AMERICAN SENIORS HOUSING ASSOCIATION
Living Longer Better

ARGENTUM
EXPANDING SENIOR LIVING

October 19, 2020

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

On behalf of the American Seniors Housing Association (ASHA) and Argentum, we write to request that the Department of Health and Human Services (HHS) consider revisions to and provide further guidance regarding HHS's Post-Payment Notice of Reporting Requirements issued on September 19, 2020 (New Reporting Requirements). The senior living industry operators started to receive much needed funding from HHS's Provider Relief Fund (PRF) are now deeply concerned that the New Reporting Requirements have created widespread confusion and unexpected potential barriers to retaining the funding received. Therefore, we respectfully urge you to consider these changes to ensure senior living communities and their operators are able to continue their efforts to fight the COVID-19 pandemic.

<u>Background</u>

ASHA and Argentum 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. ASHA and Argentum member communities offer assisted living, independent living, memory care, and continuing care retirement communities (CCRCs), representing approximately 75 percent of the professionally managed senior living industry.

These operators have been serving on the front lines of this pandemic since late February-early March, working tirelessly and compassionately to keep safe the almost 2 million residents who call "senior living" home and the close to 1 million employees who serve them.

Senior living providers have played a vital role in the fight to control the pandemic. And we are appreciative for the funding provided by the PRF to date. It will provide much needed financial relief to senior living operators who have incurred significant expenses and revenue loss associated with battling this pandemic. In our front-line position, the additional expenses are largely attributable to increased staffing needs and training costs as well as enhanced infection control protocols, procurement of PPE and testing supplies, new technology and dining alternatives. These substantial efforts are necessary to meet the continuing challenges of protecting the vulnerable residents of our communities, and their families, from COVID-19.

At the same time, the pandemic is having a long-term negative effect on senior living communities' revenues and ongoing sustainability, as these communities have been forced to severely restrict, or stop accepting entirely, new residents and greatly curtail marketing efforts. By protecting the population most susceptible to the most severe and deadly cases of the coronavirus infection, the efforts of our senior living communities have benefited all Americans and the entire health care system.

HHS Should Maintain its June 19, 2020 Guidance Regarding "Lost Revenue"

In its recent Guidance, HHS has significantly modified the calculation of "lost revenues" attributable to COVID-19. Based on informal membership feedback, most believe they will be adversely affected in a significant way by the abrupt change in the definition of lost revenue included in the New Report Guidance. In the June 19, 2020 frequently asked questions (FAQ)[2], lost revenue is defined as "any revenue that you as a health care provider lost due to coronavirus" and provides that "you may use any

[1] https://www.hhs.gov/sites/default/files/post-payment-notice-of-reporting-requirements.pdf
[2] https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf

reasonable method of estimating the revenue." "For example, if you have a budget prepared without taking into account the impact of COVID-19, the estimated lost revenue could be the difference between your budgeted revenue and actual revenue." The New Reporting Guidance, which defines lost revenue as the year over year negative change in net patient care operating income, creates significant challenges for senior living communities, including but not limited to the following:

- Penalizing organizations in the midst of growth in facility capacity – Many organizations operate communities that were newly constructed or recently expanded, and not yet fully occupied by residents, in 2019. Prior to the pandemic these organizations had budgeted for their normal ramp up period, with increased or close to full occupancy in 2020. The effects of the pandemic have lengthened this occupancy ramp up period much longer than anticipated. Under the June 19, 2020 definition of lost revenue, such organizations were able to consider their pre-pandemic 2020 budgeted revenue, thus the effect of the growth in occupancy would have been considered in their calculations of lost revenue. Under the New Reporting Guidance's definition of lost revenue this is not the case, as it computes lost revenue based on a strict calendar year 2020 over calendar year 2019 negative change in net patient care operating income. We believe there is good cause to allow organizations to incorporate budgeted 2020 operating income, the pre-pandemic trailing monthly or quarterly period, or to otherwise normalize their 2020 results in the lost revenue calculations, to accurately reflect the actual negative effects of the pandemic on their financial results.

- Penalizing organizations that made prudent efforts to reduce operating expenses – In the weeks and months following the onset of the pandemic, many organizations made proactive changes to operating expenses while maintaining an ability to safely care for their residents. Some of these changes increased operating expenses, for example providing for hero pay for their front-line employees. However, some proactive changes decreased operating expenses; for example, reducing or eliminating altogether contributions to their employee retirement plans, reducing compensation to some employees, or halting other operational improvements to their businesses. The New Reporting Guidance effectively penalizes those organizations that made proactive changes to reduce their operating expenses in response to the financial challenges created by the pandemic, by reducing the amount of PRF funds that can be retained based on improvements in operating performance made later in calendar year 2020. We believe there is good cause to revert back to the prior definition of lost revenue instead of the concept of net patient care operating income.

The Need for Further Clarification

We also seek further clarification of the New Reporting Guidance in the following areas:

- Step 1 Expenses: In the calculation of healthcare related expenses attributable to the coronavirus that another source has not reimbursed and is not obligated to reimburse, what is the expected period of measurement? For example, if an organization experienced significant Step 1 Expenses in March, April, May, and June 2020, but their experience in July, August, and September 2020 has been more favorable, would this organization be able to define the period of measurement for Step 1 Expenses as March through June, or would they be required to use some other predefined time frame?

- General and Administrative Expenses Attributable to Coronavirus: Letter g. states "Other General and Administrative Expenses." Would an organization be able to include depreciation and interest expense in this category? What about other non-cash related expenses? Relative to "Expenses paid for purchases of equipment", does this mean that cash paid for capital expenditures for coronavirus related items (e.g., ventilators, updates to HVAC systems, etc.) can be included in Step 1 Expenses?

- Step 2 Payments Applied to Lost Revenue "PRF payment amounts not fully expensed on Step 1 Expenses are then applied to lost revenues." Many organizations are interpreting that as meaning that they must apply payment to Step 1 expenses, and then apply any unused funds to lost revenues (Step 2). However, are organizations allowed to determine just Step 2 if Step 2 results in full utilization of PRF funds received?

- "Expenses to Maintain Healthcare Delivery Capacity" Many organizations are also viewing the New Reporting Guidance's statement that expenses to include as a Step 1 Expense include expenses to "maintain healthcare delivery capacity, etc." as a broad term to effectively mean all operating expenses that organizations incur. Is this broad interpretation correct?

- In the Step 1 related phrase "healthcare related expenses attributable to coronavirus that another source has not reimbursed and is not obligated to reimburse…," what does "that another source has not reimbursed and is not obligated to reimburse" mean? For example, is this phrase only intended to relate to other coronavirus-related relief from government or charitable sources or the receipt of insurance proceeds that specifically cover COVID-related expenses or lost revenue, or is it intended to relate to all reimbursement received by the organization for services rendered?

- Step 1 Expenses include "Expenses paid for purchases of supplies used to prevent, prepare for, or respond to the coronavirus during the reporting period." Does this mean cash paid for these expenses, or the amount expensed within their statement of operations under Generally Accepted Accounting Principles (GAAP)?

Additionally, it is important to clarify whether Step 1 expenses are to be determined on an income tax basis or the methodology utilized for financial statement reporting purposes? Many senior living organizations maintain their internal books and records on a basis other than the tax basis. We understand providing historical tax returns with tax basis information before the preparation of tax returns being prepared could be difficult and time consuming for many organizations. The 2020 year-end financial information will not be prepared and adjusted for tax return preparation purposes until after February 15, 2021. Further, when there are entities that report on a consolidated basis for tax return purposes, can the information included for the New Reporting Requirements be completed at a similar consolidated level?

ASHA and Argentum appreciate your attention to our members' concerns about their ability to retain the much-needed PRF funds in support of the ongoing care they provide to the population most vulnerable to COVID-19. Retaining the June 19, 2020 definition of lost revenues and providing further clarifications in their calculation are essential to support senior living providers' response to the COVID-19 pandemic in a thoughtful and sustainable way.

We appreciate all the tremendous work that you and your agency have been doing during this unprecedented crisis. Please do not hesitate to reach out to either one of us at dschless@seniorshousing.org or jbalda@argentum.org with questions.

Sincerely,

David S. Schless
President
American Seniors Housing Association

James Balda
President & CEO
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