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National Academy of Elder Law Attorneys  
**Massachusetts Chapter**  
*Leading the Way in Special Needs and Elder Law in Massachusetts*<sup>SM</sup>

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**RE: An Act relative to assisted living residences in the Commonwealth  
(S. 3057/H. 5376)**

Dear Chairs Jehlen and Stanley and Members of the Joint Committee:

On behalf of the Massachusetts Chapter of the National Academy of Elder Law Attorneys (MassNAELA)<sup>1</sup> we submit this testimony in support of S. 3057 and H. 5376, companion bills that incorporate select recommendations of the ALR Commission.

We welcome and applaud the Chairs' leadership to implement the recommendations of the ALR Commission. The proposed legislation provides a reliable funding mechanism which allows AGE to gather and disseminate information to consumers and to increase ALR accountability.

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<sup>1</sup> The National Academy of Elder Law Attorneys (NAELA), the premier organization of elder and special needs law attorneys in the country, is dedicated to developing awareness of issues concerning the elderly and those with special needs. Over 400 attorneys are members of the Massachusetts Chapter. Members work directly with the elderly and those with special needs in areas as diverse as planning for catastrophic care costs, disability planning, age discrimination in employment, housing issues including nursing homes and assisted living residences, benefits planning, estate planning, veterans' benefits and more.

If enacted, the proposed legislation:

- Establishes a dedicated and sustainable funding mechanism, an Assisted Living Residences Trust Fund, to pay for ALR certification unit staffing, reviews, investigations, ombudsman services; and to maintain data, reporting and accountability measures. Such a fund ensures that the ALR Commission’s recommendations about disclosures and accountability are consistently and adequately funded.
- Allows certified medication aides to work in ALRs;
- Creates an Affordability Task Force to define “affordable ALR”, create an inventory of qualifying residences, and recommend sustainable “housing plus services” financing models, among other areas of inquiry. (The composition of such a Task Force differs from what the ALR Commission recommended, and this is addressed below).

S.3057/H.5376 incorporate many of the ALR Commission’s recommendations, but do not include other key recommendations of the ALR Commission, notably:

- (1) Strengthen staffing by requiring licensure and board of registration for ALR Executive Directors (*ALR Commission Recommendation 4*); and
- (2) Bolster emergency preparedness and safety by reviewing ALR building classification standards, and modernizing building code requirements for ALRs. (*ALR Commission Recommendation 5*).

We urge this Committee to amend S. 3057 and H. 5376 to include both ALR Commission recommendations in the current legislation.

### **ALR Executive Director Qualifications**

Massachusetts’ Division of Occupational Licensing regulates various professions to ensure public health, safety, and consistency across a spectrum of professions, including, barbers, cosmetologists, dieticians and nutritionists, electrologists, manicurists, nurses, real estate appraisers, nursing home administrators, social workers, and landscape architects.

Despite the critical role of an ALR executive director to provide a safe and welcoming environment to residents, an ALR’s executive director is not subject to any board of registration. In fact, current CMR requirements are minimal to be hired as an ALR executive director: a candidate must be at least 21 years old, with “demonstrated” experience in administration, supervision, or management, have a bachelor’s degree or equivalent experience, be of good moral character without any felony conviction. See *651 CMR 12.06(1)*.

We propose the inclusion of the ALR Commission’s recommendation that ALR executive directors be licensed and subject to a board of registration for ALR executive directors. Specifically, we seek comparable provisions for an executor director of an assisted living residence as those that currently exist for nursing home administrators and which is detailed in Massachusetts General Laws Chapter 13, section 9, and Chapter 112, sections 108-117.

### **Emergency preparedness**

The Gabriel House fire and the tragic deaths of many residents prompted the ALR Commission to examine ALR safety measures and emergency preparedness. Even though ALRs house multiple individuals in many separate units, ALRs are classified as Residential in building classification standards. This classification may not be appropriate for ALR residents who require assisted evacuation or whose vulnerability due to mobility, disability, cognitive impairment/dementia places them at a higher risk of harm. Those living in memory care units are especially at risk during an emergency as a result of a “Residential” building classification standard.

Updating current building code requirements provides another avenue to promote resident safety in new ALR construction. Updating building codes may be difficult and too costly for older facilities. Even lesser measures can greatly improve resident safety in the event of an emergency. The ALR Commission recommended that at a minimum, ALRs work closely with local fire departments to conduct regular inspections and fire drills, to enforce no smoking policies, and to direct rescuers to residents in need of assisted evacuation.

A review of building code requirements may require a separate Task Force to review the applicability of current building code requirements upon ALR as well as increased safety recommendations to upgrade older existing facilities. Including the ALR Recommendation 5 in the proposed legislation reduces the chance of another tragedy like Gabriel House.

### **Composition of the ALR Affordability Task Force**

The Affordability Task Force, as proposed, does **not** include some key stakeholders, including the ALR Ombudsperson; a representative of Greater Boston Legal Services; an appointee of the Senate President; an appointee of the House Speaker; and a representative of MassNAELA. All participated as members of the ALR Commission and should be included in the Task Force. In addition, we propose that a representative of Dignity Alliance be afforded a seat on the Task Force.

The current legislation, as drafted, broadens Task Force representation by the ALR industry while limiting input from consumers and their families. Note that two of the Governor’s four appointees must have expertise “in developing affordable assisted living residences” and the other have expertise “in operating affordable assisted living residences...” See *Section 7 of S. 3057 and H. 5376*. These two appointments by the Governor necessitate two additional ALR industry representatives, in addition to other industry representatives. The ALR industry is already well represented on the proposed Task Force. We propose that additional consumer designees be appointed to the Task Force so that all stakeholders are fairly represented.

Thank you for the opportunity to support S. 3057 and H. 5376, as revised, above.

Respectfully Submitted,



Kathleen Lynch Moncata  
on behalf of MassNAELA

cc: Clarence Richardson, MassNAELA  
Laura Traiger, Esq.  
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