

**ANSI EXECUTIVE STANDARDS COUNCIL HEARING
FEBRUARY 18, 2020**

**APPEALS OF ACCREDITATION OF ARGENTUM AS STANDARDS DEVELOPING
ORGANIZATION FOR SENIOR LIVING INDUSTRY**

**JOINT PRESENTATION OF APPELLANTS AMERICAN SENIORS HOUSING
ASSOCIATION; LEADINGAGE; AND AMERICAN HEALTH CARE
ASSOCIATION/NATIONAL CENTER FOR ASSISTED LIVING**

Lead Speaker for Appellants:

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Vice Chairman of American Seniors Housing Association

Vice Chairman and Chief Investment Officer of Senior Lifestyle Corporation

I. Introduction of Parties and Context of Presentation

Individuals Present

I am Jerrold Frumm, here today to speak on behalf of three of the four national senior living trade organizations: the American Seniors Housing Association (ASHA), LeadingAge and the American Health Care Association/National Center for Assisted Living (AHCA/NCAL). I will introduce myself more fully in a moment and will also provide additional information on the size, scope and history of the three groups I am here to represent.

But first, I would like to thank you for convening this hearing and taking your valuable time to consider our appeals. I would also like to note that I believe everyone here today from the four industry groups, ASHA, Leading Age, AHCA/NCAL and Argentum, desire the same thing—to assure that our industry is able to grow and prosper amid a rapidly changing healthcare delivery environment and, first and foremost, to serve the diverse and expanding population of seniors (our residents and future residents) with the highest quality of care and services. The goal is the same for all of us, but the three groups I represent passionately disagree with the fourth on how to accomplish this.

Now, I would like to provide additional information about my background:

I am Vice Chairman and Chief Investment Officer of Senior Lifestyle Corporation. I have been with my company since its inception over 34 years ago. We are a national company based in Chicago and I can tell you that our company pre-dates the adoption of assisted living legislation in the State of Illinois. Senior Lifestyle currently operates in excess of 180 communities (we use the term community instead of the term facility to refer to each of our locations) with over 19,000 units across 28 states, serving 18,000 residents with a workforce totaling about 11,000. We are currently listed by both ASHA and Argentum as the eighth largest operator of senior living in the country. We operate independent living (IL), assisted living (AL), memory care (MC) and life plan or continuing care retirement communities (CCRCs). Our communities are in diverse geographic locations, urban, suburban and rural, and across a range of affordability models.

Senior Lifestyle has been a member of ASHA since 1991 when it was under the umbrella of the National Multifamily Housing Council. Our founding Chairman was instrumental in establishing ASHA as a separate organization, spinning it off from the National Multifamily Housing Council in 2001. We are also active members of Argentum and have been for many years. Our current Chief Executive Officer is a past member of Argentum's Board of Directors and served as a Commissioner on Argentum's Senior Living Certification Commission beginning in 2016. Our General Counsel sits on the Argentum Government Relations Executive Roundtable and our Chief Clinical Officer is a member of the Argentum Roundtable/Standards Initiative. We send numerous people to Argentum events each year and have actively participated in Argentum's Director of Assisted Living Certification program.

My involvement today grows out of my participation with ASHA as the immediate past Chairman of its Public Policy Committee. I was elected Vice Chairman of ASHA in January at our Annual Meeting. As I have explained, I have been actively engaged in seniors housing for quite some time and at this stage of my career, I am both pleased and fortunate to be able to devote my time and experience for the benefit of the industry and our mission as a whole. I am very proud of the important work we do—taking care of America's seniors—and I believe the issue we are facing today is important for the continued advancement of our industry.

Before giving you more information about the three separate groups I am representing, I would like to introduce you to representatives of these associations who are here today, and who will be pleased to respond to any questions you have for them:

- David Schless, President of ASHA;
- Cory Kallheim, Vice President, Legal Affairs and Social Accountability of LeadingAge; and
- Scott Tittle, Executive Director of NCAL.

Katie Smith Sloan, President & CEO of LeadingAge and Jeanne McGlynn Delgado, Vice President of Government Affairs for ASHA have joined us as observers, along with several other interested parties, including Heath Boddy, President, Nebraska Health Care Association/Nebraska Assisted Living Association and Vice President, Affiliated State Health Care Association Executives; and Rod Burkett, CEO, Gardant Management Solutions. Mr. Burkett is a member of NCAL, ASHA, and Argentum, and currently serves on the NCAL Board.

Industry Trade Associations Represented

ASHA, LeadingAge and AHCA/NCAL are three of the four leading national trade associations whose members are operators, owners, developers, investors, lenders and other service providers involved in the senior living industry. ASHA, LeadingAge and AHCA/NCAL, each appealed ANSI's Executive Standards Council's (the Standards Council) accreditation of Argentum as the Standards Development Organization (SDO) for the senior living industry. In an effort to be efficient in the use of the Panel's time, we have coordinated and consolidated our hearing presentation, as our interests and viewpoints on the subject of this proceeding are aligned.

Our three associations represent 14,800 senior living communities across the United States serving about 2.56 million residents. Based on the expanded NIC database of 23,000 communities we represent 64% of the total. (NIC is the National Investment Center for Seniors Housing & Care which helps to develop institutional quality investment data for the industry.)

- ASHA has 550 corporate members who own and operate over 6,000 senior living communities comprised of approximately 750,000 units. ASHA was founded in 1991 and has served to promote the industry and the interests of seniors across the country. ASHA maintains a robust government affairs presence at the federal level where it lobbies for legislation and policies to support seniors housing and our residents.
- LeadingAge has nearly 5,300 member communities across the country, most of which are independent living, assisted living, and life plan communities. The members of LeadingAge and their partners impact the lives of millions of individuals, families, employees, and volunteers every day. Alongside its members and 38 state partners, LeadingAge addresses critical issues by blending applied research, advocacy, education, and community-building. Over one-third of LeadingAge members provide affordable housing to seniors across the United States. LeadingAge is also a part of the Global Ageing Network, whose membership spans 30 countries. LeadingAge makes America and the world a better place to grow old.
- AHCA/NCAL has over 14,000 member communities. Of these communities, 3,500 are assisted living residences with a total of nearly 260,000 assisted living apartment units. AHCA/NCAL's members also operate over 1 million higher-acuity skilled nursing beds. AHCA/NCAL has affiliated skilled nursing chapters in all 50 states and affiliated assisted living chapters in 46 states. As a federation trade association model, AHCA/NCAL seeks to further its mission statement "Improving Lives By Delivering Solutions for Quality Care" through advocacy and representation on behalf of its members in Washington, D.C. as well as in state capitals through its state affiliated chapters.

Recognition of Importance of ANSI Consensus Standards and Foundational Issue to be Addressed

ANSI-approved standards have particular and wide-ranging impact. ASHA, LeadingAge and AHCA/NCAL are here today because we recognize and respect the importance of the ANSI process and the standards adopted according to this process. Standards with the ANSI seal of approval denote that an industry and other affected stakeholders have come together in an open, transparent and collaborative process to decide upon a particular operating standard or series of standards, and that there is broad consensus about the need for and the details of each underlying standard.

In order to achieve such consensus, at the outset there must be wide-ranging agreement from the affected industry regarding the desire to develop ANSI standards in the first place. In this case, there is no such consensus, as demonstrated by our objections and subsequent appeals, and any process built without such a foundation fails to satisfy ANSI's own requirements. Argentum has simply failed to demonstrate at any point in this process that they have sufficient support to show industry consensus.

Moreover, an organization desiring to be designated as an SDO must demonstrate that there is consensus for the designation. Similarly, Argentum has not carried this burden and should not be designated as the SDO simply because it was the first to apply.

It is important that there be consensus support of Argentum as SDO because ANSI standards are widely recognized among regulators, the trial bar, and the judiciary. There is significant legal precedent for using ANSI-approved standards to establish liability when a party alleges a standard of care has not been met. Courts of law frequently have allowed ANSI standards to be used as evidence of a standard of care or a breach thereof when a defendant's conduct does not comply with the ANSI standard at issue.

Also, consensus standards sometimes are adapted for government purposes, giving them the force of law. Congress formally recognized the relationship between private-sector standards developers and the public sector in 1996 when it passed the National Technology Transfer and Advancement Act. Although ANSI standards are initiated as voluntary standards, once adopted or codified by reference in statutes, codes or government regulations, they become mandatory standards and become the law for the jurisdiction represented by that authority. As I'm sure you are aware, OSHA has adopted ANSI Standards in a number of circumstances. The same is true for the Centers for Medicare and Medicaid Services (CMS) which is important to the senior living industry as it requires certain healthcare facilities to comply with Life Safety Code standards set by the National Fire Protection Association (NFPA), an ANSI-approved SDO.

We are here today because we think the Argentum designation as the SDO is a big deal. It has tremendous weight and, as illustrated above, the potential to create standards for liability and even regulatory standards that will impact the entire senior living industry. Importantly, however, this is not an industry trade group turf battle—we are all well-established groups with long histories and overlapping memberships in many instances. We most often work well in concert and are generally supportive of all initiatives that will benefit our industry and the residents we serve. We think this initiative is not a benefit to the industry or our residents and has been flawed (according to ANSI's own "Essential Requirements") from the inception. The information presented here today will reinforce the strength of our position.

II. Description of Senior Living Industry and Governmental Regulation of the Industry

As you consider these consolidated appeals, we think it is helpful to understand the different types of senior living options and the standards and regulations in place today. The options include a broad range of housing and services along a continuum of care that provides a combination of differing types of housing accommodations, meal service, personal care services

such as assistance with bathing, dressing, toileting and the like (known as “activities of daily living”), and healthcare.

A core principle of senior living is the preservation of each resident’s independence for as long as possible by providing services at the individual’s level of need. Older individuals and their families who are considering senior living options have several different types of settings to choose from:

Independent Living

Independent living refers to a residential living setting for seniors who require minimal or no supportive services provided by the operator. Independent living residences may be apartments or freestanding or attached homes. Meals and housekeeping generally are provided, along with other support services such as social, educational and community engagement activities and transportation to medical appointments and shopping. Independent living residences do not provide healthcare or personal care services, although residents are able to bring in outside services such as home healthcare, therapy and assistance with activities of daily living, if desired.

Governmental Regulation: Independent living buildings must comply with all applicable federal, state and local regulations including building codes; life and fire safety code requirements; state and local physical plant requirements, such as elevator maintenance and other local safety rules. Independent living is generally subject to the Federal Fair Housing Act and the Americans with Disabilities Act. If food services are provided, any state and local regulations pertaining to food service establishments apply. We are not aware of any specific legislation or regulations adopted solely for independent living.

Assisted Living

Assisted living is designed for people who need assistance with activities of daily living. Assisted living services can be provided in freestanding communities, as components of life plan communities or CCRCs, or as a separate wing or building within an independent living complex. Assisted living services include assistance with bathing, dressing, toileting, and the like, and may also include (depending upon licensure requirements) certain healthcare services, such as administration of medications and monitoring of certain medical conditions. Accommodations may vary greatly from one assisted living community to the next (*e.g.*, private rooms or semi-private rooms, some with kitchenettes and some not, etc.). Personal needs and preferences and the amenities a community offers often are important criteria when individuals and their families select a community. Assisted living communities are designed to be operated, staffed and maintained in a manner appropriate to the needs and desires of its residents, with resident safety and autonomy being paramount concerns.

Governmental Regulation: Assisted living communities are regulated in all 50 states, being registered, licensed or certified by a department or agency of state government, which usually is the division governing healthcare services. State regulations govern a wide range of assisted living operational matters, including staffing, emergency preparedness, physical plant,

personal care services, and often limited healthcare services. The responsible state agency conducts periodic on-site inspections to verify that regulations are being met. Assisted living communities also must be constructed and equipped to comply with a host of state and local building and life safety codes and health department requirements.

Memory Care

Memory care residences are designed to be supportive environments for residents coping with Alzheimer's disease or other forms of age-related dementia or cognitive impairment. These specially designed or modified areas can be in stand-alone memory care communities or are often part of a larger assisted living community. Design details and staff training are focused on the needs of residents with the goal to create a safe and nurturing atmosphere. Particular attention is paid to wayfinding (cues and design details to aid seniors with memory deficits find their way around the community), discrete easy-to-identify community activity areas, and secure exits to protect residents at risk of wandering or elopement.

Governmental Regulation: Memory care programs generally are regulated by the same state healthcare agencies that regulate assisted living. Usually the state agencies promulgate a subset of regulatory standards that are specific to memory care programs with modified staffing and programmatic requirements. In some jurisdictions, memory care programs are registered, licensed or certified separately from assisted living communities or require an assisted living license with a special designation. Building and life safety codes are applied to memory care communities often with specific requirements to assure the safety of cognitively impaired residents.

Nursing Home

Nursing homes, also known as nursing facilities or skilled nursing facilities, are institutional healthcare settings where the majority of individuals require 24/7 nursing and/or healthcare services. We will not address specific requirements or regulation of nursing homes since they are not specifically included in Argentum's SDO designation. Note, however, that nursing homes are ordinarily part of a life plan or CCRC community as described below.

Life Plan/CCRC

Life plan communities/CCRCs are diverse in their offerings and structures but generally include a combination of at least independent living and skilled nursing. As assisted living and memory care became more common residence types in the mid to late 1990s, CCRCs often added these sections to existing communities and newly developed communities usually included these uses. CCRCs are typically located in one large structure or on a campus that contains multiple buildings with varying uses. In independent living, a community may offer apartments, freestanding homes, attached homes or other residential options. Assisted living residents usually live in apartments, while those in skilled nursing and memory support areas generally reside in smaller suites or rooms.

Many life plan communities require a one-time up-front entrance fee and a predictable monthly fee, which allows the resident to occupy an independent living residence, enjoy all the services and amenities offered by the community, and have access to long-term on-site health care when and if they need it. If the resident requires assisted living, memory support or skilled nursing, the community provides the appropriate level of care. Depending on the residency contract structure, this care may be provided at essentially the same monthly rate the resident paid in independent living, at a reduced rate for a specified amount of time, or on a fee-for-service basis. Most CCRCs that require an up-front fee have some level of refundability upon the resident's death. CCRCs can also be operated on a monthly fee, pay-as-you-go model that doesn't require an up-front entrance or endowment fee.

Governmental Regulation: Most states regulate life plan communities, through the same state agencies that regulate assisted living and nursing homes. The healthcare regulations that apply to freestanding assisted living communities and nursing homes also apply to such healthcare operations housed within a life plan community. CCRCs that require up-front entrance fees are often also regulated by the state insurance departments or attorney general due to the financial aspects of the resident/community relationship.

As you can see, senior living options are not cookie-cutter, one-size-fits-all housing and services for the elderly. Rather, senior living is a system of varied housing options with a diverse menu of healthcare and non-healthcare services that has the capability and flexibility to meet the many needs of individuals whose physical and mental condition is not static. Senior living providers address the needs of their residents in a manner that expresses the culture and norms for their community and are consistent with the ultimate goal of providing high quality housing, care and services. There is no single system that is correct or best for every community.

Notably, however, Argentum has been granted the ANSI SDO designation for the broad range of senior living options: independent living, assisted living, memory care and CCRCs.

III. There Is No Consensus Within the Senior Living Industry Supporting the Proposed Standards Activity

The three national senior living trade groups that I am representing today believe that a system of national standards purporting to be industry consensus standards (developed in accordance with the ANSI process) that are instead developed by a single industry group dominating the standards-approval process, is ill-advised and will not serve to enhance the lives of residents in our communities.

The Foundational Question is Industry Support for Standards Activity

Before considering the shortcomings of Argentum's Application and its proposed Policies and Procedures for Standards Development, the foundational question is whether the senior living industry supports the proposed standards activity.

An essential part of an SDO application is to show “demonstrated support by the affected industry area for the standards activity.” (Section II.B of Argentum’s Application.) The burden is on Argentum to demonstrate consensus by the senior living industry in favor of its proposed standards activity. Argentum did not meet its burden as evidenced by these consolidated appeals of the ANSI designation.

Argentum’s application relied upon its own internal association standards activities, including its pilot program which is discussed in ASHA’s and NCAL’s appeals. Argentum failed to provide any evidence that ASHA, NCAL, LeadingAge, or even Argentum’s own members support the ANSI standards development activity. In fact, my company, Senior Lifestyle, participated in the Argentum pilot program but does not support the development of ANSI standards.

ANSI’s Essential Requirement Section 4.1.2 provides that: “If comments are submitted that challenge support for an applicant’s accreditation, the applicant shall supply evidence of such support for consideration by the commenter and the ExSC.” NCAL’s comments in opposition to the Application challenged support for Argentum’s accreditation due to lack of industry support. In responding to NCAL’s comments, Argentum failed to provide any such evidence for consideration by NCAL and the ExSC.

In their appeals, all three trade associations challenged support for the standards activities. LeadingAge went so far as to outline various alternatives to ANSI standards because the unique qualities of the senior living industry make standards problematic for the ANSI framework. Absent industry support for standards, there was and is no reason to even consider Argentum’s application.

Argentum is Aware of a Lack of Industry Support

In an effort to demonstrate industry support, Argentum argues that none of the trade associations expressed concern when they received a November 2018 NIC multi-association “Board Member Update” indicating that Argentum had established the Senior Living Standards Commission ... to develop and promote ANSI accredited standards.” (Argentum Exhibit 4.)¹ Not only was this update an ineffective notice (it was one line in a three page document and the only written indication of Argentum’s intent with regard to ANSI), Argentum knew that there was no support for national, industry-wide ANSI standards. On October 25, 2018, James Balda, President and CEO of Argentum, spoke to Scott Tittle, Executive Director of NCAL, regarding ANSI standards. Mr. Tittle told Mr. Balda that NCAL had a long standing position opposing development of national standards for the profession.

Given Argentum’s actual knowledge that the industry did not want national standards, the Board Member Update is not evidence of industry consensus, but rather evidence that Argentum will bulldoze ahead despite opposition from every side. Because Argentum knew it did not have

¹ Reference to “Argentum Exhibit” is a reference to exhibits attached to Argentum’s Response to the Appeals of Accredited Standards Developer Status.

industry support for national standards, it should have taken steps to build support prior to filing the Application. It did not. Argentum's Application fails to describe any outreach efforts with respect to the development of ANSI standards. Section C of the Application merely lists groups Argentum "has reached out to." Neither ASHA nor NCAL are on the list; underscoring its lack of communication with leading stakeholder organizations. The Application is devoid of any description of the steps Argentum took to communicate with the other three trade associations to gauge the level of support (or opposition).

ASHA, NCAL, and LeadingAge represent 64% of the senior living industry, and are standing before you today to object to the proposed standards activity. The fact that all of these parties have devoted the time and expense necessary to pursue these appeals, demonstrates the overwhelming lack of support for the ANSI standards activity by the affected industry.

In contrast, Argentum asserts that its Board and 28 of 36 people who attended an Argentum webinar in September 2019 entitled "The Case for Industry-Led Standards" are in favor of standards development. Only 51 people registered for the webinar and 30% did not respond to the survey. (Argentum Exhibit 13.) The low number of participants in the webinar speaks loudly, and suggests that the industry is not interested in standards or opposes them.

The issue here is not merely whether Argentum should be the SDO (it should not), but whether there should be ANSI standards at all. There should not. Three of four national trade organizations representing 64% of the senior living communities are saying that we do not support the activity.

IV. Argentum's Application and Proposed Process for Setting Standards are Flawed

Argentum's Application Process Did Not Comply with Several ANSI Essential Requirements

Essential Requirement 1.5 requires notice in suitable media to demonstrate an opportunity for participation by all directly and materially affected persons. Key to this Essential Requirement is that the notice be designed to permit meaningful participation by affected persons, such as the members of the three organizations I am representing today.

Argentum relies upon the November 2018 NIC multi-association Board Member Update, mentioned previously, as notice of their intent to become an ANSI-accredited SDO. Without the details or timing of its proposed Application, this was insufficient to allow meaningful participation from ASHA, LeadingAge and AHCA/NCAL in the ANSI process.

Argentum did not give notice to affected stakeholders when it filed its Application on April 5, 2019. It was pure happenstance that ASHA, AHCA/NCAL, and LeadingAge learned of the Application during a meeting on April 25, 2019 among all four trade associations on other topics. The purpose of this April meeting was to discuss several matters being considered by the Center for Excellence in Assisted Living (CEAL). James Balda, Argentum's President and CEO, mentioned the ANSI filing at the very end of the meeting in an off-handed manner. It was not part of the meeting's agenda. ANSI is not a well-known entity in senior living, thus the mention of ANSI was meaningless to us until we had an opportunity to review the Application

and investigate further. (See Argentum Exhibit 5.) In addition, by the time we learned of Argentum's Application, much of the comment period had passed.

Essential Requirement 1.6 requires consideration of written views and objections of all participants. ASHA and AHCA/NCAL asked Argentum to extend the comment period for the Application; and LeadingAge asked that the Application be withdrawn to enable transparent and meaningful review by all stakeholders in senior living. Argentum refused to seek an extension of the comment period to allow ASHA, AHCA/NCAL, and LeadingAge the opportunity to engage in meaningful analysis and participation in the process. This refusal does not bode well for future standards activity as it demonstrates Argentum's intransigent stance to follow its own path without regard to industry consensus, and does not demonstrate a willingness to substantively consider other views or objections. As a result, any standards developed will not be consensus standards; they will be Argentum's unilateral standards in violation of ANSI's Essential Requirement 1.6 which requires consideration of views and objections and an attempt to *resolve* (not ignore) all expressed objections.

Argentum places great emphasis on its October 2018 press release which was picked up by the trade publication *McKnight's Senior Living*. (Argentum Exhibit 2.) While the press release undoubtedly reached a wide audience, it did not mention ANSI at all. It was long understood that Argentum wanted to develop association standards for its members as they did with their pilot program. And the October 2018 announcement implied further work by Argentum on this initiative, stating:

Argentum also announced a new Senior Living Standards Commission, which will develop and maintain voluntary standards for senior living related to emergency preparedness, memory care, medication management and other aspects of resident safety.

"By establishing this new commission, *Argentum is expanding on its Senior Living IQ initiative* focused on supporting the ongoing investment in quality of life for residents of senior living communities," Argentum Vice President of Quality Improvement John Schulte said in a statement. (Emphasis added.)

We did not object to Argentum engaging in its own standards activities then, and do not object now. What we object to is Argentum's attempt to create national standards for the entire industry and develop ANSI standards without industry support.

Essential Requirement 1.1, Openness, requires that participation be open to all persons who are directly and materially affected by the activity in question. Neither Argentum's Application, nor its response to these appeals, demonstrate any effort by Argentum to give notice to other affected parties that it was planning to apply to ANSI to develop nationwide ANSI-approved consensus standards. The sole written notice regarding ANSI was in the single NIC Board Member Update (mentioned earlier) nearly six months prior to filing the Application.

Argentum's Proposed Policies and Procedures for Standards Development Violate Several Essential Requirements

Essential requirement 1.2 prohibits the standards development process from being dominated by any single interest category, individual, or organization. “Dominance means a position or exercise of dominant authority, leadership, or influence by reason of superior leverage, strength, or representation to the exclusion of fair and equitable consideration of other viewpoints.”

Argentum's proposed standards activities are dominated by Argentum.

- Paragraph 4 of Argentum's Policies and Procedures for Standards Development (Argentum Policies) states that the “requirement for balance will apply to the Standards Commission only, not its Work Groups, Task Forces, or other ad hoc groups.”
- “The Argentum Board of Directors maintains responsibility for final approval of all proposed Argentum standards. Standards are approved by a majority vote of the Board of Directors in accordance with Argentum Bylaws.” Argentum Policies, ¶ 7.1.
- “Argentum's Quality Improvement Committee serves in an advisory capacity to the Argentum Board of Directors. The Quality Improvement Committee is appointed in accordance with Argentum Bylaws, policies and procedures. Argentum standards will be submitted to the Quality Improvement Committee for preview before they are submitted to the Board of Directors for final approval.” Argentum Policies, ¶ 7.2.
- “The Standards Commission will be led by the Standards Commission Chair, who will be appointed by the Chair of the Argentum Board of Directors. The Chair will serve a one year term and may be appointed to serve additional terms at the discretion of the Argentum Board of Directors.” Argentum Policies ¶ 7.3.1.
- “The Chair of the Argentum Board of Directors may appoint a Vice Chair to fulfill the responsibilities of the Chair in the Chair's absence.” Argentum Policies ¶ 7.3.2.
- “Standards Commission Members will be appointed by the Chair of the Argentum Board of Directors to serve terms of two years and may be appointed to additional terms.” Argentum Policies ¶ 7.3.5.
- “Individuals interested in serving as a Member of the Standards Commission will be required to apply for consideration to the Secretariat for consideration by the Chair of the Argentum Board of Directors.” Argentum Policies ¶ 7.3.6.

- The Standards Commission Chair will review Member attendance and voting records on an annual basis. Membership on the Standards Commission may be terminated if a Member has completed two one-year terms [*sic*, compare ¶ 7.3.5] or is considered inactive, i.e., fails to return ballots on two consecutive issues and/or misses two consecutive meetings. A Standards Commission member whose change in employment affects his/her voting interest may also be terminated.” Argentum Policies ¶ 7.3.9.
- “Work Groups will be appointed by the Standards Commission Chair to develop and *maintain Argentum standards* and provide related support, such as research, training, guidance documents, and consumer outreach.” Argentum Policies ¶ 7.4.
- “Work Groups membership may be terminated at the discretion of the Standards Commission Chair for ... Antagonistic, disrespectful or disruptive behavior.” Argentum Policies ¶ 7.4.3.
- “The Argentum Vice President of Quality Improvement will serve as the Secretariat ...” Argentum Policies ¶ 7.6.
- “Projects intended to result in the development of a standard not previously addressed by Argentum require approval by the Argentum Board of Directors prior to proceeding with the initiation of the project.” Argentum Policies ¶ 8.1.1.
- “If the Argentum Board of Directors determines that a proposed standard presents an unreasonable safety or legal risk, the Secretariat has the authority to cease processing the proposal and promptly notify the Standards Commission.” Argentum Policies ¶ 8.3.
- “The Appeals Panel will consist of three individuals and a non-voting chair, all of whom will be chosen by the Argentum President/CEO. At least two of the members will be acceptable to the appellant. ... If Argentum and the Appellant cannot agree on the composition of the appeals panel within 14 days, the Argentum President/CEO will proceed with the appointment of the appeals panel so the appeals process can proceed.” Argentum Policies ¶ 11.6.
- In addition, participation will be effectively limited to Argentum’s members since they are the only ones guaranteed to receive timely notice of standards development and publication of draft standards for review and comment. Argentum Policies, ¶¶ 8.2.1 and 8.4.1.

In its response to these appeals, Argentum argues that it will seek greater balance of interests going forward. Balance is required by **Essential Requirement 1.3**. Specifically, there must be a balance of interests, i.e., participants from diverse interest categories. Here, such interest categories include providers, trade associations, other standards developers or accrediting agencies such as CARF, the American Assisted Living Nurses Association, community organizations, seniors, AARP, the Alzheimer's Association, regulators, and any number of potentially affected parties.

As it currently stands, Argentum's consensus body is dominated by Argentum and lacks balance among interest categories. See Application, Attachment C (conceding that the consensus body "does not currently achieve the level of balance required"). It is very telling that at least one person Argentum identified in its list of proposed members of the Senior Living Standards Commission had no idea Argentum was proposing to create ANSI standards. When she became aware, Margaret Wylde, a highly respected industry researcher, asked to be removed from the list.

On its Application, in response to a question to "describe your efforts to coordinate your standardization efforts with other organizations/groups to date," Argentum stated that it had "reached out to" LeadingAge and the Alzheimer's Association, among others. (Application, Section C.) The Alzheimer's Association stated in its May 6, 2019 letter that it "cannot support Argentum's application," and LeadingAge is before you today to oppose Argentum's standards activities. Notably absent from Argentum's list was any effort to coordinate with ASHA or AHCA/NCAL; perhaps this was because Argentum already knew that these organizations did not support its efforts to create nationwide standards.

Argentum's response to appellants' appeals attempts to show its efforts to coordinate with other affected parties. Again, these attempts fall flat. Argentum's communications with CARF, LeadingAge, and AARP did not mention ANSI standards and did not solicit collaboration with respect to ANSI standards. The communication Argentum provided is as follows:

- On February 13, 2019, Argentum emailed CARF regarding CARF's work. (Argentum Exhibit 15.) Argentum argues in its response that this shows its efforts to coordinate with CARF. (Response, p. 28.) However, there is no mention of ANSI standards and no indication that CARF has any interest in supporting Argentum's efforts in this regard.
- On March 7, 2019, James Balda, President and CEO of Argentum, emailed Katie Sloan, President and CEO of LeadingAge, regarding participation in "our standards initiative" and participating in "our work groups." There is no mention of nationwide ANSI standards. (Argentum Exhibit 17.) Based on the conversation, it was not clearly stated that these were standards that encompassed anything beyond assisted living nor that they would apply to any providers other than Argentum's membership, let alone for the broader purpose of ANSI standards.

- On May 21, 2019, Kelley Cox, the Director of Business and Membership Development of ANSI sent an email introduction to John Schulte at Argentum and Britta Berge at AARP to encourage them to work together on ISO TC 314, an international collaborative on Ageing Societies. In response, Argentum emailed regarding its development of standards for senior living, without mentioning the development of nationwide ANSI consensus standards. (Argentum Exhibit 9.) While invited to the international stage, Argentum instead focused upon its own unilateral efforts.
- On June 17, 2019, Argentum emailed information on standards development to the American Assisted Living Nursing Association (AALNA). (Argentum Exhibit 7.) For the first time, more than two months after Argentum submitted its Application, it explained to a materially affected party its plan for ANSI standards. However, the cover email did not solicit participation; it simply provided background and concluded “Please let me know if you have any questions.” The AALNA submitted a letter in support of AHCA/NCAL’s appeal, opposing the application. (AHCA/NCAL Exhibit I.)
- On August 8, 2019, a meeting was held among Argentum and appellants AHCA/NCAL, ASHA and LeadingAge. This meeting, which occurred four months after Argentum submitted its application and after appellants submitted objection letters, was the result of appellants’ request to Argentum—and was not convened by Argentum, as stated in Argentum’s response to our appeals.

Essential Requirement 1.4, Coordination and Harmonization, requires good-faith efforts to resolve potential conflicts between and among existing ANSI standards. It is concerning that Argentum was apparently unaware that the National Fire Prevention Association (NFPA) is an ANSI-Accredited Standards Developer. The NFPA publishes the standards used in every state and every health care facility regulated by CMS. Argentum’s application states that it desires to set standards for the entire range of senior living, which will necessarily include facilities regulated by CMS. Yet, in responding to the NFPA’s comments regarding the Application, Argentum wrote:

Thank you for participating in the public review of Argentum’s Accredited Standards Developer application and for making us aware of NFPA’s existing standards relating to emergency preparedness and life safety. We appreciate the orientation to NFPA 101, which will better position Argentum to coordinate our respective standards activities.

This fundamental lack of knowledge casts doubt upon the quality of any standards which will be proposed by Argentum and indicates that Argentum did not do its homework when preparing its Application. Argentum’s application requested SDO status for a very broad range of topics related to virtually every type of senior living. I thought it was odd that they included “Life Safety” in their request understanding that all but the most inexperienced senior living

developers know the importance of NFPA Life Safety Standards. If nothing else, it suggests that Argentum was not getting or listening to meaningful input from their own members who would be well aware of NFPA. This is a grave concern given Argentum's domination of the standards setting process and refusal to consider and adapt to input from others.

As mentioned previously, **Essential requirement 1.5**, requires Argentum to provide notice of standards activities in a manner to provide an opportunity for participation by all directly and materially affected persons. Argentum's proposed policies and procedures limits notice of standards development and public review to Argentum-controlled mailing lists and an Argentum-controlled website. See Argentum Policies, ¶¶ 8.2.1 and 8.4.1. This myopic, Argentum-centric plan for notice eliminates participation by most of the directly and materially affected persons, rather than seeking to achieve participation and consensus of the entire industry. There is no attempt to reach out to providers, trade associations, other standards developers or accrediting agencies such as CARF, the American Assisted Living Nurses Association, community organizations, seniors, AARP, the Alzheimer's Association, the Pioneer Network, regulators, and any number of potentially affected parties in a meaningful manner. Utilization of the ANSI Project Initiation Notification System will not provide effective notification since few affected parties will be aware of the need to access the system.

V. Closing Summary

This consolidated statement on behalf of ASHA, LeadingAge and AHCA/NCAL has demonstrated that the senior living industry overwhelmingly rejects Argentum's Application and designation as the ANSI SDO. There is no industry consensus that there should be ANSI standards. Accordingly, there is no consensus to designate any organization as the SDO, and certainly not Argentum who has shown an unwillingness to consider the viewpoints of three of the major national trade groups and other interested stakeholders.

Argentum's Application was flawed from the start. They provided scarce notification of their desire to seek ANSI SDO status, violated numerous elements of ANSI Essential Requirements in the Application process, and the Application itself detailed a standards-setting process that violated the Essential Requirements on its face.

When the Application was challenged, Argentum thanked the objectors for their comments, cited ANSI procedures for inclusiveness (that they had largely ignored in their Application) and informed the objectors that they planned to forge ahead. The fact that ANSI approved Argentum's Application creates an unbalanced process that is necessarily dominated by Argentum with regard to whatever conversations take place to discuss operational guidelines, best practices, or other voluntary initiatives. At best, the ANSI SDO designation awarded to Argentum forces other interested stakeholders into a process that is not of their choosing and never should have proceeded.

ASHA, LeadingAge, and AHCA/NCAL fully support senior living industry efforts to provide high quality housing, services and care to our residents. We are all committed to assuring the long term viability of our industry as we prepare to welcome the nearing demographic wave of seniors. We believe we have demonstrated that the Argentum SDO

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designation does not meet the ANSI goal of approving an open, transparent, and collaborative process that will benefit all stakeholders. We ask that you look closely at Argentum's actions in pursuing its application—what it has done rather than what it has said—and respectfully request that you reverse the initial decision and deny Argentum's SDO Application.