



March 18, 2020

The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

Dear Secretary Scalia:

We are writing on behalf of Argentum and the American Seniors Housing Association (ASHA) seeking immediate guidance regarding the definition of "health care worker" in H.R. 6201, the Families First Coronavirus Response Act, as amended by the House.

Argentum and ASHA are the leading national associations exclusively dedicated to supporting companies operating professionally managed, resident-centered senior living communities and the older adults and families they serve. Argentum and ASHA member communities offer assisted living, independent living, continuing care, and memory care services, representing approximately 75 percent of the professionally managed senior living industry.

We are concerned about two provisions of this legislation that will significantly curtail our caregiver workforce and that must be immediately addressed through rulemaking to ensure we are equipped to take care of our residents during this pandemic:

Section 3102 Emergency Expansion of the Family and Medical Leave Act & Section 5102 Emergency Paid Sick Leave Act: Employees of employers with fewer than 500 employees who have been on the job for a minimum of 30 days will have the right to take up to 12 weeks of job-protected leave under the Family and Medical Leave Act, or receive two weeks of paid leave to be used for the following reason: To care for a child of an employee if the child's school or place of care has been closed or the child care provider is unavailable due to COVID- 19.

The Secretary of Labor has the authority to issue regulations to (a) exclude certain health care providers and emergency responders from the list of those employees eligible for leave; and (b) to exempt small businesses with fewer than 50 employees where the imposition of these requirements would jeopardize the viability of the business as a going concern.

**We are specifically requesting that the Department of Labor issue immediate guidance recognizing that for purposes of Section 3102 and Section 5102 of this legislation, senior living caregivers and others who care for our residents are considered "capable of providing health care services", offering our employers the opportunity to be exempt from these requirements. This should include employees who work in assisted living, independent living, memory care, and continuing care retirement communities.**

As of March 16, at least 72,000 schools across 37 states have been closed as a result of the pandemic affecting more than 37 million students – more than half of all public and private students in the country. Many of our workers have children affected by these closures. However, if all of these workers stay home to care for their children, the senior living workforce will be decimated.

We are completely committed to helping our employees who are dealing with this childcare crisis relative to the closing of schools, along with the concern and need to not miss work and getting a paycheck. However, we also need to ensure our employees are on the job taking care of our residents. We welcome the opportunity to work with Congress to develop some viable options where our senior living employees can continue to work and receive safe childcare.

Senior living is a home- and community- based setting for older adults combining housing, supportive services and health care as needed. There are currently 28,900 communities in the United States with more than 811,500 residents calling assisted living home. More than half of all residents are over the age of 85, and another 30% are between the ages of 75-84. They often cope with multiple chronic conditions, with more than half suffering from hypertension and a third with heart disease. Over 42% suffer from some type of cognitive impairment.

Now more than ever, our residents desperately need the care and attention of our direct care workers. The ongoing coronavirus pandemic, COVID-19, presents unique challenges to our residents, as individuals who are at the greatest risk for severe disease and death include people aged over 60 years and those with underlying conditions such as hypertension, diabetes, cardiovascular disease, chronic respiratory disease and cancer. Senior living providers are doing all they can to protect our residents. But it is critical that we have a workforce in place to keep our residents safe and healthy.

If you have any questions or if we can be of assistance as you move forward, please do not hesitate to contact James Balda at (703) 894-1805 or [jbalda@argentum.org](mailto:jbalda@argentum.org) or David Schless at 202-885-5560 or [dschless@seniorshousing.org](mailto:dschless@seniorshousing.org).

Respectfully,



James Balda  
President & CEO  
Argentum



David Schless  
President  
American Seniors Housing Association

CC: Senate Majority Leader Mitch McConnell  
Senate Minority Leader Chuck Schumer  
Sen. Lamar Alexander, Chair, Health, Education, Labor and Pensions Committee  
Sen. Patty Murray, Ranking Member, Health, Education, Labor and Pensions Committee  
Sen. Roy Blunt, Chair, Rules and Administration Committee