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Senior Housing Concerns for 2015

The senior housing market, which the American Seniors Housing Association (ASHA) defines as consisting of senior apartments, independent living communities, assisted living residencies, and continuing care retirement communities, experienced a sizeable downturn during the recent U.S. housing market collapse and subsequent recession.[1] However, the 76 million *baby boomers* that recently began turning 65 are expected to cause a surge in demand for senior housing in the near future.[2] In fact, though new construction of senior housing facilities in the market slowed,[3] senior housing occupancy and annual rent rates have grown since 2010.[4] According to the National Investment Center for Seniors Housing and Care, the occupancy rate across senior housing options was 90.5% during the fourth quarter of 2014 (a 3.6% increase from its cyclical low of 86.9% during the first quarter of 2010), and annual asking rent grew at a steady 2.3%.[5] As the market begins to adjust to an aging population, investments in senior housing options are becoming increasingly attractive, with demand expecting to grow steadily without reaching its peak for an estimated 15-20 years.[6]

However, as the senior housing market begins to shift, a number of industry concerns are likely to arise and must be monitored. Non-profit associations such as ASHA and the Assisted Living Federation of America (AFLA), have lead the way in advocacy for parties with shared interests in the senior housing industry.[7] In furtherance of their mission to be the senior housing industry thought leader, AHSA recently developed a five year plan that addresses strategic goals involving advocacy, research, education and leadership, meetings, and industry promotion.[8] While ASHA's plan promotes its own organizational goals, it also identified concerns that will affect the senior housing industry on a broader scale. Some of the most prominent concerns include maintaining state (in contrast to federal) oversight of senior housing and limiting tax reform that would have adverse effects on the senior housing industry.[9] This Health Capital Topics article will discuss these concerns for the senior housing market as well as discuss the evolving competitive and regulatory context driving these concerns.

First, many stakeholders in the senior housing market, including the ASHA, have demonstrated significant concerns about growing federal oversight of the senior housing market, particularly in regard to quality of senior housing and care provided in senior housing facilities.[10] Traditionally, senior living quality has been regulated on a state level through a survey process that tracks quality measures relevant to the health of the elderly,[11] with such measures like provider staffing capacity and timeliness of care delivery,[12] as well as outcomes measures for elderly residents, such as pressure ulcers, falls leading to injury, and urinary tract infections.[13] However, as part of the *Patient Protection and Affordable Care Act* (ACA), the *Centers for Medicare and Medicaid Services* (CMS) has taken a more active role in regulating quality of care in senior housing, much to the ire of the ASHA and ALFA.[14] Under its authority through the ACA, CMS has developed quality standards and survey requirements that nursing facilities must satisfy, including disclosure of ownership and financing structures, implementation of compliance and ethics programs for care delivery and third-party billing, and outcome measures.[15] CMS then reports these figures on its *Nursing Home Compare* website, which allows consumers to search for quality data for a particular nursing home.[16] While these new CMS standards seek to encourage quality, the ASHA derided this approach in this 2014 Strategic Plan, calling such an approach a stepping stone to "*onerous, one-size-fits-all federal regulation"* that limits the state flexibility necessary to meet individual needs of nursing homes.[17] Coupled with other federal requirements, including the impending employer mandate for providing health insurance[18] as well as National Labor Relations Board rulings on issues such as employers' rights to control employee use of its email system, arbitration deferral standards, and microunions,[19] many senior housing advocates feel that federal control is trending to increase.

Second, many actors in the senior housing market fear that recent tax reform proposals may jeopardize their ability to meet increasing demand for senior housing from baby boomers. In the fourth quarter of 2014, senior housing properties averaged an occupancy rate of 90.5%, a 0.9% increase from the fourth quarter of 2013 and a 3.6% increase from the first quarter of 2010.[20] Much of this increase is driven by the aging *baby boomer* (i.e., Americans born between 1946 and 1964) population, which is turning 65 at a rate 10,000 persons per day.[21] In response, increased capital has become available to support growth in the skilled nursing and

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assisted living markets to satisfy this demand.[22] Many of these projects utilize provisions in the tax code to finance senior housing construction, such as the Section 1031 like-kind exchange rules, which allows deferred payment on taxable gains through a real estate transaction if the proceeds are reinvested in similar property.[23] However, the ASHA fears that recent tax reform proposals, notably the draft legislation offered by former House Ways and Means Committee Chairman David Camp in 2014, would eliminate many tax provisions critical to financing senior housing.[24] Critically, Chairman Camp's draft legislation proposed to repeal like-kind exchanges under the tax code as well as many other tax credits that are utilized to construct senior housing.[25] Although the draft legislation never passed the U.S. House, the ASHA fears Chairman Camp's proposal may be utilized as a framework for tax reform in the future.[26] Market analysts for senior housing may find it wise to follow the lead of ASHA and pay attention to potential tax reform efforts in the future and their effect on senior housing.

As the market for senior housing continues to evolve in the wake of the aging Baby Boomer generation, senior housing stakeholders should continue to monitor these federal, state, and tax code developments. Advocacy by actors in the senior housing market, which is likely to focus on the role of federal regulatory oversight over the quality of senior housing and the care provided[27] as well as tax reform, will be important in determining the economic outlook for senior housing in this time of increasing demand.

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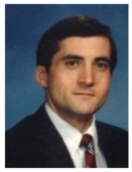

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