

[**info@DignityAlliance.org**](mailto:info@DignityAlliance.org)

November 1, 2020

Honorable Michael Rodriques

Chair, Senate Ways and Means Committee

State House – 212

Boston, MA 02133

Dear Mr. Chairman:

As you finalize the FY ’21 State Budget with the Governor and House, we would respectfully call your attention to a few items that are vitally important to older adults and people with disabilities in the Commonwealth.

By way of background, as the state’s largest and most diverse coalition of organizations and individuals with experience in this area, we believe the COVID crisis must spur a restructuring of long-term services, support, and care in the Commonwealth. We must embrace the principle of respecting the human dignity of care receivers and givers alike, and ensure that people have access to the best public health practices. The budget issues that we support, some with reservations or additional recommendations, represent important steps toward achieving an “age-friendly Commonwealth.”

There is, as the prestigious medical journal*, The Lancet*, recently editorialized, “a need to reconcile and embrace the inevitable requirement that many people will need extra care as they age. Long-term care must value the heritage, experience, and contribution of older people, and see them as individuals who are part of a wider social network

“Long-term care should be diverse, focusing on the importance of a home and community with multi-generational possibilities, with built environments designed for older people, and access to flexible and high-quality care, reflecting the many and unique ways that people age. The care workforce must be valued and receive better training, better pay, and a structured career path that reflects their important and highly skilled roles. Traditional care homes should be a last resort. The de-humanizing way that COVID-19 has been managed in people in care homes makes a mockery of the purpose of medicine to extend life and allow people to live life in the fullest sense. The long-term care system in many countries is broken and must be reimagined.” Dignity Alliance agrees with this vision. With this as background, we respectfully offer our comments on the Governor’s outside sections and our recommendations for further budget action.

The Governor’s revised FY ’21 budget submission contains several outside sections that are matters of genuine concern to our members.

* **We express our concern with the proposed Sections 4, and Sections 13 – 18**, inclusive, transferring the Office of Long-Term Care Ombudsman from the Executive Office of Elder Affairs to the Executive Office of Health and Human. We were informed that this reorganization was included to satisfy a federal requirement of the Administration for Community Living (ACL) regarding a potential conflict if the Ombudsman remained in the same agency that certified assisted living residences. **We recommend that to ensure the independence of the office, the statutory language state that it is “within, but not subject to the control of the,” for whichever agency serves as the host of the office of long-term care ombudsman. Including that language could, potential, also address any issue raised by ACL,**

.

**We are also concerned about the apparent grant of authority to the Office of Ombudsman for access to a patient’s record**. The state is authorizing the Ombudsman access to resident’s personal information, when a resident does not have the capacity to consent and does not have a legal representative. One would think, that if such a circumstance arises, that the Ombudsman should either be directing the facility to file for guardianship or notifying DPH of the incapacitated person at risk and needing a “legal representative.”

**We strongly suggest the following revision**: The ombudsman, or designee, shall have access to any resident's records with consent of the resident or the resident's representative, and to records of any public agency necessary to the duties of the office, including records on patient abuse complaints. If the ombudsman, or designee, reasonably believes that a complaint situation exists which may only be resolved by the inspection of the resident's personal, financial or medical records, and if the resident lacks the capacity to give consent, and the resident has no legal representative, or the ombudsman has reason to believe that the resident representative is not acting in the best interest of the resident, the said ombudsman or designee shall have access to the records of the resident without the resident's written authorization.”

* **We support Outside Sections 36, 42, and 112** providing a tax credit for businesses hiring and retaining workers with disabilities. A robust workforce includes people of all abilities. By integrating people with **disabilities** into the pool of **employees**, businesses will gain a competitive advantage, increase **workplace** diversity and productivity, improve their bottom line, have higher retention rates, and expand their market to new consumers. For workers with disabilities, this hiring incentive for businesses will help them to gain the financial independence and dignity that accompanies meaningful employment.
* **We express our serious concern with Outside Sections 54 and 55, to the extent that the amendment would shorten the time allowed for the state and the general public to review the suitability of an applicant for a new or transferred license. A thoughtful review, with ample time for public comment, is far more important than expediting the application process. We do not believe an expedited application process is in the interest of residents of any facility or of the general public.**

If the Legislature intends to agree to the Governor’s proposed language for these sections, **we recommend the other changes may be needed in the definitions of “Applicant,” “Person,” and “Owner” in order to increase the requirements for determining suitability of an applicant for a new or transferred license. It is our intention to submit legislation for the Legislature’s consideration in the next session to offer additional protections against an applicant acting in bad faith.**

* **We support WITH RESERVATIONS Section 56,** while the section would help to strengthen much needed oversight of nursing homes; however, the current fine of $50/day deterrence is meaningless. The proposed new $500/day deterrence is also extremely low. There are many important care issues this Section protects, including informed written consent before the administration of antipsychotics --- MA still has one of the highest antipsychotic drugging rates in the country. **We strongly recommend that the text read, “Whoever violates any rule or regulation under sections 71, 72, and 72C shall be punished by such fine, not to exceed Federal maximum rate, as the Department may establish.**
* **We support Outside Section Outside Section 62,** which reduces the rate charged on estate recovery from 12% to 3.25%. This would mitigate the hardship that estate recovery might impose upon surviving family members already suffering from the impact of COVID-19.
* **We Do Not Oppose Outside Sections 63 and 64,** The tool of revocation of license has often been found to be too extreme a penalty and hurts residents as well. Therefore, it is essentially meaningless except in the most grievous cases. The authority to impose financial penalties will be far more effective for gaining compliance with reasonable rules and regulations. **However, we recommend that penalties be established with an escalating range increasing with severity and/or repetitive instances.**
* **We recommend in Section 63, that the definition of “Owner” be changed in this section as follows:**

**“Owner,” by striking out the words: “any person owning 5 percent or more of, with an ownership interest of 5 percent or more of, or with a controlling interest in an applicant, potential transferee, or the real property on which a long-term care facility is located.” This could address a problem the state faced when Skyline Nursing Homes shut down. We will also be recommending to the Department of Public Health that the definitions for “applicant” and “licensee” be revised in a planned regulatory reform.**

* **We support Outside Section 104,** which authorizes MassHealth to directly negotiate with rebate agreements for drugs not subject to the Medicaid Drug Rebate Program and for certain non-drug products such as durable medical equipment. This provision will help to reduce the cost of medical supplies and equipment to benefit the Commonwealth’s taxpayers and to obtain needed supplies for consumers at more reasonable cost.
* **We oppose cuts tor Regional Transit Authorities (Line Item 1595-6370)** This program is vital to older adults and people with disabilities enabling them to successfully live in their communities with a good degree of independence rather than living in more restrictive settings such as skilled nursing facilities.
* **We support provisions in Line Item 4000-0601** relative to MassHealth Leaves of Absence (Bed Hold) Policy essential to the protection for nursing home residents who must leave the nursing home for hospital stay or to visit with family, by allowing them to return to their same bed – their home – up to and including 20 days per medical event (including Observation Stay over 24 hours) up to and including 10 days per year for personal leaves.
* **We further support in Line Item 4000-0601**, a modest increase in the Personal Needs Allowance (currently only $72.80/month) reserved from a nursing home or rest home resident’s income to cover all personal needs not covered by Mass Health such as clothes, haircuts, The Ride, etc.
* **We support AHVP Mobile Housing Vouchers for individuals under 60 with disabilities – line item 7004-9030.**
* **We support $1 million request in support of the Massachusetts SHINE Program** which offers counseling for health insurance and MassHealth.
* **We support an appropriation of $2 million to Establish a New Enhanced Case Management Service for Older Adults with Dementia and Significant Behavioral Health Diagnosis.**
* **We support an additional $1.44 million to expand the Elder Supportive Housing Program,** in this model one home care worker is assigned to provide care to multiple consumers in the same building.
* **We support including the pooled trust legislation in the budget** S2430/H4227 – Preserve Special Needs Trust for Disabled Seniors

These appropriations and budget language will be an important step in protecting, serving, and providing dignity for some of the Commonwealth’s most vulnerable citizens. Your leadership in gaining approval of these items will be greatly appreciated by us as advocates and, especially, by countless older adults and people with disabilities whose voices often go unheard without the vigorous advocacy of coalitions such as Dignity Alliance Massachusetts and its member organizations.

Sincerely,

Sincerely,

**Paul Lanzikos for**

**DIGNITY ALLIANCE MASSACHUSETTS**

CC: Senate President Karen Spilka



[**info@DignityAlliance.org**](mailto:info@DignityAlliance.org)

November 1, 2020

Honorable Aaron Michelwicz

Chair, House Ways and Means Committee

State House – 236

Boston, MA 02133

Dear Mr. Chairman:

As you finalize the FY ’21 State Budget with the Governor and House, we would respectfully call your attention to a few items that are vitally important to older adults and people with disabilities in the Commonwealth.

By way of background, as the state’s largest and most diverse coalition of organizations and individuals with experience in this area, we believe the COVID crisis must spur a restructuring of long-term services, support, and care in the Commonwealth. We must embrace the principle of respecting the human dignity of care receivers and givers alike, and ensure that people have access to the best public health practices. The budget issues that we support, some with reservations or additional recommendations, represent important steps toward achieving an “age-friendly Commonwealth.”

There is, as the prestigious medical journal*, The Lancet*, recently editorialized, “a need to reconcile and embrace the inevitable requirement that many people will need extra care as they age. Long-term care must value the heritage, experience, and contribution of older people, and see them as individuals who are part of a wider social network

“Long-term care should be diverse, focusing on the importance of a home and community with multi-generational possibilities, with built environments designed for older people, and access to flexible and high-quality care, reflecting the many and unique ways that people age. The care workforce must be valued and receive better training, better pay, and a structured career path that reflects their important and highly skilled roles. Traditional care homes should be a last resort. The de-humanizing way that COVID-19 has been managed in people in care homes makes a mockery of the purpose of medicine to extend life and allow people to live life in the fullest sense. The long-term care system in many countries is broken and must be reimagined.” Dignity Alliance agrees with this vision. With this as background, we respectfully offer our comments on the Governor’s outside sections and our recommendations for further budget action.

The Governor’s revised FY ’21 budget submission contains several outside sections that are matters of genuine concern to our members.

* **We express our concern with the proposed Sections 4, and Sections 13 – 18**, inclusive, transferring the Office of Long-Term Care Ombudsman from the Executive Office of Elder Affairs to the Executive Office of Health and Human. We were informed that this reorganization was included to satisfy a federal requirement of the Administration for Community Living (ACL) regarding a potential conflict if the Ombudsman remained in the same agency that certified assisted living residences. **We recommend that to ensure the independence of the office, the statutory language state that it is “within, but not subject to the control of the,” for whichever agency serves as the host of the office of long-term care ombudsman. Including that language could, potential, also address any issue raised by ACL,**

.

**We are also concerned about the apparent grant of authority to the Office of Ombudsman for access to a patient’s record**. The state is authorizing the Ombudsman access to resident’s personal information, when a resident does not have the capacity to consent and does not have a legal representative. One would think, that if such a circumstance arises, that the Ombudsman should either be directing the facility to file for guardianship or notifying DPH of the incapacitated person at risk and needing a “legal representative.”

**We strongly suggest the following revision**: The ombudsman, or designee, shall have access to any resident's records with consent of the resident or the resident's representative, and to records of any public agency necessary to the duties of the office, including records on patient abuse complaints. If the ombudsman, or designee, reasonably believes that a complaint situation exists which may only be resolved by the inspection of the resident's personal, financial or medical records, and if the resident lacks the capacity to give consent, and the resident has no legal representative, or the ombudsman has reason to believe that the resident representative is not acting in the best interest of the resident, the said ombudsman or designee shall have access to the records of the resident without the resident's written authorization.”

* **We support Outside Sections 36, 42, and 112** providing a tax credit for businesses hiring and retaining workers with disabilities. A robust workforce includes people of all abilities. By integrating people with **disabilities** into the pool of **employees**, businesses will gain a competitive advantage, increase **workplace** diversity and productivity, improve their bottom line, have higher retention rates, and expand their market to new consumers. For workers with disabilities, this hiring incentive for businesses will help them to gain the financial independence and dignity that accompanies meaningful employment.

**We express our serious concern with Outside Sections 54 and 55, to the extent that the amendment would shorten the time allowed for the state and the general public to review the suitability of an applicant for a new or transferred license. A thoughtful review, with ample time for public comment, is far more important than expediting the application process. We do not believe an expedited application process is in the interest of residents of any facility or of the general public.**

If the Legislature intends to agree to the Governor’s proposed language for these sections, **we recommend the other changes may be needed in the definitions of “Applicant,” “Person,” and “Owner” in order to increase the requirements for determining suitability of an applicant for a new or transferred license. It is our intention to submit legislation for the Legislature’s consideration in the next session to offer additional protections against an applicant acting in bad faith.**

* **We support WITH RESERVATIONS Section 56,** while the section would help to strengthen much needed oversight of nursing homes; however, the current fine of $50/day deterrence is meaningless. The proposed new $500/day deterrence is also extremely low. There are many important care issues this Section protects, including informed written consent before the administration of antipsychotics --- MA still has one of the highest antipsychotic drugging rates in the country. **We strongly recommend that the text read, “Whoever violates any rule or regulation under sections 71, 72, and 72C shall be punished by such fine, not to exceed Federal maximum rate, as the Department may establish.**
* **We support Outside Section Outside Section 62,** which reduces the rate charged on estate recovery from 12% to 3.25%. This would mitigate the hardship that estate recovery might impose upon surviving family members already suffering from the impact of COVID-19.
* **We Do Not Oppose Outside Sections 63 and 64,** The tool of revocation of license has often been found to be too extreme a penalty and hurts residents as well. Therefore, it is essentially meaningless except in the most grievous cases. The authority to impose financial penalties will be far more effective for gaining compliance with reasonable rules and regulations. **However, we recommend that penalties be established with an escalating range increasing with severity and/or repetitive instances.**
* **We recommend in Section 63, that the definition of “Owner” be changed in this section as follows:**

**“Owner,” by striking out the words: “any person owning 5 percent or more of, with an ownership interest of 5 percent or more of, or with a controlling interest in an applicant, potential transferee, or the real property on which a long-term care facility is located.” This could address a problem the state faced when Skyline Nursing Homes shut down. We will also be recommending to the Department of Public Health that the definitions for “applicant” and “licensee” be revised in a planned regulatory reform.**

* **We support Outside Section 104,** which authorizes MassHealth to directly negotiate with rebate agreements for drugs not subject to the Medicaid Drug Rebate Program and for certain non-drug products such as durable medical equipment. This provision will help to reduce the cost of medical supplies and equipment to benefit the Commonwealth’s taxpayers and to obtain needed supplies for consumers at more reasonable cost.
* **We oppose cuts tor Regional Transit Authorities (Line Item 1595-6370)** This program is vital to older adults and people with disabilities enabling them to successfully live in their communities with a good degree of independence rather than living in more restrictive settings such as skilled nursing facilities.
* **We support provisions in Line Item 4000-0601** relative to MassHealth Leaves of Absence (Bed Hold) Policy essential to the protection for nursing home residents who must leave the nursing home for hospital stay or to visit with family, by allowing them to return to their same bed – their home – up to and including 20 days per medical event (including Observation Stay over 24 hours) up to and including 10 days per year for personal leaves.
* **We further support in Line Item 4000-0601**, a modest increase in the Personal Needs Allowance (currently only $72.80/month) reserved from a nursing home or rest home resident’s income to cover all personal needs not covered by Mass Health such as clothes, haircuts, The Ride, etc.
* **We support AHVP Mobile Housing Vouchers for individuals under 60 with disabilities – line item 7004-9030.**
* **We support $1 million request in support of the Massachusetts SHINE Program** which offers counseling for health insurance and MassHealth.
* **We support an appropriation of $2 million to Establish a New Enhanced Case Management Service for Older Adults with Dementia and Significant Behavioral Health Diagnosis.**
* **We support an additional $1.44 million to expand the Elder Supportive Housing Program,** in this model one home care worker is assigned to provide care to multiple consumers in the same building.
* **We support including the pooled trust legislation in the budget** S2430/H4227 – Preserve Special Needs Trust for Disabled Seniors

These appropriations and budget language will be an important step in protecting, serving, and providing dignity for some of the Commonwealth’s most vulnerable citizens. Your leadership in gaining approval of these items will be greatly appreciated by us as advocates and, especially, by countless older adults and people with disabilities whose voices often go unheard without the vigorous advocacy of coalitions such as Dignity Alliance Massachusetts and its member organizations.

Sincerely,

**Paul Lanzikos for**

**DIGNITY ALLIANCE MASSACHUSETTS**

Cc: House Speaker Robert A. DeLeo

House Majority Leader Ronald Mariano