



LPC Weekly Report

Friday, September 15 2023

Highlights for LPCs:

IRS: Immediate Moratorium on ERC Processing of New Claims. On September 14, IRS Commissioner Danny Werfel [announced](#) an immediate moratorium on all processing of new Employee Retention Credit claims, citing increasing and substantial fraudulent claims that are flooding the agency. The moratorium will apply to all new claims filed between September 14 and December 31, 2023, although the agency does not specify whether or when new claims processing will resume. The processing time on claims already submitted will be lengthened from an average of three to an average of six months. The slow-down is intended to give the agency more time to carefully review existing claims, and protect unwitting, ineligible businesses from incurring costly penalties and interest repayments for funds received in error. Recognizing, too, that many honest, small businesses have been taken advantage of by unscrupulous third-party consultants, Commissioner Werfel said that a process is being developed to allow such small businesses to repay monies they may have already received in error without penalty. Also, a special process is being developed to allow firms with an existing, yet-unprocessed claim to rescind their submission if they discover, upon further review, that their business is not eligible. More detail on that is pending for this fall. Meanwhile, “taxpayers are encouraged to review IRS guidance and tools for helping determine [ERC eligibility](#), including [frequently asked questions](#) and a new [question and answer guide](#) ... to help businesses understand if they are actually eligible for the credit.” The IRS is working with the Justice Department to see how to pursue and exact penalties on aggressive firms that have intentionally ignored ERC rules and pushed ineligible businesses to apply. LeadingAge continues to closely monitor the updates from IRS on the ERC, and further analysis will be forthcoming.

NIC Reports Near-Record Highs in “Asking Rates.” The National Investment Center released a brief, but eyebrow-raising [report](#) on the “asking rates” - or monthly fees/ rents - for IL, AL and Memory Care providers. According to the report, monthly fees are at nearly record-setting highs, year over year, for all three care segments (of those providers who submitted data.) The aggregate increase for IL providers, year over year, was 9.8%, with existing residents seeing an average increase of 9.4% and ‘new’ resident rates increasing by 8.0% on average. AL ‘asking rates’ in aggregate skyrocketing to 10.6%, with existing residents’ fees jumping up by 9.1% on average, and new resident fees by 9.9% on average. Respectively - and the lowest percentage increase of all three categories, memory support increased by 9.2%, 8.5% and 8.1% on average. Also included in the report summary: discounts on move-ins were also the highest in the IL segment; the pace of move-ins for all three care segments generally increased in this quarter. The data is representative of 2,700 providers across the country, operated by 35-40 parent organizations; typically, MSOs of 5 communities or greater are those recruited to participate in this particular market survey.

LPC September Member Network Call. Join us on Thursday, September 28 at 2 p.m. ET for our semi-annual review of market trends and financial forecasting for LPCs. Driven by our powerhouse panel of experts from Ziegler, Greystone, CliftonLarson Allen, and others, we’ll explore the current financial realities that LPCs must navigate, and where creative solutions can be found. Waiting room opens at

1:45 p.m. ET. All LeadingAge provider members are welcome. If you have not already received the invitation, or to be added to the Network, email Dee at dpekruhn@leadingage.org.

Countdown to Latest PRF Reporting Deadline. Providers are reminded that there are just over two weeks left to submit reports for Provider Relief Fund (PRF) Reporting Period 5. Reports must be submitted by 11:59 PM ET on September 30. This impacts those providers who received PRF and ARP Rural Payments between January 1 and June 30, 2022. Now that some providers have had their prior reports audited and are being instructed to return funds for disallowed expenses, LeadingAge is encouraging members to make sure they understand which expenses are allowable uses for PRF and ARP Rural dollars. This [article](#) provides additional details on considerations related to allowable expenses.

Rescheduling of September's Assisted Living Network Meeting. Please remove the calendar invite for the LeadingAge Assisted Living Network meeting in September. We will have a meeting in a few weeks so be on the lookout for the announcement. Sorry for the inconvenience.

Workforce & Policy News:

Bureau of Labor Statistics Report Shows the Rate of Growth in Total Employer Compensation Costs Slowed Compared to the Prior Quarter. The most recent Bureau of Labor Statistics Employer Costs for Employee Compensation report, September 12, shows total employer compensation costs (wages, salaries and benefits) for private industry workers nationally, across all sectors, averaged \$41.03 per hour worked in June 2023, just slightly higher than the \$40.79 total private industry compensation costs reported in March. The wages and salaries component averaged \$28.97 per hour worked and accounted for 70.6 percent of employer costs. The report shows that while employers spent more on total compensation in the second quarter of the year than they had in the first quarter, the growth in the private industry compensation figure from March to June 2023 (+.59%) was smaller than the growth from December 2022 to March 2023 (+1.4%). The June average for the health care and social assistance industry specifically was slightly higher than the all-sectors figure, at \$42.33 per hour. Within that grouping, the average for the nursing and residential care facilities subsector was \$29.29 per hour, with the wages and salaries component averaging \$21.36 per hour. The September report is [available here](#) and supporting data are [available here](#) in easy to read charts showing geographical differences and other details.

LeadingAge Submits Comments on Physician Fee Schedule. Today, LeadingAge submitted comments on proposed CY2024 Physician Fee Schedule. The comments focused on three areas: first, CMS' proposed Caregiver Training Services (CTS), second, adding Marriage and Family Therapists (MFT) and Mental Health Counselors (MHC) to the hospice interdisciplinary team, and finally, integrating resident based care settings into the future of the Medicare Shared Savings Program (MSSP) Accountable Care Organizations (ACOs). To read the comments [click here](#).

Advocacy & Hill News:

ACL Proposes Adult Protective Services Rule, Seeks Comments. The Administration on Community Living (ACL) proposed a rule, to be published in the [Federal Register](#) on September 12, to establish the first-ever federal regulations for Adult Protective Services (APS) programs. ACL released a [Fact Sheet](#) on the proposed rule and announced that interested stakeholders can join a September 18 webinar at

11:30 AM ET on the NPRM. Webinar registration is [here](#). The proposed rule aims to improve consistency and quality of APS services across states and support the national network that delivers services, with the ultimate goal of better meeting the needs of adults who experience, or are at risk of, maltreatment. It establishes definitions and data collection requirements, mandates staff training, and requires state APS programs to develop policies and procedures.

House, Senate, White House Wrangle on Appropriations. A September 12 [release](#) from the White House outlines many of the damaging impacts of House appropriations bills, including state-by-state impacts. Early in the year, as part of an agreement to raise the federal debt ceiling, the White House, Senate, and House agreed on overall fiscal year 2024 (FY24) spending caps. The Senate proceeded to write its 12 appropriations bills under the confines of those caps plus a \$14 billion addition tacked on late in the Senate process. The House proceeded to write its bills at levels much less than the agreement allowed. In all, the House and Senate bills are about \$70 billion apart from each other in total funding. The House bills, the White House said, would result in the elimination of 20,000 HUD Housing Choice Vouchers, including 6,000 used by older adults; would result in half a million fewer people receiving job training and employment services through the Department of Labor; and would eliminate funding for the Agency for Healthcare Research and Quality, which would end long COVID research and delay other priority health services research at the National Institutes of Health. Also on September 12, the Senate began consideration of a package of three appropriations bills that leadership expects will receive bipartisan support. The Senate package includes the [HUD](#), Agriculture, and Military Construction-VA bill. LeadingAge continues to urge stakeholders to [contact their members of Congress](#) on appropriations bills. With the House and Senate bills miles apart, a continuing resolution (CR) to keep federal programs funded past the October 1 start of FY24 will be necessary but its path to enactment is unclear as members of the conservative House Freedom Caucus have said they will oppose any CR that does not also include the Border Security Act (HR 2).

LeadingAge Joins 680 Stakeholders Urging Congress to Fund the Government. On September 12, LeadingAge joined a coalition of 680 local, state, and national organizations in sending a letter to every member of the House and Senate urging passage of a clean, bipartisan continuing resolution (CR), including emergency funding that supports current services and addresses urgent needs. Without additional funding, the government will face a potential shutdown when the new fiscal year begins on October 1. “Shutdowns harm our nation’s overall economy, the financial security of individuals and families, government efficiency, and the public’s access to needed services,” the letter states. “A shutdown would put the nation’s economy at risk, delay or interrupt services to millions, and disrupt the jobs of over a million workers, making it harder for people to put food on the table, a roof over their heads, and stay safe and healthy.” [Click here to read the full letter.](#)

Proposed Staffing Rule Resources. Here is [the serial post on staffing ratios](#). You can find the recording of the September 7 Town Hall on Staffing Ratios, as well as a new, more in-depth analysis of the rule. You’ll also find the PPT deck and the Excel spreadsheet members can use to estimate the impact of the rule on their own organization. If you simply want to watch the video, you can also see it here: <https://attendeegotowebinar.com/recording/3703917557599685291>. We recommend checking the serial post frequently, as new articles, analyses, and tools are continuously posted there (as with serial posts on other topics).

House Ways and Means, Energy and Commerce, and Education and Workforce Committee Chairs introduce *Lower Costs, More Transparency Act*. Chairs Smith (R-MO, Ways and Means), McMorris Rodgers (R-WA, Energy and Commerce), Foxx (R-NC, Education and Workforce, and Ranking Member Pallone (D-NJ, Energy and Commerce) introduced the Lower Costs, More Transparency Act. This bill aims to increase health care price transparency and lower overall costs for patients and employers. This bill also extends community health center and other primary care workforce funding that is due to expire on Sept 30th. A couple of notable provisions for LeadingAge members include:

- Reports on Health Care Transparency Tools and Data. Requires GAO to report on existing and new health care price transparency requirements, compliance, enforcement, patient utilization, and whether requirements can be harmonized to reduce burden and duplication.
- Requires the Secretary of Health and Human Services (HHS) to submit an annual report on the impact of Medicare regulations on health care consolidation and to analyze the effects of Centers for Medicare and Medicaid Innovation demonstrations on health care consolidation.

Requires that Medicare Advantage organizations to report to HHS certain information relating to health care providers, PBMs, and pharmacies with which they share common ownership. Additionally, this section requires the Medicare Payment Advisory Committee (MedPAC) to study and report on vertical integration between Medicare Advantage organizations, health care providers, PBMs, and pharmacies and how this integration impacts beneficiary access, cost, quality, and outcomes.

Medical and COVID News:

CDC Advisory Committee Recommends Updated Vaccines to Anyone Over 6 months Old. Following the Food and Drug Administration's (FDA) September 11 approval of new COVID vaccine formulations, the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP) voted 13-1 on September 12 to recommend anyone above 6 months of age get an updated COVID shot this fall. Once CDC Director Mandy Cohen signs off on the recommendation, the shots will be made available to Americans who want them. The expert panel at the CDC also recommended that people who are immunocompromised get more than one shot, similar to previous recommendations. There had been some debate about whether the experts would recommend shots just for older adults and those who are immunocompromised, but they decided to advise everyone to get an updated Covid-19 shot to prevent severe disease.

FDA Approves New COVID Vaccine. On September 11, the Food and Drug Administration (FDA) approved two reformulated COVID vaccines manufactured by Moderna and Pfizer-BioNTech. The newly approved shots target the Omicron subvariant XBB.1.5, per the FDA's June recommendation, in addition to the newer EG.5 and BA.2.86 subvariants. The FDA's approval of these two vaccines clears the way for the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices to make a formal recommendation on who should receive the shots. The Advisory Committee meeting is scheduled for September 12, and CDC Director Mandy Cohen is expected to make the final approval shortly after that. [More information on the FDA's approval can be found here.](#)