LPC Weekly Report

Friday, September 1 2023

Highlights for LPCs:

ICAA: White Paper on Bridging the Consumer Gap in Senior Living. This summer, the International Council on Active Aging (ICAA) released another of their annual thought-papers; this year, the focus is on bridging the gap between consumer expectations and what senior living communities have to offer. ICAA teamed up with a research-based marketing group that specializes in the mature adult consumer (Age of Majority) to explore how well aging services providers and communities are aligned with the emerging needs and demands of the modern - and future- older adult consumer. Starting with the assertion that there is 'an apparent disconnect' between senior living communities and their consumers, the white paper dives into five topical themes: the disconnection on perceptions, the lure of autonomous living, the role of negative perceptions and lifestyle realities, the disconnection on available vs. desired amenities, and perspectives on health and wellness. The white paper also suggests there are many opportunities for senior living communities to address these gaps. Specific examples include: careful language choices that avoid words like "senior" or "retirement community;" the promotion of communities as places to be social as well as safe; highlighting the specific areas where the older adult can make choices and decisions on aspects of daily living that matter to them; demonstrating how impractical it is to live at home, long term; emphasizing lifestyle opportunities, family and community connections, and proximity to area attractions rather than physical amenities like firepits and pools; for 'active agers,' emphasizing how community living will enable them to meet their wellness goals more effectively than living in a private home; and a thorough and clear description how the current and future costs of aging in community change with time and health care needs. The data for the white paper was sourced from roughly 1,016 adults aged 40+, and 323 aging services professionals. More detail is available in the full white paper.

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 us 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.

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.

Consumer Financial Protection Bureau Announces Fall Elder Justice Webinars. The Consumer Financial Protection Bureau (CFPB) is hosting a three-part elder justice webinar series, during September and October. Here are the topics to be covered: (1) Get to Know Your Federal Financial Regulators (09/07/23): Staff from the CFBP, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency will share resources and describe their roles in preventing elder financial exploitation. (2) Just in Time Housing Guides (09/14/23): An overview of educational guides recently released by CFPB designed to assist older consumers as they address housing decisions at certain times or in connection with certain events. (3) Reporting and Investigating Elder Financial Exploitation (10/12/23): Elder justice professionals will discuss their organizations' roles in the process for reporting and investigating elder financial exploitation as well as share resources for the field. Click here to learn more about each webinar and register to attend.

Assisted Living Member Network to Meet September 26. The LeadingAge Assisted Living Member Network will meet on September 26 at 2:00 PM ET. We are planning a robust meeting on dementia care and the new GUIDE model. Please contact Janine (JFinck-Boyle@leadingage.org) for the link to join the meeting. A full agenda will be available in mid-September. See you there!

Friendly Deadline Reminder – PRF Reports Due September 30. The HRSA Provider Relief Fund reporting **portal** is open right now for providers to submit their reports for Reporting Period 5 (RP5). RP5 reports cover PRF and ARP rural payments received between January 1, 2022 and June 30, 2022. Keep in mind, these funds could be used for COVID-related expenses and lost revenues incurred between January 1, 2020 and June 30, 2023. HRSA made an important change to the use of lost revenues for future reports after RP5. For reporting period 6 and beyond, providers will only be able to apply PRF and ARP rural funds to COVID-related lost revenues incurred up to June 30, 2023. Members are reminded that expenses and lost revenues are only allowable if they were connected to preventing, preparing for and/or responding to COVID-19. Some providers have recently had audit findings that identified unallowable costs. As there is no clear process currently for providers to correct previously filed PRF reports, these providers are being required to return some of their PRF funds. Watch tomorrow for an article with a few more details and resources on this topic.

Workforce & Policy News:

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.

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). 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.

Advocacy & Hill News:

OMB Finalizes Buy America Guidance, Leaves Details to HUD. On August 23, the Office of Management and Budget issued final guidance on the Build America, Buy America (BABA) preference established in the Build America Buy America Act, which was enacted in 2021 as part of the Infrastructure Investment and Jobs Act. BABA established a new domestic procurement requirement for construction and manufacturing products, as well as all iron and steel products, used in the construction, alteration, maintenance, and repair of infrastructure in America. In the new final rule, OMB acknowledges requests to exclude affordable housing from the BABA requirements but does not change its previous stance on the question: that HUD (and other federal agencies) can choose to exercise its ability to determine whether affordable housing projects will serve a public function, including whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. "Projects with the former qualities have greater indicia of infrastructure, while projects with the latter quality have fewer," the final rule says. LeadingAge has urged HUD to institute a broad waiver for affordable housing from the BABA requirements.

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.

Medical/ COVID News:

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.

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."

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.

News from LeadingAge:

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.