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PRESIDENT & CEO

May 19, 2008

Milton Brown
Office of the Chief Counsel
National Telecommunications and Information Administration
1401 Constitution Avenue
Room 4713
Washington, DC 20230

Dear Mr. Brown:

The American Health Care Association ("AHCA") and the National Center for Assisted Living ("NCAL") welcome the opportunity to provide comments to the Department of Commerce (DOC), National Telecommunications and Information Administration (NTIA) on the proposed rule, *The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver (73 Fed. Reg. 22120)*. AHCA and NCAL represent more than 10,000 non-profit and for-profit providers dedicated to continuous improvement in the delivery of professional and compassionate care for our nation's frail, elderly and disabled citizens who live in long term care facilities, including nursing facilities, assisted living residences and homes for individuals with developmental disabilities (DD).

AHCA/NCAL are committed to performance excellence and participation in the *Advancing Excellence in America's Nursing Homes* and *Quality First* campaigns to improve quality of care and quality of life for those living or recuperating in long term care facilities. Our member facilities create and maintain a safe, clean, comfortable and home-like environment for our patients and residents, recognizing an individual's autonomy, and ensuring that they have as many of the comforts of home (*i.e.*, personal belongings, adequate lighting, quiet environment, activities, etc.) as possible, including the opportunity to watch television. For this reason, AHCA/NCAL and its members have a direct interest in NTIA's efforts to revise its *Digital-To-Analog Converter Box Coupon Program* (DTACB Coupon Program) rules, set out in 47 CFR 301.3.

First and foremost, AHCA/NCAL applaud NTIA for recognizing that our nation's senior citizens "constitute a vulnerable community that may rely on free, over-the-air television to a greater degree than other members of the public...[and] for this reason, seniors may have a greater need for converter boxes to continue receiving broadcast programming over the air using analogue-only television sets." We agree that revisions must be made to the current regulation to permit the elderly residing in nursing and other care facilities to participate in the DTACB Coupon Program, by waiving the current household eligibility and application process.

As you point out, when we talk about long term care (LTC), it's important to understand that we're talking about a dynamic, diverse and evolving sector of the nation's health care system that refers to many settings. There are all sorts of aging service options from assisted living, care in one's home, to adult day care centers. Some people—elders and the disabled—choose to reside in independent living communities that provide minimal services. Others choose large campuses, which provide independent living arrangement with comprehensive care capabilities. Still others choose a small residential home with just a few residents. With all of these options, however, the focal point is still on nursing facilities, which often serve to rehabilitate residents from an acute illness/injury so that they can return home or to another LTC setting or provide end-of-life care for a resident through a local hospice organization. One common denominator to all of these settings is that the LTC community offers critically important service to the elderly, the disabled and their families.

AHCA/NCAL's comments will not address every LTC setting, but instead will focus on our membership. In January/February 2008, we surveyed our general membership, and determined that the regulation as currently written, is a problem for some of our nursing, assisted living and DD providers and residents. Although multi- and regional- LTC companies generally provide cable/satellite in their resident's rooms; inner city, rural, stand alone or older facilities may not. In these situations, there is typically one dining area or activity room that has cable/satellite for group use. If the resident has their own television in their room, it is old and brought in by family members who are already providing other financial support for the resident. Many LTC residents have modest incomes. About 64 percent of nursing facility residents and 12 percent of assisted living residents are covered by Medicaid, and therefore, by definition, have low income. It would be difficult for many of these residents to purchase either the converter box or a new television. The coupons will be of great benefit to such residents with analog TVs.

We urge NTIA to include not only nursing facilities, but assisted living and DD facilities in defining those facilities whose residents qualify for the proposed waiver. Currently, about 1 million elderly Americans live in licensed, registered or state certified assisted living and/or residential facilities, where they receive services such as assistance with activities of daily living and medication management. These elderly and disabled individuals are just as vulnerable as the nursing facility resident when it comes to their reliance on television to provide them with entertainment, information and communication. Their reliance is further compounded by limits on their mobility, health, limited disposable income or some combination of those factors.

AHCA/NCAL believe that identifying nursing, assisted living and DD facilities could be best accomplished by asking the applicant a few additional "yes or no" questions on their application form, to establish that they reside in a long term care setting. Specifically, NTIA should ask, do you live in a nursing home, assisted living facility or other senior housing? If the applicant answers "yes," then the follow-up question should be what is the name/address of the facility? The answers to these simple questions would allow NTIA to follow up and verify that this is indeed a nursing home or senior setting. AHCA/NCAL believe that, because the potential for fraud is very low with this program, NTIA should take the applicant's word on the application form; just as the agency takes the information of persons living in individual homes at face value. Afterall, the main purpose of the program is to get vouchers to individuals that most need them.

If NTIA wished to identify assisted living/residential care communities in a more comprehensive way, AHCA/NCAL suggest that NTIA contact state assisted living/residential care licensing agencies, which are listed in NCAL's *Assisted Living State Regulatory Review 2008*, along with contact information (available on NCAL's web site at <http://www.ncal.org>), and request lists of licensed, registered or certified assisted living/residential care facilities. (NTIA should note that

the official name for assisted living/residential care varies among the states and NCAL's *Regulatory Review* includes licensure terms and other state-specific information.) Also, a recently published federal government report detailing assisted living regulation and Medicaid coverage in assisted living facilities notes that 42 states list licensed assisted living/residential care facilities on their web sites (See <http://aspe.hhs.gov/daltcp/reports/2007/07alcom.htm>).

NTIA proposes permitting one coupon to each eligible resident by one of following three methods:

1. An individual residing in an eligible setting may apply for one coupon. The applicant would have to provide their name, date of birth, Social Security Number (SSN), Name/address of the LTC setting and certification that the individual as to whether or not he/she receives television exclusively over the air or through cable, satellite or other pay television service. Disclosure of a SSN is not mandatory, but would result in requests for additional information and delays.
2. The person designated to act on a resident's behalf may request one coupon. The applicant would have to provide all of the aforementioned information, as well as their own name, address, SSN, date of birth and evidence that he/she is empowered to act on behalf of the resident.
3. An administrator or other senior care facility leadership may request one coupon on behalf of the resident. Again, the applicant would have to provide all of the aforementioned information, as well as the applicant's name, SSN, DOB and a copy of each facility's operating license.

AHCA/NCAL is concerned that NTIA is proposing more stringent burdens on residents living in LTC settings to obtain a coupon, and would encourage the agency to level the playing field. While the proposed rule states that LTC residents can only apply for one coupon, U.S. households can apply for two coupons. In some LTC settings, such as a nursing facility, this is entirely reasonable; but, in an assisted living setting, where residents may live in a setting with more than one room, this shows disparate treatment. While the proposed rule states that LTC residents must submit extensive information (including their SSN or the process for obtaining a coupon will be delayed), U.S. households merely submit their name and physical address in the application process. The disclosure of both the birth date and the SSN unfairly leave the LTC resident open to a greater risk of identity theft, and for that reason, AHCA/NCAL do not believe the SSN information should be required or force any delay in the process. For persons acting on behalf of the LTC resident, the proposed rule would require evidence of a power of attorney or a birth certificate to prove a familial relationship. This requirement is burdensome, and could be accomplished more simply by having the applicant indicate with a check mark that they are responsible for the resident, along with the other requested information. Lastly, LTC administrators and management are already overburdened with regulatory burdens, and cannot be expected to apply for their residents, and on top of that, provide their own date of birth and SSN. Further, the proposed requirement for administrators and managers to provide their operating license, is overreaching. As a practical matter, this type of process will only discourage manager's to act on behalf of their residents, due to their own administrative and own privacy concerns.

Thanks for your consideration of these matters.

Sincerely,



Bruce Yarwood
President & CEO