ARGENTUM
EXPANDING SENIOR LIVING

January 4, 2022

VIA ELECTRONIC SUBMISSION

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3415-IFC
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Medicare and Medicaid Programs; Omnibus COVID–19 Health Care Staff Vaccination

Dear Administrator Brooks-LaSure:

On behalf of our members, Argentum appreciates this opportunity to provide comments on the Interim Final Rule with Comment Period (IFC) "Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vacation."[1] Argentum is a leading national association exclusively dedicated to supporting companies operating professionally managed, resident-centered senior living communities and the older adults and families they serve. Along with its state partners, Argentum's membership represents approximately 75 percent of the professionally managed communities in the senior living industry. Nearly 1 million older adults live in an estimated 28,000 assisted living facilities across the United States.

Argentum supports CMS's efforts to promote vaccination for COVID-19 and lower the risk of COVID-19 infection in congregate care settings, and appreciates the importance of policies that expand mitigation efforts and increase access to vaccinations and overall vaccination rates. Assisted living facilities (ALFs) have successfully implemented policies to mitigate harm from COVID-19, and have implemented successful vaccination campaigns among both residents and staff. Since the beginning of the COVID-19 pandemic in the U.S., senior living communities have implemented enhanced protocols to prevent COVID-19 from entering the community, mitigate the spread of, and otherwise limit the harm from COVID-19. These steps led to a significant mitigation of harm - while 39 percent of skilled nursing facilities experienced no COVID-19-related deaths, about two-thirds of independent living (67 percent); assisted living (64 percent); and memory care (61 percent) properties have had no COVID-19-related deaths.[2]

Moreover, a relatively high percentage of assisted living facilities participated in the Pharmacy Partnerships program. Since the beginning of the vaccine distribution rollout, a high percentage of assisted living residents and staff have been vaccinated for COVID-19.[3] Although initial staff vaccine uptake was lower than resident vaccine uptake, ALFs around the country have

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[1] 86 Fed. Reg. 61555 (Nov. 5, 2021).
[2] A. C. Pearson et al., The Impact of COVID-19 on Seniors Housing, NORC at the University of Chicago (June 3, 2021), p. 18, https://www.norc.org/PDFs/COVID-19Executive20Summary20FINAL.pdf.
[3] See National Investment Center for Seniors Housing & Care, Executive Survey Insights Wave 29: May 17 to June 13, 2021 (June 24, 2021), https://blog.nic.org/executive-survey-insights-wave-29-. (finding vaccination rates at long-term care facilities to be 9 out of 10 for residents, and 2 out of 3 for staff).

successfully increased staff vaccination rates through a variety of approaches tailored to the specific needs of each community. Efforts to facilitate access to and administration of COVID-19 booster shots are currently underway.

Argentum also appreciates CMS's guidance clarifying that the agency "does not have regulatory authority over care settings such as Assisted Living Facilities," which confirmed our understanding of the exclusively state-based regulatory framework for most assisted living communities. Further, we appreciate CMS clarifying that the rule would only "apply to those Medicare and Medicaid-certified provider types that are subject to CMS health and safety regulations."[4] This alleviated some confusion and concern from ALFs that provide Home and Community Based Services (HCBS) via state Medicaid waivers over the potential burden associated with complying with the requirements outlined in the IFC.

These concerns are particularly salient given the precarious financial situation of many ALFs across the country due to the COVID-19 pandemic. For nearly two years, assisted living communities have been serving on the front lines of the COVID-19 pandemic, working tirelessly to keep safe and engaged the residents who call senior living home, as well as the employees who care for them. Despite caring for a highly vulnerable population, assisted living communities have not received anywhere near the same level of federal and state relief as other types of providers. Assisted living communities have suffered over $30 billion in losses due to PPE, testing, cleaning, staffing needs and heroes pay, as well as record-low occupancy rates. Yet to date, assisted living caregivers have received only about $1 billion in relief from the Provider Relief Fund, which represents less than 1 percent of the overall fund. As a result, half of providers are operating at a loss and at risk of facility closures. These communities, many of which are also experiencing severe workforce shortages, are in desperate need of relief. Mandatory compliance with any additional requirements would only exacerbate these ongoing issues.

Thank you for your consideration of these comments. Please contact me with any questions or requests for additional information.

Sincerely,

James Balda
President & CEO
Argentum

[4] External FAQ, CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (Updated Dec. 28, 2021).