



LPC Weekly Report

Friday, September 8 2023

**Highlights for LPCs:**

**Proposed Staffing Rule Resources; Tool to Estimate Impact on Every Nursing Home, States.** 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.

**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 more [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.

**Ziegler/ NIC LPC Q2 Report.** This week, [Ziegler](#) and the [National Investment Center](#) released an occupancy report for LPCs for Q2 of 2023. The analyses offer a year-to-year comparison of changes in occupancy, inventory, and residential fees for both LPC and non-LPC communities in the NIC Primary and Secondary Markets; total, 1,165 LPCs in 140 markets are represented in this dataset. LPCs continued to outperform non-LPCs in overall occupancy, with LPC IL occupancy being the strongest (90.0%), followed by LPC AL (86.9%) and LPC memory care (86.4%) occupancy, respectively. Entrance fee and rental LPCs combined had higher occupancy rates in IL; entrance fee LPCs continue to outperform rental LPCs in this area. While LPCs demand more in residential fees (called "Asking Rent" by this dataset) overall, non-LPCs saw the largest rate-increases this quarter and year, compared to LPCs. Non-LPCs saw the greatest increases in "Asking Rent" in their AL and memory care segments, year over year. Although not as high a percentage increase as non-LPCs (5.9%), LPCs also saw the greatest year over year increases in fees in AL and memory care (collectively, 5.0%.) The average differential in what LPCs charge in monthly fees for AL and memory care is about \$500 / month over non-LPCs. As compared to last year, both LPCs and non-LPCs saw an inventory decline in SNF beds, -1.9% and -0.9%, respectively. (A companion NIC [report](#), also released this week, on SNF occupancy - which improved slightly this month- attributed some of this inventory decline to an inability to provide care due to ongoing staffing shortages.) The Ziegler report concluded with a brief discussion on the reaction and resistance of current and prospective LPC residents to rate increases; essentially, increased residential fees, even in

high-end communities with affluent residents, reach a threshold of sustainability, and providers must be sensitive to that fact.

**IRS: ERC Refund Processing Slow-Down.** In an about-face from July's hearing and [press releases](#), the IRS [announced](#) this week that it will intentionally slow down the processing of [Employee Retention Credit](#) claims. This is because the IRS has received an abundance of suspicious, fraudulent, or inappropriate claims, and the intention is to more carefully analyze submissions prior to issuing refund monies. The IRS has already paid out an excess of \$150 billion in claims, and allegedly, there is a burgeoning influx of claims fueled by the third-party consultants that LeadingAge has repeatedly warned members to carefully screen. The IRS has offered no new timeline by when ERC claimants can now expect a response or refund; also, no answers to how the IRS will handle claims filed by organizations who were misled by unscrupulous third-party consultants. (At present, organizations that have received funds in error will have to return said funds, plus, potentially, interest and monetary penalties.) More information is expected to be forthcoming. LeadingAge members can continue to access our webinar [recordings](#) on the Hub; if you have an ERC experience you'd like to share, or if you have filed and are still waiting on a refund, please email Dee ([dpekruhn@leadingage.org](mailto:dpekruhn@leadingage.org)) or Nicole F ([nfallon@leadingage.org](mailto:nfallon@leadingage.org)).

### ***Workforce & Policy News:***

**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).*

**Department of Labor Monthly Jobs Report Shows Growth in Healthcare Jobs, Yet Demand for Workers Continues to Exceed Supply.** According to a [September 1 report from the U.S. Bureau of Labor Statistics](#), the number of healthcare jobs increased by 71,000 in August, up from 63,000 added in July. Hospitals (+14,500), nursing and residential care facilities (+16,500), and home health care services (+11,000) all saw growth in August. Job increases in nursing and residential care services for August exceeded the 11,500 added in July. In aggregate, the U.S. added 187,000 non-farm jobs last month, the same number as were added in July. The nation's unemployment rate rose by 0.3 percentage point to 3.8 percent in August, which is little different from a year earlier, when the unemployment rate was 3.7 percent. The Bureau's [Job Openings and Labor Turnover report for July 2023](#), however, confirms that demand for labor continues to notably exceed supply, with [data showing](#) a ratio of 0.7 unemployed persons per job opening - i.e., there are approximately 1.5 jobs for every one individual seeking employment.

**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.

### ***Advocacy & Hill News:***

**Senate, then House, Return for Appropriations Work.** After a summer recess, the Senate and House return to D.C. on September 5 and 12, respectively. At the top of Congress's lengthy to-do list is completing fiscal year 2024 appropriations bills, including the HUD funding bill. While the Senate and House Appropriations Committees have each passed their own HUD FY24 funding bills, the bills are radically different in how much they would fund HUD programs, including contract renewal funding, funding for new Section 202 homes, funding for Service Coordinators, and funding for the Older Adult Home Modification Program, and funding for the HOME program. In every respect, the Senate bill is much better than the House's. LeadingAge hopes all aging services stakeholders [contact their congressional offices using this action alert](#) and urge swift enactment of a HUD funding bill at the highest possible funding levels. Congress is not expected to enact appropriations bills by the October 1, 2023, start of FY24 and thus must pass a continuing resolution, which will have a rough road to enactment this year. On August 31, the White House sent Congress a list of federal programs that would need stop-gap funding during the duration of any continuing resolution, which typically funds programs at no more than the prior fiscal year's levels. The list contains a request for additional funding for only one HUD program, the defaulted Reverse Mortgage Funding portfolio, which is not a HUD rental assistant program. More information on HUD funding for FY24 is available [here](#).

**Congress Attends to Spending Bills.** With the new fiscal year starting October 1 and wide gaps between the House and Senate on spending bills, it is clear a continuing resolution (CR) will be needed to keep federal programs funded from October 1 until final fiscal year 2024 (FY24) appropriations bills are enacted. If Congress cannot agree on the content of a CR and enact one by October 1 then the federal government will shut down and all annually appropriated services will grind to a halt. Any shutdown is expected to be very short. To be enacted, it appears a successful CR would have to include not just continued federal funding but also supplemental funding for disasters, aid to Ukraine, and other additional funding the Biden Administration is seeking. One scenario is that Congress would pass a CR to fund programs from October 1 until early December. After a new agreement on spending caps, Congress would work to pass the 12 spending bills before the expiration of the CR or again risk a shutdown. Earlier this year, the White House, Senate, and House agreed to overall spending caps and the Senate proceeded to pass 12 bills from its appropriations committee that complied with those levels. But the House took the deal's spending caps and cut them further before it passed bills from committee at very reduced levels, leaving vast differences between many of the respective House and Senate bills; this turn of events led to today's impasse that requires a CR. During the week of September 11, the Senate is expected to demonstrate its ability to pass spending bills with bi-partisan support when it brings a package of three FY24 bills, the HUD, Military Construction/VA, and Agriculture bills, to the Senate floor.

**Senator Cassidy Suggests Separate Approach for Regulating AI in Health Care.** Articles on the use of artificial intelligence (AI) use in health care and other fields are ubiquitous this year. One area that LeadingAge members are familiar with is when Medicare Advantage plans use third-party tools, such as NaviHealth or MyNexus, to make generalized coverage determinations. LeadingAge has asked CMS to

limit these tools' use as they don't examine the needs of the individual but instead suggest a treatment timeline based upon the typical person with the same diagnosis. Congress has been evaluating establishing some regulation around AI and on September 6, Sen. Bill Cassidy (R-LA) suggested that AI in health care should have its own regulations, noting, "a sweeping, one-size-fits-all approach for regulating AI will not work and will stifle, not foster, innovation. The Senate is ramping up its AI work according to Congressional Quarterly with another Senate Commerce, Science and Transportation subcommittee hearing on AI scheduled for September 12.

**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.

### ***News from LeadingAge:***

**Welcome to LeadingAge, Nicole Howell, Director of Workforce Policy.** Nicole Howell joined the LeadingAge national Policy Team on September 1. Nicole most recently served as Representative Bill Pascrell's Health Policy Advisor. Before that, as a Health and Aging Policy Fellow, she worked on the Health Subcommittee of the House Ways & Means Committee. Nicole hails from Nevada and previously served as Executive Director of Empowered Aging in California. She'll lead our workforce policy and advocacy activities, working closely with the rest of the Policy Team, other colleagues at LeadingAge, state partners, and members. You can contact Nicole at [NHowell@LeadingAge.org](mailto:NHowell@LeadingAge.org).

**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.