



Board of Directors

July 2, 2020

**President**

Amy Schectman

The Honorable John Mahoney  
State House, Room 130  
Boston, MA 02133

The Honorable Joanne Comerford  
State House, Room 413-C  
Boston, MA 02133

**Vice Presidents**

Felicia Jacques  
Charleen Regan

**RE: CHAPA Testimony Supporting S.2753, An Act to Ensure the Collection of COVID-19 Data**

**Treasurer**

Ken Willis

Dear Chairman Mahoney, Chairwoman Comerford, and Distinguished Members of the Joint Committee on Public Health,

**Clerk**

Naomi Sweitzer

On behalf of Citizens' Housing and Planning Association (CHAPA), I am writing in support of S.2753, *An Act to ensure the Collection of COVID-19 Data*. This bill removes reporting requirements in the recently enacted COVID-19 data reporting law<sup>1</sup> that cannot be met by housing providers for seniors and persons with disabilities. Enacting this legislation will help better serve residents of affordable, public, and market rate housing for seniors and persons with disabilities as housing providers work to protect their residents from the virus. S.2753 will also help better achieve the goal of the underlying legislation to improve data collection and transparency in order prevent the further spread of COVID-19.

Howard Cohen  
Andrew DeFranza  
Aida Franquiz  
Soni Gupta  
Wendell Joseph  
Jason Korb  
Gloria Leipzig  
Angie Liou  
Kathy McGilvray  
Chris Norris  
Jeanne Pinado  
Gordon Pulsifer  
Olivia Richard  
Dr. Megan Sandel  
Lynne Wallace

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.

**Chief Executive Officer**

Rachel Heller

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.

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

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<sup>1</sup> 2020 Mass. Acts 93.

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. The law 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, the law places reporting requirements that cannot be met on all affordable, public, and market rate housing for seniors and persons with disabilities. Specifically, the law requires housing providers to publicly report daily the number of new known COVID-19 cases and deaths among residents and staff to local boards of health, the Department of Public Health (DPH), residents, and each resident's health care proxy. DPH is then required to post this information publicly on its website.

These reporting requirements should not apply to housing providers for seniors and persons with disabilities. CHAPA agrees that these requirements are important for residents in nursing homes and other skilled-care facilities where medical care is provided to residents and where residents live in a congregate setting. However, subsidized and market-rate housing providers offer apartments and do not administer medical care. Nor, do they have access to the private health information of residents.

Therefore, CHAPA strongly supports S.2753 which would amend the data reporting law to remove housing providers for seniors and persons with disabilities from the reporting requirement. We hope then that the bill can be quickly passed to better fight the ongoing pandemic.

### **The Data Reporting Law Requires the Sharing of Residents' Private Health Information That Housing Providers Do Not Have Access To**

The data reporting law requires the sharing of residents' private health information that housing providers for seniors and persons with disabilities do not have access to. The law requires housing providers to report known COVID-19 cases and deaths of staff and residents. Housing providers have no way to know about cases unless the resident or their family choose to inform the housing provider. This is unlike nursing homes or other skilled care facilities where medical care and health care services are provided to residents. Housing providers for seniors and persons with disabilities do not have access to the private health information of their residents. This is not a reliable way to gather information on COVID-19 cases as the data could be incomplete or inaccurate.

Residents of affordable, public, and market rate housing also have no duty to disclose any personal health information or information on health care proxies to their housing provider. Residents of housing for seniors and persons with disabilities live in private apartments and not in shared living settings like at nursing homes with trained medical staff. Unless a resident chooses to disclose a COVID-19 diagnosis to the housing provider, the housing provider has no right to know its resident's private health information.

Local boards of health and DPH already have access to the information that the law requires housing providers to report. 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 asked 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.

### **The Reporting Requirements Divert Resources and Staff Away from Efforts to Protect Residents and Prevent the Spread of COVID-19**

The reporting requirements divert resources and staff of affordable, public, and market rate housing for seniors and persons with disabilities away from efforts being taken to actually protect residents and prevent the spread of COVID-19. Housing providers are already taking additional precautions and steps necessary to combat the virus, at great additional expense to the housing provider. 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.

In order for housing providers for seniors and persons with disabilities to comply with the reporting requirements of the new law, resources and staff will 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 reporting information that is unknown and notifying 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. This is an ineffective and inefficient use of already scarce resources and funds.

### **The Reporting Requirements Discourage Transparent Information Sharing**

The reporting requirement discourages transparent data sharing among housing providers, residents, and local boards of health. This is counter to the goal of the legislation. Again, the law requires housing providers to report only *known* COVID-19 cases or deaths of residents and staff.<sup>2</sup> If only known cases are reported, this creates "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 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

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<sup>2</sup> H.4672, § 1(b).

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.

### **The Reporting Requirements Will Cause Unnecessary Anxiety Among Residents of Housing for Seniors and Persons with Disabilities**

The reporting requirements 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.<sup>3</sup> 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. The lack of clarity about the form of reporting also leaves housing providers open to demands for onerous and unreasonable, and even counterproductive, requirements to provide letter after letter to residents and contacts that housing providers do not even often have information on.

### **The Data Reporting Law Imposes Regulations for Nursing Homes and Skilled Care Facilities on Affordable, Public, and Market Rate Housing**

The data reporting law imposes federal regulations for nursing homes and other skilled care facilities on affordable, public, and market rate housing providers that do not provide medical care.

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. Housing providers for seniors and persons with disabilities are not subject to these regulations because the housing providers are not responsible for their residents’ medical care.

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<sup>3</sup> H.4672, § 1(g).

The same federal regulation that the data reporting law took its language from for the daily notification requirement also requires long term care facilities to have an infection preventionist on staff.<sup>4</sup> 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.<sup>5</sup>

Nursing homes and other elder care facilities that the law imposes its reporting requirements on are situated to be able to comply with the law because these skilled care facilities already must follow specific federal regulations related to the services they provide. They have staff available with the required education and training to manage compliance with the law.

Most private housing providers and housing authorities that offer housing for seniors and persons with disabilities do not have the capacity 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 and market rate housing providers and housing authorities to comply with regulations meant to govern skilled care facilities.

## **Conclusion**

CHAPA strongly supports the important underlying goals of the data reporting law 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, the law applies its reporting requirements for “elder care facilities” too broadly to include all affordable, public, and market rate housing for seniors and persons with disabilities. This places requirements on housing providers that cannot be met, takes resources away from efforts to actually prevent the spread of the virus, and works against the underlying goal of the law to increase transparency and data sharing.

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<sup>4</sup> 42 C.F.R. § 483.80(b).

<sup>5</sup> 42 C.F.R. § 483.80(b)(1)–(4).

Therefore, CHAPA asks the Committee to quickly report S.2753 out favorably to remove housing providers for seniors and persons with disabilities from the reporting requirements.

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

Sincerely,

A handwritten signature in cursive script that reads "Rachel Heller".

Rachel Heller  
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