

# LeadingAge Policy Update



*July 31, 2019*

## **Overview:**

With Congress about to begin a month-long August recess, the congressional leadership and the White House have reached agreement on a two-year budget plan to cover fiscal years 2020 and 2021. This agreement will allow work on fiscal 2020 appropriations bills to move forward, especially in the Senate.

The House already has passed 10 of the 12 spending measures for 2020, including those covering senior housing and services programs. However, the House bills are based on a higher total spending limit than allowed under the budget deal, so the House-passed appropriations will have to be adjusted as the fiscal 2020 spending process continues.

The budget deal reportedly eliminates the sequester provisions of the Budget Control Act of 2011 for federal discretionary programs, those subject to the annual appropriations process. In the future, we will not face the threat of large and growing cuts to senior housing and services programs as a means of bringing total federal spending within unrealistic limits legislated several years ago.

However, the 2% Medicare sequestration will continue, and in fact is being extended for another two years, through fiscal 2029, as an offset for the higher spending allowed under the budget deal.

## **Affordable Senior Housing – Fiscal 2020 Funding**

On June 25, the House passed a Transportation/Housing and Urban Development (HUD) fiscal 2020 spending measure, H.R. 3055, 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.



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Now that the budget deal has been reached, we expect the Senate Appropriations Committee to begin work on its version of 2020 funding for federal housing programs. We are urging senators to join the House in increasing resources for senior housing.

## **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 filed comments in opposition to the rule.

## **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:**

We continue to work for passage of H.R. 1682 and S. 753, legislation to require all the time a Medicare beneficiary spends in a hospital to count toward the three-day stay requirement for coverage of any subsequent post-acute care.

## **Elder Abuse:**

On July 23, the Senate Finance Committee held a second hearing on combatting abuse of elders, focusing on a just-issued [report](#) by the Government Accountability Office, *Nursing Homes: Improved Oversight Needed to Better Protect Residents from Abuse*. We filed a [statement](#) for the hearing record, pointing out the substantial mechanisms that already exist in law and regulation to detect, deter,



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punish, and prevent abuse of nursing home residents. We also described the work LeadingAge members have done to shelter elders who have experienced abuse in the community and to enhance protections for nursing home residents.

## 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.

Fiscal 2020 funding for Older Americans Act programs passed the House June 19 as part of an appropriations “minibus”, H.R. 2740. 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.

As with the Transportation/HUD spending bill, we are urging the Senate to follow the House’s lead in raising spending levels for programs that help families with community-based services.

**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.

**Money Follows the Person/Protection against spousal impoverishment:** On July 25, the Senate passed an amended version of H.R. 3253, the Empowering Beneficiaries, Ensuring Access, and Strengthening Accountability Act, already passed by the House. The legislation extends protection against impoverishment for spouses of Medicaid beneficiaries receiving home and community-based services



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through December 31, 2019. The bill also provides \$245 million for the Money Follows the Person Rebalancing Demonstration to support program services being provided through the end of the year. The House now must consider the Senate amendments to the bill before it can become law.

## **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, the Energy and Commerce Committee has approved H.R. 2781, the Educating Medical Professionals and Optimizing Workforce Efficiency and Readiness (EMPOWER) for Health Act, which is now ready for consideration on the House floor. The legislation will reauthorize the Title VII health professions education and training programs from fiscal 2020 through 2024.

The committee also approved H.R. 728, the Title VIII Nursing Workforce Reauthorization Act, to extend federal nursing workforce development programs through 2024. The legislation adds "the elderly" to the groups of underserved and high-risk populations on which efforts to strengthen capacity for basic nurse education and practice are to focus.

In addition, the committee approved the Lifespan Respite Care Reauthorization Act, H.R. 2035. The bill, introduced by Reps. Langevin (D-RI) and McMorris Rodgers (R-WA), would reauthorize the Lifespan Respite Care program at \$20 million in FY 2020, and increase the funding level by \$10 million each year thereafter through FY 2024.

## **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](#) and a [staff competency toolkit](#).

On July 17, CMS issued a [proposed rule](#) to allow greater flexibility on compliance with some of the RoPs III provisions, including the designation of specific staff as compliance officers, grievance officers, and compliance liaisons. CMS also issued a final rule on arbitration agreements, specifying that they are not to be made a condition of entry into a nursing home.

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**Quality reporting noncompliance:** CMS has notified nursing homes and hospices if they are not in compliance with quality reporting requirements and therefore liable for a 2% Medicare rate reduction beginning October 1. Providers should check their CASPER folders for any CMS notification they may have received; they have until August 15 to request reconsideration.

**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](#).

## Skilled Nursing Facilities: Final Fiscal 2020 Medicare Rule

CMS posted the [final rule](#) on July 31, effective as of October 1, 2019. The rule allows for a somewhat smaller payment update, 2.4%, than would have been provided under the rule proposed in April. The 2.4% update is a national average; individual nursing homes' rates will depend on local wage indexes, the homes' compliance with quality reporting, and their performance on value-based purchasing. Medicare 2% sequestration also will continue to reduce payments. Most nursing homes are likely to experience essentially flat funding. The new payment model, PDPM, also goes into effect October 1.

## Hospice: Proposed Fiscal 2020 Medicare Rule

CMS 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 filed [comments](#) on the proposed rule June 18.

## Home health proposed rule

CMS released [the proposed Medicare home health payment rule](#) for calendar 2020 on July 11. The proposal has positive aspects, including allowing paraprofessionals to work to the highest level of their training and pegging payment rates to clinical factors and beneficiary needs. However, we are concerned about the combined negative financial impact of the rule that would result from an increased reliance on unobserved, prospective behavior assumptions, the proposal to eliminate RAP payments, and the ongoing phase-out of the rural add-on payments. Comments are due September 9; we are seeking member input and will let CMS know of our concerns.

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## **PACE Final Rule for 2020:**

On May 28, CMS announced a new [final rule](#) 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](#) 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](#).

## **HUD Data Collection Initiative:**

LeadingAge has filed [comments](#) 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](#), available to members to help them prepare.

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## **Connecting Generations in Senior Housing**

A new [toolkit](#) 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](#), 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.