



Nursing Home Weekly Recap

October 18, 2024

Nursing Home Network Call: NO CALL Tuesday, October 29. The Nursing Home Network will not meet in the month of October due to LeadingAge Annual Meeting in Nashville, Tennessee, October 27-30. The next meeting of the Nursing Home Network will take place on Tuesday, November 26 at 2 p.m. ET. The Nursing Home Network meets on the last Tuesday of each month and is open to all LeadingAge provider members. Register for the Network [here](#) using your LeadingAge login.

National Policy Pulse Call. LeadingAge's members-only briefing and analysis call with our experts, "National Policy Pulse", happens every Monday at 3:30 p.m. ET. Register for the calls [here](#). Your registration will keep you on the list for all calls in 2024, and we'll send a new registration link to members for calls in 2025 so you never miss a beat.

CMS Holds Off on Quality Measures Update. The Centers for Medicare & Medicaid Services (CMS) temporarily froze four quality measures on Nursing Home Care Compare in April 2024 due to a [planned case mix methodology transition](#). Initially, CMS intended to unfreeze and update one of the four measures with the October 2024 refresh. However, in a [memo revised on October 4](#), CMS announced that all four measures will be unfrozen together, as part of the January 2025 refresh. Learn more about the freeze and case mix methodology in the [Five Star Quality Rating System Technical Users Guide](#).

Update on IV Solution Supply Shortages. Health & Human Services (HHS) Secretary Xavier Becerra issued a [letter to healthcare providers](#) on October 9 and a [press statement](#) on October 11 outlining the Department's understanding of and actions to address intravenous (IV) solution supply shortages related to Hurricane Helene. Secretary Becerra stated that HHS has moved and protected product from the impacted manufacturing facility in North Carolina, worked with the Food & Drug Administration (FDA) and other agencies to increase supply, and is working to restore operations at the impacted North Carolina facility. The Administration for Strategic Preparedness and Response (ASPR) released an [updated tip sheet](#) on October 9 for managing IV fluid supplies during shortage. Watch for the latest updates on hurricane and disaster relief [here](#).

CMS Issues Rule Outlining Appeals Processes Relating to Hospital Observation Status. On October 11, CMS published a [Final Rule](#) establishing appeals processes for certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified as outpatients receiving observation services during their hospital stay. The purpose of the rule is for CMS to comply with a court order issued in the case *Alexander v. Azar*, a nationwide class action case that established the right of patients to appeal such changes of status. A retroactive right of appeal will be available to Medicare beneficiaries meeting certain criteria, and both "expedited" and "standard" appeals processes will apply prospectively. CMS anticipates these processes will be available in early 2025. The appeals processes established by this rule do not extend to enrollees in Medicare Advantage (MA) plans. A fact sheet is [available here](#), and LeadingAge will prepare a detailed analysis.

OIG Updates Recommendations Tracker with Four Nursing Home Recommendations. The Health & Human Services (HHS) Office of Inspector General (OIG) updated its Recommendations Tracker with the

Top Unimplemented Recommendations of 2024 on October 17. Of thirty-three unimplemented recommendations, four relate directly to nursing homes including two recommendations related to psychotropic drug use, one recommendation related to infection control, and one recommendation related to facility-initiated discharges. Updates on all four recommendations are expected in the coming months. Learn more [here](#).

SNF Open Door Forum Answers Questions on Ownership Reporting. An October 17 Skilled Nursing Facilities (SNF) Open Door Forum answered questions related to new nursing home requirements for reporting of ownership, management, and related party data. CMS urged providers to review newly released and updated guidance on the updated Form 855A and stated that guidance will continue to be updated as new questions and need for clarification emerge. If questions remain after reviewing guidance, providers can reach out to CMS via a new HelpDesk email: SNFDisclosures@cms.hhs.gov. Read more [here](#) and keep an eye on the [LeadingAge serial post](#) for more updates.

CMS Releases Annual Health Equity Confidential Feedback Reports for Post-Acute Care Providers. On October 15, the Centers for Medicare & Medicaid Services (CMS) updated the two annual post-acute care (PAC) Health Equity Confidential Feedback Reports: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. These reports are available to providers in the [Home Health](#) (HH) and [Skilled Nursing Facility](#) (SNF) settings.

The updated Fall 2024 Health Equity Confidential Reports are based on data from Calendar Year 2022-2023 for HH and from Fiscal Year 2022-2023 SNF settings. The Health Equity Confidential Feedback Reports provide insight on DTC and MSPB measure outcome differences across social risk factors. These reports stratify these two PAC Quality Reporting Program (QRP) measure outcomes by Medicare-Medicaid dual-enrollment status (duals and non-duals), and by patient race/ethnicity (non-White and White patients).

This data is meant to provide information to providers about their performance for certain populations who may have been historically disadvantaged. Providers can use the information from these reports to focus their internal quality improvement initiatives aimed at increasing opportunities for all individuals to achieve optimal health outcomes. Earlier in October, CMS also [released](#) the new Screen Positive for Health-Related Social Needs (HRSN) Indicator Confidential Feedback Report to Home Health agencies and anticipates releasing a similar report for SNF in October 2025.

LeadingAge Article on MedPAC Discussion of MA Supplemental Benefits. On October 10, LeadingAge highlighted the MedPAC commissioners' October 10 discussion of Medicare Advantage (MA) supplemental benefits and their goals for future work to make the provision and use of these benefits along with the cost more transparent. This LeadingAge [article](#) entitled, "MedPAC Examines MA Plan Supplemental Benefit Financing: Signals Future Look at Usage, Transparency," provides further details of the October 10 MedPAC report and discussion.

LeadingAge Continues to Ask for MA Prior Authorization Data. To inform the Centers for Medicare and Medicaid Services (CMS) staff on how Medicare Advantage (MA) prior authorizations and re-authorizations play out when MA enrollees need skilled nursing facility and home health care, LeadingAge is asking its Skilled Nursing Facilities (SNFs) and Home Health Agencies (HHAs) to track and report one month worth of data on the prior authorizations, concurrent reviews/re-authorization

requests and appeals. This quantitative data can supplement the anecdotal stories members have shared where these processes deny, delay or terminate medically necessary care. This information can help us target the regulatory changes needed to improve these processes in MA and show the need for addressing the substantive administrative burden that goes along with it. Members can access the [SNF Data Spreadsheet here](#) and the [Home Health Spreadsheet here](#) to use in tracking their data. Once you've tracked one month of data, it can be submitted to Nicole Fallon (nfallon@leadingage.org). Organizational and patient level data will not be shared publicly. Instead, the data will be used to identify trends and challenges in the MA prior authorization processes in order to seek remedies with CMS.

Senate Subcommittee Releases Scathing Report on Medicare Advantage Prior Authorization Practices in Post-Acute Care. On October 17, the Senate Permanent Subcommittee on Investigations chaired by Senator Richard Blumenthal (D-CT) released a report, [Refusal of Recovery: How Medicare Advantage Insurers Have Denied Patients Access to Post-Acute Care](#). The report underscored [trends and patterns that LeadingAge has been reporting on](#) and advocating against regarding practices that Medicare Advantage (MA) plans are utilizing in relation to post-acute care – and the report finds that the plans the Permanent Subcommittee on Investigations looked at are doing so in pursuit of cost savings. The Senate team looked at 280,000 pages of documentation related to practices undertaken between 2019 - 2022 by United Healthcare (UHC), CVS/Aetna, and Humana. These three plans make up 60% of the MA market. A telling quote from the report is: “The data obtained so far is troubling regardless of whether the decisions reflected in the data were the result of predictive technology or human discretion. It suggests Medicare Advantage insurers are intentionally targeting a costly but critical area of medicine – substituting judgment about medical necessity with a calculation about financial gain.” In addition to plans’ use of predictive technology, the report examined trends in prior authorization both in terms of initial denials but also in terms of volume of prior authorizations requested. LeadingAge will provide a more detailed analysis of the report in the coming days, but some key findings include:

- In 2022, UHC and CVS/Aetna denied prior authorization requests for post-acute care at rates 3x higher than their overall rates of denial; Humana denied post-acute care service requests at a rate 16x higher than its overall rate of denial.
- UHC’s denial rate for skilled nursing facility care increased by a factor of nine between 2019 and 2022, from an initial denial rate of 1.4% in 2019 to an initial denial rate of 12.6% in 2022.
- A number of findings around UHC’s AI driven algorithm embedded within the product naviHealth, which is also used by Humana. These findings included the use of naviHealth to determine length of stay regardless of the person’s actual clinical need, the use of naviHealth’s portal function to avoid speaking to providers about authorization decisions – in fact instructing naviHealth employees NOT to speak to providers about certain items and using naviHealth to restrict home health visits and duration of care even if initial approvals for home health were higher than for skilled nursing or other post-acute care.
- CVS/Aetna was found to have a higher initial rate of denial in the study period so that remained steady, but the volume of prior authorizations detected increased by 57.5% over the study period.

LeadingAge’s press statement on the report can be found [here](#). We look forward to continuing our advocacy on these issues and that effort is bolstered by this report.

DEA Submits Final Rule to Extend Telemedicine Flexibilities for a Third Time. The Drug Enforcement Agency (DEA) [submitted](#) a final rule to the Office of Management and Budget (OMB) for a third temporary extension of the COVID telemedicine flexibilities for prescription of controlled substances. As LeadingAge previously [reported](#), the DEA is working to update COVID waivers that allowed prescribers to write prescriptions for controlled substances without an in-person meeting. Those current flexibilities are set to expire December 31, 2024. The current proposed rule to update the flexibilities, which was redrafted after considerable pushback in 2023, has yet again hit major hurdles with advocates from across the care continuum. A former DEA staff member shared that the proposal, which has been with OMB since June 2024 would be even more restrictive than the original proposal. LeadingAge does not expect the new proposed rule to be published before the election, but the temporary extension will allow more time for advocates, prescribers, and patients to review and comment on the proposal without losing access to essential medications.

Congress Concerned about DEA's Approach to Telehealth Prescribing. On October 11, a group of lawmakers from the House of Representatives pressed the Drug Enforcement Administration (DEA) over reports that it plans to limit flexibilities allowing health care providers to prescribe controlled substances via telemedicine. In a [letter](#) sent to DEA Administrator Anne Milgram, a group of lawmakers led by Representatives Doris Matsui (D-CA) and Earl L. "Buddy" Carter (R-GA) took issue with the agency's work to create a special registration process for telemedicine prescribing. During the COVID-19 pandemic, the DEA allowed for most controlled medicines, like ADHD medications, to be prescribed via telemedicine rather than in person. As LeadingAge previously [reported](#), DEA has extended the flexibilities twice, and appears poised to extend those flexibilities a third time. The DEA has not said how long the third extension will be. The current flexibilities are set to expire on December 31, 2024. In the letter, lawmakers expressed concern about reports that the DEA ultimately has plans to limit telemedicine prescribing and the misalignment with legislative intent of the registration program as well as the potential to hurt patient access to necessary drugs. Furthermore, the letter voices concern regarding time running out for DEA to finalize the rule before it reverts back to pre-COVID prescribing requirements on December 31, 2024.

LeadingAge Calls on White House to Elevate Older Adults in Extreme Heat Response. In early July, President Biden [called](#) for multiple agencies to coalesce at an Extreme Weather Summit. Following the [summit](#) in mid-September, the White House announced an extreme heat call to action. The call to action was coupled with a [draft Extreme Heat Community Checklist](#) to help municipalities, towns, and tribal organizations prepare for and respond to extreme heat events. LeadingAge submitted comments urging the administration to take better account of the needs of older adults and their vulnerabilities to heat. Learn more and read our comments [here](#).

Don't Forget: Register for LeadingAge's November 13 IDR Webinar. Join us on November 13 for "[Is Disputing Your Citation Worth It?](#)", a webinar that will explore the nursing home informal dispute resolution (IDR) and independent informal dispute resolution (IIDR) processes. We'll explore the IDR/IIDR processes and discuss you need to know as a provider, what you should consider when deciding whether to dispute a citation, and what makes for an effective – and ineffective – IDR/IIDR. Register [here](#).

Medicaid Payments to Nursing Homes Average 82% of Costs of Care, National Study Finds. In a report released October 15 by HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE),

authors evaluated Medicaid payments to nursing homes across 44 states and found that Medicaid reimbursements fall short of covering the full costs of care, with many variables affecting rates. Read more [here](#).

New Research Shows Wage Gap for Direct Care Workers. On October 16, PHI released [Competitive Disadvantage: Direct Care Wages Are Lagging Behind—2024 Update](#), an analysis of wage disparities between direct care workers and comparable occupations throughout the United States. The analysis also highlights trends in the wage gap between direct care workers and comparable occupations (e.g., housekeepers, janitors, customer service representatives, retail salespersons, and food preparation workers) from 2014 to 2023.

The report found that in all 50 states and the District of Columbia, direct care workers earned a lower median wage than comparable occupations in other industries. As of 2023, the latest available data, the hourly wage gap varied from -\$0.46 in Rhode Island to -\$5.56 in Texas. In 39 states, the gap was at least -\$2.00 per hour, with 19 of those states reporting a difference of over -\$3.00 per hour. Over the past decade, direct care worker median wages remained lower than median wages for similar occupations despite narrowing in 32 states. Despite some advances, the wage gap has widened 17 states.

“An array of strategies is needed to improve job quality, strengthen and stabilize the direct care workforce, and ensure access to services for all those who need them,” the report says, reflecting LeadingAge’s support for an array of solutions to address the needs of the aging services workforce.