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## Senior Living Should be Priority for Initial SARS-CoV-2 Vaccine, Committee Recommends

**The work being done to prioritize those who receive the first wave of COVID vaccinations is currently underway. Phase 1 of the plan for prioritized distribution is undergoing final review by the government and those on this specialized committee.**

Written by: Kimberly Bonvissuto

10/5/2020

Senior living workers and residents should be part of the initial phase of distribution of vaccines against SARS-CoV-2 when they become available, the National Academies of Science, Engineering, and Medicine advise in [a report](#) released Friday. The recommendation maintains one made in a [draft report](#) released in September.

The final report from the Committee on Equitable Allocation of Vaccine for the Novel Coronavirus recommends a four-phase approach. High-risk health workers, including senior living workers, and first responders are in the report’s Phase 1a “Jumpstart Phase.” Older adults living in congregate or overcrowded settings, as well as anyone at higher risk for illness due to comorbid conditions, are part of Phase 1b.

The early phases of the committee’s proposed framework emphasize “prevention of severe morbidity and mortality” and maintaining essential health and emergency services. In later phases, the focus shifts toward reducing transmission. The committee, according to the report, based its approach on each group’s risk of acquiring infection, risk of severe morbidity and mortality, risk of negative societal impact, and risk of transmission to others.

Older adults and those with chronic conditions, Argentum President and CEO James Balda said, are “extremely vulnerable to the harmful effects of COVID-19” and require prioritization in vaccinations, as do the frontline workers who care for them.

“We remain optimistic that the committee’s recommendations will be implemented in [the Department of Health and Human Services’] final vaccine allocation plan,” Balda said.

“Importantly, however, we need to ensure senior living communities have the resources available for the administration of vaccines, and we will continue to ask HHS for additional financial support for these measures.”

Argentum and the American Seniors Housing Association had [submitted comments](#) in response to the draft released last month, supporting the prioritization of senior living employees and residents and requesting more specificity in the final report to ensure that they were included in the stated groups.

The draft had mentioned assisted living in the context of including frontline healthcare workers in the first phase of vaccination to reduce their risk of spreading the infection, as well as protecting staff members at high risk for severe illness and death due to comorbid conditions and age. And the draft proposed that older adults living in congregate care and long-term care settings — citing nursing homes or skilled nursing facilities as examples — be included in Phase 1b of vaccine allocation.

The final report specifically mentions assisted living facilities, residential care facilities, nursing homes and intermediate care facilities in Phase 1 recommendations.

ASHA President David Schless, who participated in a public forum when the draft report was released, said he is encouraged that senior living residents and workers are included in the first phase of vaccine distribution.

“We will continue to monitor further advancement of a vaccine prioritization strategy to ensure the full spectrum of senior living residents and staff have access to a vaccine when available,” he said.

Similarly, LeadingAge provided [oral testimony](#) and submitted [written comments](#) on the draft report. LeadingAge noted that the final report does not specifically list affordable senior housing or independent living communities, but the nature of these communities, which primarily house older adults, “should qualify both of these settings for prioritized vaccine access.”



## COVID Claims are Coming: Here's How You can Prepare

**Legal claims over the procedures and practices related to COVID throughout the healthcare system will be unavoidable over the coming years. Senior living directors will need to be prepared to answer some tough questions and many will have to protect their long-standing reputations for quality care.**

Written by: Timothy J. Ford, Esq.

10/5/2020

For many senior living and care facilities and healthcare workers, the events and tragedies surrounding COVID-19 were by far the most challenging industry issue that they have ever encountered.

During the initial surge of the virus, facilities were left scrambling for support, supplies, staff and reliable solutions to complex infectious disease issues. Many facilities were able to leverage their experience and resourcefulness to survive, developing strategies to provide for and protect residents and staff. Yet their actions, done in good faith by the majority of facilities, already are being scrutinized, and plaintiffs' lawyers are considering who to blame.

Families of residents and staff members who fell ill to COVID-19 are starting to place blame on facilities and healthcare workers. This is a brewing crisis for senior living care facilities, and litigation most certainly will follow. Whether the facilities will be penalized is yet to be seen, but owners should be aware that "COVID claims" likely are coming, and because of the unprecedented nature of the pandemic, the outcomes cannot be predicted with any certainty.

### **Legislation may or may not offer immunity or other protection**

In the early days of the pandemic, legislation was enacted in dozens of states providing civil and criminal immunity for senior living and nursing home operators and workers acting in good faith. Legislatures recognized the need to protect facilities and healthcare workers from facing a flood of malpractice suits for acts and omissions undertaken in good faith for care and treatment provided in response to COVID-19.

Many of these laws, however, contain exceptions that will be tested as loopholes to the legislation. Moreover, several of the states that enacted immunity-based legislation early on in the pandemic, such as New York, have taken steps to roll back the legislation.

Facilities are seeing that their initial actions are being scrutinized. Critics point to the current availability of personal protective equipment and the effective protocols now in place.

Will facilities be protected from malpractice when a plaintiff claims that "good faith actions" taken at the onset of the pandemic fell short? Will the civil and criminal immunity that originally was provided to facilities protect them, or will loopholes and roll backs open the door to litigation?

### **Comparing COVID-19 preparedness to preparedness for other infectious diseases**

The comparisons of COVID-19 to prior infectious diseases started early on, and critics readily condemned some long-term care facilities for their "lack" of preparedness, on the grounds that prior infectious disease protocols should have enabled COVID-19 preparedness. But it is questionable whether a facility's prior experience with infectious disease preparedness could be expected to guarantee preparedness for the COVID-19 pandemic.

One need only look to the state and federal governments and agencies, along with businesses across many industries, that had prior experience with infectious disease; their experience did not necessarily equate to preparedness for the COVID-19 pandemic. The scope and duration of the pandemic has changed. Information from scientists and epidemiologists has changed. The initial protocol and guidance from the Surgeon General and Centers for Disease Control and Prevention have changed or have been inconsistent. For many senior living and care communities, questions posed to government agencies about health protocols perhaps were overlooked or ignored.

### **A no-win situation, even for good acts**

Operators were presented with unprecedented challenges, often with few solutions. Shortages of PPE crippled facilities, and the lack of essential supplies and testing contributed to illness and deaths.

Staff shortages were prevalent, despite many employers offering additional compensation. For many communities, they were damned if they did and damned if they didn't.

For example, when state regulations and CDC guidance called for social distancing, operators restricted outdoor and indoor visitations to lower risk in their communities. Yet even though facilities were following recommended protocols that supported the safety of facility residents and staff, many residents, family and the lay media lambasted the facilities for the visitation limits.

### **News headlines will affect perception of good faith**

Most facilities and their staff members performed heroically, risking not only their lives but also those of their loved ones. Unfortunately, many lay media outlets have painted assisted living communities and nursing homes with a broad brush, lumping all of them into the category of bad actors. The stories of facilities that were negligent in obtaining PPE or delayed in locking down or that refused to permit staff members to use PPE, generally are the exception as opposed to the rule.

Many headlines in the lay media have called out clear cases of facilities, owners and healthcare workers not acting in good faith. Those negligent facilities should not be entitled to any immunity and, due to their actions, are unlikely to benefit from immunity. But the lines are not clear as to what actions were done in good faith. Undoubtedly, an onslaught of litigation will ensue, but it may be years before we know how courts and juries interpret what was reasonable and in good faith.

### **The financial impact already is underway**

The results of individual lawsuits cannot be predicted, but we already are seeing the effects of pending litigation against facilities. Many now are facing increased insurance premiums for both malpractice and employment practices liability insurance. The strain of rebuilding a facility's reputation will be seen in the number of new residents. Even marketing communications will be affected by the need to regain trust and promote safety. For years to come, there will be uncertainty, business disruption and expense.

### **Prepare for pandemic litigation**

Take the time to prepare for litigation that undoubtedly will affect the industry. Do a thorough and strategic review of insurance policies, compliance requirements and all obligations regarding the potential for litigation.

Of note, policies regarding digital and hard-copy information must address storage procedures to prevent even the inadvertent destruction of what may become evidence in a litigation. This direction must happen before a "litigation hold" is sent from the facility's legal team instructing employees not to delete electronically stored information or discard paper documents that may be relevant to a new or imminent legal case.

The "COVID claims" are coming, and now is the time to prepare for litigation that may result from the pandemic.



[‘Ugly Period’ of Pandemic is Over, but ‘COVID Hangovers’ Will Persist: Panelists](#)

**We have all been worried about how bad the COVID situation could get, but some industry experts agree that we have made it through the most challenging part. The leaders of senior living need to take the steps necessary to ensure that there are reasons to be optimistic.**

Written by: Kimberly Bonvissuto

10/5/2020

The “ugly period” of the COVID-19 pandemic is behind the senior living industry, but a couple of “COVID hangovers” will persist moving forward, according to industry experts.

“Hero” pay and price gouging will not continue, the cost of test kits is coming down, and some operators have received government relief dollars for personal protective equipment, Colleen Blumenthal, chief operating officer and partner of HealthTrust, a Sarasota, FL-based healthcare real estate advisory firm, said during an inaugural webinar hosted by the American Seniors Housing Association on [“The Financial Impact of COVID-19 on Senior Living Communities.”](#)

Liability is a ticking time bomb as insurance premiums increase and COVID carve-outs surface, Blumenthal said. And occupancy, she predicted, will take longer to recover than the four months it spent in flux.

Bill Sciortino, chief operating officer of Florida-based Discovery Senior Living, said that concerns include increased government scrutiny, staffing, a potential “twindemic” of flu and COVID-19, and coaxing people back to senior living after they settled in at home.

“Is there a time when the federal government just gave money and went away?” he said. “I’m worried we are going to have some additional scrutiny or regulation coming our way as an industry because we’ve attracted attention and now we have money.”

As she did at Argentum’s recent annual conference, Blumenthal shared results of a [HealthTrust survey](#) on the financial effects of COVID-19; it included 30 operators representing more than 180,000 units. Several universal themes emerged, she said, including occupancy decreases, significant labor cost increases, significant compression on margins, net operating incomes that were lower than budgeted, and expense increases not only in PPE, but in a variety of areas, including dietary supplies, visitation tents, third-party cleaning and fogging services, polycarbonate dividers, electrostatic sprayers, and more.

Not all experiences were universal, however, Blumenthal said. Occupancy decreases ranged from more than 900 basis points to less than 100 basis points. Approximately 21% of respondents reported labor costs at or below budget, whereas others reported costs that ran as high as 8% of revenues.

Testing also revealed wide swings of experiences, with some operators reporting spending less than \$500 per week and others reported spending thousands of dollars per week. And net operating income losses ranged from 15% to 55%.

“It was an ugly period,” Blumenthal said, adding that the “worst is behind us. But going forward, there will be a couple of COVID hangovers.”

Kathryn Sweeney, co-founder and managing partner of Blue Moon Capital Partners, a Massachusetts-based real estate investment advisory firm, said that the past several months fell into three phases: shock and awe, setting in and cautious optimism.

The shock and awe phase, she said, included “a real scramble” for PPE and testing.

“The federal government was competing with states competing with operators,” Sweeney said. “It was figuring out testing protocols — how can you get a test, where can you get a test. I talked to one operator who went through a Google search to find a lab to access tests.”

The settling in phase, Sweeney said, saw lab relationships established, PPE sourced, “hero” pay set up, training refreshed and the ability to operate and reopen to new residents. Sciortino described this phase as having data to drive decisions.

August ushered in the “cautious optimism” phase, Sweeney said. Now, government relief funding is in place, rapid antigen tests are available, and therapeutics and vaccines are in phase 3 trials.

“We’re getting back to operating. We’re not just COVID,” Sciortino said. “We will need to clean the kitchen floor, we need to have a great meal service, we need to push our capital projects through, we need to get back into preventive maintenance and shift our operators thoughts back from just COVID to, again, good old-fashioned operating quality.”

Investors are evaluating operators on how they handled the pandemic and how they mitigated COVID-19 cases in their communities, Sweeney said.

They are “really getting under the hood and understanding the details behind the numbers and how the organization supported those successful outcomes is what we’re looking at,” she said.

Sciortino said that a lesson for the industry is to be nimble.

“We have a real challenge, as the operators and investors and owners, to be nimble, to be changing without giving our residents whiplash,” he said. “They don’t want to change. We need to be paddling furiously under the water so we’re making changes.”

The webinar was the first of three in a “Where You Live Matters” series from ASHA. Future webinars will focus on how to better adapt sales and marketing, and how to adjust to the “new normal” in the wake of COVID-19.

## SENIOR HOUSING NEWS

### HHS Opens More Relief Funding for Assisted Living Providers

**The Department of Health & Human Services (HHS) announced that there will be more relief funding on the way for assisted living communities around the country. Specific stipulations are in place to make sure that the right assistance is given to those most in need.**

Written by: Tim Regan

10/1/2020

Assisted living providers will have an opportunity to receive additional federal funds to help offset the financial impacts of Covid-19.

The Department of Health & Human Services (HHS) on Thursday [announced](#) the next phase of funding from the Provider Relief Fund. The funding includes \$20 billion in aid for providers on the front lines of the pandemic.

Providers that have already received Provider Relief Fund payments can apply for additional funding that considers financial losses and changes in operating expenses caused by the Covid-19 pandemic, according to HHS. Previously ineligible providers — including companies that began practicing in 2020 — can also apply. Also eligible for payments under this phase of funding are behavioral health providers dealing with increased mental health and substance use issues exacerbated by the pandemic.

Providers can receive 2% of annual revenue from patient care, plus an add-on payment to account for revenue losses and expenses attributable the pandemic. HHS will take into account the three factors to determine the amount of funding allocated to a provider:

- Its change in operating revenues from patient care
- Its change in operating expenses from patient care, including expenses incurred related to the coronavirus
- Payments already received through prior Provider Relief Fund distributions

“We are extremely pleased to see this additional funding made available to the provider communities on the front lines of the pandemic,” said Argentum President and CEO James Balda in a press release about the new phase of funding. “While this added funding won’t make these communities ‘whole,’ it will offer essential relief the industry needs to continue prioritizing the health and safety of residents and staff.”

We see virtual tools and broadcasts becoming a fixture and an expectation of the future, thanks to the pandemic – being able to provide residents with the choice of online or live. We are committed to adding to our virtual offerings even as we are slowly beginning to offer in-person classes and programs. And senior living will need to continue investing in the infrastructure and equipment required to do it well.

Even as we all look forward to connecting in person again, we’ve learned that having a rich library of customized online wellness content is an important way to expand the opportunity for all residents to belong and engage with their community.

The start date for applications is Monday, Oct. 5, and the application deadline is Friday, Nov. 6. HHS is urging eligible providers to apply early.

“Do not wait until the last day or week of the application period,” the HHS release said. “Applying early will help to expedite HHS’s review process and payment calculations, and ultimately accelerate the distribution of all payments.”

The federal government [formally announced](#) that private-pay assisted living providers were eligible for funding under the Provider Relief Fund Phase 2 General Distribution allocation in September. HHS says it has so far issued about \$100 billion in aid to health care operators from the Provider Relief Fund.

The American Senior Housing Association (ASHA) noted in a message to its members that the Phase 3 distribution appears to favor companies and organizations that have not received as much federal aid, potentially favoring assisted living providers over skilled nursing facilities or hospitals.

LeadingAge, which represents non-profit senior care providers, said the announcement is welcome news for aging services providers, many of which are struggling with their finances as a result of the pandemic.

“The additional costs borne by our members as a result of the pandemic is significant, and will continue to grow for the foreseeable future,” Nicole Fallon, vice president of health policy and integrated services at LeadingAge, said in a statement. “Help such as this is welcome and necessary to ensure the care of and well-being of older adults and staff, and we appreciate HHS’s efforts to get these relief funds to those who have the greatest needs.”

The American Health Care Association (AHCA), which has lobbied for more federal funding for senior housing and care providers, noted it was glad to see the latest round of HHS funding.

“As the virus shows no signs of letting up, nursing homes and assisted living communities require a constant flow of resources to acquire the testing, personal protective equipment and staff support needed to protect residents and staff,” ACHA said in a statement. “We also appreciate HHS acknowledging that lost revenue due to Covid puts our long-term care facilities at further financial risk, threatening access to seniors and individuals with disabilities who require round-the-clock care.”

The latest round of funding comes amid a time of [financial distress for many providers](#) in the senior living industry. An August survey from the National Center for Assisted Living (NCAL) showed that 26% of providers said they could sustain operations at their current levels for just [another six months](#) without assistance. More recently, an analysis from HealthTrust [estimated](#) a \$17 billion impact on providers this year due to Covid-19.