



December 2, 2024

Dear Senator Kelly:

On behalf of the American Seniors Housing Association (ASHA), we appreciate the opportunity to weigh in on your proposed legislation, “Advancing Supportive Services, Information Sharing, and Transparency for Evidence -informed Decisions in Assisted Living Act” or the “ASSISTED in Assisted Living Act”. This draft bill proposes to create an Assisted Living Advisory Council at the federal level to develop best practices for the operation of assisted living communities.

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.

We applaud your efforts to enhance quality care for older adults who live in assisted living communities across the nation. The senior living industry prioritizes the safety, and wellbeing of the residents they serve and strives for excellence in the provision of housing, care and socialization programs for almost 2 million residents.

As a state regulated and private pay business, assisted living communities offer a quality product for older adults who need support with activities of daily living and choose to make this setting their “home”. As we review the draft legislation, we are concerned that what is being proposed can interfere with industry innovation and divert necessary resources from state initiatives. Specifically, we offer our thoughts in a few areas: 1) what appears to be a voluntary effort can lead to new and duplicative federal oversight; and 2) the purpose of the Advisory Commission, which is to create best practices, is already underway by an industry and regulatory stakeholder community. Therefore, it is through this lens we offer the following observations about this draft legislation:

1. The Advisory Commission suggests a path for federal oversight. Assisted living is highly regulated at the state level. Strict licensing and practice requirements are imposed on every community and while state variations exist, they generally all address the core elements of operation and practice: residency agreements, disclosure of service costs, resident need assessments and care planning (pre- and post- admission), resident rights, community policies, staffing and training requirements (including dementia care training), medication assistance services, food and dietary provisions, third-party provider offerings, resident safety, limitations on services, community compliance survey requirements, physical plant and life safety mandates, and much more. In addition, assisted living is subject to the local health department and fire safety rules and regulations.

Further state regulation of assisted living and memory care allows for a more responsive process when policymakers, industry, consumers, and other stakeholders call for a change in rules.

Changes and improvements are under consideration each year at state legislatures and state agencies. Over the last five years, 19 states on average each year reported changes to key licensure and/or regulatory requirements for assisted living, demonstrating the level to which states are actively engaged to ensure vigorous and ongoing oversight is in place. The most recent example of this was in the state of Arizona which amended their state assisted living rules in response to calls to create and enforce comprehensive rules on oversight care for individuals with dementia and other memory-related conditions and establishing training standards for assisted living facilities licensed to provide directed care services.

We believe the establishment of a commission at the federal level will create conflicts with the state oversight structure of assisted living. It will present challenges that will be duplicative and confusing and require the unnecessary expenditure of significant resources that are better directed to state and industry led efforts to improve resident care and quality services.

2. An Assisted Living Advisory committee that develops recommendations for best practices duplicates efforts already underway at the state level.

The Quality in Assisted Living Collaborative (QALC), is comprised of five “Partnering Organizations”, including four leading industry trade groups: The American Seniors Housing Association (ASHA), Argentum, LeadingAge, and the National Center for Assisted Living (NCAL).), and the National Association for Regulatory Administration (NARA), the professional organization representing all human care licensing, including adult residential and assisted living, adult day care, childcare, and child welfare. These organizations joined forces in 2023 to identify, define, and develop model guidance for assisted living communities on a variety of complex issues. This significant undertaking is well on its way and the Collaborative has just released its first set of Guidelines, [Infection Protection Control \(IPC\)](#), a priority coming out of the pandemic. A copy is attached for your review. The next two topics for guidelines development include Emergency Preparedness and Response and Dementia Care Training. These three initial areas of guidance development are also identified in the proposed draft bill and therefore would be duplicative to these industry and state regulatory efforts.

The process is thoughtful, detailed and inclusive. For example, the IPC Guidelines were developed using reputable sources, such as those available from the Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC). These materials were reviewed by a broad spectrum of stakeholders including assisted living providers, state regulatory officials, physicians, consumer representatives, and other interested parties to validate the applicability of these guidelines for the assisted living sector. This step was particularly important given that much of the IPC guidance currently in place is geared to skilled nursing facilities and not properly adapted to fit the assisted living sector.

In no way, does this Collaborative intend to supersede existing regulations or local public health authority. Rather, its intent is to offer guidance for assisted living providers and state regulators to consider, modify, and adopt as they see fit, either in its entirety or in its parts.

3. There are currently federal HCBS rules and outstanding studies focused on assisted living operations and quality standards that should be allowed to play out before introducing new initiatives.

CMS Access Rule: The Centers for Medicare and Medicaid Services (CMS) released a final rule on April 22, 2024, *Ensuring Access to Medicaid Services*. Known as the “access” rule, it applies to HCBS programs which includes the only federal and state program that partially subsidizes assisted living costs for eligible seniors. HCBS waivers provide individuals who need assistance with everyday activities the opportunity to receive services (such as personal care, homemaker, and adult day health services) in their own homes or the community as opposed to institutional settings.

As stated, CMS intends for these “improvements to increase transparency and accountability, standardize data and monitoring, and create opportunities for states to promote active beneficiary engagement in their Medicaid programs, with the goal of improving access to care”. In addition to addressing payment adequacy for direct care workers, wait times in the waiver program, disclosure of rates, etc. the final rule requires states to report on CMS HCBS quality standards. This legislation will duplicate and may even conflict with these ongoing efforts.

Assisted living is largely a private pay option for an older adult with supportive care needs. Medicare does not generally cover any costs associated with assisted living. Medicaid offers limited payment for eligible residents under the HCBS Waiver program but is prohibited from paying housing and meal costs. The Medicaid Waiver program, noted above, allows income limited older adults the opportunity to access assisted living for their care. State Medicaid programs and CMS share responsibility for overseeing these state programs. With the adoption of these new rules, in addition to ongoing requirements of the HCBS program, it seems prudent to allow this work to be completed without adding more complexity to the system.

GAO Report on Assisted Living and Medicaid Funding: In concert with the January 25, 2024 Senate Aging Committee hearing, “*Assisted Living Facilities: Understanding Long-Term Care Options for Older Adults*,” Chairman Bob Casey, submitted a request to GAO to conduct a study to examine several areas of inquiry: Medicaid assisted living payment structures, state variations in reimbursements rates, requirements of participation, number of residents served by Medicaid in assisted living, and the amount of Medicaid funding for residents in assisted living. The letter also requests data on Medicare and Medicare Advantage beneficiaries who live in assisted living communities. Senator Casey probes the level of other federal sources of payments for assisted living such as SSI, VA health care programs, and HUD housing programs. Finally, he asks GAO to identify barriers to residents when seeking to use government programs to pay for assisted living communities.

This report can be helpful to inform policymakers and stakeholders about the presence of Medicaid in assisted living and other relevant financial sources available to eligible consumers.

2018 GAO Study on Medicaid Oversight in Assisted Living: GAO was asked to examine state and federal oversight of assisted living services in Medicaid and released a report of its findings. After an extensive review of all state Medicaid agencies, state regulations and guidance; and interviews with state and CMS officials the study identified a few areas of concern along with some recommendations. This recommendation called for more effective state reporting to ensure the health and welfare of Medicaid beneficiaries receiving assisted living care and services. The report found gaps in state Medicaid agencies completing mandated CMS reporting forms, the need for increased CMS guidance to states on what information to include in the annual reports, and the

need for improved communication on deficiencies and incident reports between state agencies regulating assisted living and the state Medicaid agencies. These recommendations are in various stages of completion by CMS.

While the above initiatives are limited to Medicaid supported assisted living, the benefit of this work will likely be more broadly informative when viewed constructively by the stakeholder community.

Additional Thoughts.

Overall, ASHA is concerned the draft legislation creates conflict between state and federal oversight. With the good work being done by the industry, regulators and other key stakeholders, as described above to develop Practice Guidelines, perhaps a better approach is to create a grant program to encourage adoption of these state-based initiatives, such as the QALC, to improve quality and care in assisted living communities.

There is a significant amount of information available to consumers to educate them on the benefits, value, costs, oversight, etc. of assisted living as an option for long-term care. ASHA has created a trustworthy resource for older adults and their families called Where You Live Matters (www.WhereYouLiveMatters.org), that among other things includes information about the cost of care in states and cities across the country; Google Business Reviews (both positive and negative feedback) for verified communities; and identification of communities that are accredited by CARF and the Joint Commission. However, it is challenging to communicate this information broadly so that prospective residents and family members can make informed decisions. We recommend additional thought be given to how best to educate consumers on how to find relevant information about assisted living, the key factors that should be considered when selecting a community such as costs, levels of care provided as well as available assistance once in residency, if needed.

We appreciate the opportunity to share our thoughts about this draft bill and look forward to further working with your office on this and other issues of important to our seniors and to the work of the Senate Aging Committee agenda. Please feel free to reach out with questions to Jeanne McGlynn Delgado, ASHA's V.P. of Government Affairs at jeanne@ashaliving.org.

Sincerely,

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

David Schless
President & CEO