May 3, 2024

The Honorable Edward Markey
United States Senate
Washington D.C. 20510

Dear Senator Markey,

On behalf of the American Seniors Housing Association (ASHA) and Argentum, we want to thank you for the opportunity to provide feedback on your recently released discussion draft, the *Health Over Wealth Act*. Our respective organizations represent owners and operators of professionally managed senior living communities which includes assisted living, memory care, independent living, and life plan/continuing care retirement communities.

Our members are very concerned about the approach taken in this legislation, which we believe creates unnecessary restrictions and an overly burdensome regulatory process to rein in the participation of specific capital sources in certain for-profit health care entities. While we believe the proposed legislation is problematic in its entirety, we will focus our comments on the negative impact this legislation will have on assisted living communities and the reasons why we believe assisted living should be withdrawn from the definition of "health care entity."

We believe the draft legislation if implemented would have catastrophic consequences for older adults and their families in the decades ahead. Our comments are intended to inform you of certain market data regarding the industry as well as present key facts about the unique characteristics of this sector which we hope will lead you to remove assisted living from the bill.

Key reasons to exclude assisted living from this proposal:

- Assisted Living is a market driven, private pay residential living environment that creates value for residents and the overall health system and is not reliant on Medicare or Medicaid reimbursement.
- It will greatly deter investment in assisted living at a time when demand is expected to outpace supply. The consequences of eliminating private investment in assisted living will result in critical access shortages for frail seniors over the next 20 years and will almost certainly make assisted living less affordable.
- Private Equity and REITs are necessary capital partners to assisted living providers, with all parties seeking to align interests to create successful high-quality market driven senior living communities.

Assisted Living is a Market Driven, Private Pay Residential Living Environment that Creates Value and is Not Reliant on Medicare or Medicaid Reimbursement

Assisted living is largely a private pay model of residential care and unlike the other health care entities targeted by this draft legislation, Medicare does not generally cover the services provided in assisted living. It is noted, however, that a small percentage of assisted living is available pursuant to the HCBS Medicaid Waiver Program, which covers a portion of the monthly cost for supportive services but does not pay for room and board.

Key facts about assisted living:

- Assisted living and memory care communities are "home" to approximately 1.4 million older adults. Most assisted living residents are in need of supportive care services but don't require the intensity of health care provided to those in skilled nursing facilities. Memory care is most often licensed as assisted living and may be offered in a standalone building or as a designated section of a larger community. These settings offer specialized services for those in need with trained staff who offer innovative cognitive therapies and monitoring tailored to meet the specific needs of those with Alzheimer's Disease and other forms of age-related dementia.

- Assisted living is a market driven model of care that demands quality services. Successful assisted living operations are driven by maintaining high levels of resident and family satisfaction and having a reputation in the local market for delivering high quality services and care.

- The latest survey data from JD Power suggests residents and families are very satisfied with assisted living as the sector has a segment average of 837 on a 1,000-point scale, exceeding satisfaction levels in industries like travel and hospitality, which received a score of 596. In addition, industry surveys found that 90% of assisted living residents report high satisfaction with their care and communities, and 96% feel their communities provide sufficient access to healthcare professionals. Further, social connections are equally important, with 93% of residents reporting adequate social opportunities within their communities, and 75% saying assisted living has demonstrably improved their quality of life.

- Assisted living is regulated in all 50 states and the District of Columbia with oversight by state regulatory agencies.

- Assisted living provides direct and personalized 24/7 supportive care in a residential setting, as determined through a health assessment and creation of an individualized resident care plan according to state regulations.

- Assisted living delays a person's need for nursing home care and thus saves Medicaid significant dollars each year. A report to Congress by the Department of Veterans Affairs (VA), Veterans Health Administration (VHA), on the current and projected needs for Long Term Services and Supports (LTSS) acknowledged access to assisted living for veterans otherwise eligible for nursing home care will create savings of $69,101 per placement each year. The demand for care will increase from 61,000 to 387,000 veterans over the next 20 years.

- Residents who live in assisted living take their medications on time, enjoy nutritional meals, engage socially and receive care and attention. These services benefit the resident and the overall health system.

- Assisted living is the lowest cost setting available to older adults relative to nursing home and home health care. It is in the best interest of our nation to prevent the implementation of harmful policies that will limit the availability and affordability of this important setting for our dramatically aging population.

Provider	Setting	Monthly Cost	Yearly Cost
Assisted Living Community (12 months of care/housing)	Private, One Bedroom	$5,350	$64,200
Home Health Care (44 hours per week/52 weeks)	Homemaker Health Aide	$6,291	$75,500
Nursing Home Care (365 days of care)	Semi- Private Room	$8,666	$104,000
	Private Room	$9,733	$116,800

Source: Genworth Cost of Care Survey 2023

This Proposal Will Greatly Deter Investment in Assisted Living at a Time When Demand is Expected to Outpace Supply

The requirements of the *Health Over Wealth Act* will profoundly reduce investment in assisted living at a time when we will have unprecedented growth of the 80+ population in the U.S.

By 2030, all baby boomers (those born between 1946 and 1964) will have reached the age of 65. The 85 and older population (average age of an assisted living resident) is projected to more than double from 6.6 million in 2019 to 14.4 million in 2040 (a 118% increase).

According to ATI Advisory, in 2020, the percentage of Medicare beneficiaries living in assisted living with chronic conditions, Alzheimer’s Disease or related dementia, or who receive help with one or more activities of daily living (ADLs), is significantly higher than the population of older adults living in traditional private housing *NOTE: See table below. This only reflects those older adults in Medicare data as having been diagnosed with Alzheimer’s. According to CDC, the majority (80%) of people with Alzheimer's disease and related dementias are receiving care in their homes. However, a good number of people are living in assisted living communities and that number is expected to grow.*

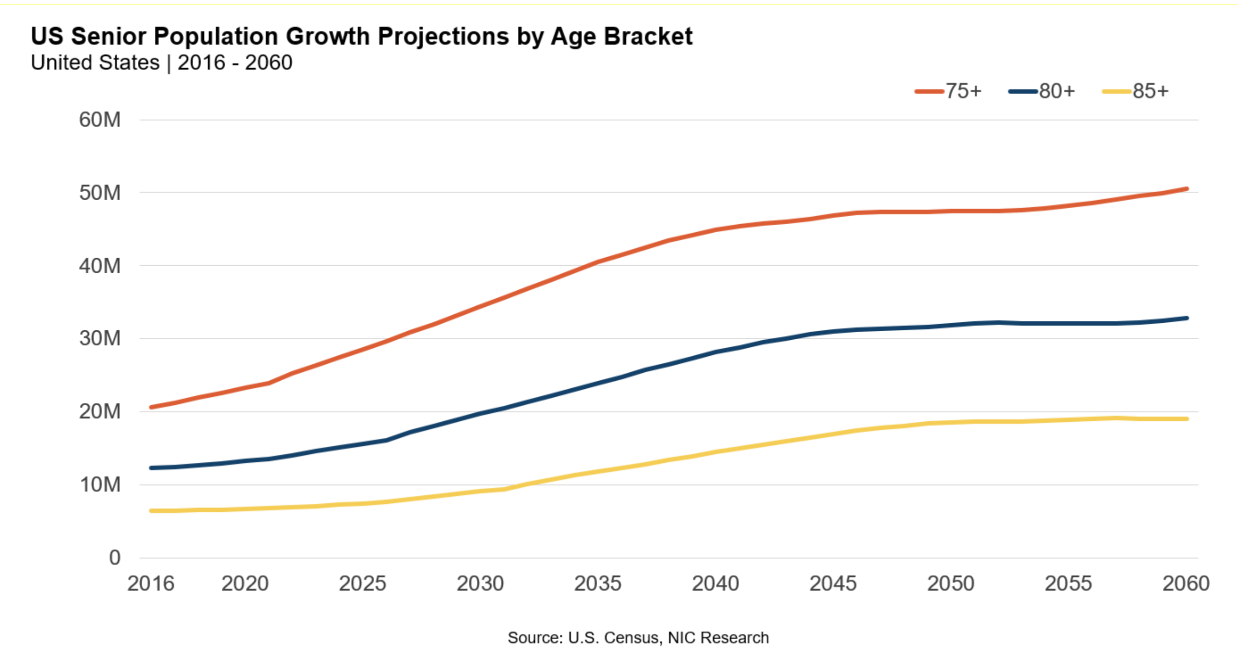
Percent of Medicare Beneficiaries with:	**Traditional Private Housing**	**Assisted Living**
4+ Chronic Conditions	38%	71%
Alzheimer's or Dementia Diagnosis	3%*	49%
Receive Help with 1+ ADL	8%	82%

Source: Data are from the 2020 Medicare Current Beneficiary Survey analyzed by ATI Advisory.

Further, ATI notes that "policymakers and regulators may not fully appreciate the critical role that seniors housing organizations fulfill in [chronic] disease management and prevention. Many lack insight into the value that these healthcare services can generate in terms of improved clinical outcomes, lower resource allocation, and an improved quality of life for residents."

More than 6.9 million people aged 65 and older live with Alzheimer's today. Absent a cure or development of successful treatment, the number is projected to reach 13 million by 2050.

Millions of aging Americans will require access to a variety of different care options in the decades ahead, including private pay assisted living.

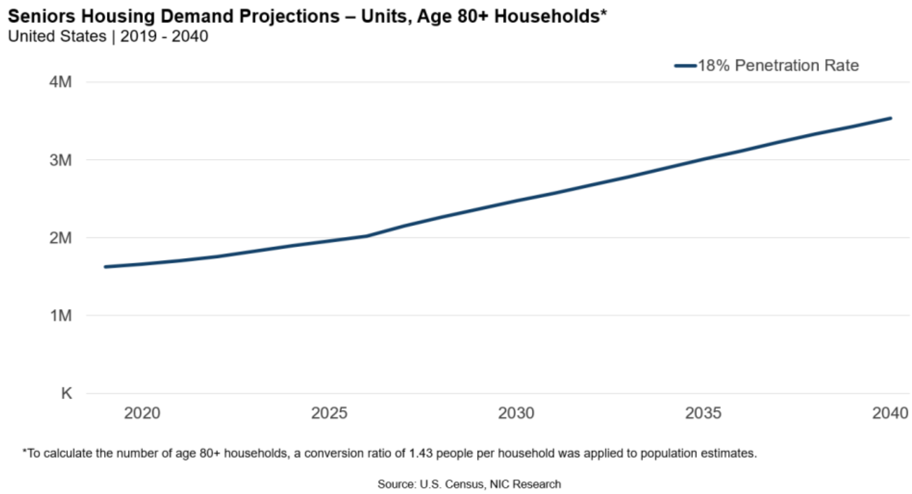


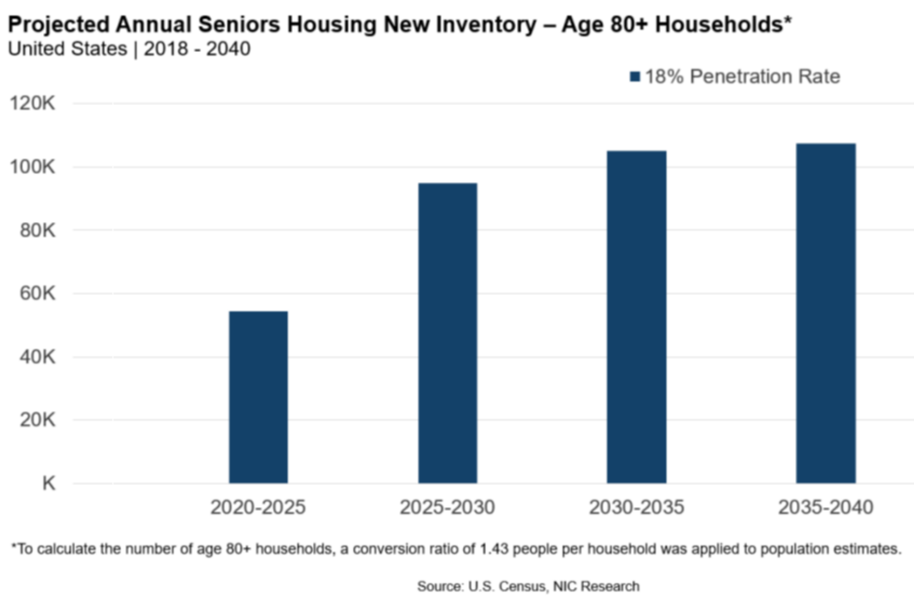
The proposed legislation will result in the virtual elimination of private for-profit investment in assisted living at a time when demand for assisted living is projected to dramatically increase.

The negative impacts of this are manifest:
- It threatens the market driven nature of assisted living that currently encourages innovation and constant quality improvement pursued by private capital in collaboration with professional senior living operators.
- It puts at risk the great strides assisted living has achieved to become the most efficient setting to address social determinants of health for a rapidly growing segment of the population.

- Not-for-profit and government funded assisted living will be unable to meet the expected demand and the proposed legislation will result in a dramatic shortage of supply and concomitant decrease in affordability.

According to the National Investment Center for Seniors Housing and Care (NIC), assuming an 18% penetration rate for age 80 plus households, approximately 881,000 additional units of assisted living inventory will be needed to serve seniors by 2030. Moreover, the rate of increase in demand continues to accelerate with a need for roughly 54,000 units per year required between 2020 and 2025; 95,000 units between 2025 and 2030 and 105,000 units between 2030 and 2040 (see charts below).

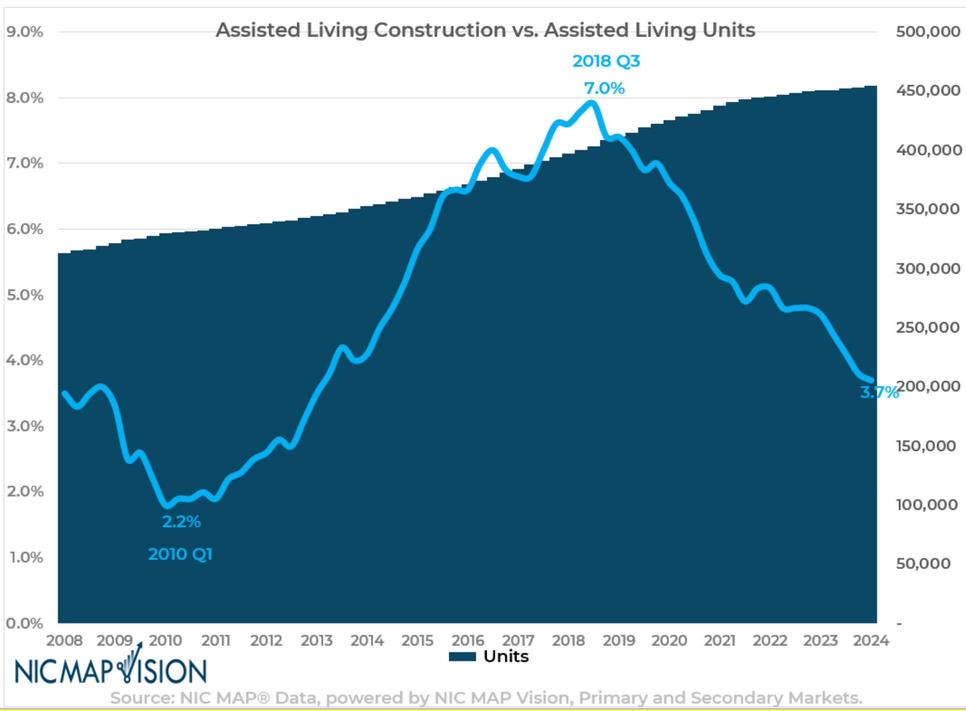




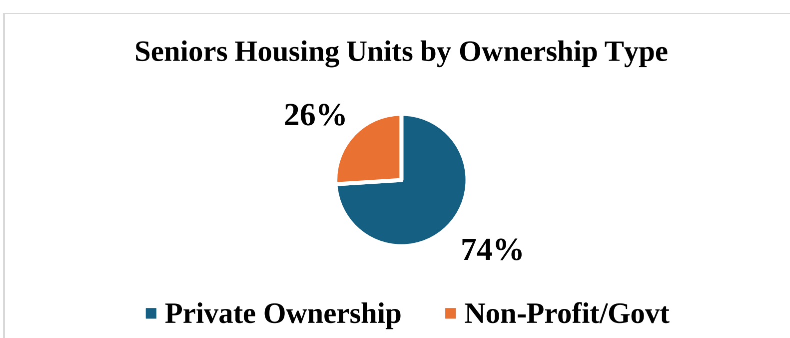
Estimates suggest that the development cost associated with needed production of assisted living will exceed $1 trillion by 2050. Inadequate funding of new development activity and supply growth as well as limited investment for improvements in the existing supply will dramatically limit access to quality living options for some seniors and make existing options more expensive for all.

The negative consequences associated with not keeping pace with the demand for assisted living are significant. If investors are deterred from supporting this industry due to the unrealistic demands of the proposed bill, the existing supply will soon be out of reach of average Americans.

As the following illustrates, post pandemic construction of new assisted living units has fallen dramatically. and is currently at its lowest point since tracking began. The chart below shows that assisted living construction has fallen to less than 17,000 units in 2024, far below demand estimates. Additionally, without adequate capital for renovations and improvements, existing inventory will deteriorate and result in fewer available units, impacting affordability.



Non-Profits and Government Assisted Housing Cannot Meet the Demand



If private investment is discouraged in assisted living, non-profits and government programs cannot meet this demand. Multiple public and private capital sources will be needed to ensure our older adult population has access to assisted living over the next thirty years. Congress should consider ways to encourage growth in this industry, not stall the economic engine necessary to meet the projected demand.

Private Equity and REITS are Necessary Capital Partners to Assisted Living Providers

Investment funded by private equity and publicly traded entities is prevalent in ALL sectors of the economy, including assisted living communities. It provides necessary capital that allows business owners and operators to deliver their products and services to consumers in a free market at competitive rates. If capital resources are constrained the result will be less supply and greater cost to the consumer, neither of which is ultimately in the best interest of the public.

While examples of specific private equity investments in health care entities have led to harmful outcomes, as well as bankruptcies, closures and lost jobs, there has been scant evidence of similar negative impacts or harms when private equity and REITs invest in assisted living communities. In limited research conducted making these comparisons, results indicate non discernable differences in specific quality measure outcomes. There is ongoing independent federally funded research into the role of private equity and assisted living being conducted by Johns Hopkins University. We look forward to those findings which can inform additional work in this area. In the meantime, we are opposed to any legislation that will restrict capital sources to this industry.

For the past three decades REITs and private equity investors have been effective, efficient and indispensable participants in this industry, ensuring adequate capital investment is accessible and available to address the necessary growth driven by the aging population. They are not the only source of capital, but they are significant and are behind much of the current stock of assisted living built since the 1990s.

In many cases, assisted living properties are owned by an entity other than the operator. These ownership entities include publicly traded health care focused REITs and other institutional investors, including those identified as private equity. The structures of the relationships vary, but both offer efficient and reliable capital that invests in both new assisted living development as well as investments to preserve the existing supply of these residential settings.

Assisted living is a capital-intensive business and private investment is critical to ensure the continued availability of housing and care for seniors in need of this lifestyle option. There is an alignment of interests between investor and operator in both private equity and REIT relationships where shared success is the goal. As noted earlier, the market driven nature of assisted living mandates that successful investments require high quality operations and consistent high levels of resident satisfaction.

Conclusion

The demand for seniors' housing is significant and will grow dramatically with the aging of the baby boom generation. Having access to all capital sources, including REITs and private equity, is critical to meeting the needs of older adults who require the supportive care offered in assisted living and memory care settings. Many of our operators are private regional companies and as small businesses, this proposal will have the unintended consequence of limiting their options for capital. The proposed *Health over Wealth Act* will have disastrous consequences for older Americans and their families as it will result in an inadequate supply of needed resources. Neither not-for-profits nor the government will be able to develop or maintain a sufficient stock of assisted living given the rapid aging of our 80+ population.

These comments are in no way intended to excuse the bad behavior of any owner or operator of health care entities or senior living. However, the proposed legislation will have a chilling effect on future investment in assisted living by both private equity and REITs. Excessive reporting, unrealistic escrow reserves, licensing, agency approval process, devastating changes to the tax code for REITs, government control of critical decision-making, and other restrictions will jeopardize access to quality assisted living with grave national consequences.

The impact will be decreased efficiency and liquidity in the market as transactional timeframes will be extended, increasing diligence costs, and greatly limiting the pool of investors interested and therefore the supply of inventory to consumers. Without assisted living as an option those residents would be forced to find other options, including SNFs (at greater cost to the taxpayers) or aging at home potentially without adequate assistance with daily living and therefore a lower quality of life and care.

Additionally, the value of current investments will be jeopardized as the pool of prospective investors will be limited. By extension, the investments by pension plans in assisted living will be harmed as well as the financial wellbeing of the holders of those pensions.

Thank you for the opportunity to weigh in on this important legislation. We urge you to reconsider the inclusion of assisted living for the reasons stated above. Our organizations look forward to working with you and your staff going forward and are happy to respond to questions.

Sincerely,

David Schless
President & CEO
American Seniors Housing Association

James Balda
President & CEO
Argentum

The American Seniors Housing Association (ASHA) is a national organization of over 500 senior living companies who own, operate or provide services to approximately 7,000 senior living communities across the U.S., including active adult, independent living, assisted living, memory care and life plan/continuing care retirement communities. The Association's programs are focused on promoting quality and innovation, advancing research, exchanging strategic business information, and educating seniors and their families about the merits of senior living.

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 to older adults and their families. Since 1990, Argentum has advocated for choice, independence, dignity, and quality of life for all older adults.

Addendum

REIT Investment in Assisted Living

Publicly traded REITs play an important role in the ownership of assisted living. They are a product of the tax code and, as such, are highly regulated and transparent. As public companies, REITs are subject to all SEC public reporting requirements for financial institutions. They hold quarterly earnings calls, the transcripts of which are publicly available. They provide quarterly supplemental reporting, so that stakeholders can better understand some of the underlying operating results of the REIT. They disclose financial information and report on material business developments and risks on a timely basis. In addition to being a valuable source of capital to business, they also provide the average person the opportunity to invest in real estate, allowing then to diversify and grow retirement savings. Roughly 145 million Americans, or 44 percent of U.S. households held REIT investments in 2020 either directly or indirectly as part of their retirement savings.

It is noteworthy to understand the level of support REITs contributed to their operating partners during the COVID pandemic. When government was largely inattentive to the needs of this private pay setting, the industry had to procure supplies, testing kits, vaccines and other assistance as needed to keep operations running smoothly and safely. While the industry received a small percentage of the levels of funding received by other sectors on the front lines of COVID, many REITs spent millions of dollars to ensure the well-being of residents and staff. REITs also offered rent deferrals, abatements and restructuring to their operator tenants who struggled to maintain occupancy and pay for increased operating expenses.

Private Equity Investment in Senior Living

Real estate private equity takes many forms, but the majority of the investors in the funds targeted to assisted living assets are large public pension plans and endowments, while some investors are from ERISA pension plans and union plans, including state and local government plans.

The objective is to responsibly diversify the investment of pension fund assets to secure the pension plan benefits of its members.

Private equity is diligent in their selection of responsible operators who provide exceptional service to their senior residents. They engage in extensive due diligence that includes a thorough review of the senior living operator in areas that include: financial condition, state survey reviews, history of litigation and status, employee and resident turnover, employee and resident satisfaction surveys, employee and resident handbooks, wages and benefits reviews by positions, policies and procedures, resident agreements, corporate resources to support community operations, resumes of community leadership, and other areas specific to the operations of the prospective investment

Further, most real estate private equity firms are Registered Investment Advisors (RIA's) with the Securities and Exchange Commission (SEC) and subject to many restrictions on company activities (transparency, fees, reporting, etc.) and personal activities (political contributions, personal investments, personal conduct, etc.).

Senior Living Industry Pursuit of Quality

The senior living industry, including owners, operators, industry trade groups and others, is diligently pursuing initiatives to understand and address the needs of current and prospective senior living residents. These initiatives include a partnership with the National Association for Regulatory Administration in the Quality in Assisted Living Collaborative, to develop state model guidelines on infection prevention and control, dementia care training, and emergency preparedness. Other initiatives include ongoing market research to identify both resident and non-resident attitudes toward assisted living and the services offered, ways to improve the resident experience, enhance staff recruitment and retention, as well as exploring new technology opportunities and developing innovative ways to deliver critical services to residents.

The goal of these widely supported industry efforts is to continuously adapt and improve the services offered to senior living residents. Financial success in senior living is directly correlated with achieving the highest standards of resident services.