

An Act authorizing the option of providing basic common sense health services for residents of assisted living residences; and Q&A explanation of the legislation.

SECTION 1. Section 1 of chapter 19D of the general laws, as appearing in the 2014 Official Edition, is hereby amended, by inserting after the definition for “elderly housing,” the following new definition:-

“Basic Health Services”, injections; application or replacement of simple non-sterile dressings; management of oxygen on a regular and continuing basis when the resident's medical condition warrants; or application of ointments or drops.

SECTION 2. Section 10 of chapter 19D, is hereby amended by striking subsection (5), and inserting in place thereof, the following subsection: -

(5) For all residents whose service plans so specify, either or both self-administered medication management or basic health services by personnel meeting standards for professional qualifications and training set forth in the regulations.

SECTION 3. Section 10 of chapter 19D, is hereby further amended in subsection (7) (c) by inserting after the words, “for the provisions of,” the following: - “basic health services, or.”

SECTION 4. Section 10 of chapter 19D, is hereby further amended by inserting after subsection (7) (d), the following new subsection:-

(e) The sponsor may advertise, market, and otherwise promote or provide or arrange for the provision of basic health services for assisted living residents and shall administer such care and services in accordance with the requirements set forth herein. A sponsor may not provide basic health services without submitting an operating plan to the Executive Office of Elder Affairs for its approval that explains how the Residence’s basic health services will meet the needs of its resident population or individual residents therein, and the staff qualifications and training for providing such services. Said operating plan shall specify whether all, or certain, of the enumerated basic health services will be offered, steps taken to provide adequate support and training of nurses who will provide such care, oversight and evaluation of basic health services, provided, however, that no such plan shall restrict resident choice in the delivery of said services by outside health professionals. The Executive Office of Elder Affairs is, hereby, authorized and directed to promulgate appropriate regulations governing the application, criteria for approval or disapproval, and ongoing oversight of basic health services authorized in this section.

SECTION 5. Section 11 of said chapter 19D, is hereby further amended by inserting after the first sentence the following:-

“Except as permitted for residences which opt to provide basic health services,”.

Mass-ALA Common Sense Health Services - Q & A document

Why is Mass-ALA planning to file legislation to permit the option for common sense basic health services to be offered in those assisted living residences whose residents may need improved access to health care?

- This issue has been discussed by the Mass-ALA Board, staff and several providers for more than four years. The Board, in September 2015, voted to file legislation to offer the option of providing certain basic services in those assisted living residences which could justify the need and their ability to safely provide quality care. The proposal was discussed by Mass-ALA's Resident Care Committee, Quality Committee, and Public Policy Committee and these discussions helped to develop the legislative proposal. Before it was filed. Several assisted living nurses testified in favor of the bill (then S. 2139) last year at the public hearing held by the Legislature's Committee on Elder Affairs on March 15, 2016. During the hearing, and in the following months, there were continued discussions in meetings of Mass-ALA committees, Regional Leadership Councils, the Nursing Training Seminar and other meeting of Mass-ALA, the Elder Stakeholders Network, the Assisted Living Advisory Council, the Legislature's Committee on Elder Affairs and other organizations. Senate Bill 2139 was placed in a study and will expire at the end of the current session. Every effort has been made to listen to all views in developing the new legislative proposal for consideration in the 2017-2018 Legislative Session.

What are the basic health services that could be authorized to be provided by nurses in a certified assisted living residence?

- The health services that might be provided are injections (such as Insulin); managing Oxygen; application of drops or ointments; and/or changing a dressing and managing wound care. Application to the Executive Office of Elder Affairs for permission to authorize a provider to permit an assisted living nurse to administer one or more of these treatments must be submitted and approved before a nurse would be permitted to provide direct care for one or more of these services.

Is the language in draft proposal the same as the language of last year's Senate Bill 2139, or will it be the final language of the bill?

- No. Based on input from numerous individuals and organization, both within and outside Mass-AL, the language of the original version of S. 2139 has been redrafted. Input continues to be solicited. Even when the bill is, ultimately, enacted by the Legislature, Mass-ALA will seek additional input regarding the regulations expected from EOEA and the content of the training that will be required for those who will administer the program in the ALR's that apply for the authority to offer basic health services.

How will basic health services be authorized?

- It is anticipated that the Executive Office of Elder Affairs (the agency which certifies that an assisted living residence is in compliance with state laws and regulations governing assisted living communities), will develop regulations to require that whichever health services are sought by an assisted living provider, that there will be sufficient policies, procedures, and trained nurses available to support those services. The quality, safety, and availability of the delivery of those services by the assisted living nurse will be reviewed no less than every two years during certification of the residence by the state, and can be reviewed more frequently if required resulting from incident reports or ombudsman complaints which indicate that there are any problems with the quality, safety, or availability of health services.

How will accountability for quality and safety of basic health services be assured?

- The assisted living provider must develop and adhere to policies and procedures which will have to conform to the legislation once enacted, and to whatever regulations will be required in order to obtain approval to offer basic health services and to remain certified by the Executive Office of Elder Affairs in order to provide residences and services for seniors. The EOEA has the authority to suspend admissions or close a non-compliant assisted living residence. All assisted living nurses are licensed by the Massachusetts Board of Registration of Nursing and can be sanctioned, including revocation of license, if a nurse fails to perform their duties in accordance with the highest standards of care. The language of the proposed bill requires EOEA to establish a process for oversight of the health services. The Massachusetts Department of Public Health, while not seeking to provide oversight, has informed EOEA that they are available to provide technical advice to EOEA upon request.

Why is Mass-ALA seeking to provide basic health services when assisted living follows a so-called “social/residential model”?

- Current restrictions on routine, non-invasive medical treatments create a financial burden for otherwise healthy older adults who prefer the community setting assisted living provides.
- This legislation will lead to more seniors being able to afford to remain in a home-like setting while receiving the basic health services they need rather than be required to move to a skilled nursing facility or out of state when they do not require more intensive skilled care.
- The scope of health services are consistent with health services offered in other states that are regulated by state agencies including agencies other than the public health department. The health services included in the proposed legislation are essentially

unskilled and in line with the unique assisted living model. Assisted Living will still follow the “social/residential model” for senior living, however, some communities which apply for and receive state approval will be able to offer additional health services to meet the health needs of some residents, rather than force resident to move prematurely to skilled nursing facilities – a decision that often requires the use of eviction proceedings because of resident and family unwillingness to move.

- Seniors living in assisted living have more health needs today, but choose to age in place and retain their independence and dignity when they don’t need the more extensive skilled health services of a skilled nursing facility. Under current law, some seniors have been forced prematurely into skilled nursing facilities or into assisted living in another state in order to obtain the common sense health services they need to remain independent.

Will every assisted living community be required to offer basic health services if this legislation passes?

- No. Only those assisted living communities that would like to provide basic health services to meet the needs of their residents will provide such services. Furthermore, they don’t need to offer all five services listed in the legislation. The assisted living residence will seek written approval from the Executive Office of Elder Affairs (EOEA) of a plan to offer one, a few, or all five basic health services demonstrating they have the qualified nursing personnel capable of providing the selected health services. If they initially only seek one or two services, but later have residents who need one or more of the remaining services authorized in the law, the management would need to seek additional permission from EOEA.

Won’t assisted living communities be like nursing facilities if this legislation is passed? Will this legislation lead to assisted living housing an even frailer population?

- The scope of health services Mass-ALA seeks as part of this new legislation is limited, including giving certain routine injections (insulin, for example), managing wound care; administering oxygen, inserting and managing urinary catheters, and applying ointments and drops.
- The proposed legislation remains in line with assisted living’s unique model of independent and community-oriented care in a home-like setting.
- If, at some future time, the needs of assisted living residents require other health services, the law would need to be amended at that time through a similar public process where interested parties have the opportunity for input.

Will passage of this legislation eliminate outside nursing services?

- No. More complex health needs, beyond those that would be authorized to be provided by assisted living services, would still need to be provided by outside health care providers. The bill provides that residents may choose between outside services and those provided by assisted living nurses, especially if outside services are reimbursed by third parties which results in lower cost to the resident.

If basic health services legislation is successful, will it lead to Mass-ALA being regulated differently—perhaps by DPH instead of Elder Affairs?

- Some who oppose giving assisted living providers the option of offering basic health services have argued that an assisted living residence that offers such services should have those unskilled services licensed by the Department of Public Health. This is not the intent of the legislation since it amends Chapter 19D, MGL placing the approval and oversight specifically within the Executive Office of Elder Affairs which currently has oversight of limited medication administration and memory care services. Furthermore, the current Secretary of Elder Affairs, and at least one of the new surveyors, are Registered Nurses and can guide the development of any regulations and criteria that may be necessary for health, safety, and quality standards. It should be noted that a resident or family member, neither of whom are licensed by DPH or anyone else are currently allowed to administer these basic services.
- Mass-ALFA is confident that the level of health services provided will be so minimal that broad changes to oversight of the industry won't be necessary. However, we will remain in close contact with the state as this legislation develops to help ensure oversight that is appropriate and meets the needs of residents. In that regard, Mass-ALA has spoken with the Commission of DPH who believes that Elder Affairs is the appropriate agency to provide oversight of assisted living, and that DPH is ready to provide whatever guidance might be needed by EOE.

Aren't all assisted living residences in other states that offer basic health services regulated by their state Department of Public Health?

- Many are, but some are not! Seven states where assisted living residences offer limited health services are regulated by agencies other than the state public health department. They are: Iowa (Department of Inspections and Appeals, Adult Services Bureau), California (Department of Social Services, Community Care Licensing Division), Kansas (Department on Aging), Michigan (Department of Human Services, Bureau of Children and Adult Licensing), Texas (Department of Aging and Disability Services), Vermont (Department of Disabilities, Aging, Independent Living, Division of Licensing and

Protection) and Virginia (Department of Social Services, Division of Licensing Programs).

Will the basic health services be delivered in a safe, high quality manner?

- The basic health services will be delivered by a Registered Nurse or Licensed Practical Nurse with the necessary skills and competency to deliver safe, high quality services within the scope of their nursing license. The change will let nurses be nurses, allowing them to provide direct care for which they were professionally prepared and to work within the scope of their license and regulations developed by the Executive Office of Elder Affairs. The proposed bill requires that providers seeking to offer basic health services must demonstrate to EOEA that they have the trained personnel available to offer these services.

Will basic health services require ALR nurses to be available on site 24/7?

- Not necessarily. If residents need one of the limited health services when the ALR nurse is not on duty, the resident could be expected to contact an outside agency for after-hours service just as they would at present. There will continue to be a role for nursing agencies for more complex care and, quite possibly, for times when the ALR nurse is not on duty. Some ALR's, if enough residents need limited health services, may choose to add nurses for additional coverage.

Will residents who may need basic health services be required to assume any potential cost where a provider might seek and be approved to offer basic health services?

It is possible, even likely, that those residents needing one of the basic health services would pay for this service if included in their individualized service plan just as now happens with Limited Medication Administration or Memory Care. Mass-ALA believes this will benefit the senior consumer since offering the services on sight with the provider's nursing staff is likely to be more cost effective than calling in outside care providers to deliver unskilled and often unreimbursed services. Let's be clear that the primary purpose for seeking this legislation is to provide an option for providers of assisted living to better serve the health needs of their residents in the most economical and efficient manner. While some of these services – such as insulin injections – can sometimes be covered to some extent by Medicare, the coverage is limited to training the older adult to inject themselves, not to continuing service. If the senior is unable to learn how to do this, the visiting nurse is not reimbursed by Medicare for continuing to provide the service. If the senior needs continued insulin injections (usually once, twice, or even three times daily) the senior currently must pay for this and usually pays for the cost of a full nursing visit, not simply for the cost of a few minutes for the injection. If the bill passes, any charges that are added to cover the cost of the services are likely to be significantly less than the cost of bringing in a nurse from outside. Some low income seniors may actually not be able to

afford outside visits and might skip an injection, only to add costs resulting from diabetes complications.

What could be the role that Mass-ALA might play if the legislation were to be enacted?

Mass-ALA clearly understands that the association will continue to have an important role in helping with the transition to basic health services for those members who opt to provide such services.

1. Mass-ALA is currently working with experts in nursing to develop a “basic health service” module to incorporate in our boot camp training, annual conference, and nurse’s education conference. In fact, we have a met with Jeanette Ives Erickson, RN, DNP, FAAN, Chief Nurse and Vice President of Clinical Services at MGH to discuss the potential for designing guidelines and identifying on-line training modules. Dr. Erickson, along with her colleague Gino Chisari, formerly of the Board of Registration in Nursing, who also works at the MGH Institute of Health Professions, are assisting in this planning effort. The training program would be designed to refresh the clinical skills and knowledge for assisted living nurses to safely perform the basic services identified in the new legislative proposal.
2. Mass-ALA will review and update our highly-regarded Quality Improvement Tool to incorporate basic health services. In addition, we will provide guidance to assisted living providers and staff on necessary revisions for assisted living disclosure and residency agreement, quality assurance systems, service plans and medication assistance to guide assisted living communities in revising all legal documents, policies and procedures. The experts mentioned in #1 are also helping to advise Mass-ALA on this aspect as well.
3. We will train those who operate our Mass-ALA Resident Care Help Line and help them to link those who may call with questions or concerns with professional staff in other ALRs who have had experience with these conditions and treatments.
4. We do not anticipate serious transition issues to develop since many providers also operate assisted living residences in other states (some overseen by DPH and others overseen by agencies such as Elder Affairs) and/or skilled nursing facilities and are very familiar with the delivery of nursing services. Furthermore, there were no substantial issues with the implementation of limited medication administration a few years ago or in a similar change approved for our neighbors in Rhode Island.
5. Mass-ALA will work with the Executive Office of Elder Affairs, and any other appropriate agencies, in developing regulations for implementation of limited health services.

What about the concern regarding any potential competition between an assisted living residence that does not want to offer basic health services and one which does?

Based on the experience to date with our neighbors in Rhode Island when that state passed legislation permitting the option of basic health services in 2014, Mass-ALA believes that no assisted living provider is likely to endure harm.

1. Massachusetts assisted living residences will remain the traditional social/recreational model whether or not it opts for basic health services. There certainly is no intention to cause economic harm for any provider. Those potential residents who have a condition that could be addressed by basic health services might choose an ALR that offers basic health services rather than move to a skilled nursing facility when they do not need full skilled nursing service.
2. Whether to seek authority to offer basic health services by an assisted living provider is not only a decision that should primarily be to address health needs of one or more older residents, but also whether offering such services makes sense from a business perspective or adds to the costs of potential increase in risk of delivering such services.
3. When some assisted living providers adopted limited medication administration, the process was reasonably smooth and without serious harm to other providers who chose not to offer such service. Furthermore, the limited medication administration generally improved the quality of life and safety of residents who needed the service and, undoubtedly reduced the number who were forced to move to skilled nursing facilities.