



## LPC Weekly Recap

Friday, November 15, 2024

**LPC November Network: Thank the Board!** LPCs' volunteer boards of directors are the heartbeat of good governance in our organizations; this month's meeting will be devoted to recognizing the gifts of our board members and hearing their perspectives on what is shaping modern governance practices and, therefore, the future of LPCs. Expert guest panelists include Warren Callaway (ACTS Board Member) and Vince Nesline (Edenwald Board Member,) among others. Join us on November 21, 2 p.m. ET. All LeadingAge provider members are welcome; please email Dee at [dpekruhn@leadingage.org](mailto:dpekruhn@leadingage.org) if you need the Zoom invitation.

**New! A LeadingAge Comparative Guide to LPC States' Statutes.** The laws that govern Life Plan Communities (LPCs) – referred to as continuing care retirement communities (CCRCs) in statute - vary widely by state and have a significant impact on the financial success and long-term sustainability of LeadingAge members. [A new, in-depth resource from LeadingAge's](#) Dee Pekruhn, Director, LPC Services and Policy, provides insights into the evolving statutory landscape of LPC/ CCRCs' contract language. This Learning Hub resource – the first in a series of six that will offer deep dives into the issues most important to LPCs – is a comprehensive comparison of four core components of statutorily-required contract language: how a "CCRC" is defined, state-required disclaimer statements, transitions to higher levels of care, and contract termination. An essential tool for anyone concerned with how states' statutes impact CCRCs, this resource will be a must-have for LeadingAge members, business partners, state partners, policymakers, and other stakeholders. The Comparative Statutory Guide to LPCs' Contract Language is live now on the Learning Hub and available FREE to members. Then, on December 12, [join Dee Pekruhn and an expert panel of guest speakers](#) for a live discussion about CCRC contracts, statutory requirements, and how these shape LPCs' operations.

**Legal Challenges to CMS Staffing Standard: Litigation Updates.** The next few weeks will be an active period for the lawsuits challenging the CMS nursing home staffing standard. (1) In the Texas case in which LeadingAge is a co-plaintiff, November 15 is the deadline for the Department of Justice, on behalf of HHS and CMS, to file the government's response to our plaintiffs' motion for summary judgment and the government's own cross-motion for summary judgment. If the filing is not be available until late in the day November 15, we will provide additional information and a link to the filing on November 18. (2) As we reported earlier, the LeadingAge state affiliates and state Attorneys General that filed a separate challenge to the CMS rule in an Iowa federal court filed a motion for a preliminary injunction on October 22. The judge presiding over the case has entered a scheduling order relating to the motion: defendants will file their response to the plaintiffs' motion by November 21; plaintiffs may file a reply in support of their motion by November 27; and the court will hold a hearing with oral arguments from the parties on the morning of December 5.

**LeadingAge Joins Coalition Letter to Expand Veterans' Options for Long-term Care.** As the country turned its attention this week to honoring our nation's veterans, LeadingAge [joined five associations on November 13 in sending a letter](#) to Congressional leaders requesting that the House take up and pass H.R. 8371, *The Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act*. Included in this bill are the key provisions of the *Expanding Veterans' Options for Long Term Care Act*, which would authorize the Veterans Administration to offer assisted living settings for aging and disabled veterans who would otherwise require more costly nursing home care. LeadingAge has been working alongside our coalition partners to advance policies that provide additional care and supports for veterans. This pilot program will

give veterans additional options for how and where they can get the long-term care, as well as inform future policy decisions to meet the growing care needs of our nation’s aging veterans.

**Appeals Processes Relating to Hospital Observation Status: Awaiting Additional CMS Guidance.**

LeadingAge is continuing to monitor for further guidance from CMS concerning implementation of the [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. As required by the court order, 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. This [LeadingAge article](#) provides analysis of the final rule, and we will work with CMS to gather additional information about how the processes will work and to identify and address practical issues that arise for providers.

**Bill: Abuse Training for Some Housing Providers.** A bill introduced by Representative Ritchie Torres (D-NY) on October 18 would require all public housing agency staff to be trained on the “prevention, identification, and intervention as it relates to signs of abuse, neglect, and exploitation of elder persons” residing in public housing. While most LeadingAge affordable housing members are not public housing agencies, LeadingAge monitors public housing legislation because public housing is an important source of affordable housing (about 37% of public housing residents are older adults), and oftentimes bills are expanded to apply to other programs than originally envisioned. With sufficient funding for training and compliance, which this bill ([H.R. 10017](#)) does not provide or mention, LeadingAge would support such a requirement.

**ASPE Report on Bereavement and Grief Services in the United States.** The Assistant Secretary for Planning and Evaluation (ASPE) published a report on November 4, 2024, presenting findings of an environmental scan and semi-structured interviews around bereavement and grief services in the United States. This report was funded as part of the Consolidated Appropriations Act of 2023, in which LeadingAge [advocated](#) for funding on an evidence review and technical expert panel to establish consensus based standards for grief and bereavement care. On June 28, LeadingAge submitted [comments](#) to the Agency for Healthcare Research and Quality (AHRQ) on a systematic literature review for a research project on [Interventions to Improve Care of Bereaved Persons](#). Our comments highlighted the need for cross-continuum grief and bereavement assessments, interventions, and resources, including in settings outside of traditional hospice care, like affordable senior housing. We also stressed the need to equip aging services providers in assisting older adults navigating a variety of grief and loss, including loss of identity and “disenfranchisement loss” resulting from the aging process. The final report released by ASPE reviews the following key points from the literature review and key contributor interviews:

- The literature suggests that an estimated one in ten bereaved adults will develop prolonged grief disorder (PDG) or complicated grief (CG) after a loved one dies. However, key contributors interviewed for this study indicated that diagnosis is challenging because of potentially overlapping mental health conditions which suggest that the rates of PGD and CG may be underestimated.
- PGD is often comorbid with post-traumatic stress disorder (PTSD), depression, substance use disorder (SUD), and anxiety, making treatment and recovery challenging. Despite this challenge, key contributors conveyed the importance of access to bereavement services to help prevent longer-term conditions associated with PGD.
- Populations highly impacted by PGD include children, caregivers, veterans, and those bereaved in traumatic ways. Key contributors interviewed clearly conveyed that grief is highly individual,

and although many experience bereavement lasting over one year, many individuals recover within one year of a death event; furthermore, grief reactions may present differently in children than adults.

- There are many types of bereavement support services targeting PGD, ranging from phone calls and traditional psychotherapy to services such as music therapy. According to key contributors, incorporating trauma-informed care is essential for treating bereaved individuals. Populations with high need can be identified through schools, data, and mental health settings.
- Hospice can play a crucial role in promoting healthy bereavement by offering support before, during, and after a loved one passes to facilitate coping mechanisms to navigate loss. While key contributors support hospice, some expressed concern about inequity in accessing services and transitioning to for-profit models within the hospice industry.
- Research indicates that disparities in bereavement service utilization exist due to individual characteristics and social determinants of health (SDOH). Key contributors expressed that SDOH, including systemic racial discrimination, requires examination of grief experiences in communities of color. Additionally, bereavement and grief services are disjointed and can exacerbate inequities based on race, socioeconomic status, and geography.
- More than 50 percent of key contributors reported that the COVID-19 pandemic reduced stigma and encouraged discussions about loss and grief; and concurrently increased the need for services, especially in under-resourced communities and communities of color.
- There is debate among key contributors regarding the medicalization of bereavement and grief; most key contributors reported a need for a more comprehensive approach to managing grief beyond medicalization.

**LeadingAge LTSS Center Releases Report on Rural Aging Action Network.** The Rural Aging Action Network (RAAN) is a national learning collaborative developed and led by Lutheran Services in America (LSA). Launched in 2022, the RAAN is designed to expand community-based services and supports in rural communities and ensure independence and choice for the older adults who live there. The LeadingAge LTSS Center @UMass Boston partnered with Lutheran Services in America to lead a two-year evaluation of the RAAN. Researchers assessed the RAAN’s effectiveness, impact, and value as it mobilized whole communities to address gaps in the care of older adults. A new report released in November 2024 provides lessons learned during the RAAN’s development and implementation in rural communities across Minnesota, Montana, North Dakota, and South Dakota. The report is designed especially for organizations serving rural older adults or seeking to expand their reach into rural communities. The [report](#) provides an overview of the RAAN model, outlines seven steps involved in establishing a RAAN, and explores how the RAAN empowers older adults and advances equity and engagement among diverse populations.

**Join the LTSS Center to Discuss the Rural Aging Action Network on November 21.** On National Rural Health Day, researchers from the LeadingAge LTSS Center @UMass Boston and program developers from Lutheran Services in America will present an interactive webinar about the Rural Aging Action Network. The free session, which begins at 2 p.m. ET on November 21, will help you better understand the lessons and best practices that emerged as the LSA RAAN Collaborative worked to cultivate caring communities that address the unique needs of rural older adults. [Register today.](#)

**Kennedy Tapped for HHS Secretary.** On November 14, President-elect Donald Trump said he has selected Robert F. Kennedy Jr. to be Secretary of the Department of Health and Human Services. “For too long, Americans have been crushed by the industrial food complex and drug companies who have engaged in deception, misinformation, and disinformation when it comes to Public Health,” President-elect Trump posted on X. “The Safety and Health of all Americans is the most important role of any Administration, and

HHS will play a big role in helping ensure that everybody will be protected from harmful chemicals, pollutants, pesticides, pharmaceutical products, and food additives that have contributed to the overwhelming Health Crisis in this Country.” Hear about the election’s impact on aging services on our November 18 National Policy Pulse call. Register for the call [here](#).

**CMS Final 2025 Physician Fee Schedule: Summary of Key Provisions.** As we reported on November 4, the Centers for Medicare & Medicaid Services (CMS) recently issued its final Calendar Year 2025 Physician Fee Schedule rule, which updates rates and policies relating to Medicare Part B services delivered in a variety of settings. The final rule includes policy changes that LeadingAge supports, including the establishment of payment for new caregiver training services, as well as certain Medicare telehealth policies. This LeadingAge [article](#) summarizes key aspects of the final rule.

**Congressional Watchdog Cites Ongoing Challenges with HHS's Leadership in Cybersecurity.** The Government Accountability Office (GAO) [released a report](#) on November 13 highlighting the Department of Health and Human Services' (HHS) ongoing challenges in carrying out its cybersecurity responsibilities as the lead federal agency for the healthcare and public health critical infrastructure sectors. The report noted the increased incidents of cyberattacks across the healthcare sector, including the February 2024 Change Healthcare ransomware attack that had widespread impacts on healthcare providers and patient care. The GAO went on to highlight several recommendations that HHS has yet to fully implement to improve cybersecurity risk management. The recommendations include tracking the healthcare sector's adoption of cybersecurity practices that reduce ransomware-specific attacks; including medical devices and other operational technologies as part of HHS's risk assessments; and ensuring that the Centers for Medicare and Medicaid Services (CMS) maximizes collaboration with other federal agencies to provide consistent cybersecurity requirements across state agencies. Although much of HHS's cybersecurity focus has been on hospitals, the Change Healthcare ransomware attack demonstrated the vulnerabilities that exist across the entire healthcare sector, including post-acute and long-term care providers. LeadingAge actively engaged with HHS to help members impacted by the Change Healthcare ransomware attack and is continuing to work with members, partners, and policymakers to strengthen and share [cybersecurity best practices](#).

**OIG Publishes Assessment on National Background Check Program for LTC.** A [November 7 report](#) and [fact sheet](#) from the HHS Office of Inspector General (OIG) evaluated the effectiveness of the National Background Check Program, created under the Affordable Care Act, to enhance safety in long-term care settings. Between 2010 and 2024, 29 states participated in the program, utilizing over \$100 million in federal and state funding to establish more robust systems for screening potential employees and disqualifying those with concerning criminal records, the report says. The National Background Check Program supported 27 states in establishing programs to develop efficient and cost-effective background check procedures for prospective long-term care employees. Two states, Maryland and Wisconsin, withdrew from the program early. Through the program, states successfully built systems to disqualify individuals with concerning criminal convictions from working in long-term care settings. The report highlights that automated background check systems and ongoing post-check monitoring were the most effective measures, significantly contributing to resident safety in long-term care. The States rarely reported any unintended consequences such as workforce reductions as a result of conducting background checks. The most common challenges states faced during the program were insufficient legislative authority at the state level and difficulties in coordinating efforts among various state departments. The OIG provided recommendations throughout the program that contributed to the positive outcomes in this final assessment. At this time, the OIG has no further recommendations for CMS. After the 2024 ending of the program, states continue to advance the initiatives established in the program by participating in the National Background Check Program Forum. With an increased focus on preventing abuse and neglect in nursing homes, CMS has

updated survey guidance within the requirements of participation. The National Background Check Program enabled states to create systems for conducting background checks on prospective employees, helping to screen out individuals who might pose a risk of abuse or neglect. LeadingAge has continuously advocated for programs that prevent abuse, neglect and misappropriation of resident funds.

**HUD Seeks to Serve Middle Income Housing.** On October 29, HUD proposed a new Mortgagee Letter (ML) to create a new set of underwriting thresholds for middle income housing as part of the Federal Housing Administration's (FHA's) Multifamily Housing Programs' underwriting standards and guidelines. The proposal would add a middle income option within HUD's 221(d)(4) multifamily mortgage loan insurance program. "Many households with incomes above levels usually targeted and defined as affordable (i.e., LIHTC, Section 8, etc.) face lack of available housing affordable to them. Defining this Middle Income housing segment can help investors, lenders, governments, and other stakeholders target their activities to these challenges," the draft mortgagee letter says. In the draft letter, HUD proposes to define, for the purposes of its Middle Income Housing new underwriting criteria, middle income housing as housing that is affordable to individuals and families with incomes from 60% to 120% of area median income (affordable is defined as housing costs not exceeding 30% of household income). Comments on the draft are due November 25. "As part of the Biden-Harris Administration's commitment to create additional housing, both affordable and market rate, FHA is introducing specific policy changes to support expansion of Middle Income Housing. These changes respond to market need using the existing FHA 221(d)(4) loan program," the draft letter says. Under the 221(d)(4) program, HUD insured mortgages for 105 projects with 17,222 units, totaling \$2.5 billion, in fiscal year 2023. Read the draft mortgagee letter [here](#). Read more about the 221(d)(4) program [here](#). While LeadingAge does not typically work on this mortgage insurance program, there has been a significant and growing interest in developing middle income housing over the past few years and HUD's revision of its main multifamily housing mortgage insurance program identifying and addressing these needs is a significant federal event.

**Nonprofit Nursing Homes Financially Challenged Post-PHE Funds.** On November 4, the journal Health Affairs published the study, "[\*Loss of Public Health Emergency Funds Challenges the Financial Viability of Nursing Homes, Especially Not-For Profit Facilities.\*](#)" The researchers analyzed financial and facility data from Medicare Cost Reports to assess how COVID-19 public health funding, including the Provider Relief Fund and the Paycheck Protection Program, allowed nursing homes to remain profitable through 2021. They examined financial performance metrics from 2018 to 2022 to track trends in the financial viability of for-profit and nonprofit nursing homes both leading up to and during the early pandemic years. The financial measures researchers calculated included net operating income, overall net income with public health emergency funds, and overall net income without these funds. To better understand the challenges nursing homes face, the researchers also evaluated occupancy rates, Medicaid payer mix, and nursing staff metrics. They noted concerns about related-party transactions, which they said could potentially bias financial performance results downward. Despite some limitations, including incomplete ownership information and variations in fiscal year reporting, the findings showed that nursing homes experienced declines in net operating income, which worsened during the pandemic. For-profit facilities generally reported smaller financial losses than nonprofits, the researchers found. Before COVID-19, for-profit nursing homes typically generated sufficient revenue to cover their operating costs, while nonprofits often relied on donations and other non-patient funding sources. Public health emergency funding helped stabilize nursing home operations through 2021. However, by 2022, as this funding was reduced, for-profits reported a modest net income of \$1.68 per resident day, whereas nonprofits reported losses of \$31.18 per resident day. The study also examined trends impacting nursing homes' financial performance, such as occupancy rates and staffing levels. Nonprofit nursing homes consistently maintained higher nurse staffing levels than for-profits, although both saw increased reliance on agency staff from 2018 to 2022. Researchers emphasized that

staffing remains a significant financial challenge that could affect future viability. While there may be opportunities to improve efficiency, establishing a sustainable long-term care financing system will be critical for nursing homes' continued solvency. Long-term care financing has long been a policy goal for LeadingAge, and the findings underscore the current financial instability within nursing homes. Without policy intervention to address funding issues, access to high-quality nursing home care could be significantly reduced. The LeadingAge [policy platform](#) includes long-term services and supports financing reform including the goal to Promote equitable LTSS financing reform to ensure that people at all economic levels (including "middle income") are able to access services when they need them. We will continue to advocate for financing reform as we begin a new Administration and Congress.

**2025 Call for Sessions at Annual Meeting Now Open:** Do you want to present at the 2025 LeadingAge Annual Meeting in Boston? Aging services providers and business members have the opportunity to share their original, thought-provoking approaches, ideas, models, best practices, and more with the LeadingAge community. [Mark your calendars for the December 9 deadline](#) and submit your proposal for consideration. [View guidelines and submission information here](#). The 2025 LeadingAge Annual Meeting will be held in conjunction with the [Global Ageing Network's](#) biennial conference.