



January 17, 2023

The Honorable Douglas L. Parker  
Assistant Secretary of Labor  
Occupational Safety and Health  
U.S. Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

On behalf of Argentum, the leading national non-profit association representing the senior living industry, we ask for your consideration of the unique nature of assisted living communities regarding rules for occupational exposure. As we have repeatedly stated in public comments (dated August 19, 2021, April 22, 2022, May 23, 2022, November 29, 2022) as well as our April 27, 2022 testimony, senior living communities are not medical facilities and should not be regulated as such; rather, they are “home” for many of our nation’s seniors.

Argentum remains opposed to OSHA’s consideration of assisted living facilities (ALFs) as a “healthcare setting.” ALFs provide only limited “healthcare services” (defined in part as services provided by “doctors and nurses”), and instead primarily assist residents with basic self-care or activities of daily living (ADLs) such as eating, dressing, bathing, and the management or administration of medication. ALFs are also a lower-risk environment than “hospital ambulatory care settings” and “non-hospital ambulatory care settings,” which were exempt from the emergency temporary standard in certain circumstances. As such, it is our position that ALFs should not be considered “healthcare settings” and should not be subject to any further requirements imposed by OSHA’s rulemaking.

Our position is supported both by the Centers for Disease Control (CDC) and by more than one hundred public comments submitted last year by residents, family members, caregivers, and other advocates. Last September, the CDC adjusted [guidance](#) for assisted living communities to reflect guidance for the general public, distinguishing assisted living from a healthcare setting. That guidance noted that certain long-term care settings—including specifically assisted living—should follow community prevention strategies. The guidance specified that, “Non-skilled personal care consists of any non-medical care that can reasonably and safely be provided by non-licensed caregivers, such as help with daily activities like bathing and dressing; it may also include the kind of health-related care that most people do themselves, like taking oral medications. In some cases where care is received at home or a residential setting, care can also include help with household duties such as cooking and laundry.”

Separately, and perhaps most importantly is the consideration of how ALFs should be categorized by the residents and their family members, as well as the dedicated staff who assist with their ADLs. In public comments submitted last Spring, a caregiver at an assisted living facility in Oklahoma noted that it’s imperative to be mindful that these residences are foremost seniors’ homes, writing, “We work in their home, they don’t live where we work.” Adding to this, an operator based on the West Coast stressed that residences are not short-term placements, but in many cases the final home chosen by the senior or their loved one, writing, “Our residents are not in our communities for a temporary stay but are living out the remaining years of their lives. Over the last two years, our residents had to endure too much isolation and confinement. To restrict them further from physical contact from their friends, family, and staff who love them and care for them, with more masks, physical barriers, and plexiglass barriers, would be detrimental to their well-being.”

Similarly, a rural operator based in Wyoming commented that restrictions “resulted in social isolation, increased (and unnecessary) fear, and decreased communication, especially for those



persons who are hard of hearing, have an existing speech impairment, or have some age related or other dementia.” And echoing these concerns, a commenter from Wisconsin wrote that restrictions are “the opposite from the care, love and support that assisted living providers strive to create in their environments” and added, “a smile can bring joy and wonder to a person in senior living, especially those with dementia,” when describing the challenges of masking and barriers. These comments truly underscore why assisted living is unlike any other setting regulated by this rule, and why these restrictions are not appropriate.

The many requirements in OSHA’s rulemaking that may be applicable to healthcare settings are inconsistent with this concept. As such, we request that our members should not be considered “healthcare settings” under OSHA’s rulemaking and thus should not be subject to any further requirements imposed by such rulemaking.

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