

# NEWS & NOTES

Leading Stories from LeadingAge New Jersey



## News

### **Brian Montgomery Confirmed as FHA commissioner & Assistant Secretary for Housing at HUD**

Brian Montgomery was confirmed by the Senate to be the next Federal Housing Administration (FHA) Commissioner / Assistant Secretary for Housing at HUD on Wednesday, May 23. This will be Montgomery's second time serving as the FHA Commissioner.

The banner features the LeadingAge New Jersey logo on the left. The main text reads: "LeadingAge New Jersey Annual Meeting &amp; Expo", "Harrah's Waterfront Hotel &amp; Conference Center", "Atlantic City, New Jersey", and "June 5 - June 7, 2018". Below this is the slogan "Life ON PURPOSE" where "ON" is in a green circle. On the right is a circular inset photo of an elderly woman wearing headphones and smiling.

**2018 Annual Meeting & EXPO**  
**OPENING KEYNOTE: Driving Miss Norma**  
Wednesday, June 6th 11:30 a.m.  
General Session



### ***"I'm ninety years old . . . I'm hitting the road"***

Driving Miss Norma is about a families journey of saying "Yes" to living. After a diagnosis of uterine cancer and advised to undergo surgery, radiation, and chemotherapy, Miss Norma decided to hit the road and see the country.

And so Miss Norma took off on a journey in a thirty-six-foot motor home with her retired son Tim, his wife Ramie and their standard poodle Ringo.

Driving Miss Norma is the infectiously joyous chronicle of their experiences on the road. It portrays a transformative journey of living life on your own terms that show us it is never too late to begin an adventure, inspire hope, or become a trailblazer.

Come and join us to be inspired and to inspire others!

### **LIMITED TIME OFFER!**

Pre-order your hardcover copy of  
**DRIVING MISS NORMA: ONE FAMILY'S JOURNEY SAYING "YES" TO LIVING"**  
by June 1st 7:00 p.m. to guarantee availability for the Annual Meeting.

### **\*ONLINE REGISTRATION DEADLINE EXTENDED!\***

You may have noticed the online registration system for our Annual Meeting & EXPO was down the past couple of days - we are happy to announce the system is back up and running **AND** the registration deadline has been extended until **May 30th**.

Register by [clicking here!](#)

## **Notes & Updates**

### **Family Members and Volunteers who Assist Residents with Dining**

The New Jersey Department of Health (DOH) has provided information as an interim communication prior to its official memorandum concerning family members and volunteers who assist residents with dining.

The regulations in F811 for paid feeding assistants exempts families and volunteers. During survey activity, if families are feeding residents, DOH will determine if the facility has policies/procedures in place to ensure the residents' safety during meal time/feeding.

Families are not prohibited from feeding residents who have dysphagia, special diets, or restrictions. DOH would cite if the surveyor identifies an issue with the family feeding a resident who is not properly positioned or requires any special requirements which were not implemented.

## **Successful 202 Amendment**

An amendment from Congresswoman Debbie Wasserman Shultz to increase the House HUD Subcommittee bill's funding for Section 202 by \$46 million (to be level with the FY'18 bill's level for the 202 program) was accepted by voice vote in the full House Appropriations Committee Thursday, May 24.

Before the vote, House Appropriations HUD Subcommittee Chair Mario Diaz-Balart supported the amendment, saying "the amendment unites everyone on the Committee." Subcommittee Ranking Member Price also strongly supported the amendment before the vote.

There will be \$46 million for new 202 construction in the House's FY'19 HUD appropriations bill. (LeadingAge is seeking \$600 million in new 202 construction funding for FY19).

Congressman David Price was determined to increase several accounts and was successful in increasing funds for the 202 program with the help of his supportive committee members.

The Senate bill begin consideration of its HUD FY'19 bill the first full week of June.

## **NLRB Mulling Rulemaking to Address Joint-Employer Standard**

Earlier this month, the National Labor Relations Board (NLRB) announced that it had commenced the internal process necessary to consider rulemaking to address the standard for determining joint-employer status under the National Labor Relations Act (NLRA).

The joint-employer standard comes into play when two or more businesses share control and responsibility over certain employees and is most often seen in the context of franchise operations, subcontracting arrangements and, in the case of LeadingAge members, use of contract workers. If joint-employment is found to exist, each business is held to be responsible for the employment practices and collective bargaining (if one of the businesses is unionized) of the other.

The joint-employer standard has been in flux following a ruling by the Obama-era NLRB in the case of Browning-Ferris Industries of California, Inc., 362 NLRB No. 186 (Aug. 27, 2015).

The Browning-Ferris decision held that a company may be held liable for labor violations by other employers with which they contract by exercising indirect control or possessing unexercised potential control over work conditions such as hiring, supervision, and wages. For 30 years prior to Browning-Ferris, a joint employment relationship would be found to exist only where a company directly controlled the essential terms and conditions of employment of the other company with which it contracts.

The Browning-Ferris decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (DC Circuit), which heard oral arguments in 2017. Before a decision in the case could be rendered, the Trump-controlled NLRB issued a decision in Hy-Brand Industrial Contractors, Ltd., 365 NLRB No. 156 (Dec. 14, 2017), which overturned Browning-Ferris and restored the "direct control" joint employer standard.

The NLRB, however, vacated the Hy-Brand decision in February 2018 after an ethics determination that one of the board members that participated in the Hy-Brand decision was a member of a law firm that had represented one of the alleged joint employers in the Browning-Ferris case and thus should not have participated in the deliberations in the Hy-Brand case.

As a result, the Board submitted a motion to the DC Circuit asking the court to continue its review of the Browning-Ferris decision. The DC Circuit has yet to render a decision on that motion. Until such time as either the DC Circuit issues an opinion in the greater appeal of the Board's decision in Browning-Ferris or the NLRB promulgates a final rule reverting back to the "direct control" standard for determining joint-employment status, the "indirect control" standard of Browning-Ferris remains in effect.

[Click here](#) to read the NLRB news release.

## Policy & Advocacy

*We are your voice, advocating for you collectively and individually. Our goal is to ensure that our members' best interests are advanced at all levels of government. The list below are among the important legislative matters tracked by LeadingAge New Jersey.*

- |                            |  |
|----------------------------|--|
| <b>A-2442</b>              | Establishes reciprocity requirements for out-of-State certified nurse aides and personal care assistants to practice in New Jersey.  |
| <b>A-382 &amp; S-1612</b>  | Establishes minimum certified nurse aide-to-resident ratios in nursing homes.  |
| <b>A-436 &amp; S-2399</b>  | Requires electric public utilities to provide priority power restoration to certain medical facilities, assisted living facilities, and nursing homes.   |
| <b>A-444 - S-2471</b>      | "Uncompensated Pending Medicaid Beneficiary Payment Relief Act"; provides compensation relief to nursing facilities when resident's Medicaid eligibility determination is delayed more than 90 days. |
| <b>A-1271 &amp; S-1295</b> | Establishes procedures to prevent and eradicate bedbug infestations in certain residential property.   |
| <b>A-2536 &amp; S-538</b>  | Concerns long term tax exemptions on certain age-restricted low-income housing.  |
| <b>A-2747 &amp; S-1532</b> | Limited time continuing care retirement communities may retain refundable entrance fee after resident vacates facility; provides for disposition of certain personal property.                       |
| <b>A-2942 &amp; S-794</b>  | Establishes certain minimum and maximum temperatures in emergency shelters, rooming and boarding houses, and certain nursing homes and residential health care facilities.                           |
| <b>A-3630 &amp; S-1820</b> | Makes certain changes to hourly reimbursement rate for personal care services reimbursed by Medicaid.  |
| <b>A-3846 &amp; S-2470</b> | Requires Department of Human Services to review Medicaid reimbursement to nursing homes under Managed Long-Term Services and Supports Program.   |

### **LeadingAge New Jersey Testifies before the Senate Health, Human Services and Senior Citizens Committee on CNA Ratio Legislation**

On May 21, 2018, President & CEO James W. McCracken testified before the Senate Health, Human Services and Senior Citizens Committee opposing Senate Bill S-1612, a bill that mandates certified nursing assistant (CNA) staffing ratios in nursing homes.

LeadingAge NJ Board Chair and Administrator at the Manor Health and Rehabilitation Center, Toni Lynn Davis, joined McCracken and also testified.

"CNAs are the front-line workers that provide the hands-on personal care, supervision, emotional support to our residents. I want to say



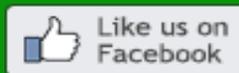
unequivocally CNAs are one of the most important members of our health care teams," said Davis.

"I have experienced significant difficulty attracting, recruiting and hiring CNAs. One solution to consider is reciprocity for CNAs and I believe reciprocity is a practical and systematic approach to overcoming the workforce shortage challenges."

The bill was released from committee with amendments to exclude pediatric long-term care facilities from these staffing requirements.

LeadingAge NJ remains strongly committed to working with NJ's lawmakers to address CNA shortages and ensure we take the right step forward in improving delivery of care.

## STAY CONNECTED JOIN THE CONVERSATION



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