



March 29, 2023

The Honorable Bernie Sanders  
Chairman  
Senate HELP Committee  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Bill Cassidy  
Ranking Member  
Senate HELP Committee  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Bob Casey  
Member  
Senate HELP Committee  
393 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Mitt Romney  
Member  
Senate HELP Committee  
354 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Sanders, Ranking Member Cassidy, Senator Casey, and Senator Romney:

On behalf of the American Seniors Housing Association (ASHA), I appreciate the opportunity to submit comments to aid your work in reauthorizing the Pandemic and All-Hazards Preparedness Act (PAHPA).

ASHA is a national organization of over 500 companies involved in the operation, development, investment, and financing of the entire spectrum of seniors housing – independent living, assisted living, memory care, and continuing care/life plan communities. Our members' communities serve a wide range of seniors, from those who require assistance with activities of daily living (ADL) such as eating, bathing, and dressing, to those with significant needs associated with Alzheimer's disease and related dementias. Our members are on the front lines when it comes to serving frail seniors providing 24/7 expert care, supportive services, dining, housekeeping, and myriad activities that promote wellbeing and social interaction. Senior living offers a valuable and much needed option for older adults and their families in need of care that is community based.

We will focus our comments on two topics: 1) Deploying PPE and Other Medical Supplies and Equipment from the Strategic National Stockpile; and 2) the PREP Act Applications to Senior Living

**I. Deploying PPE and Other Medical Supplies and Equipment from the Strategic National Stockpile**

*The Senior Living Response to COVID 19 Was Strong but Federal and State Resources Were Limited*

To give our comments some context, it is important to understand the significant efforts the senior living industry undertook to combat the devastating threats of COVID-19. The pandemic hit this industry extremely hard both financially and emotionally. These companies took on a significant financial burden with extraordinary additional costs associated with infection control measures, PPE supplies, test kits as well as additional staffing costs. The health and safety of residents and the staff who serve them, is always the top priority for owners and operators of senior living communities across the country. Never has this been more critical to their mission than during this pandemic. Dedicated front-line responders and caregivers diligently and compassionately worked to protect the one million seniors in their care. It is estimated that forty percent of senior living communities offer memory care programs for those living

with Alzheimer's or other dementias, underscoring the heroic work of the employees working in these communities.

### *Senior Living Communities Should be Prioritized in the Distribution of Pandemic Resources*

While little was known about COVID-19 in those early days, we learned quickly that older people were especially vulnerable to severe illness if they were infected. Adults 60 and older, especially those with preexisting medical conditions, such as heart disease, lung disease, diabetes or cancer are more likely to have severe — even deadly — coronavirus infection than other age groups. This describes many of the residents across the country who call senior living “home.” And yet as scarce resources were made available to the overall health care sector, senior living was rarely considered on equal footing with other providers and settings. At every turn, senior living had to fight for access to PPE, testing kits or the vaccine itself as others were given top priority.

For the most part these are private pay independent living, assisted living, memory care and continuing care/life plan communities who serve a population that is on average 86 years old and requires help with three activities of daily living. These communities are regulated at the state level and are not reimbursed by Medicare or Medicaid for the care of their residents. Therefore, this industry is not typically reliant on federal government subsidies, like hospitals and nursing homes but this distinction shouldn't matter in times of a pandemic. However, it appeared that the lack of federal payment stream meant the industry was self-sufficient at a time when their need for COVID-19 resources was just as great as other health care providers and, in many cases, more critical. When the federal government was distributing PPE to nursing homes, the senior living industry had to navigate their own path to try and procure needed PPE, cleaning supplies, and test kits to protect their residents and staff.

When the rapid point-of-care tests were allocated to states, we implored the governors to prioritize senior living communities as they allocated the limited supplies. When the Administration announced that tests were being sent to 5,500 assisted living communities, for which we were grateful to have gotten recognized at all, it paled in comparison to the numbers needed to meet the demand of the approximately 30,000 senior living communities in the United States, which all desperately needed these tests. We were grateful to be included when vaccines were allocated to assisted living residents and administered through the CDC LTC Pharmacy program. Many settings, such as independent living, were not included in this program and therefore struggled to secure vaccine access for their residents (who by virtue of their age were at high risk of negative outcomes from COVID).

Therefore, we respectfully request that future Pandemic Preparedness Plans recognize the needs of the senior living population and prioritize them right alongside other key healthcare providers. When the country experiences a public health crisis and resources, treatments and supplies are scarce, aging seniors in congregate settings, regardless of the setting and payment model, should be included in all prioritization and distribution plans.

We also recommend that the federal government strengthen the Strategic National Stockpile to guarantee a sufficient level of supplies and equipment is available to endure the next pandemic. The U.S. reliance on foreign markets for the importation of face masks, eye protection and medical gloves coupled with the disruption in the global supply chains greatly weakened our ability to meet the demand for these critical supplies and senior living providers were largely on their own to try and source these items.

## **II. The PREP Act Application to Senior Living**

Under the PREP Act, “a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration...has been issued with respect to such countermeasure.” The United States Department of Health and Human Services (HHS) triggered the liability protections for covered persons under the PREP Act when it published the “Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19” and the Amendment to the Declaration.

We believe that senior living communities meet the definition of a “covered person” under the PREP Act because they are both “qualified person[s]” and “program planner[s]” as defined by the statute. Specifically, senior living communities meet the definition of a “qualified person” because the communities employ individuals who are licensed, registered, certified, or authorized to assist with the administration of, and to administer, daily medications to residents of senior living communities. Additionally, senior living communities meet the definition of a “program planner” because the communities are “a facility” that, in part, are used to “administer or use” covered countermeasures, including COVID-19-related diagnostics, therapeutics, and respiratory protective devices.

We would like to affirm that senior living providers, licensed and unlicensed, are covered persons and program planners under the PREP Act, and that protected COVID countermeasures include all forms of intervention, including basic COVID mitigation measures such as the use of masks, PPE, testing, vaccination decisions, disinfection of surfaces [all of which involve “products”] or even includes non-product-oriented mitigation measures like limits on visitation and group activities, staffing, isolation, contact tracing, admissions policies, etc. when designed to prevent or mitigate the spread of COVID in a community.

The federal government should clarify the extent of the federal immunity, so that a uniform national policy is applied during an unprecedented pandemic, rather than a piecemeal state-by-state approach.

Thank you for the opportunity to express our thoughts on these matters.

Sincerely,



David Schless  
President & CEO