

Background

The COVID-19 pandemic presents unique challenges to the senior living industry. Nearly two million older Americans, those who are most vulnerable to COVID-19, are cared for in senior living communities by 900,000 direct care workers and support staff. Senior living communities are proud to be playing a critical role in helping to “flatten the curve” and avoid further burdening our nation’s hospitals during this crisis, but keeping residents and staff healthy has been especially challenging due to the nationwide shortage of personal protective equipment (PPE) and testing. Argentum, representing approximately 75 percent of the professionally managed, resident-centered senior living industry, urges policymakers to consider the unique needs of our communities and to prioritize access to PPE, test kits, financial relief, and reasonable liability protections for our workers and providers.

Senior Living and COVID-19

Senior living is a home- and community- based setting for older adults combining housing, supportive services and health care as needed. There are currently nearly two million residents calling senior living home across assisted living, memory care, independent living and continuing care retirement services; however, while they care for similar populations, they are not nursing homes. Communities are regulated in all 50 states plus the District of Columbia.

Communities are playing a critical role in this ongoing health care crisis. They are caring for some of the most vulnerable Americans as well as supporting the staff and team members who provide that care and service every day. Individuals who are at the greatest risk of complications from the disease include people aged over 65 years and those suffering from comorbidities. Within senior living communities, 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 and often require assistance with activities of daily living (ADL), such as eating, dressing, bathing, and the management or administration of medication. Over 42% suffer from some type of cognitive impairment.

Since the beginning of the pandemic in the United States, senior living providers have implemented enhanced protocols to prevent the virus from entering the community and if it does, mitigate the spread of COVID-19. This includes, among other steps, appropriate efforts to institute enhanced infection control protocols; restrict or cease visitation and move-ins; conduct health screenings and COVID-19 testing as available and appropriate for residents and employees; in many instances, limit or replace communal dining in favor of personalized meal service and delivery; and establish virtual engagement opportunities between residents and loved ones. When a resident is suspected to be infected or tests positive for COVID-19, protocols are in place to quarantine or isolate the resident, monitor progression of symptoms and facilitate hospital transfers when necessary.

While communities are taking preventive measures against the virus, there is no doubt that support is needed from the federal government to help keep our residents and team members safe. Argentum supports measures that are specifically targeted at protecting employees, residents, and the financial stability of communities to be able to continue serving residents during and after the pandemic.

Priority Access to PPE

Guidance released by CMS on March 10 provides details on the types of personal protective equipment (PPE) that long-term care communities should maintain to properly protect against the spread of the virus. These include respirators, facemasks, eye protection, medical gowns, and gloves. We support proposals that will prioritize senior living communities to receive the necessary supplies and equipment to care for our residents.

While FEMA has recognized the need to protect vulnerable populations by prioritizing more than 15,000 nursing homes for protective equipment, these urgently needed supplies have not been made available to senior living communities. Having the resources to protect residents and staff, whether symptomatic or asymptomatic, is absolutely critical to containing the spread of COVID-19 in these communities and avoiding an increase in hospital admissions, straining already limited healthcare resources.

Priority Access to Testing

Protecting healthy residents and staff requires timely and accurate testing on suspected cases of the virus. We support policies that will ensure senior living communities will have adequate access to COVID-19 tests that will enable expeditious initiation of escalated infection control protocols. Communities need support to access rapid testing to be able to test those in the community as often as necessary to keep the community safe.

While Argentum fully supports expanded testing that is reliable, accessible, and executable, we fully acknowledge that test results, even if accurate, only provide data at a point in time. There are currently no COVID-19 tests that have been fully vetted and approved by the FDA, which can make it inadvisable to rely too heavily on the results obtained. Mandatory testing of employees and/or residents should be based on scientific evidence and consistent guidance, and costs for mandated testing should be reimbursable.

Financial Relief

Senior living providers are not supported by government funding, yet they are part of the health care system currently tasked with the responsibility for containing the COVID-19 pandemic and if successful, can unburden these higher care services. In

doing this, they are facing similar and immediate financial pressures that should be addressed in the same serious manner.

Our estimated increased costs and lost revenue over the next 12 months could reach a staggering \$40 – \$57 billion. Costs for infection control, dietary, and PPE expenses have quadrupled. In the abundance of caution, new admissions have been halted. Labor costs have increased as more staff are needed to care for frail seniors during this challenging time. All communities are working to prevent the spread of the disease, but once a resident tests positive for COVID-19, the costs exponentially increase.

While we appreciate the initial steps taken by the CARES Act and its supplemental funding package to provide financial relief to businesses, many of these provisions were not directly available to senior living operators and the financial aid for nursing homes is not available for our communities. A specific allocation to the Public Health and Social Services Emergency Fund should be made for senior living communities to help safeguard the current and future financial health of the industry.

Small Business Loans

The Small Business Administration (SBA) Paycheck Protection Program (PPP) provides 100% federally guaranteed loans to employers with fewer than 500 employees and 501(c)(3) non-profits to help with payroll, mortgage, debt and other expenses associated with paying employees' salaries. However, they are not currently reaching much of the senior living industry due to "affiliation" rules. The program is currently limited to businesses that employ less than 500 employees, with exceptions that allow that limit to be applied on a per-location basis for businesses that are assigned a North American Industry Classification System code beginning with 72.

We urge similar treatment for senior living by authorizing a waiver of the affiliation rules for NAIC codes beginning with 62, Health Care and Social Assistance. This exemption should also include coverage of senior independent living communities, classified under codes beginning with 52, specifically 531110 and 531311.

Hero Pay

Senior living operators are going above and beyond to support their workers and recruit additional workers by implementing bonuses, increased overtime pay, childcare support, meals and groceries, and transportation services, among other incentives. Legislation has been offered in Congress to recognize essential frontline healthcare workers through direct federal payments to employers to distribute to workers. Proposals have included an additional \$13 per hour wage increase for workers, retroactive to the start of the public health emergency, in addition to a \$15,000 recruitment incentive to attract and secure the workforce.

We support the enactment of a Heroes Fund that would include all of the nearly one million direct care workers and support staff in senior living.

Reasonable Liability Protections

The nationwide shortages of tests, critical care equipment, protective gear, and constantly changing laws and guidance federally and in the states have exacerbated the crisis. We are concerned for what this could mean for staff and residents who suffer negative outcomes, and that it could make senior living communities vulnerable to legal attacks. To protect the front-line health care workers during these extraordinary circumstances, numerous states have acted to ensure that reasonable liability protections are in place.

However, this is a national crisis, and a patchwork of state solutions results in inconsistency and confusion, in turn deterring additional help and creating a snowball effect of increasing financial and human costs. Congress already took a step in this direction--section 3215 of the CARES Act provided limited liability protections for volunteer health professionals for health care services performed during the pandemic. That same reasonable, limited liability should be extended to all our front-line health care professionals and health care institutions, including senior living communities.

Reasonable protections are warranted given that the virus is highly contagious and can be transmitted by asymptomatic carriers, factors which, when combined with the lack of PPE and testing and changing guidance, have created an unprecedented situation. Such reasonable liability protections would be limited to actions taken in good faith, and not apply to actions involving gross negligence and willful or criminal misconduct, or that evidence conscious, flagrant indifference to the rights or safety of an individual. Additionally, liability protections should be time-limited to the duration of this public health emergency.

Summary

The senior living industry is prepared to respond to the ongoing challenges presented by the COVID-19 pandemic. We urge policymakers to consider the unique nature of our residents and the vulnerabilities they face to this virus. Prioritizing resources to senior living communities, particularly timely and sufficient testing supplies, to combat the spread of the virus and ensuring an adequate response in the event of an outbreak will help to reduce the overall effect of this pandemic on society.

The process of reopening states and communities is continuing to occur in stages; however, while the threat of COVID-19 may be receding for some populations, the virus threat will remain for our nation's seniors until a vaccine can be developed and made widely available. Protecting residents and staff, and their families, will continue to be a high priority and senior living communities will continue to need priority access to PPE, rapid testing, financial relief, and protections for workers and facilities.

About Argentum

Argentum is the leading national association exclusively dedicated to supporting companies operating professionally managed, resident-centered senior living communities and the older adults and families they serve. Argentum member companies operate senior living communities offering assisted living, independent living, continuing care, and memory care services. Along with its state partners, Argentum's membership represents approximately 75 percent of the professionally managed senior living industry—an industry with a national economic impact of nearly a quarter of a trillion dollars and responsible for providing over 1.6 million jobs. Since 1990, Argentum has advocated for choice, independence, dignity, and quality of life for all older adults.