Major Victory for Assisted Living in MA: Supreme Judicial Court decision in *Ryan v. Mary Ann Morse Healthcare Corp*. (2026)

Dear Members,

We are very pleased to inform you of a major victory for assisted living in Massachusetts that has been years in the making. Mass-ALA advocated last year in an amicus brief to the Massachusetts Supreme Judicial Court ("SJC") that assisted living providers may charge community fees for specified allowable services. We urged the SJC to reverse a precedent-setting lower court decision that deemed the fees unlawful and to be returned with over $2.6 million in compensatory damages and legal fees. In a new landmark decision in favor of assisted living providers, the SJC has reversed that lower court decision and ruled in favor of the defendant, a Mass-ALA member ALR. Mass-ALA President and CEO Brian Doherty said that "the SJC confirmed Mass-ALA's long-held position that fees can be charged for assessing resident needs and developing their individualized service plans as they move into their new home in an assisted living residence."

Here is a summary of this issue and the decision:
In 2019, the SJC decided the case *Ryan v. Mary Ann Morse Healthcare Corporation* ("*Ryan I*"), wherein it ruled for the first time that ALRs organized and licensed under Massachusetts' Assisted Living Law, M.G.L. c. 19D, were also subject to state landlord tenant law, and specifically M.G.L. c. 176, Section 15B, known colloquially as the Security Deposit Law.

At issue in that case was the legality of an ALR's practice of charging one-time, non-refundable upfront "community fees" to new residents. The resident who filed the lawsuit had tried to argue that since the Security Deposit Law only permitted residential landlords to collect four kinds of charges at the beginning of a tenancy—(1) first months' rent, (2) last month's rent, (3) a security deposit, and (4) a key and lock fee—any charges over and above these permitted charges, such as "community fees," are illegal under the Security Deposit Law. But the SJC declined to go so far as to prohibit the charging of community fees altogether and instead struck a balance between the state's Assisted Living Law and its Security Deposit Law. Ultimately, the court ruled that, in Massachusetts, ALRs ***can*** charge upfront non-refundable community fees to their incoming residents, ***but only if*** those fees "correspond to initial ALR-specific services inapplicable to ordinary landlord-tenant relationships."

Following the *Ryan I* decision, some assisted living providers elected to temporarily suspend the collection of upfront fees in their Massachusetts communities or amended residency agreement language in an attempt to make it clearer to residents and reviewing courts that such fees were being charged exclusively for ALR-related services and not traditional landlord functions and services. But lawsuits by residents have nevertheless persisted since *Ryan I*. Attorneys representing these residents have employed several creative interpretations of *Ryan I* that successfully gained traction in the lower courts. These theories include the premise that ALRs who comingle their community fee revenues with their other revenues (e.g., rent, ancillary fees, etc.) violate the *Ryan I* decision and therefore render the fees they charge totally illegal. Another theory holds that such fees are illegal unless they match the exact cost that an ALR incurs when it onboards the individual residents who pay them.

That long history previews the most recent development in the law in this area. The *Ryan I* case was contentiously litigated as a certified class action for another half-decade. Ultimately, a lower court entered a multi-million-dollar judgment against the ALR because it had not segregated its community fees revenues from its other revenues. Instead of paying the judgment, the ALR appealed the case, and it ended up back in front of the SJC. Mass-ALA filed a brief with the SJC in this appeal, outlining the unified position of Mass-ALA's member ALRs operating in Massachusetts. The SJC just issued its decision, "***Ryan II***," which overrules the lower court and orders that the class action be dismissed in its entirety. The court ruled that although "an ALR cannot belatedly fabricate a purported correspondence between an upfront fee and permissible ALR-specific intake services when such a correspondence did not exist at the time that the fee was charged," the ALR had not done that. There was ample proof, the court found, that the ALR had charged the fees for resident assessment, service plan preparation, and other onboarding services.

Notably, the ALR had undisputedly incurred costs to provide these services that exceeded the amount it had collected in fees charged for those very services. The *Ryan II* decision is a very positive development for assisted living providers, and forecloses liability under the Security Deposit Law in circumstances where an ALR can prove both that the fee was charged for ALR-related services that typical landlords do not provide. The SJC rejected the premise that the amount charged as a community fee must mirror the ALR's costs exactly, but declined to express any view one way or the other on circumstances in which fees are charged in amounts exceeding the cost of providing intake services.

Please note that while the *Ryan II* decision is a very positive development, it does not represent a complete reversal of the SJC's decision in *Ryan I*. It remains the law in Massachusetts that ALRs can only charge upfront fees for ALR-related services. The SJC's recent decision merely rejected the adoption of a requirement to segregate community fee revenues from other revenues or to trace onboarding expenditures to specific residents. The Mass-ALA member who prevailed in *Ryan II* did so by carefully showing the court that while it could not possibly prove how each dollar collected as a community fee was spent, it certainly could demonstrate that it had expended significant sums retaining qualified staff to perform critical pre-admission assessment, service planning, and orientation services for new residents.

This update is solely for general informational purposes. It is not intended to replace a full review of the cited regulations, guidance, or consultation with qualified legal counsel.

A copy of the SJC's *Ryan II* decision can be accessed using the link below:
https://www.mass.gov/doc/ryan-v-mary-ann-morse-healthcare-corp-sjc-c13726/download

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If you have any questions, please contact us at Mass-ALA@mass-ala.org.

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