HCBS Solutions, LLC
Advancing Home Care Services

Testimony Regarding H.791/S.474, "An Act relative to assisted living and the frail elder waiver"
Submitted to the Joint Committee on Aging and Independence

Submitted by Peter J. Tiernan, Principal
Submitted as written testimony accompanying verbal testimony,
Email copy delivered to jointcommittee.elderaffairs@malegislature.gov

- **Testimony offered with enthusiastic support for H.791/S.474.**
- The Bill will require MassHealth to enable Assisted Living Residences ("ALRs") as diversion or transition from a nursing home placement.
- The Bill bolsters the Commonwealth's long-standing "Community First" policy commitment by further adhering to the "least restrictive environment" principle derived from the landmark U.S. Supreme Court Case *Olmstead v. L.C*.
    - There is suggested to be a significant number of MassHealth Nursing Home Seniors with a care complexity level typical of Frail Elder Waiver participants, but who have housing issues identified as a barrier to community living. For these individuals, Assisted Living is a less restrictive environment that should be offered to promote diversion/transition from a Nursing Home.
- **The Bill restricts the Commonwealth's average cost for an Assisted Living placement from exceeding 80% of the Commonwealth's average cost of a nursing home placement.**
    - The language establishes the 80% cost threshold for ALR services with consideration of the health care supports provided by MassHealth and any room and board supports that may be provided by the Department of Transitional Assistance.

Chair Jehlen, Chair Stanley, and Members of the Joint Committee on Aging and Independence, I thank you for the opportunity to testify in support of H.791/S.474, *An act relative to assisted living and the frail elder waiver*.

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. Today I am before you in the role of volunteer advocate, as this particular matter has been a bit of a quest that I have adopted ever since I became aware of this public policy Gordion's Knot that unfortunately affects many MassHealth Seniors in nursing homes. I am honored to testify in strong support of H.791/S.474, *An Act relative to Assisted Living and the Frail Elder Waiver.*

This bill is a critical step toward ensuring that frail elders who are housing challenged in Massachusetts have access to the supportive services they need while maintaining autonomy and dignity in their living environments. As a Commonwealth, we must reaffirm our commitment to the principles established in *Olmstead v. L.C.*, which declared that individuals with disabilities—including older adults—have the right to receive services in the most integrated and least restrictive setting appropriate to their needs. Assisted Living

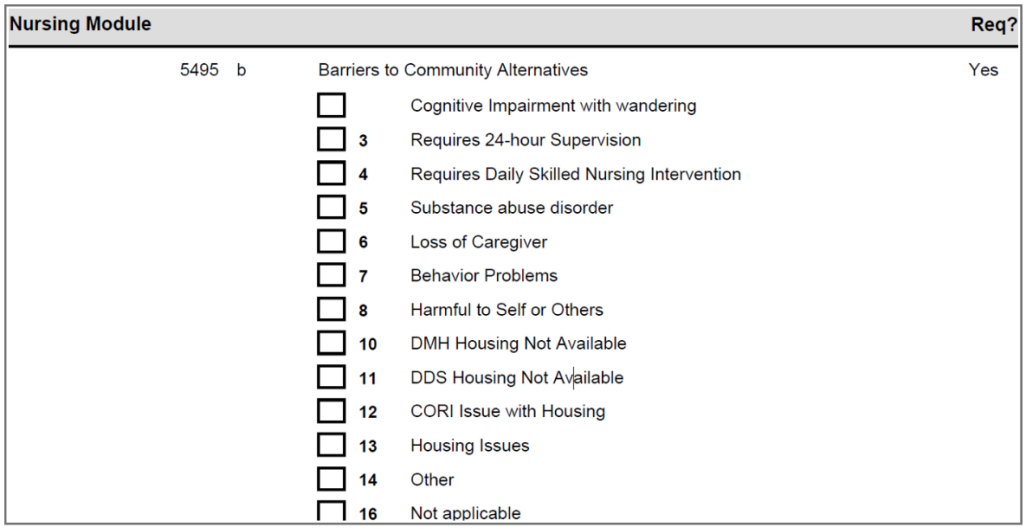
Residences, when properly funded and made accessible, represent such a setting for many frail elders who would otherwise be placed in institutional care unnecessarily.

A significant barrier to realizing this principle for many nursing home residents is the lack of appropriate housing options. Too often, elders who could live successfully in assisted living or other community settings remain in nursing homes—not due to medical necessity, but because their housing situation presents a barrier. Below Exhibit #1 is a question from the standard assessment that is conducted for all MassHealth Nursing Home Residents. The assessment asks an ASAP Nurse to identify the barriers to community living. These assessments are fully automated, and available in "real time" to the Executive Office of Aging and Independence.

Exhibit #1

Image From MassHealth Clinical Eligibility Assessment Form

Question Asks ASAP Nurse to Identify Barriers to Community Alternatives to Nursing Home Placement



Nursing Module			Req?
5495	b	Barriers to Community Alternatives	Yes
☐		Cognitive Impairment with wandering	
☐	3	Requires 24-hour Supervision	
☐	4	Requires Daily Skilled Nursing Intervention	
☐	5	Substance abuse disorder	
☐	6	Loss of Caregiver	
☐	7	Behavior Problems	
☐	8	Harmful to Self or Others	
☐	10	DMH Housing Not Available	
☐	11	DDS Housing Not Available	
☐	12	CORI Issue with Housing	
☐	13	Housing Issues	
☐	14	Other	
☐	16	Not applicable	

I respectfully urge the committee to inquire with AGE as to how many Nursing Home Residents have checked items 12-13, indicating that housing is a "Barrier to Community Alternative". I stress that this is the cohort of Nursing Home Residents for whom the Commonwealth should be prioritizing the extension of "Assisted Living" as care setting[1]. Without the Residential Support option of "Assisted Living as a Service", these individuals remain institutionalized, perhaps against their preference. This misalignment directly contradicts the intent of *Olmstead*, which emphasizes community-based care whenever possible.

Comment Regarding Elected Official/Appointed Resolve to Extend Assisted Living to MassHealth Seniors

Since 2003, when I first became involved in the elder affairs policy space, <u>every</u> elected official and appointed official that I have interreacted with on the topic has expressed support for making Assisted Living an option for MassHealth Seniors. In varying capacities, I have been involved in three "campaigns" to enable Assisted Living that made significant development advances with the support of the Governor's Office and Cabinet Officials (and always enjoying the support of the General Court). In all three instances, the initiative ultimately failed due to MassHealth indifference or reluctance. I believe the primary reason for this is the initiative has never been a priority of the State Medicaid Director, and it was left to languish in the bureaucratic process. I have never come across a compelling public policy argument <u>not</u> to enable Assisted Living as a Service[2].

[1] Note I am not including the indications of "10 DMH Housing Not Available" and "11 DDS Housing Not Available" because, in general, Group Homes provide the residential support option for these target populations.

[2] To be clear, over the years I have heard MassHealth staff opine on typical "pros/cons" concerns regarding the prospect of enabling Assisted Living as care setting for MassHealth Seniors. Staff raising such concerns is perfectly appropriate and expected. However, no

It is this history of MassHealth indifference/inaction which necessitates the complexity of H.791/S.474. Section 2 identifies the three major pathways[3] that have been used in other states to enable Assisted Living, along with a respective state that is viewed as having a "best in breed" service offering for each pathway.

- Pathway #1 is perhaps the path of least resistance. It is simply adding Assisted Living as a service to the Frail Elder Waiver. This is the option that, historically, staff at AGE has favored when working with MassHealth.
- Pathway #2 is likely the most prudent approach. It is standing up a new HCBS Waiver for the sole purpose of enabling Assisted Living as a Service. With the caveat that I am a former CFO, this is the option I would favor due to the ability to tightly manage utilization and to better define a target group.
- Pathway #3 is the fastest approach. It would permit MassHealth to essentially "pilot" Assisted Living as a Service within the SCO program, perhaps to gain administrative experience prior to standing it up in a 1915(c) Waiver. This particular administrative technique is valuable in that it can help to deploy a MassHealth defined Assisted Living Service while ensuring that the service is properly installed in the SCO risk pool (and the SCOs get full credit of making authorized health care expenditures). If favoring this option, MassHealth will need to make some considerations about i) how it compensates SCOs for the Assisted Living setting type, and ii) how to communicate either a rate floor or a standard rate so ALRs can evaluate the potential service line. Lastly, I note that if MassHealth opts for this pathway, it should also make "equal treatment" considerations to create rate add-ons for the PACE program for the scenario of when a PACE member resides in an Assisted Living Residence.

The Bill's Section 2 is thought to be beneficial in furthering a comprehensive dialogue where all interested parties gain an understanding of the MassHealth outlook on Assisted Living as a Service. In addition, the Section 2 requirements should hopefully flesh out the MassHealth "pros & cons" analysis on the administrative techniques that are prevalent in other states.

Regarding Section 3 Report

As Massachusetts has grown its Assisted Living industry without a meaningful MassHealth service offering, our public policy has unintentionally created an undesirable degree of economic segregation of ALR Residents. This is somewhat obvious, as 74% of Nursing Home bed days are from public payer sources (MassHealth or Medicare); meanwhile approximately 12% of Assisted Living Residents are associated with some form of public supports (either housing vouchers or identified as a MassHealth PACE/SCO member or Group Adult Foster Care utilizer).

As I am submitting this testimony, there are 17 Nursing Homes in receivership, many of which are located in hard-to-serve areas. MassHealth enabling "assisted living as a service" will bring some much needed capacity quickly on-line that may assist with any related contingency planning related to these distressed SNFs. Furthermore, it is noted that per the February 2025 Mass. Hospital Association Monthly Throughput Survey Report[4], a somewhat typical 235 Hospital Patients were reported in beds for more than 30 days waiting for discharge to a nursing home. Smart MassHealth deployment of "Assisted Living as a Service" should promote some diversion/transition from nursing home beds; which in turn could contribute to solving hospital throughput challenges.

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such staff concern has ever been advanced to and embraced by an appointed official that I had the opportunity to engage with. Every potential "con" raised at the staff level could be readily addressed or mitigated. I have never heard MassHealth publicly articulate why they are disinterested in enabling Assisted Living as a choice in lieu of nursing home placement for MassHealth Seniors.

[3] Note there are additional administrative techniques available for a state agency to implement Assisted Living. These three have been selected because they are the more common, and they are viewed as a likely/viable option for MassHealth to select.

[4] https://www.mhalink.org/throughputreports/

It is anticipated that the sought report is going to confirm that the Commonwealth should be accelerating efforts to bring Assisted Living units on-line and available to MassHealth, with particular emphasis on serving residents with long-term care needs who reside in qualified census tracts[5] ("QCT").

Closing

Thank you for this opportunity to comment on the process of developing the FY25 General Appropriation Act. Feel free to contact me at 617-784-5113, or at 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.

HCBS Solutions, LLC is not being compensated for this testimony.

[5] A Qualified Census Tract is defined as any census tract where at least 50% of households have an income less than 60% of the Area Median Gross Income.