



Nursing Home Weekly Recap

December 13, 2024

Nursing Home Network Call: No call in December. Due to the December holidays, the Nursing Home Network will not meet in December. The next meeting of the Nursing Home Network will take place on Tuesday, January 28 at 2 p.m. ET. We will review the latest nursing home updates from December and January, followed by time for feedback and discussion among members. 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: 2024 Holiday Schedule and 2025 Updates. Over 700 of your LeadingAge peers join us weekly for our National Policy Pulse calls when we keep members equipped to navigate the ever-evolving landscape of aging services national policy. Here's how to stay engaged in the new year: If you're currently registered for 2024 National Policy Pulse calls, you'll remain registered for 2025 calls automatically. If you're interested in signing up for the calls (and are currently not registered), please sign up using [the link on our National Policy Pulse webpage](#). Holiday schedule:

- No call on Monday, December 23 or Monday, December 30, 2024.
- Calls will resume on Monday, January 6, 2025, at 3:30 p.m. ET.

If you would prefer to be removed from the list, please email [Janine Finck-Boyle](#).

Staffing Rule Litigation Update: Plaintiffs in Texas Case to File Response Brief. December 13 will mark the next milestone in the Texas lawsuit in which LeadingAge is a party, as consolidated with the State of Texas' separate suit, challenging the CMS nursing home staffing rule. On that date, LeadingAge and our fellow plaintiffs will file a memorandum opposing the motion for summary judgment filed November 15 by the Department of Justice on behalf of HHS and CMS. The purpose of the government's November filing was to advance arguments defending the validity of the staffing standards, request a ruling in the government's favor and rebut arguments raised by the consolidated plaintiffs in our own motion for summary judgment, filed October 18. The December 13 filing offers plaintiffs the opportunity to respond with counterarguments as to why the standards must be set aside. We will provide a link to the filing as soon as it is available.

Developments in State-Led Legal Challenge to Staffing Rule. Judge Leonard Strand, who is presiding over the lawsuit filed by LeadingAge state affiliates and state Attorneys General to challenge the nursing home staffing standard, has taken the plaintiffs' motion for a preliminary injunction under advisement following a December 5 hearing. The hearing followed the submission of detailed written arguments by the plaintiffs and HHS/CMS, and it offered Judge Strand the opportunity to pose questions to attorneys for all parties about the legal issues involved. Judge Strand also approved the filing of a friend of the court brief by a group consisting of the Center For Medicare Advocacy, Justice In Aging, and other advocacy organizations, in support of HHS/CMS and the rule. A link to the filing is available in our [Nursing Home Staffing Mandates](#) serial post.

Action Alert on Medicaid Advocacy 2025: We have written an action alert on the need to protect Medicaid from cuts and programmatic changes that would limit access to Medicaid coverage and

services. Congress is actively discussing moving forward with budget reconciliation early in 2025 and as part of this process, Medicaid cuts are on the table for inclusion so we are asking that members express their support for the Medicaid program through the alert found [here](#).

MedPAC Recommends 3% Reduction in SNF Rates for FY2026. The Medicare Payment Advisory Commission reviewed the latest commission staff analysis of skilled nursing facility (SNF) payment adequacy in Medicare fee-for-service (FFS) on December 12 and based upon the analysis recommended that Congress reduce SNF rates by 3 percent in Fiscal Year 2026. It should be noted that MedPAC recommendations are rarely, if ever, adopted by Congress and cannot be adopted without Congressional or Administrative action. MedPAC examines four criteria in determining adequacy – beneficiary access to care, quality of care, access to capital, and Medicare payments to costs (or FFS Medicare margin). In all four categories, staff concluded that the indicators were mostly positive though they did note a slight decrease in the available supply of SNF services. The report also included an examination of the nursing home staffing rule and an analysis of nursing homes’ ability to comply. While MedPAC is not taking a position on the rule, they have asked staff to monitor its effects on nursing home finances.

CMMI Issues 7th Report to Congress Highlighting Strategic Accomplishments. The report issued December 11 notes that between 2022 and 2024, the Center for Medicare and Medicaid Innovation (CMMI) has served more than 57 million beneficiaries through more than 192,000 providers participating in 37 active models and initiatives. During this time, nine new models were announced among them the Guiding an Improved Dementia Experience (GUIDE), and Transforming Episode Accountability Model (TEAM). The [report](#) includes a summary of what CMMI has achieved in relationship to its 2021 strategic framework and 5 strategic pillars – Drive Accountable Care, Advance Health Equity, Support Innovation, Address Affordability, and Partner to Achieve System Transformation. It also provides overviews of the currently active models.

Care Compare Technical Users’ Guide Updated for Nursing Homes. The updated [Nursing Home Care Compare Technical Users’ Guide](#) is now available on the [Five Star Quality Rating System page](#). Starting with the January 2025 refresh, CMS will unfreeze four quality measures (QMs) that were previously frozen as of the April 2024 refresh. The measures are:

- Percentage of Residents Who Made Improvements in Function (short stay)
- Percent of Residents Whose Need for Help with Activities of Daily Living Has Increased (long-stay)
- Percent of Residents Whose Ability to Move Independently Worsened (long stay)
- Percent of High-Risk Residents with Pressure Ulcers (long stay)

These measures have been revised to reflect recent updates to the Minimum Data Set (MDS). For further details on these updates, please refer to CMS Memorandum [QSO-25-01-NH](#). The revised memo outlines the timeline for adjusting the quality measures so that all affected quality measures are updated at the same time.

Join the Institute of Healthcare Improvement’s (IHI) Age-Friendly Health Systems (AFHS) movement. Nursing Homes are invited to join IHI’s “Action Community” beginning in March 2025. The Action Community offers a free, seven-month virtual learning program designed to help nursing homes and

other healthcare systems accelerate the adoption [the 4Ms Framework](#). The 4Ms (What Matters, Medication, Mentation, and Mobility) are a set of evidence-based practices intended to make the complex care of older adults manageable, consistent, and reliable. Nearly 750 nursing homes are already recognized as Age-Friendly and are beginning to report [positive impacts on overall quality, residents, and staff](#). Log on [here](#) to learn more and register. Any questions, please direct to [Janine](#).

OSHA Work-Related Injury and Illness Data for Calendar Year 2023 Are Available to the Public. This is a reminder that the Occupational Safety and Health Administration (OSHA) is posting [2023 injury and illness data](#) for review by the public. The information includes summary data submitted by establishments from their OSHA Form 300A, which OSHA has been posting for a number of years. New in 2024, however, is that OSHA also has posted data from the more detailed Form 300 Log of Work-Related Injuries and Illnesses and Form 301 Injury and Illness Incident Report, which certain establishments are required to electronically submit under a [new tracking of workplace injuries and illnesses regulation](#) that took effect January 1, 2024. OSHA first posted selected 2023 data in April 2024 and has since added data, including on December 11. We encourage providers to review the 2023 data, which is presented through downloadable spreadsheets, to become familiar with what information is available about your organizations and, if needed, to review it for accuracy.

Hearing Proceedings Begin Concerning Marijuana Rescheduling. Formal hearing proceedings regarding the Drug Enforcement Administration's (DEA) proposed rescheduling of marijuana began on December 2. This first convening served as a procedural day to address legal and logistical issues, including for presiding Administrative Law Judge John Mulrooney to ask questions of the organizations and individuals DEA has selected and designated as hearing participants. Shortly after, on December 4, Judge Mulrooney issued a [pre-hearing ruling](#) that sets a schedule, running from January 1 to March 6, for when participants will present information and testimony in the hearing. DEA will be the first to present, then other witnesses will follow, starting with organizations supporting the proposed rescheduling and followed by organizations opposed. Once the hearing concludes, the ALJ will submit its findings to the DEA, which DEA will consider, along with public comments submitted during the rulemaking and other information, to make a final determination about whether and how to finalize the proposed rule.

OIG Issues MA Scam Alert Reminding Providers that Payments for MA Marketing Activities Are Prohibited. [The Medicare Advantage regulations related to marketing](#) explicitly state what marketing activities providers can and cannot do related to MA plans. The Health and Human Services Office of the Inspector General (OIG) issued a [special fraud alert](#) on December 11 highlighting the risks posed by MA organizations' (MAO) paying or rewarding healthcare providers in exchange for referrals. Providers should take note that such payments can come in various forms, including gift cards, goods or services. Regardless of its form, the OIG said that direct and indirect remuneration in exchange for referrals can be a sign of abusive marketing practices and it has observed an uptick in these practices in recent years. The alert outlines a series of "suspect characteristics" that providers should watch out for to avoid legal sanctions. Essentially, health care providers and their staff should not accept any type of remuneration (e.g., bonuses or gift cards) in exchange for referring or recommending patients to a particular plan or MAO. Providers should be wary of payments from plans that are disguised as payment for legitimate services but really in exchange for referrals. Providers shouldn't share patient information which could be used for marketing purposes by a plan or MAO including demographics or health status. For example, plans might be interested in current patients who will need long term nursing home care following post-acute care so they can market their institutional special needs plan (ISNP). Providers should review the

[MA regulations](#) regarding what activities are permissible and which are prohibited, and establish and communicate clear policies on these practices to prevent the organization and staff from running afoul of these situations.

Department of Labor(DOL) Releases November Jobs Report. The Department of Labor (DOL) released an encouraging [November Employment Situation Summary](#), known as the jobs report on Friday, December 6, 2024, showcasing robust growth in the U.S. labor market. The economy added 227,000 jobs in November, reflecting strong employment gains despite a slight increase in the unemployment rate to 4.2%. Key drivers of this job growth included recovery from hurricane disruptions and the resolution of a major strike that had temporarily sidelined workers in October. The health care sector, a consistent contributor to job creation, added 54,000 jobs in November—aligning with its 12-month average monthly increase of 59,000. Ambulatory health care services led the sector with 22,000 new jobs, including 16,000 in home health care services. Hospitals and nursing and residential care facilities also saw notable increases, adding 19,000 and 12,000 jobs, respectively. The report further highlighted upward revisions for two previous months. September’s job gains were revised up to 255,000 from 223,000, while October’s growth exceeded expectations, with 36,000 jobs added—24,000 more than initially reported.

Congress sends letter to Dr. Oz regarding Medicare Advantage and conflicts of interest. On December 10, Senators Warren (D-MA), Wyden (D-OR), Blumenthal (D-CT), Durbin (D-IL), Merkley (D-OR), and Cardin (D-MD) along with Rep Lloyd Doggett (D-TX) sent a letter to CMS Administrator Designate Dr. Mehmet Oz regarding his previous statements on Medicare Advantage vs. Traditional Medicare. The letter highlights Dr. Oz’s previous statements on wanting “Medicare Advantage for All” and calling traditional Medicare “highly dysfunctional.” They ask a number of questions about Dr. Oz’s investments including significant stock holdings in United Healthcare. The letter can be found [here](#).

Senate Judiciary Committee Holds Hearing Examining Impact of Mass Deportations. On Tuesday, December 10, 2024 Senator Dick Durbin(D-IL) Chair of the Senate Judiciary Committee held a hearing, [How Mass Deportations Will Separate American Families, Harm Our Armed Forces, and Devastate Our Economy](#). Senator Durbin and other lawmakers emphasized the importance of redirecting congressional efforts toward bipartisan solutions that provide border security while offering a pathway to citizenship for long-term residents and DACA recipients. Testimony was provided by a diverse panel of witnesses, including Aaron Reichlin-Melnick, Senior Fellow at the American Immigration Council; Foday Turay, a DACA recipient and Assistant District Attorney; Maj. General Randy Manner (Retired); Art Arthur, Resident Fellow in Law and Policy at the Center for Immigration Studies and Patty Morin. The hearing, marked by several fiery exchanges between multiple Senators and Senator Durbin noted in his opening statement the indispensable role immigrants play across a variety of sectors including caregiving. LeadingAge continues to call for comprehensive immigration reform to expand the aging services workforce recently releasing the [Immigration Imperative](#), a white paper offering practical policy recommendations to increase the pipeline of foreign-born workers in aging services.

Workforce Innovation and Opportunity Act(WIOA) Moves Toward Senate Passage. The Workforce Innovation and Opportunity Act (WIOA), which funds the majority of the nation’s workforce training programs, is making progress toward Senate approval. The bill has secured support from top committee leaders and may be included in an end-of-year package that will move alongside a Continuing Resolution (CR) that is expected to fund the government through March. However,

WIOA's passage faces hurdles due to holds placed by several senators, most notably Sen. Casey (D-PA), the outgoing Chair of the Senate Committee on Aging. Sen. Casey(D-PA), a prominent advocate for disability rights, has withheld his support for the bill, demanding it include provisions to eliminate the subminimum wage for workers with disabilities under the 14(c) exemption. This exemption allows employers to obtain certificates permitting them to pay disabled workers less than the federal minimum wage. Critics of the 14(c) policy argue that it is discriminatory and prevents individuals with disabilities from earning fair wages. The Biden administration [recently proposed](#) changes to phase out the use of 14(c) by halting the issuance of new certificates and allowing existing ones to expire over three years. However, this proposal will not be finalized before President Biden leaves office, and it remains uncertain whether President-elect Donald Trump supports ending the subminimum wage policy. Sen. Casey has long championed this cause, introducing the [Transformation to Competitive Integrated Employment Act \(S.533\)](#) to phase out the 14(c) exemption. LeadingAge has endorsed the House-passed version of the WIOA reauthorization, the [A Stronger Workforce for America Act \(H.R. 6655\)](#), which has already cleared the House and will work to secure the passage of a Senate version as well.

The Senate Passes the Older Americans Act Reauthorization(OAA). On December 10, the Senate passed the [Older Americans Act Reauthorization Act of 2024\(S.4776\)](#), a critical piece of legislation that strengthens and modernizes services for older adults through 2029. OAA, sponsored by Sen. Sanders(I-VT), includes provisions to enhance access to nutrition programs, caregiver support, elder justice initiatives, and other essential services that promote the well-being and independence of older adults. The bill now advances to the House of Representatives for consideration. LeadingAge influenced the reauthorization responding to Senate Health Education Labor and Pensions(HELP) committee [request for information](#), participated in key meetings with Senate staffers and worked with advocacy groups to shape and advance the OAA reauthorization and will be working to ensure House passage.

Senate Introduces Bill to Expand Health Care Apprenticeships. On December 6, Senator Wyden(D-OR), Chair of the Senate Committee on Finance introduced the [Fast Track Apprenticeship Act](#) which aims to streamline the development of new apprenticeship programs in healthcare and update and accelerate federal and state labor agencies' healthcare apprenticeship application processes to reduce delays and red tape for current and future programs. The bill would do so by requiring federal and state labor agencies to make determinations on health care apprenticeship applications within 45 days of receipt and requiring that the Department of Labor (DOL) digitize apprenticeship agreement forms, modernize the application process, and enhance accessibility for applicants. The bill also would provide employers the opportunity to revise and resubmit applications after rejection without enduring prolonged delays. By modernizing and expediting the review process, the bill facilitates easier pathways for employers to train aspiring health care professionals. This legislation is important for LeadingAge members because it reduces barriers to entry for healthcare workforce training through the apprenticeship program which is a bipartisan workforce program that healthcare is often not well represented in. We look forward to supporting this and other changes to the apprenticeship program that would allow more of our members to take advantage of this pathway for future staff recruitment.

Federal Reserve Bank of Chicago Releases Analysis of Childcare's Impact on Employment. The Federal Reserve Bank of Chicago has released a [comprehensive analysis](#) highlighting how childcare challenges

are increasingly keeping parents out of the workforce, with significant implications for employers. The study examines U.S. Census data across three periods—pre-pandemic, peak pandemic, and post-pandemic (2022–2024)—to understand the evolving impact of childcare issues on labor force participation. The analysis found that the number of parents citing childcare problems as the main reason for not participating in the labor force, working part-time, or missing workdays has risen by 19% from the pre-pandemic period to the present day and mothers with children under five are more than twice as likely to be affected by childcare issues compared to fathers or mothers with older children. Contributing factors include rising cost of childcare, with many families spending amounts comparable to housing costs on childcare. Additionally, the childcare industry faces its own labor shortages, with employment remaining 9% below pre-pandemic levels as of late 2023. This gap limits the availability of childcare services for working parents. There are significant implications for the labor market as employers report difficulty hiring due to potential employees being unable to secure reliable childcare and employees missing workdays or working part-time because of childcare issues can lead to decreased productivity and increased operational challenges. The analysis highlights the critical intersection between childcare accessibility and stabilizing labor markets. LeadingAge supports policies aimed at expanding access to childcare services, particularly for the aging services workforce, to address these challenges and support economic and workforce recovery.

KFF Examines Nursing Facility Characteristics Data. On December 6, KFF released [A Look at Nursing Facility Characteristics Between 2015 and 2024](#) with data from Nursing Home Compare and CASPER (Certification and Survey Provider Enhanced Reports). The topline findings of the analysis include:

- The number of CMS certified nursing homes dropped by 5% between July 2015 and July 2024 (the study period).
- The number of certified nursing homes and the number of nursing home residents is lower now than it was in 2015.
- During the same period, the average daily nursing care hours per resident day decreased by 8% (from 4.13 hours to 3.80), despite residents' health needs generally rising and the average number of deficiencies per facility increased.
- The decline in staffing hours was primarily caused by a 21% reduction in registered nurse (RN) hours and an 8% decrease in nurse aide hours. In contrast, licensed practical nurse (LPN) hours rose by 6% during the same period. The only year that did not see a decrease in hours per resident day was 2021 which is likely due to larger reduction in the number of residents due to COVID than the reduction in staff in that year.
- Both the average number of deficiencies and the proportion of facilities with serious deficiencies have risen over time, potentially due to increased oversight and reduced staffing levels. From 2015 to 2024, the average number of deficiencies grew from 6.8 to 9.5, a 40% increase. The share of facilities reporting serious deficiencies between this period rose from 17% to 28%. This rise was generally consistent, with the exception of a stable period between 2020 and 2022.
- KFF also reported that the share of facilities by ownership type and the share of residents with Medicaid as their primary payment, 6 out of 10 residents, was stable over time. It was noted that the for-profit facilities have received increased scrutiny.

This analysis points to the need for a large investment in nursing home staff which LeadingAge has called for repeatedly called for and adequate funding to prevent nursing home closures and ensure adequate staffing.

NEW DATE - Managed Care Solutions Network Meeting for December 18 at 3 p.m. ET. Mark your calendars! We had to reschedule our regular meeting of the Managed Care Solutions network. We will now be meeting on Wednesday, December 18 at 3 p.m. ET. Note that the meeting will be on a Wednesday not our typical Thursday. We will be discussing and seeking member feedback on the proposed CY2026 Medicare Advantage rule and priorities for 2025. Nicole will be sending out Zoom details shortly to all those who are signed up for the network. Please reach out to her directly if you would like to attend and are not yet registered.