

LeadingAge Policy Update



April 3, 2019

Overview:

With President Trump's 2020 budget proposal having been declared "dead on arrival" on Capitol Hill, Congress is pushing forward with work on budget and appropriations measures for the next fiscal year. One of the first considerations will be raising caps on discretionary spending that were imposed by the Budget Control Act of 2011. The budget caps would require draconian cuts in funding for a wide range of federal domestic programs, including affordable housing for older people. The House Budget Committee has approved an increase in the spending caps for fiscal years 2020 and 2021.

President Trump renewed the issue of eliminating the Affordable Care Act (ACA), but the Senate leadership has indicated no plans to take any legislative action, given that repeal legislation would not pass the House. We are monitoring this issue because any legislation on the ACA could become a vehicle for changes in Medicare and/or Medicaid.

On the Democratic side, there have been proposals for "Medicare for all", with legislation, H.R. 1384, having been introduced in the House to "establish . . . a national health insurance program to provide comprehensive protection against the costs of health care and health-related services . . . ". The legislation would include long-term services and supports under the program it would establish. However, the legislation skimps on details like the services to be covered, eligibility, and how the entire system would be financed. We have not taken a position on this bill; we are using it as an opportunity to engage policymakers in a discussion on coordinating long-term services and supports with the rest of the health care system and better mechanisms for financing.

Affordable Senior Housing

Preliminary work has begun on determining spending levels for housing programs for fiscal 2020. We are advocating for the following:

- Expanded funding for new Section 202 homes to \$600 million.
- Full funding for rental assistance contracts renewal.
- Full Service Coordinator funding, as well as \$30 million to expand Service Coordinators to more communities.
- Enactment of legislation to improve and expand the Low Income Housing Tax Credit program.
- Protection of the National Housing Trust Fund, Capital Magnet Fund, and Private Activity Bonds.

Our **Senior Housing Now** rally is scheduled for May 8 on the West Lawn of the Capitol. We have invited members of Congress to speak and we encourage as many LeadingAge members as possible to participate.



LeadingAge Policy Update



Medicare Observation Days legislation:

Legislation has been introduced in both the House and the Senate, H.R. 1682 and S. 753 respectively, to resolve the observation days issue by requiring all time Medicare beneficiaries spend in a hospital to count toward the three-day stay requirement for coverage of any subsequent post-acute care. Both bills are bipartisan. We strongly support the legislation and are urging legislators to cosponsor these bills.

Home and community-based services (HCBS):

Money Follows the Person (MFP): This demonstration program that helps states rebalance their Medicaid programs expired at the end of 2018. Congress passed the Medicaid Extenders Act of 2019, now law, to provide three months of funding for MFP, allowing states to use the money through the end of September 2019.

Both the House and Senate have passed H.R. 1839, the Medicaid Services Investment and Accountability Act, to extend the Medicaid home- and community-based services spousal impoverishment protections through September 2019 and provide an additional \$20 million for Money Follows the Person. We are hearing that the President plans to sign the bill into law.

Older Americans Act: The law that funds a wide range of home and community-based services, including congregate and home-delivered meals, family caregiver support, and transportation, is due for reauthorization this year. We are working with other stakeholders on reauthorization legislation, including an increase in funding to meet the needs of an aging population.

Workforce:

Geriatric Workforce Enhancement Program reauthorization: We are working for passage of S. 299, the Geriatrics Workforce Improvement Act introduced by Senators Susan Collins (R-ME) and Bob Casey (D-PA). This bill would help to ensure a more adequate supply of health care and other professionals trained and educated to meet the special needs of people as they age.

Nursing home regulation:

Nurse aide training lock-out: Since the automatic loss of training authority is statutory, we have worked with Rep. Sean Duffy (R-WI) on the introduction of the Nursing Home Workforce Quality Act, H.R. 1265. The bill has bipartisan cosponsorship and we are working to get more House members to sign onto it.

LeadingAge Policy Update



Requirements of Participation: The third and final phase of the new requirements of participation go into effect November 28, 2019. We have begun posting tools and holding webinars to help members prepare. We still have a few months left on the moratorium on civil monetary penalties for deficiencies cited under Phase II.

RoPs Phase 2 civil monetary penalty moratorium: In a Senate Finance Committee hearing on March 6, Dr. Kate Goodrich of CMS announced that the 18-month [moratorium](#) on Civil Monetary Penalties (CMPs) will be lifted in May 2019. Originally instituted in November 2017 with the implementation of Phase 2 of the Requirements of Participation, the moratorium had been put in place to allow more time for compliance in eight categories. While deficiencies were still cited in these areas on survey, enforcement remedies were, according to CMS, more educational in nature.

During the LeadingAge Leadership Summit in Washington, DC, on March 19, Centers for Medicare & Medicaid Services (CMS) representatives were on hand to meet with nursing home providers and present a [Skilled Nursing Regulatory Update](#). Topics included survey trends, a brief overview of the analysis that heralded the re-instatement of the health inspection star rating to the Five Star Quality Rating System, changes to the Five Star Quality Rating System, and the Patient-Driven Payment Model (PDPM).

Reference was made during this discussion to the MDS 3.0 Quality Measures User's Manual. This manual provides detailed information on how the Quality Measure star rating is calculated, including an explanation of sample and record selection methodology for short-stay and long-stay measures, and any exclusions that may apply to the calculation of a given quality measure. Points of interest include the exclusion of hospice patients from the long-stay weight loss quality measure and the long-stay antianxiety / hypnotic medication measure. A more guided view of the User's Manual is available on the [LeadingAge website](#).

The [Five Star Quality Rating system](#) is getting a make-over, effective April 24, 2019. Frozen in February 2018, the Health Inspections star rating will return and will include results from surveys conducted on or after November 28, 2017. The Staffing domain introduces new hurdles including new staffing thresholds, increased weighting for RN staffing and a significant change to the RN on-site threshold. Additionally, the Quality Measures of the Five Star Rating System will feature higher thresholds, new weighting and a separation of data for long-stay versus short-stay residents.

Appendix Q of the State Operations Manual has been revised. [Core Appendix Q](#) offers updated guidance on citing immediate jeopardy (IJ). Surveyors must now evaluate on the basis of the likelihood of harm, rather than the potential for harm, and are newly instructed to consider the aspect of psychosocial harm. These changes are effective immediately.



LeadingAge Policy Update



Elimination of inappropriate antipsychotics use: Facilities that have struggled to reduce the use of antipsychotic medications will now be subject to [enhanced oversight and enforcement](#). Identified as “non-improving late adopters,” facilities with two or more deficiency citations in the areas of Chemical Restraints (F605), Dementia Care (F744) or Psychotropic Medications (F758) may be subject to fines and penalties to include discretionary Denials of Payment for New Admissions and Civil Monetary Penalties.

Trauma-informed care: In an effort to assist in the implementation of Trauma-Informed Care, LeadingAge announces the release of a new resource, [Implementing Trauma-Informed Care: A Guidebook](#). Available to members, this guidebook is a follow up to *Foundations of Trauma-Informed Care* and provides strategies for compliance with Phase 3 of the Requirements of Participation while improving an organization’s culture for residents, their families and the staff who care for them.

Medicare Patient-Driven Payment Model (PDPM):

The new Medicare payment system for skilled nursing facilities will go into effect on October 1, 2019. To prepare, SNFs will need to learn the new minimum data set (MDS) requirements and coding according to the ICD-10 system. We are making tools and information, including a [checklist](#), available to members to help them prepare.

Senior housing resources:

In addition to working on fiscal 2020 funding for federal senior housing programs, we are advocating for the reintroduction of legislation to improve and expand the Low-Income Housing Tax Credit program. Key areas of improvement for us are in better serving low income older adults and preserving LIHTC housing.

We also expect a lot of activity in the 116th Congress on the National Housing Trust Fund and the Capital Magnet Fund, which provide significant capital and operating subsidies for affordable housing. Both these funds get their resources from Fannie Mae and Freddie Mac, whose next regulator may call for halting funding into the HTF and the CMF.

Immigration:

We have raised concerns about the loss of temporary protected status for thousands of immigrant long-term care workers who now will be subject to deportation according to Trump Administration policy.

LeadingAge Policy Update



In view of the number of long-term services and supports workers who have come to the United States from other countries, mostly on the basis of family reunification, we would be concerned about any proposals to restrict family-based immigration.

We are looking into the possibility of legislation to create a guest worker program that would authorize long-term services and supports providers to sponsor people from other countries to work in the sponsoring organizations for a limited period of time.

We also filed comments in opposition to the rule proposed by the Department of Homeland Security to broaden the number of federal programs the federal government would consider in making public charge determinations on admissions of potential immigrants.

Center for Workforce Solutions:

LeadingAge partnered with the Gerontological Association of America, AHCA/NCAL and Argentum to make March 3-9 this year's Careers in Aging Week.

The designated week allowed our member organizations to make students aware of the rich variety of jobs in the field of aging services. Participating members invited students to their organizations for different events or reached out to local schools to talk to students about our field. We are provided tools and resources for members to participate, and these are available on an ongoing basis.

Center for Managed Care Solutions and Innovations:

We posted comments on the 2020 Advance Notice of Methodological Changes for Medicare Advantage (MA) Capitation Rates and Part D Payment Policies (the Advance Notice) and Draft Call Letter CMS released on January 30. Key elements involve the way Medicare Advantage and Part D plans will be paid and operate in 2020, including new Special Supplemental Benefits for the Chronically Ill (SSBCI) option, new plan performance measures, and payments for crossover claims for dual eligibles.

Regulatory tracker:

Our [Regulatory Roundup 2.0](#), is a quick and easy tracker to help members find pertinent rules and federal regulations, with timelines for submitting comments and links to any comments LeadingAge may have submitted.

Guidance on marijuana and weapons policies:

We have published guidance for members on [medical marijuana](#) and [weapons](#) policies in aging services organizations.



LeadingAge Policy Update



2030 Scenario Planning for Aging Services:

In an uncertain political and regulatory environment with multiple forces impacting aging services, it is imperative that we help our provider members take the initiative to plan for possible futures. We engaged the Institute for Alternative Futures to help us with 2030 Scenario Planning for Aging Services and developed a [toolkit](#) for members.