



## Workforce Policy Weekly: Recap of LeadingAge Updates

October 6, 2023

**LeadingAge Policy Update Calls; all calls are at 3:30 p.m. ET. NO CALL ON MONDAY, OCTOBER 9, which is a holiday for many people.** On **Wednesday, October 11**, let's get a firsthand report about Congress in Your Neighborhood. Join us as we chat with **Melanie Hall from the Hospice of Huntington in West Virginia**. She hosted Senator Shelly Capito for a ribbon cutting at her new adult day center. We'll talk about that visit – how the organization prepared, the kinds of information they shared, what kinds of questions came up answer your questions about how effective and energizing hosting members of Congress can be. We'll also drill down a bit on the idea of and considerations for a hospice expanding into adult day services.

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.

**Senators Call for Stopping Implementation of the Proposed Staffing Standard.** As a part of their continued effort to support rural nursing homes and ensure America's seniors are receiving the highest quality of long-term care possible, Senators Tester (D-MT) and Lankford (R-OK) led a bipartisan letter signed by 28 members of the Senate demanding the Biden Administration abandon the proposed rule that would increase staffing ratios in rural nursing homes, which could result in facility closures and reductions in access to care across the country. The letter to CMS Administrator Brooks-LaSure **said, in part: "In many parts of the country, America's long-term care facilities are facing severe workforce shortage issues that are harming access to critical care for our nation's seniors. With this in mind, we are deeply concerned that now is the worst possible time for the United States to establish the nation's first federal staffing mandate for long-term care facilities. We urge you to rescind CMS's proposed rule and instead commit to working with Congress on a large number of alternative approaches to ensure the quality and safety of care in skilled nursing facilities."**

Senator Tester is dedicated to preserving access to long-term care and has long advocated for realistic policy that can support care, particularly in rural America. In June 2023, he sent [two letters to CMS](#) Administrator Chiquita Brooks-LaSure to express concerns about the Administration's intent to issue staffing mandates for nursing homes. Senator Tester [sent an additional letter to CMS](#) urging the agency to reconsider a proposed rule to update Medicare payment policies and rates for skilled nursing facilities that would have resulted in a \$320 million overall decrease in payments to long term care facilities.

Check out the bipartisan Senate [letter](#). If your Senator signed on, contact their office, and thank them for their support and commitment to this issue.

**Bill Would Prohibit CMS Implementation of Proposed Staffing Rule.** In response to CMS's proposed staffing rule, Rep. Michelle Fischbach (R-MN) introduced the [Protecting Rural Seniors Access to Care Act](#) on September 29. "The Protecting Rural Seniors Access to Care Act will keep CMS from implementing this rule until it can prove it will not result in the closure of skilled nursing facilities, will not harm patient

access, and will not make workforce shortage issues worse in areas that are already struggling. I am proud to introduce this legislation and will continue to fight for the strength of our rural communities," Rep. Fischbach said in a [statement](#). The bill, [HR 5796](#), would prohibit the HHS Secretary from implementing the proposed rule and create a 13-member federal advisory committee on the nursing home workforce that must report annually to the Administration and congressional committees of jurisdiction. The annual report must include an assessment of the nursing home workforce in rural and underserved areas, an analysis of nursing home regulations and their effect on the nursing home workforce, and recommendations for the HHS Secretary on how to strengthen the nursing home workforce. Rep. Fischbach is a member of the House Committee on Ways and Means, which has jurisdiction over Medicare. Rep. Greg Pence (R-IN) is the bill's original co-sponsor. Rep. Pence is a member of the House Committee on Energy and Commerce, which has broad jurisdiction over Medicaid public health. The bill has been referred to both Committees for consideration. LeadingAge continues to ask aging services stakeholders [to tell CMS to get the proposed rule right](#).

**Tell Congress: Let's Get Nursing Home Staffing Right and Support HR 5796!** On October 3, LeadingAge posted an [Action Alert](#) to ask members and all aging services stakeholders to ask their member of the House to support and cosponsor [HR 5796](#), the Protecting Rural Seniors Access to Care Act (Fischbach (R-MN)). The bill, if enacted, would prohibit CMS from implementing its proposed staffing mandate and establish an advisory committee on the nursing home workforce. The Action Alert further asks members of the Senate to introduce a companion measure. LeadingAge is appealing to all members across the continuum to take action and make sure our voice is heard. Mandating that nursing homes hire 90,000 new staff will make it even harder for home health, hospice, home care, assisted living, and other provider types and settings to hire nurses and frontline staff. More details on the proposed bill are included in this [press release](#) from Representative Fischbach.

**“Without Rate Construction reform, SNFs become “SCNFs” – Swiss Cheese Nursing Facilities”** In a white paper, *The Great Transition: Medicaid Rate Construction Reform*, Marc Zimmet of Zimmet Healthcare Services, purports access to local nursing facility care is at risk in certain communities because of current Medicaid rate structures. Zimmet stresses that healthcare is local, and factors used in attributing reimbursement in both Medicare and Medicaid make survival in some localities impossible. Understanding that Medicare and private pay have long propped up Medicaid underfunding, small shifts in Medicare reimbursement trends have significant effects on individual NF financial stability. Expanding enrollment in Medicare advantage is driving down length of stay, while simultaneously deflating reimbursement for services reducing the expendable funds from Medicare stays- dollars used to cover Medicaid shortfalls in the past (traditionally called cost-shifting). Zimmet concludes that without wholesale rethinking of Medicaid Rate development and construction as states move from RUGS to PDPM, little will change. With CMS abandonment of MDS Section G, massive reshuffling will occur in Medicaid rates but the same facilities that have historically focused on reimbursement optimization will remain with elevated and viable Medicaid rates while disadvantaged and smaller facilities will continue to flounder. The paper closes with suggestions for states to consider in rate restructuring to include incentivizing desirable outcomes over punitive standards for non-compliance; considerations, add-ons, or incentives for smaller and less efficient facilities with high fixed costs spread over smaller resident populations to maintain local access in underserved communities; address distortions caused by different types of providers (single site vs. hospital based vs. life plan community) and by variable payer mixes (Medicare Advantage penetration, availability of Medicare part B subsidy, local ACOs, Medicaid occupancy). Read the full paper [here](#).

**DOL Submits Final Independent Contractor Rule to White House for Review.** A final rule that will revise the federal framework for determining whether a worker is an employee, or an independent contractor is now under review by the White House Office of Management and Budget (OMB). The U.S. Department of Labor (DOL) issued a proposed rule on this subject in October 2022, accepted comments through mid-December, and submitted the final rule to OMB on September 28, signaling that it has completed its work. As proposed, the rule would rescind a 2021 Independent Contractor Status rule and, among other changes, restore a “totality-of-the-circumstances” analysis to determining whether a worker is economically dependent upon an employer for work, versus being in business for themselves, under the Fair Labor Standards Act (FLSA). This standard is important because the FLSA’s minimum wage and overtime pay protections do not apply to independent contractors, and many observers expect the new rule to result in more individuals being classified as employees than is the case under the current rule. It is not known when the final rule will be published, but OMB review is the final step in the rulemaking process. We will monitor closely for release of the final rule and provide analysis for members when it emerges.

**LeadingAge to Congress: You Must Act to Ensure Patient Access and Provider Payment for Home Health.** In follow up to the [Sept 19 Senate Finance Committee hearing entitled “Aging in Place: the Vital Role of Home Health in Access to Care,”](#) LeadingAge submitted a [statement for the record](#). The statement focused on four key issues: payment, access, Medicare Advantage, and workforce. We look forward to continuing to work with Senators Cardin and Daines and others who attended the hearing and were supportive of home health solutions.

**Forget quiet quitting or lazy girl jobs; LeanIn Finds that Women are More Likely to Want a Promotion Now than Before the Pandemic.**

LeanIn recently conducted its annual workplace study in partnership with McKinsey & Co surveying approximately 27,000 employees at 33 companies from 276 companies in the U.S. and Canada. The report found that 81% of women said they were interested in getting promoted, a 10-point increase from 2019 and one in five women said flexibility has helped them stay in their jobs and avoid reducing their work hours. Interestingly, there wasn't a difference in ambition between those who come to the office and those who don't: 80% of those who work remotely said they were interested in a promotion, compared to 79% who work on-site.

It wasn't just women that enjoyed the flexibility. An overwhelming majority of women and men surveyed said that working remotely or on a hybrid schedule made it easier to balance work and life. And believed that the arrangement made them more efficient and productive.

Not surprisingly, managers did not agree and the push to return to the traditional office continues. Despite efforts to reignite commutes and cubicles, occupancy is still hovering at about 50% compared to pre-pandemic levels, according to [Kastle's office swipe data](#)

The LeanIn report can be [found here](#).

**Senator bemoans the “E” in HELP.**

Sen. Bill Cassidy (R-LA) is not pleased with the Senate HELP committees lack of progress addressing education. He shared his frustration recently saying, “I don't think we have, besides workforce development.” The committee has scheduled (and postponed) markups of four workforce development bills including the [JOBS Act](#) and [Gateway to Careers Act](#).

**Sen. Cassidy**, is frustrated by the recent delays said the committee should focus on issues including

literacy and dyslexia and has previously introduced the 21<sup>st</sup> Century Dyslexia Act. The Senator acknowledged it is not for lack of interest causing education to not receive the attention it deserves, noting **“We've been scrambling to try and take care of things that had to be reauthorized** prior to the funding cut off,”

Senator Cassidy promised a renewed interest and focus on education saying “We’re going to be doing an effort regarding the lack of literacy because there's a real issue right now with poor literacy in our nation.”

**Last Week’s Workforce Weekly Update.** Here is the September 29, 2023 [Workforce Policy Update](#).