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## COVID Relief Package Passes Senate without Amendment to Help Senior Living, but 'Forward Progress' is Made, Provider Group Says

Written by: Lois A. Bowers

3/8/2021

An attempt to include direct aid to senior living operators in the American Rescue Plan Act failed in the Senate on Saturday, but the effort represents "forward progress" as the industry continues to battle the coronavirus, according to Argentum.

Sen. Susan Collins (R-ME) introduced [Amendment 1345](#), which would have provided \$35 billion in additional relief for healthcare providers to cover healthcare-related expenses and lost revenues due to COVID-19. Under the proposal, eligible providers would have included assisted living communities as defined by the Older Americans Act as well as "senior congregate home" providers as defined by the secretary of the Department Health and Human Services.

"The significance of this is that for the first time senior living communities are specifically targeted for federal relief dollars," Argentum said in a statement. "Despite the defeat of the amendment, having a Senate vote on this language is an important step forward."

Covered expenses would have been those to "prevent, prepare for and respond to COVID-19, including the building or construction of a temporary structure, the leasing of a property, the purchase of medical supplies and equipment, including personal protective equipment and testing supplies, providing for increased workforce in training, including maintenance staff, obtaining additional staff, or both, the operation of an emergency operation center, retrofitting a facility, providing for surge capacity, and other expenses determined appropriate by the secretary," according to the amendment.

Argentum said that the association and its consultants led the effort with Collins to draft and propose the amendment and now will "utilize the support we've garnered through this process to urge the administration to make additional support from the Provider Relief Fund available to the industry."

Assisted living communities [have been promised less than 2% of funding](#) from the Provider Relief Fund and have received only about half of that amount to date, according to the association.

Co-sponsors of the amendment, Argentum said, were Sens. Thom Tillis (R-NC) and Kevin Cramer (R-ND).

“We appreciate the efforts from Sens. Collins, Tillis and Cramer and their understanding of the critical needs of assisted living communities as a result of COVID-19,” Argentum President and CEO James Balda said in a statement. “The filing of this amendment is critical to the industry, regardless of its success. It is forward progress for us in continuing to share that assisted living providers and senior living communities desperately need more relief and resources.”

[Congress.gov](#) also lists Sen. Rob Portman (R-OH) as a co-sponsor of the amendment.

Collins and 10 other Republican senators proposed a coronavirus relief package that, at \$650 billion, was smaller than the \$1.9 trillion bill previously passed by the House and then passed by the Senate on Saturday. The House and Senate versions now must be reconciled into a final bill to be sent to President Biden. The House is expected to vote on the final bill on Tuesday to enable Biden to sign it before unemployment aid programs contained in previous legislation expire Sunday.

In a [recent survey](#), more than half of participating senior living providers said they are operating at a loss, up 20% from October; 56% said they won't be able to sustain operations for another year.

In a call with members of the media last week, American Health Care Association and National Center for Assisted Living President and CEO Mark Parkinson also pointed to the Provider Relief Fund as one of [two potential avenues for coronavirus relief](#) for senior living providers, since the package expected to land on Biden's desk does not contain any direct funding for senior living providers. Approximately \$25 billion in unallocated Provider Relief Funds could continue to provide support for long-term care, especially assisted living, which has received “very little help” from the federal government so far, he suggested.

Also, noting that the American Rescue Plan Act earmarks \$200 billion for states, Parkinson said that the organization is asking state governments to review their Medicaid programs and provide assistance not just to long-term care providers but to all providers that have been adversely affected by the pandemic.



## Senior Living can Limit Liability Exposure through Legal, Regulatory Tools: Panel

Written by: Kimberly Bonvissuto

3/5/2021

As COVID-19 cases and deaths trend downward and senior living communities begin to reopen, tools are available to help mitigate their liability risk, according to a panel of experts speaking Wednesday at a virtual session at the American Health Law Association 2021 Long-Term Care and the Law conference.

Panelists addressed trends and legal developments in the use of waivers, informed consents and attestations in senior living communities.

Melissa Solomon, vice president of risk and legal affairs at Irvine, CA-based Silverado, said that when a national state of emergency was declared due to COVID-19, it was the “equivalent of a Category V hurricane” of federal, state and local laws, regulations, orders and guidance being thrown at the long-term care industry.

“The volume of guidance coming out was significant, and it changed at least weekly,” she said.

Long-term care operators typically enacted their emergency operations plans once or twice a year due to natural disasters, she pointed out, but those emergencies typically targeted specific regions and affected only a handful of communities for short periods of time.

“The scope and scale of the coronavirus pandemic was like nothing we’ve ever experienced,” Solomon said, adding that operators were talking about their exposure to potential pandemic liability, how their insurance carriers would respond to potential claims, and what policy renewals would look like.

### **Insurance**

Tara Clayton, a senior claims consultant with Louisville, KY-based Willis Towers Watson, said that COVID-19 is the largest event to affect the insurance industry. It made its impact across all geographies, affecting multiple lines of business. As a result, she said, COVID-19 is another factor layered on to a marketplace already having an adverse reaction, particularly in general and professional liability.

Once the pandemic started, the marketplace reacted quickly, Clayton said. As policies come up for renewal, she said, carriers are implementing exclusions ranging from narrow and specific COVID exclusions to broader pandemic and epidemic policies to the broadest communicable disease exclusions.

The market has not defined “communicable disease,” Clayton said, adding that a host of diseases completely unrelated to COVID could be captured in the exemptions now rolling out.

A big takeaway from the insurance side, she said, is that during renewal time, operators should know what type of coverage is being offered and where issues may exist where they previously did not.

### **Waivers**

Waivers, Clayton said, involve intentional relinquishment or abandonment of a known right. Courts will consider multiple factors, and waivers can vary by jurisdiction, with some jurisdictions outright forbidding them.

Pandemic waivers are untested in courts and are less common in the healthcare sector, she said. Regulatory requirements exist for senior living providers and directors mandating person-centered care, and some regulations may prohibit waivers, Clayton added.

Waivers, she said, are not a one-size-fits-all approach, and jurisdictions and regulations play a role in determining what is permissible.

### **Informed consent**

Informed consents result from discussions with a resident or family member of the risks each are willing or unwilling to assume with the provision of services in the resident’s living environment, explained Drew Graham, a partner at Hall Booth Smith, P.C., in New York.

An “expectation of failure or disappointment” drives people to sue, he said, adding that a strong discussion — sometimes a difficult discussion — can break that cycle.

“One thing we spent a lot of time and energy on with our associates is helping them to set reasonable, realistic expectations with family members,” Solomon said, adding that Silverado uses informed consent through a risk advisory document that everyone signs at move-in. The process is similar to what the community does with falls, she said.

“We are educating them with a realistic look at what the residential setting is, the benefits and risks,” Solomon said. “We made it a priority.”

Ninety-five percent of residents or families sign and return the document, she said.

One of the overarching themes in actions related to COVID-19, Clayton said, are allegations from families that they were not notified of an infection in the building. In her experience, however, “Throughout the pandemic, providers have done a phenomenal job of communicating. I’ve never seen the industry step up as much as they have, really taking the time to give constant updates and communication to staff, residents and family members across the board.” She said she hopes that communication continues when the pandemic ends.

### **Attestations**

Attestations are formal documents that verify a discussion or presentation about inherent risks. They are commitments that people are willing to affirm that they will follow whatever guidance they are being asked to follow, Graham said.

For litigation, in theory, signing an attestation and then not following the rules is impeachment. Graham called it a way to break the cycle of people seeking legal remedies and an additional incentive to say “we’re all in this together.”

Attestations, Clayton said, show that processes are in place and that there are expectations for behavior. They help build trust in relationships so that residents and families understand the culture, mindset and expectations.

### **PREP Act**

The Public Readiness and Emergency Preparedness Act is a federal public health law that provides immunity for injury caused by a covered countermeasures, except in cases of willful misconduct.

Clayton said that, in her experience, providers are asking how the PREP Act is going to apply or how it applies to specific claims. U.S. Department of Health and Human Services guidance on the PREP Act has evolved with the breadth of the pandemic and in response to narrow readings by federal judges.

With little case law available on the PREP Act in the context of COVID-19, Graham called the act an uncharted area that the courts are trying to understand. He said it’s not routine administrative law nor tort reform, but it’s something necessary as part of the social contract to keep people “motivated and moving and manufacturing without fear of liability.”

“This is a federal crisis. We want federal judges to administer the act in a uniform way,” Graham said. “The big issue I think HHS is perceiving is that with inconsistent application of the law and the declaration, we could end up hurting our ability to respond not only to this emergency but the next one.”



## Is it too soon to Lift Public Health Mandates?

Written by: Lois A. Bowers

3/8/2021

This past week, we learned of two states lifting mask mandates and opening businesses up to 100% capacity as the pandemic continues. The moves were effective last Wednesday in [Mississippi](#) and will be effective this Wednesday in [Texas](#). In a third state, [Arizona](#), as of Friday, a mask mandate still is in place, but restaurants, bars, gyms, movie theaters, bowling alleys and water parks are permitted to be open at 100% capacity.

These announcements came after a [March 1 press briefing](#) by the White House COVID-19 Response Team and public health officials during which Centers for Disease Control and Prevention Director Rochelle Walensky, M.D., MPH, said she was “really worried about reports that more states are rolling back the exact public health measures we have recommended to protect people from COVID-19.”

“Now is not the time to relax the critical safeguards that we know can stop the spread of COVID-19 in our communities, not when we are so close,” she said.

[Research released Friday](#) by the CDC found that “mask mandates and restricting any on-premises dining at restaurants can help limit community transmission of COVID-19 and reduce case and death growth rates.” And we know from [previous nursing home research](#) (senior living-specific data are more difficult to come by) that stopping the spread of COVID in the greater community can help stop it within long-term care facilities.

Michael Wasserman, M.D., CMD, a geriatrician and immediate past president of the California Association of Long Term Care Medicine, echoes Walensky’s concerns.

“Lifting of mask mandates and occupancy restrictions flies in the face of science and experience around the world and puts older adults and others at greater risk,” he told me, calling such decisions “irresponsible, immoral and dangerous.”

“The shame regarding these decisions is that we are so close to winning the battle against COVID-19,” Dr. Wasserman said.

Senior living operators must continue to be vigilant in their efforts to fight the coronavirus by having abundant personal protective equipment, readily available testing, stellar infection control practices, and emergency preparedness, he said, noting that those factors are part of CALTCM’s “quadruple aim.”

A fifth part of the equation, Dr. Wasserman said, is vaccination, which he said is “making a huge difference.”

“Getting residents and staff vaccinated is critical,” he said, warning, “however, it doesn’t mean that the virus won’t or can’t be transmitted.”

The American Health Care Association and LeadingAge said it is possible to get [75% of the nation's approximately 1.5 million nursing home staffers](#) vaccinated by June 30. The same rate of vaccination probably will take more time at senior living communities, which in many locations have been prioritized after nursing homes.

One challenge has been that the vaccination rate among staff members — people who are out in the greater community when they're not working — still lags that of residents. A month ago, the [CDC said](#) that among 11,460 skilled nursing facilities that had conducted at least one vaccination clinic during the first month of the Pharmacy Partnership for Long-Term Care Program, a median of 77.8% of residents and 37.5% of staff members received one or more vaccine doses through the program.

At a time when families are pleading to see their loved ones who live in senior living communities, the lifting of restrictions in some states will “absolutely” affect the ability of some communities to loosen their visitation restrictions, Dr. Wassermann said.

“The vaccine has created an incredible opportunity for vaccinated older adults to see, and even hug, their vaccinated loved ones,” he said. “The lifting of restrictions increases the potential of continued transmission of the virus.”

Unvaccinated senior living residents and staff members, as well as unvaccinated members of the greater community who are vulnerable, will be at the greatest risk from these state actions, Dr. Wasserman added.

The good news, he said, is that “it does appear that vaccinated older adults should still be able to interact with vaccinated friends and family. We don't have all of the data yet, but the data that we do have is encouraging.”

## SENIOR HOUSING NEWS

### New Operator Alta Senior Living Sees Opportunity in COVID-Related Market Disruption

Written by: Tim Regan

2/24/2021

The Covid-19 pandemic has led to financial distress across the senior living industry as occupancy has fallen to historic lows — but for one new operator, that is an opportunity.

The newly launched company, Alta Senior Living, is planning to build out its portfolio first by acquiring communities at a good price due to the Covid-19 pandemic and its headwinds, according to Scott McCorvie, Alta's chief financial officer and executive vice president of investments.

“The biggest opportunities in real estate come after periods of disruption, and there's no bigger disrupter in senior housing than Covid,” McCorvie told Senior Housing News. “We feel there are some great opportunities right now with sellers who are willing to sell at a discount to focus on other industries or investments, or just exit the business altogether.”

Already, the company has closed two acquisition deals in Walnut and Sacramento, California, and broke ground on a memory care community in North Palm Beach, Florida. And the operator — which has offices in both

Santa Monica, California, and West Palm Beach, Florida — is currently scouring regions in the east and west for more opportunities. Initially that search includes markets in California, Utah, Nevada, and the Southeast, including Florida and Georgia.

Heading up Alta is Doug Brawn, who is also co-founder and principal of Bountiful, Utah-based Welbrook Senior Living. Brawn will continue to work as a principal for Welbrook, an operator that is in the midst of winding down its operations in the senior living industry, McCorvie said. But Alta is now his primary focus.

The company currently has nine employees, including some who worked with Brawn at Welbrook, and is actively looking to grow its leadership roster in the weeks and months ahead.

McCorvie is also no stranger to the senior living world, with previous titles including vice president of acquisitions for Orlando, Florida-based private investment management firm CNL Financial Group; and manager of investments for Orlando-based health care investment company Sentio Investments.

McCorvie also is host of an industry podcast called The Inner Circle of Senior Living, though he plans to scale back the amount of content he produces as a result of his new role with Alta.

### High standards

Alta is Latin for “high,” a word also that helps illustrate how the company seeks to elevate its senior living communities.

“We want to enhance senior living by enhancing the real estate and the operations to maximize the care and the overall value of the community,” McCorvie said.

To achieve that, Alta plans to embark on CapEx projects in each of the communities it acquires. For example, the company is investing about \$3 million in CapEx for its 89-unit assisted living and memory care community in Walnut, California; and about \$1.4 million in its 72-unit independent living, assisted living and memory care community in Sacramento.

“We really want to hit the immediate needs right off the bat ... then it’s more aesthetics and amenities, and then last, it’s any long-term value plays, such as conversions,” McCorvie said. “We’re really focused on curb appeal, too, and we find that signage and creating a really warm appeal for drive-by traffic is important.”

The company’s operational model emphasizes features such as dining and technology, and McCorvie believes these will be key to winning over residents when pent-up demand returns to the industry.

“I think it’s going to take a little bit of time, but I think it’s going to happen this year,” McCorvie said. “I know some people are predicting ‘22 or ‘23, but I see a faster rebound.”

But while Alta seeks to bring a higher level of service and value to the communities it acquires, company leaders also believe they can do so without charging lofty rates. The company is seeking to offer rental rates that lie about 20% below the rest of the market, and achieve that by avoiding the costs of developing and building a community from scratch.

“I know a lot of people are trying to find more of a creative, ground-up construction model to meet that affordability question,” McCorvie said. “But we feel there are a lot of great opportunities in some of these well-established, stronger-reputation communities, and in coming in and updating the real estate and the operations.”

The company is also vertically integrated, and its leaders believe that controlling investment, development and operations under one roof will allow it to operate in a more efficient manner.

Currently, Alta is searching for capital and development partners for its growing pipeline. The company is focused on its value-add acquisition and development strategy through the end of 2021, but in the years to come, McCorvie hopes Alta will become a senior living industry “influencer.”

“We want to be in the forefront of helping lead the charge in creating innovative and affordable products that are focused on providing the best care,” McCorvie said. “As long as we hit our mission statement of providing the best care, we’re open to different ideas, long-term.”