decisions are not based on biases or stereotypes about individuals with disabilities, judgments that an individual will be a burden on others, or beliefs that the life of an individual with a disability has less value than the life of a person without a disability.
2. Clarify obligations for web, mobile, and kiosk accessibility.
3. Establish enforceable standards for accessible medical equipment.
4. Clarify requirements in HHS-funded child welfare programs and activities.
5. Prohibit the use of value assessment methods that place a lower value on life-extension for individuals with disabilities when that method is used to limit access or to deny aids, benefits, and services.
6. Clarify obligations to provide services in the most integrated setting appropriate to the needs of individuals with disabilities.

**House Committee Seeks Input on Workforce, Payments, Financing.** In a September 7 open letter to health care stakeholders, House Committee on Ways and Means Chairman Jason Smith (R-MO) said the Committee is seeking information about [Improving Access to Health Care in Rural and Underserved Areas](#). The Committee is seeking to "identify how geographic barriers, misaligned Medicare payment incentives, and consolidation may be driving facility closures and workforce shortages." Chairman Smith outlined five areas for which the Committee is seeking comment: geographic payment differences, sustainable provider and facility financing, aligning sites of service, the health care workforce, and innovative models and technology. LeadingAge looks forward to reviewing the request for information and providing comment before the Committee's October 5 deadline.

**OIG Report Finds Nursing Homes Meet Emergency Preparedness Requirements but Still Face Challenges.** The Office of the Inspector General (OIG) completed a study on nursing home preparedness for public health emergencies and natural disasters finding that while most nursing homes complied with emergency preparedness requirements, 77% experienced challenges with preparedness activities. The most frequently cited challenges identified by the study were: 1) ensuring proper staffing during emergency; and 2) transporting residents during an evacuation. 168 nursing homes responded to the OIG inquiry and were identified as they are located in areas of high or relatively high risk for natural disasters. Other issues highlighted that pose challenges include: identifying a location to which to

evacuate residents and staff; maintaining infection control and quarantine needs during the emergency; and collaborating with community partners. None of the issues cited are surprising and LeadingAge and members have raised these issues before. The report also offers no recommendations about how these challenges can be mitigated or how the federal government/CMS may be able to help. The full report can be read [here](#).

**LeadingAge CMMI Webinar Recording on the GUIDE Dementia Model is Now Available.** On August 30, LeadingAge hosted a webinar where the CMS Innovation Center (CMMI) staff discussed the Guiding an Improved Dementia Experience (GUIDE) model and how aging service providers might lead or participate in the model. If you missed it or want to listen to it again, the recording is now available on the LeadingAge Learning Hub and can be found [here](#). Those who may be interested in being part of the model are reminded that the Letter of Intent to participate is due on September 15.

**Humana Sues CMS for Rule Requiring Paybacks.** Humana is suing the Biden Administration regarding its finalization of a rule related to how it conducts risk adjustment audits of Medicare Advantage plans and calculates if overpayments were made for what is commonly referred to as “upcoding” or documenting unnecessary diagnoses to make MA enrollees appear sicker resulting in higher payments to plans. This practice is expected to increase plan payments by \$27B this year compared to traditional FFS Medicare. The new rule would audit a small sample of plan claims to verify the accuracy of diagnoses listed. The results of that small sample would then be extrapolated and applied to the entire plan population. Plans would then need to pay back the overpayments for that percentage of the population. The final rule would also retroactively apply this new approach to claims as far back as 2018. CMS estimated it would recoup \$4.7B under the final rule between 2023 and 2032.

**Nursing Home Minimum Staffing Standards Proposed Rule Released - \$40.6 Billion Price Tag; LeadingAge Meets with CMS.** 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 an overview [here](#). Read in-depth analysis of the rule [here](#). CMS leaders met with LeadingAge in conjunction with posting the proposed rule. They said they will be offering meetings, webinars, and other materials and sessions to explain the proposed rule, starting in about two weeks.

**In case you missed it. Early LeadingAge Response to Staffing NPRM; Press Coverage.** We released LeadingAge reaction to the proposed staffing rule within minutes of the early coverage of the rule’s contents. The LeadingAge statement: “To say that we are disappointed that President Biden chose to move forward with the proposed staffing ratios [despite clear evidence against them](#) is an understatement.

We share the Administration’s goal of ensuring access to quality nursing home care. This proposed rule works against that shared goal. One-size-fits-all staffing ratios don’t guarantee quality, as the Administration’s own Abt research findings made clear. That aside, it’s meaningless to mandate staffing levels that cannot be met.

There are simply no people to hire—especially nurses. The proposed rule requires that nursing homes hire additional staff. But where are they coming from? To serve older adults and families, nursing homes must have the resources, including staff, to serve them. Without that, there is no care.

Funding for training programs – while a huge need, to be sure – is simply not enough at this point. America’s under-funded, long-ignored long-term care sector is in a workforce crisis. The Biden Administration has in this initiative an opportunity to change the narrative surrounding nursing homes. Commit to real solutions: prioritize immigration reform to help build the pipeline, increase reimbursement rates to cover the cost of care and increase wages.

Nonprofit and mission-driven nursing homes will be forced to reduce admissions or even close if this rule is finalized—a needless outcome that will cause older Americans and families to suffer. The Biden White House in 2022 set out to create policy based on research. If neither study nor practice nor reason guide our federal regulations, how can CMS justify them?”

**LeadingAge Comments Were Sought By Media Outlets and Included in Press Coverage.** Press coverage about the staffing rule on September 1 was robust and voluminous. Some of the examples include the following (\*indicates LeadingAge mention):

Wall Street Journal: [Nursing Homes Must Boost Staffing Under First-Ever National Standards](#) (Sep 1, 2023)

\*Kaiser Health News, New York Times: [Federal Officials Propose New Nursing Home Standards to Increase Staffing](#) (Sep 1, 2023)

\*Associated Press: [US will regulate nursing home staffing for first time, but proposal lower than many advocates hoped](#) (Sep 1, 2023)

\*ABC News: [Nursing homes must boost staffing levels under new Biden plan](#) (Sep 1, 2023)

\*Axios: [Biden administration proposes new nursing home staffing standards](#) (Sep 1, 2023)

\*Bloomberg Law: [Mandatory Nursing Home Staffing Levels Proposed by Biden HHS](#) (Sep 1, 2023)

Politico Pro: [Nearly 3 in 4 nursing homes would have to add staff under CMS proposal](#) (Sep 1, 2023)

Reuters: [Biden seeks minimum staff levels at US nursing homes](#) (Sep 1, 2023)

CQ Roll Call: [HHS releases long-awaited nursing home staffing proposal](#) (Sep 1, 2023)

\*USA Today: [Biden wants to boost staffing at nursing homes, but feds rarely enforce existing rules](#) (Sep 1, 2023)

\*Washington Post: [Nursing homes face minimum staff rule for first time](#) (Sep 1, 2023)

HealthDay: [Federal Government to Regulate Staffing at Nursing Homes for First Time](#) (Sep 1, 2023)

\*Spectrum News: [New Biden rule would set staffing minimums at nursing homes](#) (Sep 1, 2023)

\*Skilled Nursing News: [CMS Issues Federal Nursing Home Staffing Mandate](#) (Sep 1, 2023)

\*McKnight’s Long-Term Care: [CMS issues first-ever nursing home staffing mandate](#) (Sep 1, 2023)

*NOTE: The Hill and Fox News republished AP’s article with LeadingAge mention. Other outlets may follow suit (ex: ABC republished AP before writing their own piece).*

**Last Week’s Nursing Home Weekly Update.** Here is the September 1, 2023 [Nursing Home Update](#).