March 5, 2024

TO: Rep. Mohamud Noor, Chair of House Human Services Finance and Members of House Human Services Finance and Senator John Hoffman, Chair, Senate Human Services Policy & Finance and Members of the Senate Human Services Committee
CC: Rep. Liz Lee

RE: HF4220/ SF4044

Dear Chair Hoffman, Chair Noor, and members of the House Human Services Finance Committee and Senate Human Services Finance Committee:

We write to share our very serious concerns with HF4220, and respectfully ask that this bill not advance this session.

Reduced access to specialized services for low-income Minnesotans.

- We are extremely concerned about access to specialized services for low-income Minnesotans, particularly individuals with mental illness, behavioral health issues and/or substance use disorders. These exempt settings are providers who often fill a critical need in their community serving individuals who would otherwise face homelessness or admission to a hospital, or some other higher acuity setting.
- We have limited financial resources due to our federal funding status. If we are required to comply with the comprehensive set of regulatory requirements under Assisted Living Licensure as provided in Sections 2-14 of the bill, many of us will have no choice but to cease offering assisted living or other supportive services because the cost of licensure and compliance is too high. For example, licensure and compliance for an exempt setting of 100 units would be over $15,000 annually. Adding these licensure and regulatory requirements- without any funding support to pay for those requirements would put the provider upside down-unable to pay their other operating expenses, keep up maintenance, etc.
- The Legislature made important investments in Elderly Waiver and customized living last session. Those investments do not account for housing supports of serving these individuals, and increasing the financial obligations and licensure costs for providers would come at the expense of other asset and maintenance needs or access to care.

HF4220 is overly prescriptive and takes agency away from many independent residents in exempt-settings.

- Many exempt provider settings are closer to independent living than they are to a medical model that is more akin to Assisted Living or Skilled Nursing care.
  - It is not uncommon for exempt settings to have some residents receiving assisted living-like services while others do not. This bill would require all

residents in the building to be treated like assisted living residents. Many of our independent residents value that independence and would bristle at the notion that by virtue of where they live that they are ‘vulnerable’ or in need of these added protections and services.
  - Residents in exempt settings cannot simply move to another HUD setting that is not offering assisted living or supportive services. Those waiting lists often take over a year to clear.

HF4220 adds unnecessary layers of regulatory requirements on top of existing state or federal requirements.

- The notion that residents in exempt settings have no consumer rights or protections is false. There are existing consumer protections under federal HUD financing and MHFA requirements. As just one example, HUD-financed housing already uses a required tenant contract.
- HUD’s expectation is that the provision of housing and services are kept separate, in part because some funding streams, such as “Section 8” funding, cannot be used for any health-related services. These restrictions would also make it challenging for some of these properties to fund requirements needed to meet AL licensure, such as increased staffing, or even the annual licensing fees, since existing HUD administrative funds cannot be used for this purpose.
- Minnesota Housing Finance Agency programs most relevant to this project include tax credits and deferred loans that are used to encourage and fund the development of rental housing. Many of these programs leverage the IRS’s Low Income Housing Tax Credit (LIHTC) program to help finance development and construction. Previous interpretations of IRS code published by the agency in response to questions from developers and housing finance agencies indicate that a licensed assisted living facility would likely be considered to be a “health care facility” as opposed to a “residential rental property,” and therefore not eligible to receive tax credits. This interpretation means that any project that seeks to access MHFA funding through a program that utilizes tax credits may not include an assisted living component.
- Assisted living services provided at exempt settings are licensed as home care providers and surveyed by the Minnesota Department of Health.
- Critically, while the aforementioned DHS study found that some settings *could* legally comply with other state requirements, it was silent on the operational feasibility. In addition, the study also cited multiple times that many residents liked the services they received as is, and that more exempt-sites would benefit Minnesota, not fewer.

We all support a goal of making housing more affordable for Minnesota seniors and welcome an opportunity to work with you to achieve this goal. Unfortunately, HF4220 as written will result in less access, not more. Please do not advance this legislation this year.

Respectfully,

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