



July 3, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

**RE: CMS–2442–P RIN 0938–AU68 Medicaid Program; Ensuring Access to Medicaid Services**

Dear Administrator Brooks-LaSure:

On behalf of the American Seniors Housing Association (ASHA), I am pleased to have the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) proposed rule to improve access, quality and health outcomes in Medicaid fee-for-service (FFS) delivery systems and in home and community-based services (HCBS) programs.

The American Seniors Housing Association 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 Retirement Communities (CCRCs). 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. They 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 aging seniors and their families in need of care that is community based.

While this proposed rule takes a comprehensive approach to improving access to care, I would like to focus my brief comments on the states' administration of home and community-based services delivered through 1915 (c). Home and Community-Based Services (HCBS) provide opportunities for individuals to receive needed services and supports in their own home or community, including assisted living communities, rather than in institutions or other isolated settings. Many ASHA members participate in the Medicaid Waiver program, where permitted by the state, thus providing an affordable option for older adults who need supportive services in a home like setting.

**Assisted Living is a HCBS Setting**

Assisted living is an important part of the HCBS settings continuum but often unrecognized as such. As described in the attached study, Assisted Living: An Important Option for Providing LTSS in the Community authored by ATI Advisory, these communities are more than just a home for hundreds of thousands of older adults; they offer recreation and socialization opportunities as well as critical functional supports to help prevent an individual from declining into a more complex, institutional level of need, thus creating cost savings for the overall healthcare system. The demand for this home setting is growing, the benefits are many, and the average national costs are among the lowest of Long-Term Care Services (LTSS) options and therefore beneficial to taxpayers. Senior living covers a range of

service-enriched housing aimed at older adults who want or need specific service amenities or help with activities of daily living. They differ from nursing homes in purpose, levels of care, residences, and lifestyle. They help people live as independently and safely as possible when they can no longer perform everyday activities on their own.

ASHA believes more effort should be given to attracting more assisted living providers to participate in the HCBS programs. While most states today offer a program or waiver to cover long term services and supports in assisted living, all states should consider the value assisted living settings provide to lower income, vulnerable seniors who need help with everyday activities and other supports.

The consequence of this state variation can be unmet need in traditional private housing or unnecessary institutionalization in a skilled nursing facility when an individual could otherwise be served in the community. Assisted living offers significant benefits to residents that are not always available to an older adult living in a traditional single-family home or who live alone. As the population ages and a greater percentage of older adults are financially unprepared for the likelihood of long-term care, there will be greater need for programs such as the Medicaid Waiver program. Assisted living can play a bigger role in meeting those needs.

***Payment Adequacy: The proposal requires that at least 80 percent of all Medicaid payments, including but not limited to base payments and supplemental payments, be spent on compensation to direct care workers: homemaker services, home health aide services, and personal care services.***

The significant workforce shortages in the health care sector, specifically in the long-term care industry, are of critical concern. The industry is taking extraordinary steps to ensure staffing needs are met in our communities. We are concerned that mandating 80 percent of Medicaid payments be spent on compensation may not serve the purpose intended, and rather create unintended consequences that may result in fewer providers able to participate in the program, especially in rural or tertiary markets. Often, state Medicaid Waiver programs require the cobbling together of various subsidy sources in a complex formula.

Since COVID, the senior living industry has greatly increased compensation levels to recruit and retain new workers. The market has demanded these increases due to strong competition in other sectors of the economy. In addition to compensation, greater attention has been focused on workforce development, flexibility and creating career paths to incentivize retention and staff. However, it is important to recognize that these positions are hard to fill for many reasons. At their core, they are difficult jobs, physically and emotionally, and require a person to have a generous respect for older adults and a level of compassion that cannot be taught. According to a report from the Peterson Center on Healthcare and Kaiser Family Foundation, wages for community elder care facility workers increased 20.5% between February 2020 and November 2022, and nursing home employee average earnings rose by 21.8%. These increases compare with overall private-sector wages for health employees, which have increased by 14.6% since mid-2021, and healthcare employee average wages, which have increased 17%.

Further, the timing of such a policy change presents even greater challenges. The long-term care industry is slowly recovering from COVID, occupancy is increasing, and labor shortages are improving slightly. However, recent economic conditions cannot be overlooked. Inflation and rising interest rates impact every part of the business model from staffing costs, food and services to insurance and energy costs. Imposing policy changes now without an accompanying payment increase for providers may

result in driving providers out of the program, leaving fewer affordable options for older adults in need of this care and should be discouraged.

Thank you for the opportunity to weigh in on this proposal. As stated, we believe the overall goals are laudable and making HCBS more accessible to those who need these services should drive the policy. Therefore, we support taking steps to encourage more participation by assisted living providers. The community living environment in assisted living combats prolonged social isolation, lack of engagement and loneliness that can contribute to functional and cognitive decline, as well as depression and anxiety in older adults. These benefits should factor heavily as efforts to improve access and choice are considered. This setting meets the intended purpose of HCBS by offering person centered care, a home like environment, and quality care.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Schless".

David Schless  
President & CEO