



Public Comment Submitted by Peter J. Tiernan, Principal
Submitted to the Executive Office of Health and Human Services (EOHHS)
via email to ehs-regulations@mass.gov

**Public Comment Related to Proposed Amendments to 101 CMR 206.00:
Standard Payments to Nursing Facilities**

Courtesy Copies Transmitted to the Joint Committee on Elder Affairs, Certain Advocacy Agencies Often Referred to as “the Elders Stakeholder Coalition”, Dignity Alliance Massachusetts, and Other Parties with interests in ensuring Massachusetts Builds Upon the Tradition of Being a “Community First” State

- **The Healey-Driscoll Administration is Strongly Encouraged to Ensure an Ongoing Commitment to a “Community First” Long-Term Care Policy¹. It is Necessary to Conduct a Post-Pandemic Review of All Long-Term Services and Supports (LTSS) Governance, with Particular Emphasis on Policy Interventions Developed in Response to the Pandemic.**
- Certain recent policy interventions² reflected in the Skilled Nursing Facility rate regulations suggest to have the unintended effect of incentivizing institutional settings for the delivery of post-acute and long-term care services.
 - It is understood that such interventions are well-intended and for the purpose of relieving hospital bed and emergency shelter service constraints. However, it is essential that LTSS Policymakers vigilantly maintain the North Star objective of delivering high quality services in the least restrictive environment possible. **A nursing facility bed should be utilized because it is appropriate and the setting of choice, not simply because it is available.**
 - Any policy that promotes the utilization of a nursing facility bed as setting of care should be mirrored with a policy of comparable financial commitment to home and community-based care settings, including but not limited to: (i) enhanced use of clustering supports to help marshal Home Care Aide workforce to areas with a density of MassHealth Members, and (ii) enhanced use of Assisted Living Residences and Rest Homes via Group Adult Foster Care (“GAFC”) rate reform and related use of add-on payments.
 - Significant concern is raised with the operational design of the Medicaid Transitional Add-On established in 101 CMR 206.10 (7). A \$200 supplemental add-on for the first 60 days of transitioning from a MassHealth-funded acute or non-acute hospital stay should be accompanied with significant procedures to guard against a nursing facility retaining a resident for at least 60 days when a transition to the community is possible. Furthermore,

¹ Commonwealth of Massachusetts, “The Community First OLMSTEAD PLAN”, last retrieved from State Library of Massachusetts archives on 10/19/23

<https://archives.lib.state.ma.us/bitstream/handle/2452/626020/ocn974922370.pdf?sequence=1&isAllowed=y>

² Particular emphasis on the Medicaid Transitional Add-on enabling a \$200 supplemental payment for up to 60 days; and the Homelessness Rate Add-on enabling a \$200 supplemental payment for up to 180 days.

substantially similar payment policies for HCBS should be extended to the scenario of promoting the transition of a MassHealth member from an institutional setting (**including nursing facilities**) to a home and community-based setting.

- **The Healey-Driscoll Administration Should Recommit the Executive Branch to the “Community First Law³³” and the Requirement to Provide Pre-Admission Counseling Prior to Nursing Facility Admission.** An implementation approach should include a phase one goal of achieving full compliance for MassHealth members. Phase two should seek to implement private pay requirements.
- **Furthermore, and Most Relevant to this Promulgation Process for SNF Payment Policy, Sound Public Administration Techniques Will Serve to Harmonize the Statutory Requirement of Pre-Admission Counseling with Eligibility for a SNF to Realize Enhanced Compensation.** For certain supplemental add-ons, no payment should be issued until it is demonstrated that the MassHealth member received the pre-admission counseling required by M. G. L. C. 118E, §9⁴. Suggested add-on types are: (i) Temporary Resident Add-on; (ii) Medicaid Transitional Add-on; or (iii) Homelessness Rate Add-on.
 - When reviewing SNF Add-on payments, it is important to consider the add-on amounts in context of the MassHealth routine daily cost for a SNF bed day. As demonstrated by recent 1915(c) renewal submissions, MassHealth is of the general planning perspective that an average SNF bed day will cost the MassHealth program \$258.71⁵. **This means in the instances where MassHealth is indicating a \$200 add-on payment, it is willing to pay a 77% premium to nursing facilities to help address its policy priorities.** For every 30 days of supplemental payments, MassHealth is extending \$6,000 in enhanced payments per member with no commensurate performance requirements imposed on the SNF.
 - Within the HCBS service arena, \$6,000 in monthly supplemental payment towards a community-dwelling member is an **extraordinary** level of resource which could go a long way towards linking a highly skilled Home Care Aide to supporting a service plan need (to be clear, I am advocating a comparable HCBS resource commitment to be made with appropriate use-of-fund requirements).
 - If MassHealth is willing to provide such a premium to nursing facilities, then certainly it should be willing to make the necessary commitment to fully stand-up pre-admission counseling infrastructure in the manner intended and required by statute. The historical approach to meeting this statutory mandate is best characterized as a reluctant bureaucracy cobbling together funds necessary to demonstrate adherence. The suggested model approach is for EOHHS Executive Leadership to enthusiastically embrace the benefit of a

³³ M. G. L. c. 118E, §9

⁴ “...A person seeking admission to a long-term care facility paid for by MassHealth shall receive pre-admission counseling for long-term care services, which shall include an assessment of community-based service options. A person seeking care in a long-term care facility on a private pay basis shall be offered pre-admission counseling. For the purposes of this section, pre-admission counseling shall be conducted by the executive office of health and human services or the executive office of elder affairs or their subcontractors. The executive office of elder affairs shall, in consultation with the office of acute and ambulatory care in the executive office of health and human services, study the advisability and feasibility of using certain Medicaid providers to provide pre-admission counseling. The division shall report to the general court on an annual basis the number of individuals who received pre-admission counseling under this section and the number of diversions to the community generated by the pre-admission counseling program.”

⁵ MassHealth average SNF daily cost based on recent Frail Elder Waiver proposed renewal, redline version for public comment, Appendix J inputs of ‘Waiver Year 1’ Factor G cost of \$72,301.68 and the average length of stay of 279.47 days. \$72,301.68 /279.47 days = \$258.71.

robust public policy instrument that proactively facilitates the diversion from avoidable nursing home placement.

- **Furthermore, MassHealth should be willing to implement HCBS interventions that improve the proposition to divert these MassHealth Members from a nursing facility placement to a community setting.**
 - The home care aide clustering supports that are inherent in the MFP-CL waiver service known as “Independent Living Supports” should be extended to the Frail Elder Waiver. Furthermore, the service should be accorded \$200 per day add-on payments consistent with SNF add-on payments (perhaps capped at 5 -10 consumers at any designated site). Installing this service in the Frail Elder Waiver will substantially improve the proposition for Home Care Aide Providers to marshal workforce towards fulfilling all active MassHealth service plans at a site designated for clustering (e.g. a public housing complex, or a neighborhood with a significant volume of service plans for Home Care Aide services).
 - *Those familiar with my recent testimony submissions are aware I am an ardent supporter of implementing Assisted Living as a 1915 (c) service for the purpose of addressing the economic segregation that Massachusetts public policy has fostered in the housing option of Assisted Living. Setting this overarching concern aside, the following comments are offered as short-term and readily achievable solutions within the existing array of the MassHealth LTSS. MassHealth must conduct a reasonableness test on the GAFC service rate and hold it up against the \$258.71 SNF daily cost in addition to the potential supplemental payments resulting from Add-on provisions.*
 - Both Assisted Living Residences and Rest Homes need to be better established on the MassHealth LTSS setting of care continuum. **Even if they are not able to support the highly complex cases that MassHealth is solving for with these add-on payments, about 15-20% of routine MassHealth SNF utilization⁶ suggests that it can be migrated to a less restrictive environment.** Successfully migrating this MassHealth structural overreliance on nursing facility services will free up SNF beds, which in turn will help ensure that Skilled Nursing Facilities remain mission focused on supporting MassHealth Members with the highest complexity of LTSS needs.

⁶ This suggested potential to migrate structural overreliance on SNF beds to HCBS is based on examination of the distribution of MassHealth paid bed days by payment cell. Substantially similar snapshots from 2017, 2022, and 2023, obtained via legislative reports or public records request, consistently indicate that at least 10% of MassHealth SNF utilization is for residents expected to receive 30 to 110 minutes of daily direct care support; and at least 20% of MassHealth SNF utilization is for residents expected to receive 111 to 170 minutes of daily direct care support. This level of care complexity is routinely supported in the HCBS Waiver programs, and should be an EOHHS policy target to transition this imbedded MassHealth SNF utilization to a less restrictive setting.

Closing

Thank you for your facilitation of this important public process and your consideration of my remarks. 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.

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