



June 5, 2024

Submitted via regulations.gov

The Honorable Xavier Becerra, Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC, 20201

The Honorable Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

The Honorable Lina Khan, Chair
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

**Re: Request for Information on Consolidation of Health Care Markets
[Docket No. ATR 102]**

Dear Secretary Becerra, Attorney General Garland, and Commissioner Khan:

On behalf of the two leading national associations representing owners, operators and developers of professionally managed senior living communities, the American Seniors Housing Association (ASHA) and Argentum, we appreciate the opportunity to provide our thoughts regarding your call for comments on the Consolidation in Health Care Markets (Docket No. ATR 102). We will focus our views on the role private equity and REIT investment play in meeting the growing needs of our aging population who rely on senior living communities.

Our members own and operate professionally managed senior living communities, including assisted living residences where nearly 1.4 million older adults call home. They offer a choice for seniors who are no longer able to live independently or choose to live in a community setting. While they help facilitate access to health care services, they are primarily a non-medical setting that play an important role in addressing important social determinants of health for its residents and facilitate the beneficial management of chronic conditions. These services are provided in a residential setting that distinguishes senior living further from other traditional health care providers.

With the heightened attention by policymakers on private equity and other private investment in health care, we are concerned that premature regulatory and/or legislative activity in this area will create unintended consequences that will deter the much-needed private investment to our industry in the years and decades ahead at a time when we can least afford it. The population is aging and creating significant demand for our services, which can only be met when all capital sources are available, including private investment.



Further, assisted living is a market driven, private pay residential living setting that creates value for residents and families, benefits to the greater health care system, and because assisted living is not reliant on Medicare or Medicaid reimbursement, helps preserve scarce public resources. By operating on a private-pay model and not public or third-party funding, residents have options and will readily exercise them if not satisfied. Word-of-mouth referrals typically account for up to 50% of resident move ins. Neither the community nor investors benefit by cutting services or amenities valued by the residents. This model stands in contrast to most health care settings that rely on federal reimbursement or insurance benefits that create a steady stream of income.

Importantly, there are significant savings for the Medicaid program because this private pay option is available and attractive to older adults who require a supportive care setting. Rather than spend down to qualify for a nursing home bed, seniors are choosing to pay personally for assisted living, thus reserving those Medicaid resources for those who truly need them. It is critical that policymakers refrain from taking action that will deter any capital source from investing in this industry, especially at a time when demand is expected to quickly outpace supply for these settings.

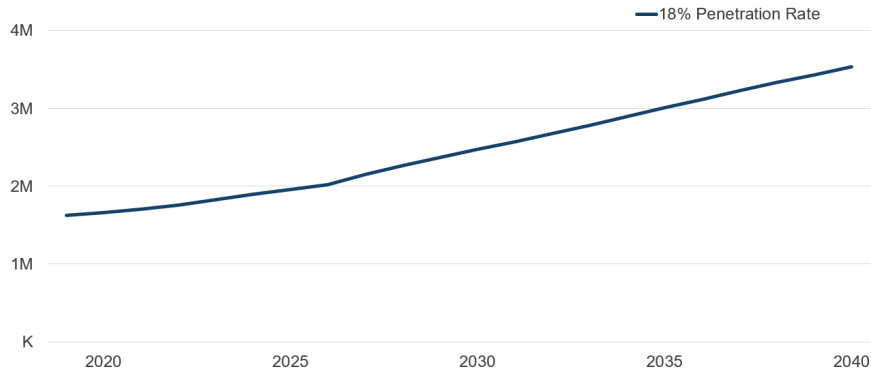
The Population is Aging and Development of Senior Living is Not Keeping Pace with Demand

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). 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. To meet the needs of the aging population, the National Investment Center for Seniors Housing and Care (NIC) estimates that 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 -NIC).



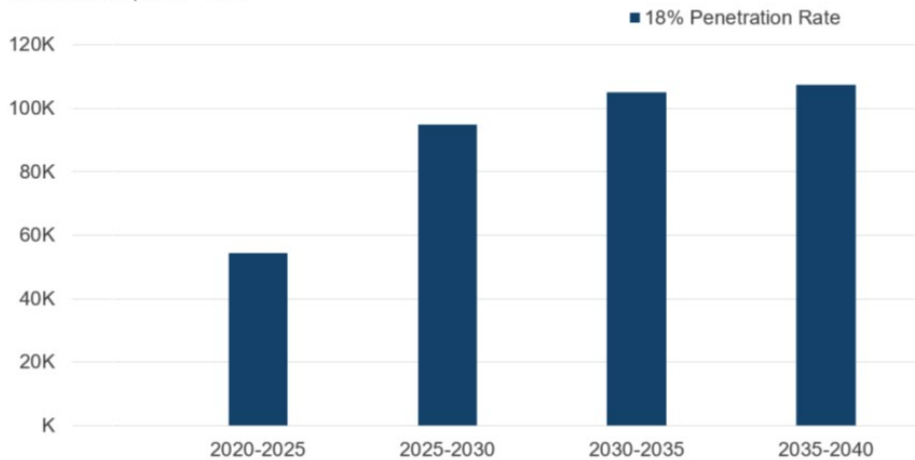
Seniors Housing Demand Projections – Units, Age 80+ Households*
United States | 2019 - 2040



*To calculate the number of age 80+ households, a conversion ratio of 1.43 people per household was applied to population estimates.

Source: U.S. Census, NIC Research

Projected Annual Seniors Housing New Inventory – Age 80+ Households*
United States | 2018 - 2040



*To calculate the number of age 80+ households, a conversion ratio of 1.43 people per household was applied to population estimates.

Source: U.S. Census, NIC Research

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, the existing supply will soon be out of reach of average Americans.

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



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.

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. 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

As policymakers scrutinize the role of private investment in health care entities, we point to scant evidence of negative impacts or harms when private equity and REITs invest in assisted living communities. In fact, preliminary research has found no discernable differences in specific quality measure outcomes between communities with private equity and REIT investments and those without. Further, 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 urge policymakers to refrain from taking any action that will restrict capital sources to this industry.

Thank you for the opportunity to share our views on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Balda'.

James Balda
President & CEO
Argentum

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

David S. Schless
President & CEO
American Seniors Housing Association



About Argentum

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.

About ASHA

The American Seniors Housing Association (ASHA) is a national organization of over 500 senior living providers 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 are home to a wide range of seniors, including those who live independently as well as those who require varying degrees of assistance with activities of daily living (ADL) such as eating, bathing, and dressing. Our members also offer memory care housing choices for those seniors with Alzheimer's and related dementia.

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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 a 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 them 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.