



## **Public Comment Offered to Massachusetts Assisted Living Residences Commission**

Submitted by Peter J. Tiernan, Principal

Submitted as written talking points to verbal remarks

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Good Afternoon Chair Lipson and Members of the Assisted Living Residences (“ALR”) Commission, I thank you for the opportunity to participate in today’s public session.

While I welcome the opportunity to spend time with some known and respected colleagues, for those who don’t know me my name is Peter Tiernan, and I am a public policy consultant specializing in the financing and program design of publicly-sponsored long-term care services, with emphasis on the elder care services portfolio. Prior to starting my own consulting practice in 2017, I enjoyed a twenty-year career in state government; eleven of which were in senior positions with the Executive Office of Elder Affairs.

During my tenure at AGE (then “EOEA”), my time spent as Chief of Staff involved numerous instances where I was highly engaged in ALR certification policy matters. On my second tour of AGE, in the role of Chief Financial Officer which at the time was configured to include operations management, I was often engaged in matters pertaining to MassHealth coverage of elder care services and the potential for making better use of Assisted Living as a care setting option.

For your consideration, I offer the below remarks in a “talking point” format on two main topics:

- i) While applauding the concept of ALR “Basic Health Services”, raising concerns about potential unintended consequences of reducing the availability of Medicare-funded services to ALR Residents, and the related need for consumer protections to ensure “Basic Health Services” recipients are payers of last resort; and
- ii) Requesting the ALR Commission to take note of the existing structural economic disparity across the ALR care setting, and to in-turn take the initiative to propose its charter be expanded to include deeper examination of such economic disparity.

## Topic One: Interoperation of ALR “Basic Health Services” with ongoing ALR Resident health care services covered by Medicare

- **Supporting the advancement of public policy related to Assisted Living Residence (“ALR”) governance as reflected in Chapter 197 of the Acts of 2024, with particular emphasis on the innovation of enabling ALR nursing staff to perform or supervise newly defined “Basic Health Services”.**
- Emphasizing that this innovation is not a change in services that historical ALR Residents have been receiving but rather recognizes the presence of ALR Nurses and permits them to directly provide the services rather than expect the residents to coordinate with a third-party Provider.
- All the sub-services folded under the umbrella definition of “Basic Health Services” are typically Medicare-eligible health care expenditures. **Therefore, a caution is raised that protections need to be put in place to ensure anytime an ALR resident is paying a supplemental charge related to Basic Health Services, the resident is the payer of last resort. The ALR should be required to document extraordinary measures it takes to appropriately charge any likely Medicare-eligible health care services to the proper payer.**
  - The Commission should carefully examine the interoperation of Basic Health Services and Medicare-funded Home Health Services being delivered to ALR Residents. A suggested dynamic to guard against is the scenario to which if an ALR begins to hold out “Basic Health Services” as a standard offering of that ALR, it potentially negates the ability for all residents of that ALR to receive Medicare-funded Home Health Services. This is because the Basic Health Services are viewed as a standard service of the ALR setting, and therefore there is no need for Medicare to be duplicating the service. I raise this as a generalist, urging specialists to be engaged on the topic.
- My above concerns may be moot if the vision is to simply empower existing ALR nurses without triggering new ALR service revenue specifically related to the delivery of “Basic Health Services”.

## Topic Two: Regarding ALR Access and Economic Disparity

- **Raising serious concerns about ALR access, and how such concerns have manifested in profound economic segregation across ALRs when considered as a class of housing.**
  - Per the most recent AGE census of ALRs, and typical of prior year observations, in 2023 only 10% of ALR Residents were MassHealth members. **This implies 90% of ALR stays are privately funded.** As contrast, per Kaiser Family Foundation routine analysis of CASPER data, **in 2023 27% of Massachusetts Nursing Home Bed days were privately funded.**
  - The concern is that while certainly unintentional when policymakers first began pouring the foundation for growing and regulating Assisted Living as an LTSS setting option, today the Commonwealth is operating a two-tier system of residential supports for Seniors.
  - For Seniors with needs best addressed in a residential services setting, if they have the means they can access ALRs. For low-income seniors, they can choose between Nursing Homes and Rest Homes. While Rest Homes have a proud tradition of service and play an important role in supporting low-income seniors, I trust that all Commission Members can readily agree that low-income elders who require residential supports should not be limited to Rest Homes as their only option. Choice should be enabled, and ALR service capacity deployed towards MassHealth member needs accordingly.

- **With awareness that there are bills pending before the Joint Committee for Aging and Independence to amend the composition of this commission to include more members, I raise the possibility that this Commission could recommend that its charter be expanded so the scope of review includes the examination of economic barriers to ALRs.**
- This ALR Commission seems to be the logical body to comprehensively consider ALR access concerns and emphasize the necessity for ALR offerings to be available to all Older Adults with LTSS needs, regardless of income.
- To help sharpen focus, I suggest examination of current MassHealth Nursing Facility Seniors for whom their active assessment is identifying “Housing Issues” as a barrier to community living. It is for this cohort in particular that I urge the Commission to adopt a sense of urgency towards solving this social injustice.
  - As attachment to this submission, I am including testimony I provided earlier this week to the Joint Committee on Aging and Independence in support of H.791/S.474, “An Act relative to assisted living and the frail elder waiver”, which further details how this type of current MassHealth Nursing Home utilization can be identified and scoped for transition/diversion options; in furtherance of a now ripe public policy discussion.

### **Closing**

Thank you for this opportunity to offer public comment to the ongoing deliberations of the Assisted Living Residences Commission. Feel free to contact me at 617-784-5113, or at [ptiernan@hcbssolutions.com](mailto:ptiernan@hcbssolutions.com) with any questions or concerns regarding this submission.

Pete Tiernan is a subject matter expert in public administration, with particular emphasis on the financing and operations of programs for publicly sponsored consumers receiving home and community-based services and supports. During his twenty-year career in Massachusetts state service, he held several senior level positions with delegated agency-head responsibility. He had the privilege to perform as Chief of Staff and then as CFO for the Executive Office of Elder Affairs, serving 4 Secretaries and 2 Acting Secretaries across the span of 3 Administrations. Since leaving state service, Pete provides technical assistance to other state governments, trade organizations, managed care organizations, and provider entities.

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