*June 14, 2019*

**Overview:**

Back in session following the Memorial Day recess, the House is pushing forward with appropriations measures for fiscal year 2020, which begins on October 1. There still is no agreement, however, among the House, the Senate, and the White House on raising caps on discretionary spending that were imposed by the Budget Control Act of 2011. Meanwhile, draft legislation to reauthorize the Older Americans Act is circulating in the Senate Committee on Health, Education, Labor and Pensions (HELP), bills have been introduced to expand and make a wide range of improvements in the Low-Income Housing Tax Credit, and the Senate Finance Committee leadership continues moving forward on legislation to continue the income tax medical expense deduction’s 7.5% adjusted gross income threshold.

**Affordable Senior Housing – Fiscal 2020 Funding**

The House Appropriations Committee has approved a Transportation/Housing and Urban Development (HUD) fiscal 2020 spending measure that would provide the largest increase in funding senior housing programs have received since 2010. The legislation includes the following provisions:

* $803 million for Section 202, a $125 million increase over this year’s spending. This amount includes $140 million for new construction and $95 million for service coordinators, the largest increase in funding for this program since 2010;
* $259 million for housing for people with disabilities;
* Full renewal funding for all Section 202 rental assistance contracts, including Project-Based Rental Assistance and Project Rental Assistance Contracts.
* $10 million for HUD’s home modification program for older adults.
* A ban on the use of funds to carry out a HUD-proposed regulation that would force families out of assisted housing if any member of the household failed to meet immigration status documentation requirements.
* Language in the report accompanying the bill directs HUD’s research office to collaborate with CMS on the use of Medicare and Medicaid funds to support programs making affordable senior housing a platform for services to promote aging in community.

The House leadership plans to combine fiscal 2020 spending bills into a series of so-called “minibuses” to facilitate their passage and hopes to have all twelve bills through the House by the July 4 recess.

We also expect the Senate Appropriations Committee to begin work on its version of 2020 funding for federal housing programs. But before legislation can be finally enacted, Congress and the White House will have to reach an agreement on raising the budget caps.

**Proposed HUD rule on immigration status:**

We are extremely concerned about a rule HUD proposed on May 10, which would end the practice of having “mixed status” families in federally assisted housing. The proposed rule would also require noncitizens who are 62 years old and older, who currently are only required to provide a signed declaration of eligible immigration status and a proof of age document, to submit immigration documentation. HUD’s impact analysis of the proposed rule estimates that 108,000 people would be affected, at least 70% of whom are eligible for HUD assistance. In addition to supporting legislative nullification under the HUD fiscal 2020 spending bill, we are filing comments in opposition to the rule, including member input. Comment deadline is July 9, 2019.

**Low-Income Housing Tax Credit:**

On June 4, identical bills were introduced in the Senate (S. 1703) and House (H.R. 3077) by Senators Maria Cantwell (D-WA), Johnny Isakson (R-GA), Ron Wyden (D-OR), and Todd Young (R-IN), and Representatives Suzan DelBene (D-WA), Kenny Marchant (R-TX), Don Beyer (D-VA), and Jackie Walorski (R-IN). The bills would expand state Housing Credit allocations by 50% and make a long list of other improvements, including a 50% basis boost for communities serving extremely low income households, a 30% basis boost for communities in rural areas, some fixes to year-15 special right of first refusal issues, and a 4% minimum credit rate for credits used for bond-financed developments and for acquisitions.

**Medicare Observation Days legislation:**

When the House Ways and Means Health Subcommittee held a hearing May 21 on *Protecting Patients from Surprise Medical Bills*, LeadingAge joined a coalition of other stakeholders in telling the subcommittee that the Medicare "observation stays" issue is a big part of the problem that needs to be resolved. Our [statement](https://www.leadingage.org/sites/default/files/5.21.19%20Observation%20Coalition%20Statment%20for%20the%20Record.pdf) for the hearing record pointed out that Medicare beneficiaries whose hospital stays are designated as outpatient/observation are "surprised" when confronted with bills for post-acute care not covered by Medicare because of the beneficiary's failure to meet the three-day inpatient stay requirement. We continue to urge Congress to pass legislation, H.R. 1682 and S. 753, to require all time Medicare beneficiaries spend in a hospital to count toward the three-day stay requirement for coverage of any subsequent post-acute care.

**Home and community-based services (HCBS):**

***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. The Senate Health, Education, Labor and Pensions Committee has issued a draft measure that we are reviewing. On the House side, the Education and Labor Committee held a hearing to discuss key OAA programs; the committee plans to release a legislative package once consensus is reached among its members.

In addition, funding for Older Americans Act programs in fiscal 2020 will be taken up by the House during the week of June 10 as part of an appropriations “minibus”. The spending bill has the following provisions:

* $1 billion for senior nutrition programs, a $93 million increase over current spending;
* $245 million for family caregiver support, an increase of $26 million over this year;
* $3.8 billion for Low-Income Home Energy Assistance, a $150 million increase;
* $760 million for Community Services Block Grants, which many states use to provide home- and community-based services. This funding level represents an increase of $35 million.

This appropriations measure faces the same challenge as the Transportation/HUD spending bill, the need for consensus among the two houses of Congress and the President on total spending levels for fiscal 2020, now less than four months away.

***Home Health Payment Innovation Act***: On May 8, Rep. Terry Sewell (D-AL) introduced H.R. 2573, a companion measure to S. 433, to prevent unwarranted Medicare payment rate cuts by basing any behavioral adjustment on actual evidence and limit the risk of disruption in care by providing a phase-in for any necessary rate increases or decreases. The legislation will also waive homebound rules for some Medicare beneficiaries. The bill has bipartisan cosponsorship, and LeadingAge, ElevatingHome, and the Visiting Nurses Associations of America support the legislation.

**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.

In the House, H.R. 2781, the Educating Medical Professionals and Optimizing Workforce Efficiency and Readiness (EMPOWER) for Health Act, has been introduced. The legislation will reauthorize the Title VII health professions education and training programs from fiscal 2020 through 2024.

**“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.

The House Ways and Means Committee held a hearing on June 12 on “Pathways to Universal Health Coverage.” However, it is unlikely that this type of legislation 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.

***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. These include resources on [trauma-informed care](https://www.leadingage.org/tools-information/trauma-informed-care-resources) and a [staff competency toolkit](https://www.leadingage.org/members/staff-competency-toolkit%C2%A9-available).

***Special Focus Facilities (SFF):*** In response to an inquiry from Pennsylvania Senators Bob Casey (D) and Patrick Toomey (R), CMS has issued a list of 400 nursing homes that for the first time includes homes that have been “candidates” for SFF designation as well as those that have received this designation. Out of the 400 nursing homes, 14 are current LeadingAge members. All of our members on the list were in the candidate category. Our statement:

"LeadingAge, whose members include nearly 2000 nonprofit skilled nursing providers nationwide, stands for quality nursing home care," said Katie Smith Sloan, president and CEO, LeadingAge. "Our goal is for every nursing home in the country to be a place where any of us would be willing to live or have a family member stay if we needed the level of care nursing homes provide. We support efforts to increase ease of access to and transparency around information regarding care of older adults; we believe that consumers should have as much information as possible on any provider they are considering for care. It is important to note that some providers on the Special Focus Facilities list do improve to such as extent that they are removed and become quality performers. LeadingAge believes the best way to promote improvement is to increase attention on and enforcement of care standards on the nursing homes that need it most -- those that do not meet card standards under OBRA."

*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). On May 15, Pharmerica, a LeadingAge business member, presented a webinar to discuss the impact of this rule; a recording is available on the [LeadingAge Learning Hub](https://learninghub.leadingage.org/).

**Skilled Nursing Facilities: Proposed Fiscal 2020 Medicare Rule**

CMS posted the [proposed rule](https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-08181.pdf) late on Friday, April 19, along with a [fact sheet](https://www.cms.gov/newsroom/fact-sheets/proposed-fiscal-year-2020-payment-and-policy-changes-medicare-skilled-nursing-facilities-cms-1718-p). 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 has drafted and is circulating comments on the rule; the comment deadline is June 18.

**Reduction in Regulatory Burden: Patients Over Paperwork**

On June 6, CMS issued a [request for information](https://www.cms.gov/newsroom/press-releases/cms-seeks-public-input-patients-over-paperwork-initiative-further-reduce-administrative-regulatory) in an effort to continue the progress the agency says it has made over the last year and a half in reducing federal regulatory burdens on healthcare providers. We are soliciting input from LeadingAge members and will submit recommendations to CMS; the deadline is August 12.

**Hospice: Proposed Fiscal 2020 Medicare Rule**

CMS also issued the [proposed rule](https://s3.amazonaws.com/public-inspection.federalregister.gov/2019-08143.pdf) for hospice providers on April 19, with a [fact sheet](https://www.cms.gov/newsroom/fact-sheets/fiscal-year-2020-hospice-payment-rate-update-proposed-rule-cms-1714-p). 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 has drafted and is circulating comments on the proposed rule.

**PACE Final Rule for 2020:**

On May 28, CMS announced a new [final rule](https://www.federalregister.gov/documents/2019/06/03/2019-11087/medicare-and-medicaid-programs-programs-of-all-inclusive-care-for-the-elderly-pace) for Programs of All-Inclusive Care for the Elderly (PACE) programs. The rule increases flexibility for PACE programs and may result in expanded access to PACE for consumers. Our [summary](https://leadingage.org/regulation/cms-final-rule-increases-flexibility-pace-organizations) of the final rule. We briefed members on it June 11.

**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](https://www.leadingage.org/center-managed-care/cms-finalizes-chronically-ill-benefits-dsnp-integration-and-telehealth-policies?mkt_tok=eyJpIjoiT1dWbE1qVXpaVEE0Tm1NMCIsInQiOiI4Zm5DZHEwNFpxVlo5T3hcL1E5cUlRRk10VmNETmNST2VjdEJ5WWlqekdyTzJhVVhIaitiU3h2V1J1UGVhdHRCRXJuU2xSTnUzdDZxMEhMZUtQdWwySjdnYVwvXC9Oc05EcjN6U3l5VlB4emtwWTc0cXFTNVhtNHN5Q09VMVZzOHozSCJ9).

**HUD Data Collection Initiative:**

LeadingAge has filed [comments](https://drive.google.com/file/d/1sL_6J2LxzpC6ycPd3lydgpkCnRDUU4jK/view) with the Department of Housing and Urban Development (HUD) on the agency’s information collection proposal, the National Standards for the Physical Inspection of Real Estate (NSPIRE). Properties’ participation initially would be voluntary. We urged HUD to keep the abilities and resources of smaller properties in mind in considering processes for submitting data and to allow properties to use software they already have for reporting, rather than requiring the installation of any new computer systems.

**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.

**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 [webinar](https://learninghub.leadingage.org/courses/are-you-clinically-ready-for-pdpm), available to members to help them prepare.

**Connecting Generations in Senior Housing**

A new [toolkit](https://www.ltsscenter.org/new-toolkit-connecting-generations-in-senior-housing/?mkt_tok=eyJpIjoiWW1NNU5EUXlZV1ZqTlRFeSIsInQiOiJTTHUzYmVPbm1DR082a1wvN1p1Z2k4b1VcL1NuZ2ZYekNkMnM4NFhqYXNMdTMxc3NrRFp5TWRVcStYaEFmNlNkbzc0NnI5V3U0c0QwNmdQQWx0YksxTFk0ak1zeEx1XC9qYVNxbEFraVRINlJzTXNZOTQzQlozTVpEeDZmemdXN05LWCJ9) from the LeadingAge LTSS Center @UMass Boston and Generations United provides practical information, guidance, and templates to help senior housing providers, and other organizations serving older adults, implement high-quality intergenerational programs that will benefit elders and young people in their communities.

**Regulatory tracker:**

Our [Regulatory Roundup 2.0,](https://www.leadingage.org/regulatory-roundup-20) 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](https://leadingage.org/regulation/nursing-homes-new-newsletter-life-safetyemergency-prep?mkt_tok=eyJpIjoiTnpGbE9UQTRZVGM0TTJVeSIsInQiOiJROHkxUVwvRHZuVGZkTmE4eit3SlwvYURXUGZpNHQyYjZcL3hCaGQ3VDBqNHFaSlpNUWNTRmdsVFwvbUE2MWo5NVg2SVU5QWZuUFhcLzlTNHo3RThzXC9CZTRwQjdRRE5IQ29cL0liMlByZ3FlNkkrTHFhRkpoeDlIREwyVlB3MDFlN083MGYifQ%3D%3D) 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](http://www.leadingage.org/legislation/medical-marijuana-what-you-need-know) and [weapons](http://www.leadingage.org/weapons-policies-aging-services-organizations) 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](https://www.leadingage.org/2030scenarios) for members.