

LeadingAge Policy Update



April 22, 2019

Overview:

Congress is pushing forward with work on budget and appropriations measures for fiscal year 2020, which begins on October 1. 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 and home- and community-based services for older people. The House Budget Committee has approved an increase in the spending caps for fiscal years 2020 and 2021.

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.

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): 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.



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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.

“Medicare for All”:

Rep. Pramila Jayapal (D-WA) has introduced H.R. 1384 to “establish . . . a national health insurance program to provide comprehensive protection against the costs of health care and health-related services . . . “. The bill 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, provider reimbursement rates, and how the entire system would be financed.

Senator Bernie Sanders (I-VT) has introduced a somewhat different measure, S. 1129. His broad-based replacement of the current health care system would do away with private insurance, with all health care coverage coming through a government program. The plan would cover home- and community-based long-term services and supports, as well as vision and dental care. Nursing home care would be covered by Medicaid.

It is unlikely that either of these measures will be enacted in the present Congress. We have not taken a position on this legislation; 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 our sector.

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.

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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), originally imposed in November 2017, will be lifted in May 2019.

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, changes to the Five Star Quality Rating System, and the Patient-Driven Payment Model (PDPM). CMS discussed issues relating to quality measure star ratings as set out in the MDS 3.0 Quality Measures User's [Manual](#).

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 includes 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.

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.

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Hazardous Waste Disposal Rule: Effective Aug. 22, 2019, nursing homes and residential providers of hospice services will no longer be allowed to dispose of pharmaceuticals by flushing them down a toilet or sink drain. The prohibition is part of a new rule from the Environmental Protection Agency (EPA). Pharmerica, a LeadingAge business member, will present an upcoming [webinar](#) to discuss the impact of this rule on May 15.

CMS plan for Quality of Nursing Home Care: In a blog posted on April 15, CMS Administrator Seema Verma discussed the agency's [five-part plan](#) to ensure quality care in nursing homes. Many elements of the plan are already in effect, but it will include more CMS oversight of state survey agencies and more guidance on citing immediate jeopardy.

Skilled Nursing Facilities: Proposed Fiscal 2020 Medicare Rule

CMS posted the [proposed rule](#) late on Friday, April 19, along with a [fact sheet](#). Among many other provisions, the proposed rule, “projects aggregate payments to SNFs will increase by \$887 million, or 2.5 percent, for FY 2020 compared to FY 2019. This estimated increase is attributable to a 3.0 percent market basket increase factor with a 0.5 percentage point reduction for multifactor productivity adjustment.” CMS reminds nursing homes that the Patient Driven Payment Model (PDPM) reimbursement system will take effect for fiscal 2020. LeadingAge is analyzing the rule and will file comments on it; the comment deadline is June 18.

Hospice: Proposed Fiscal 2020 Medicare Rule

CMS also issued the [proposed rule](#) for hospice providers on April 19, with a [fact sheet](#). CMS notes that the proposed rule includes “changes in its inpatient and home care hospice rates to improve payment accuracy within the system. This includes rebasing the CHC, GIP, and IRC per diem payment rates.” LeadingAge will file comments on the proposed rule.

Medicare Advantage 2020 call letter:

CMS’s final 2020 Medicare Advantage call letter made two key changes in policy: a larger-than-expected rate increase for Advantage plans – 2.53%; and permission for plans to provide non-medical capital and structural improvements to beneficiaries’ homes as part of Special Supplemental Benefits for the Chronically Ill. The letter specifies that these improvements would have to enhance the beneficiary’s health or functioning relative to the beneficiary’s chronic health condition. [More information.](#)

Senior housing funding:

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.



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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.

Home- and Community-Based Services/Settings Rule:

On April 17, the Medicaid and CHIP Payment and Access Commission (MACPAC) convened a telephone discussion with LeadingAge and LeadingAge members to discuss the home and community-based services (HCBS) settings rule, implementation of the rule across states and its implications for providers and for Medicaid beneficiaries. Seven LeadingAge members from six states (Colorado, Indiana, Michigan, New York, Ohio, Wisconsin) participated, including representatives from adult day services, assisted living, and life plan communities. Members raised several concerns about the rule, including its potential impact on providers co-located with a nursing home and the unreimbursed costs associated with compliance. They also provided examples of conflicts between state law and regulation and the settings rule.

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.

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. We are providing tools and resources for members to use on an ongoing basis.



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Considering this was our first year participating in this special week and the short timeframe we had to act, we are very pleased with the social media coverage we achieved. Our posts reached a potential audience of almost 7,000 people on Facebook, 126,000 people on Twitter, and more than 8,000 people on LinkedIn.

Tools and resources:

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.

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.

Life Safety/Emergency Preparedness newsletter:

Our new monthly [newsletter](#) will focus on nursing home compliance with emergency preparation and life safety requirements.

Guidance on marijuana and weapons policies:

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

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.