



TESTIMONY BY DIGNITY ALLIANCE MASSACHUSETTS

101 CMR 206.00: Standard Payments to Nursing Facilities

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Dignity Alliance Massachusetts is a statewide, non-profit coalition of individuals and organizations advocating for the interests of older adults, people with disabilities, and their caregivers. We take this opportunity to provide testimony relative to the proposed amendments to **101 CMR 206.00 implement Fiscal Year 2024 (FY24)** budget requirements.

Dignity Alliance Massachusetts is concerned with several policy matters that the proposed amendments appear to be at serious variance:

1. Skilled Nursing Facilities, or Nursing Homes as they are commonly known, are designed to provide care and services for older adults and people with disabilities, including dementia and Alzheimer's Disease. They are not intended to be used as "housing for the homeless" even if they meet basic criteria for admission to a nursing home. Such a plan creates a new "book of business" for nursing homes in an effort to financially prop them up. Nursing homes are always searching for extra sources of revenue; however, we are unaware of any research regarding whether most homeless individuals want to live in the restrictive setting of a nursing home. It should be noted that, according to AARP, 88% of older adults do not want to live in a nursing home!
2. One of the criteria for a May 31, 2019, Determination of Need (DON) Request Draft¹ for licensing of additional beds was "Reduces the risk of homelessness by improving housing stability". What was the outcome of this DON request? While

¹ [Mass.gov](https://www.mass.gov)

this predates the formation of Dignity Alliance, many of the Alliance's members submitted testimony at that time to halt such licensing. Housing for homeless individuals requires a special skillset and other considerations necessary to provide safe and individualized support to this population.

3. At the outset of the Covid-19 Pandemic, the Commonwealth adopted a policy to move nursing home residents to establish facilities specifically for the care of persons with Covid. Upon further consideration, the Baker Administration abandoned this plan for housing infected patients together and arbitrarily relocating frail elder nursing home residents. This was a clear instance of poor public health policy and an abridgement of nursing home residents' rights and dignity. We are concerned that mixing homeless individuals, even if they are close to current nursing home residents in age, with frail, older adults may not benefit either population. Furthermore, we would strongly oppose any efforts to move nursing home residents in order to make rooms available for homeless individuals. Will homeless people admitted to a nursing home receive treatment for addiction and / or mental illness? Will cultural needs and preferences be respected? Will a Determination of Need process apply to those nursing homes seeking to house homeless to receive a supplemental reimbursement?
4. Nursing homes have continued to claim that they are unable to hire or retain staff. Understaffed nursing homes pose significant burdens for staff under current working conditions. Will adding homeless adults as residents increase the demands on overworked, underpaid staff?
5. Dignity Alliance believes that nursing home residents should have access to single rooms for privacy and to prevent the spread of infections. Department of Public Health regulations limit nursing homes to two residents per room, yet a number of nursing homes, fighting this regulation, prefer to provide rooms housing three and four residents. Will homeless people be housed with more than two residents per room?
6. If the new regulations are intended to free up space in acute care hospitals by transferring patients to nursing home care, Dignity Alliance believes that hospital patients being discharged for rehabilitation should be provided appropriate counseling and assistance with the option of returning to a home or other community setting with services such as the "hospital at home programs" offered by several major Massachusetts hospitals. An unnecessary stay in a nursing home should be avoided and minimized to the greatest extent possible. Experience demonstrates that once an older adult has been admitted to a nursing home bed, the probability for their transition to home decreases by the day. Aging Services Access Points (ASAPs) and Independent Living Centers (ILCs) have demonstrated success in facilitating diversion from a nursing home placement. Case managers have noted that promoting transition from a nursing home is exponentially more complicated.
7. Under the proposed new payment regulations, nursing homes remain eligible for a member-based Homelessness Rate Add-on of \$200 per clinically eligible MassHealth resident if that individual has experienced homelessness for at least

six months directly prior to admission, is homeless or at risk of homelessness, and has a behavioral health condition or has recently experienced a sudden or unexpected loss of primary residence necessitating an emergency admission. However, this rate add-on remains available only for the first 180 days of the member's nursing facility stay. Are there any MassHealth/EOHHS plans to assist in securing community-based housing for these individuals and/or expectations for the nursing homes themselves upon the six-month expiration of the Homelessness Rate Add-On? Are nursing home operators expected to assist in securing non-institutional housing for these homeless individuals either during the rate add-on period and/or when their rate add-on expires after 180 days? Nursing homes which receive Add-on payments should be required to submit quarterly reports containing at least this information: a) Number of residents admitted; b) Age of each resident; c) Living condition prior to admission; d) Referral sources; e) Number of discharges; f) Length of stay for each resident; and g) Discharge disposition.

8. Dignity Alliance strongly believes that enhanced payments to nursing homes should also be made available to fund home and community-based supports and services. Whenever possible and appropriate for the individual, residents of the Commonwealth deserve the dignity of care in home and community locations rather than in a nursing home.² This principle is based on the outcome of *Olmstead v. L.C.* In this case, the U. S. Supreme Court held that “unjustified isolation of individuals with disabilities” through “undue institutionalization,” constituted discrimination based on disability in violation of Title II of the Americans with Disabilities Act. Therefore, the proposed regulations must recognize the responsibility of the Commonwealth to respect the option of receiving care in their community.
9. Nursing homes have had little oversight for at least the last decade.³ What agency of state government will provide oversight to the homeless who might be placed in a nursing home? The Department of Public Health appears to lack sufficient staff or commitment to monitor nursing home operations as currently mandated by law. If these regulations will reward nursing homes with supplemental payments without providing more funds to DPH for oversight and active enforcement, the resulting mix of types of residents will make life untenable for nursing home residents, homeless individuals, and care staff alike.
10. Dignity Alliance also strongly espouses that no nursing facilities receive an increase in standard payments if they are not in compliance with Massachusetts Department of Public Health nursing home staffing regulations and all other relevant regulations as provided in 105 CMR 150.00: Standards for long-term care facilities.⁴ Otherwise, it would be irresponsible or illegal, for the Commonwealth to increase reimbursements to nursing facilities that are

² [Olmstead v. L.C. - Disability Justice](#)

³ Since 2020, two Office of Inspector General reports on DPH operations in 50 states.

⁴ <https://www.mass.gov/regulations/105-CMR-15000-standards-for-long-term-care-facilities>

- providing unsafe, poor-quality care. Surely, the Legislature could not have intended to provide these additional taxpayer dollars as a reward for poor care!
11. We especially want to point out that facilities that are determined to be providing insufficient care should not be rewarded with supplemental payments and assume more responsibility.
 12. We also strongly believe that any supplemental payments must be in full compliance with the Direct Care Cost Quotient⁵ which requires that 75% of revenues received by a nursing home shall be utilized for direct care staff in compliance with state regulations - Administrative Bulletin 21-02 101 CMR 206.00: Standard Payments to Nursing Facilities.
 13. What augmented services and extraordinary expenses justify the expenditure of \$200 per day per resident? These should be detailed and publicly identified.
 14. In the interests of transparency and accountability, Dignity Alliance believes that any payments pursuant to these regulations must be made public at the time of publication of the final regulation, and must be included as a separate line item the respective nursing facilities cost reports submitted to the Center for Health Information and Analysis (CHIA) and that those reports include the names of all owners, nursing home administrators, and medical directors. We also advocate that the submitted reports be comprehensively analyzed and reports issued publicly in a timely manner.
 15. Finally, Dignity Alliance Massachusetts endorses the testimony submitted by Peter J. Tiernan, Principal, HCBS Services, LLC.

FOR DIGNITY ALLIANCE MASSACHUSETTS

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Dignity Alliance Massachusetts, a grass-roots coalition of aging and disability service and advocacy organizations and supporters, works to secure fundamental changes in the provision of long-term services, support, and care. A coalition of more than 30 organizations, committed to a new vision of dignity and care for older and disabled people in Massachusetts! Positions are not necessarily the opinions of all members.

⁵ <https://www.mass.gov/doc/administrative-bulletin-21-02-101-cmr-20600-standard-payments-to-nursing-facilities-nursing-0/download#:~:text=As%20of%20October%201%2C%202020%2C%20nursing%20facilities%20must,thereafter%2C%20running%20from%20July%201%20through%20June%2030.>