



Board of Directors

June 5, 2020

President
Amy Schectman

The Honorable Charlie Baker
Governor of Massachusetts
State House, Room 280
Boston, MA 02133

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**RE: Recommendation on H.4672, An Act Addressing COVID-19
Data Collection and Disparities in Treatment**

Clerk
Naomi Sweitzer

Dear Governor Baker,

Howard Cohen
Andrew DeFranza

On behalf of Citizens' Housing and Planning Association (CHAPA), I am writing to recommend that you strike certain language from H.4672, *An Act Addressing COVID-19 Data Collection and Disparities in Treatment*, to better serve residents of affordable and public housing for seniors and persons with disabilities. This recommendation will also help better achieve the goal of the underlying legislation to improve data collection and transparency in order to protect residents and prevent the further spread of the virus.

Aida Franquiz
Soni Gupta
Wendell Joseph

Specifically, CHAPA asks that you strike Section 1(a)(6)–(7) of H.4672, which defines “elder care facilities” to include all elderly housing facilities and subsidized affordable and public housing available for lease by seniors and persons with disabilities.¹

Jason Korb
Gloria Leipzig
Angie Liou

CHAPA’s mission is to encourage the production and preservation of housing that is affordable to low- and moderate-income families and individuals and to foster diverse and sustainable communities through planning and community development.

Kathy McGilvray
Chris Norris
Jeanne Pinado

Housing stability is critical to positive health outcomes and to protect public health. CHAPA’s approach to ensuring housing stability during the COVID-19 crisis is to ensure equitable policies and programs for Massachusetts residents. We advocate for the resources and policies needed to support renters, homeowners, and landlords and to preserve and expand the state’s affordable housing stock to make sure everyone in the Commonwealth has a safe, healthy, and affordable place to call home.

Gordon Pulsifer
Olivia Richard
Dr. Megan Sandel

CHAPA agrees with the important goals of H.4672 to increase data collection to better protect and meet the needs of communities that are most impacted by the

Lynne Wallace

Chief Executive
Officer

Rachel Heller

¹ H. 4672, 191st Gen. Ct. § 1(a)(6)–(7) (Mass. 2020).

virus, including communities of color and persons living in nursing homes, assisted-living facilities, or prisons. We also support the creation of a task force to examine disparities in barriers to accessing testing, care, and medical and personal protective equipment. These goals are critical to help prevent and respond to the tragic situations at nursing homes like the Holyoke Soldiers' Home. H.4672 will also help better understand and address the disproportionate impact the virus is having in communities such as Chelsea and Lawrence.

However, as currently written, H.4672 places unnecessary and burdensome reporting requirements on all affordable and public housing for seniors and persons with disabilities that would impede transparent data collection and information sharing between housing providers and residents. The bill also raises concerns about the sharing of private health information of residents who are elderly or who have a disability. Finally, H4672 would take away critical resources from housing providers and their residents needed to protect against and prevent the spread of the virus in affordable and public housing.

Therefore, CHAPA recommends that you return H.4672 to the Legislature with an amendment to strike Section 1(a)(6)–(7). We hope then that the bill can be quickly passed with the amendment to better fight the ongoing pandemic.

H.4672 Threatens Privacy Protections for Seniors and Persons with Disabilities in Public and Affordable Housing

Local housing authorities and private affordable housing owners and operators should not be required to publicly share private health information of their residents. Unlike nursing homes or other skilled care facilities, housing authorities and private affordable housing providers do not provide medical or health care services. Housing authorities and private affordable housing providers do not have access to the private health information of their residents.

Also, residents of public and affordable housing have no duty to disclose any personal health information to their housing authority or property manager. Residents of public and affordable housing live in private apartments and not in shared living settings like at nursing homes with trained medical staff. Unless a resident of affordable housing voluntarily chooses to disclose a COVID-19 diagnosis to her housing provider, the housing provider has no right to know its resident's private health information.

H.4672 Diverts Resources and Staff Away from Other Services to Protect Residents and Prevent the Spread of COVID-19

H.4672 would divert resources and staff of public and affordable housing providers away from other services and actions being taken to protect residents and prevent the spread of COVID-19. Housing providers are already taking additional precautions and steps necessary to combat the virus. These actions include increasing cleanings of common areas, establishing social distancing protocols, delivering meals, hiring additional staff, and purchasing personal protective equipment for residents and

employees. Many housing providers have incurred these significant costs at their own expense.

Fortunately, these measures have helped to protect elderly and disabled residents by preventing and slowing the spread of the virus. For example, 2Life Communities, a leading provider of affordable housing for seniors in Massachusetts, has reported that there have been only 17 COVID-19 cases among the 1,106 apartments that it manages. Sadly, 2Life has reported 4 resident deaths.² However, this rate COVID-19 rate for senior affordable housing is low compared to rates in long-term care facilities.³ This demonstrates the effectiveness of measures that housing providers are taking to protect seniors and persons with disabilities.

In order for housing providers for seniors and persons with disabilities to comply with the reporting requirements of H.4672, resources and staff would need to be taken from other effective preventative measures being taken to protect residents. Instead of being able to do additional cleaning or staffing, housing providers will have to spend scarce resources on notifying residents and every resident's health care proxy or legal representative each time there is a new COVID-19 case, death, or someone who has presented symptoms within in the last 72 hours.⁴ This is an ineffective and inefficient use of already scarce resources and funds.

H.4672 Requires Public and Affordable Housing Providers to Report Data That They Do Not Possess or Have Access To

H.4672 requires housing authorities and affordable housing providers to report data that they do not possess or have access to—namely, the private health information of residents. Housing providers do not know who tests positive for COVID-19 unless a resident chooses to tell her housing providers.

Local boards of health and the state Department of Public Health (DPH) already have access to the information that H.4672 requires housing providers to report to DPH and the boards of health. This includes the names, numbers, and location of COVID-19 cases and deaths. However, DPH and the local boards of health cannot share this information with housing providers.

Housing providers for seniors and persons with disabilities have been asking local boards of health and DPH to share information about cases to allow the providers to better respond to the needs of residents and to participate in contact tracing. To date, that information is still not able to be shared to housing providers.

² 2Life Communities, *Cases by Campus* (June 3, 2020) <https://www.2lifecommunities.org/cases-campus>.

³ Laura Crimaldi, *Rate of coronavirus deaths at Mass. long-term care facilities among highest in the nation*, *The Boston Globe* (May 2, 2020) (coronavirus deaths in long-term care facilities have represented at least half of all deaths in the state with several nursing homes having tragic numbers of deaths) <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Rule-18-Handout-1.Secara-1.pdf>.

⁴ H.4672, § 1(g).

H.4672 Will Discourage Transparent Information Sharing

H.4672 will discourage transparent data sharing among housing providers, residents, and local boards of health, which is counter to the goal of the legislation. Again, the bill requires public and affordable housing providers to report only *known* COVID-19 cases or deaths of residents and staff.⁵ If only known cases have to be reported, this could create a de facto “Don’t Ask, Don’t Tell” policy that would not serve to protect the public health interests of residents, staff, and the broader community.

Housing providers can only learn of a COVID-19 case from the resident—and there is no duty for a resident to disclose his private health information, including a COVID-19 diagnosis, to a housing provider. Therefore, in order to avoid reporting each confirmed or suspected COVID-19 case or death and subsequently having to notify all residents and their families, a “Don’t Ask, Don’t Tell” policy could discourage proactive engagement with elderly and disabled residents about their health and well-being. This would leave residents, housing providers, and boards of health with less information on how to respond to the virus and direct resources to prevent its further spread. It could also lead to increased isolation of already vulnerable elderly and disabled residents.

H.4672 Stigmatizes Public and Affordable Housing for Seniors and Persons with Disabilities

H.4672 stigmatizes low- and moderate-income seniors and persons with disabilities living in affordable and public housing by imposing reporting requirements only on these housing developments and not requiring reporting by market rate housing. The bill requires the Department of Public Health (DPH) to publish a daily report on a public website with specific development information or addresses for affordable and public housing with 25 or more confirmed cases.⁶ There is no justification for imposing the reporting requirements of H.4672 on seniors or persons with disabilities living in affordable and public housing while excluding reporting on similarly situated residents in market rate housing.

By singling out residents and providers of affordable and public housing, H.4672 suggests that these residents, housing authorities, or owners and operators of affordable housing pose an increased public health risk to the community or that they are improperly working to prevent the spread of COVID-19. This could erode support for public and affordable housing and their residents at a time when these homes are more important than ever.

⁵ H.4672, § 1(b).

⁶ H.4672, § 1(d)(1) (requiring that data shall reflect the primary residence of the impacted populations).

H.4672 Will Cause Unnecessary Anxiety Among Residents of Affordable and Public Housing for Seniors and Persons with Disabilities

H.4672 will cause unnecessary anxiety among residents of affordable and public housing for seniors and persons with disabilities without protecting them. Again, the bill requires housing providers to notify residents and every resident's health care proxy or legal representative each time there is a new known COVID-19 case, death, or someone who has presented symptoms within in the last 72 hours.⁷ However, privacy laws rightfully prohibit the housing provider from sharing any information that would personally identify the health or diagnosis information of a resident or staff member.

Sharing with residents that someone in their building is sick can be counterproductive and cause anxiety or panic among residents. Even if a housing provider shares that someone in a building is sick, the housing provider cannot say the name, where the resident lives within the complex, who the employee is, or if the person has been in shared spaces. Residents and their families would receive this alarming information each time there is a confirmed or suspected case or death from the virus. However, the notice would not include any actionable information that would allow residents to adjust behavior to avoid the virus.

H.4672 Imposes Regulations for Nursing Homes and Skilled Care Facilities on Public and Affordable Housing

H.4672 imposes federal regulations for nursing homes and other skilled care facilities on housing authorities and affordable housing. The bill requires housing providers to notify residents and each resident's health care proxy or other legally authorized representative by 5:00 p.m. the next day of any new known COVID-19 case or death among staff or residents or if three or more residents or staff have presented with new-onset of respiratory symptoms within the previous 72 hours.⁸

The language for this sub-section of H.4672 mirrors federal regulations that apply to long term care facilities.⁹ The bill also reflects notification requirements from the Centers for Medicare and Medicaid Services (CMS), which is responsible for ensuring the health and safety of nursing home residents.¹⁰ Nursing homes and long term care facilities subject to these rules are highly regulated because they are responsible for providing medical care to their residents. These facilities have the resources, capacity, and staff necessary to comply with these federal regulations.

For example, the same federal regulation that H.4672 took its language from for the daily notification requirement also requires long term care facilities to have an infection

⁷ H.4672, § 1(g).

⁸ H.4672, § 1(g).

⁹ 42 C.F.R. § 483.80(g)(3).

¹⁰ Centers for Medicare & Medicaid Services, *Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes*, Ref. QSO-20-26-NH (April 19, 2020) <https://www.cms.gov/files/document/qso-20-26-nh.pdf>.

preventionist on staff.¹¹ This specialist is responsible for the facility's required infection prevention and control program and must have primary professional training in nursing, medical technology, microbiology, epidemiology, or another related field. The infection preventionist must also have completed specialized training in infection prevention and control.¹²

Nursing homes and other elder care facilities and that H.4672 imposes its reporting requirements on are situated to be able to comply with the bill because these skilled care facilities already must follow strict federal regulations. They have staff available with the required education and training to manage compliance with H.4672.

However, most private housing providers and housing authorities that offer affordable and public housing for seniors and persons with disabilities are not set up to comply with federal regulations meant for long term skilled care facilities such as those overseen by CMS. Most housing providers for seniors and persons with disabilities have no involvement with CMS or employ trained medical staff. Therefore, it would be difficult and burdensome for private affordable housing providers and housing authorities to comply with regulations meant to govern skilled care facilities.

H.4672 is Unclear About What Housing for Seniors and Persons with Disabilities it Applies To

H.4672 is unclear about what housing for seniors and persons with disabilities that the bill applies to which leaves confusion about who is subject to the reporting requirements. The bill potentially applies the reporting requirements to every unit of affordable and public housing in Massachusetts. This overly broad requirement would place unnecessary burden on public and affordable housing providers and threaten the privacy protections of every resident of subsidized housing across the Commonwealth.

Under the definition of "elder care facilities" that are subject to the reporting requirements, H.4672 includes "elderly housing facilities" and "any residential premises available for lease by elderly or disabled individuals that is financed or subsidized in whole or in part by state or federal housing programs established primarily to furnish housing..."¹³ First, the bill does not define "elderly housing facilities." With no definition, the bill is unclear about whether "elderly housing facilities" could include any age-restricted private or subsidized housing development in Massachusetts. This would include hundreds of age-restricted housing developments which have tens of thousands of units occupied by seniors.¹⁴

Second, H.4672 could also potentially apply to every unit of public and subsidized housing in Massachusetts. The language of the bill applies the reporting to any

¹¹ 42 C.F.R. § 483.80(b).

¹² 42 C.F.R. § 483.80(b)(1)-(4).

¹³ H.4672, § 1(a)(6)-(7).

¹⁴ See Citizens' Housing & Planning Association, *Age Restricted Active Adult Housing in Massachusetts* 4 (2005) https://www.chapa.org/sites/default/files/f_122952789640BUpdateDec2008_4.pdf.

subsidized residential premises available for lease by elderly or disabled individuals.¹⁵ H.4672 does not limit the reporting requirements to subsidized housing available for lease *only* by the elderly and persons with disabilities. This captures all public and affordable housing because all subsidized housing is available for lease by the elderly or persons with disabilities. Therefore, this would impose the reporting requirement on more than 98,500 privately-own subsidized housing units and more than 74,000 state- and federally-assisted public housing units in Massachusetts.¹⁶ This overly broad reporting requirement would be difficult for every public and affordable housing development in Massachusetts to comply with and would place unnecessary burdens on these housing providers and their residents.

Conclusion

CHAPA strongly supports the important underlying goals of H.4672 to combat the COVID-19 pandemic. The state and its residents need more data and transparency about the disproportionate impact that virus is having on the Black and Latinx communities, the elderly living in nursing homes or other long term care facilities, and those in correctional institutions. However, as currently written, H.4672 applies its reporting requirements for “elder care facilities” over-broadly to include potentially all public and affordable housing for seniors and disabilities. This would place an unnecessary burden on housing providers for seniors and persons with disabilities, threatens the private health information of residents, and would work against the bill’s underlying goal of increasing transparency and data sharing.

Therefore, CHAPA recommends that you return H.4672 to the Legislature with an amendment to strike Section 1(a)(6)–(7).

Thank you for your consideration. Please do not hesitate to contact me with any questions.

Sincerely,



Rachel Heller
Chief Executive Officer

cc: Secretary Michael Kennealy, Executive Office of Housing & Economic Development
Undersecretary Jennifer Maddox, Department of Housing & Community Development
The Honorable Robert DeLeo
The Honorable Karen Spilka

¹⁵ H.4672, § 1(a)(7).

¹⁶ Massachusetts Department of Housing & Community Development, *2017 Massachusetts Housing Data Collection* (2017).