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**INDEPENDENT STATE AUDITOR'S STATEWIDE
REVIEW OF THE PHYSICAL CONDITION OF
PUBLIC HOUSING UNITS FOR SPECIAL NEEDS
INDIVIDUALS UNDER THE CHAPTER 689
HOUSING PROGRAM
JULY 1, 2007 TO JUNE 30, 2008**

**OFFICIAL AUDIT
REPORT
FEBRUARY 23, 2010**

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In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we have conducted a statewide comprehensive review of the physical conditions and the adequacy of resources available for the maintenance, repair, and upkeep of the Chapter 689 housing program for individuals with special needs, which is intended to provide decent, safe, secure, and sanitary housing for these residents in homes suited for that purpose. To accomplish our audit, we obtained data from the Department of Housing and Community Development (DHCD) and from a sampling of 30 local housing authorities (LHAs) that manage 652 special needs housing units throughout the state. We also conducted site visits and photographed the degree of deterioration of the property or other unsafe or unsanitary conditions that could affect the health of these residents. A complete list of the LHAs surveyed and Chapter 689 program properties visited is provided in Appendix A of the report.

According to DHCD, there are approximately 1,904 Chapter 689 special needs housing units owned by 115 LHAs throughout the Commonwealth. Various human service providers manage these units under contract with the LHAs and certain Executive Office of Health and Human Services agencies. The human service agencies involved include the Departments of Mental Health (DMH), Developmental Services (DDS), Social Services (DSS), and Public Health (DPH), and the human service providers or vendors operate these programs under contract with these agencies. The audit was initiated to follow up on our prior audit, No. 2005-5119-3A, which reviewed the funding and physical condition of the state's public housing stock. Our prior audit found instances in which properties in the state's Chapter 689 housing program for some of the state's special needs population were not properly maintained. Massachusetts National Association of Housing and Redevelopment Officials (MassNAHRO) and LHA committee officials have been seeking resolution for the problems identified as they relate to the Chapter 689 Program.

The purpose of our audit was to determine whether units in the Chapter 689 Program were being maintained properly so that decent, safe, secure, and sanitary housing was being provided to individuals housed through this program and to recommend appropriate corrective action to provide for upkeep on a continuing, uninterrupted basis in a more efficient, economical, and timely manner.

Our site visits found that years of underfunding of both operating and capital budgets have resulted in the deterioration of the state-aided housing programs, and LHAs have been forced to defer maintenance and close units to potential residents. The LHAs have been provided with fewer funds to make significant modernization and capital repairs, such as roof, window, door, and heating system replacements, bathroom and kitchen modernizations, and repairs to floors, siding, and other interior and exterior areas. Accordingly, the physical conditions of the Chapter 689 special needs housing properties has deteriorated to the point that many residents are being deprived of decent, safe, secure, and sanitary housing that the law mandates and unrepaired conditions may result in further damage that will be more costly to repair.

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Our survey and site visits at 30 LHAs throughout the state revealed serious deficiencies in (a) the physical condition of properties and (b) the lease agreements of the Chapter 689 housing program. As a result of these deficiencies, many special needs residents are being deprived of the much-needed safe, decent, and sanitary housing that the law mandates, as discussed below.

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Our survey and site visits found that the physical condition of Chapter 689 special needs housing properties has been allowed to deteriorate to the point that many residents are being deprived of decent, safe, secure, and sanitary housing that the law mandates. Specific examples of health and safety hazards observed in both the interior and exterior of the properties include extensive mold and mildew damage to interior walls; rotted and weather-damaged window frames, roofs, siding, and shingles in need of replacement; broken and missing floor and bathroom tiles, safety railings, and cabinets; failing heating systems and boilers in need of repair; animal infestation of units; and debris and shrubbery overgrowth in yard areas (see Appendix B for photographs of specific conditions observed). Conversely, our survey and site visits also found that the general physical condition of federally subsidized housing operated by these same LHAs for their other programs has not deteriorated and has provided a higher standard of quality and dignity to those tenants residing therein because they are provided with a higher monthly subsidy than that provided by the Commonwealth through DHCD.

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According to DHCD, there are approximately 1,904 Chapter 689 special needs housing units owned by 115 LHAs throughout the Commonwealth. Various human service providers manage these units under contract with the Local Housing Authorities and certain Executive Office of Health and Human Services agencies, including the Departments of Mental Health (DMH), Developmental Services (DDS), Social Services (DSS), and Public Health (DPH). The human service providers or vendors operate these programs under contract with these state human service agencies. As part of our review of the chapter 689 Program, we requested that the 30 LHAs in our sample provide us copies of the current operating lease between them and their human service provider. Of the 23 LHAs that responded to our request, six LHAs provided leases that were either operating on automatic extensions or were unsigned, and five LHAs provided leases that had expired altogether, including one LHA that has been waiting 18 months for a new lease. In addition to these leases not being renewed on a timely basis, we found that the lease terms were administratively inefficient and potentially detrimental to the timely maintenance and repair of the conditions that we noted as being unsafe and unhealthy for these residents.

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As identified and documented within this audit report, it is evident that the Commonwealth's LHAs have been severely underfunded and financially restricted for a number of years. Although the current administration has provided increased funding in the DHCD budget for operating subsidies and capital projects, the current fiscal crisis has curtailed these funding increases, and has not provided for adequate monthly rental levels or annual maintenance fees to cover capital or operating needs.

Prior to the issuance of this report, DHCD, after over a year of discussions with a representative committee of LHAs, MassNAHRO, providers, DMH, and DDS, has made some basic changes in the revised version of the standard contract. The changes were promulgated by DHCD via Public Housing Notice 2009-14 on August 14, 2009, to be effective September 1, 2009, for LHAs with fiscal years ending on June 30.

These efforts result from recognition by all parties that something needed to be done to remedy the concerns surrounding the Chapter 689 Program. Accordingly, a baseline target rent of \$216 per unit per month has been established, which DHCD concedes may not be achievable in fiscal year 2010 and thereafter pending budget conditions, and the \$2,000 per year maintenance fee will be provided over the year at \$167 per month. However, although this represents progress, some administrative inefficiencies remain, which require time-consuming arbitration and negotiation that does not recognize the basic principles previously outlined and results in delayed repairs: that the human service agencies should be concerned with delivering services and the LHA owners (landlords) of the property are ultimately responsible for the property's condition, safety, and security. Accordingly, it is strongly recommended that all parties continue to strive to improve the program by providing for timely repairs and renovations for the health, safety, and security of these special needs tenants.

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INTRODUCTION

Background

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we have conducted a statewide comprehensive review of the physical conditions and the adequacy of resources available for the maintenance, repair, and upkeep of the Chapter 689 housing program for individuals with special needs, which is intended to provide decent, safe, secure, and sanitary housing for these residents in homes suited for that purpose. To accomplish our audit, we obtained data from the Department of Housing and Community Development (DHCD) and also from a sampling of 30 local housing authorities (LHAs) that manage 652 special needs housing units throughout the state. We also conducted site visits and photographed the degree of deterioration of the property or other unsafe or unsanitary conditions that could affect the health of these residents. A complete list of those LHAs surveyed and Chapter 689 program properties visited is provided in Appendix A of the report.

According to DHCD, there are approximately 1,904 Chapter 689 special needs housing units owned by 115 LHAs throughout the Commonwealth. Various human service providers manage these units under contract with the LHAs and certain Executive Office of Health and Human Services agencies, including the Departments of Mental Health (DMH), Developmental Services (DDS), Social Services (DSS), and Public Health (DPH). The human service providers or vendors operate these programs under contract with these state human service agencies. The audit was initiated to follow up on our prior audit, No. 2005-5119-3A, which reviewed the funding and physical conditions of the state's public housing stock. Our prior audit found instances in which properties in the state's Chapter 689 housing program for some of the state's special needs population were not properly maintained. The Massachusetts Chapter of the National Association of Housing and Redevelopment Officials (MassNAHRO) and LHA members and officials have been seeking resolution of the problems identified as they relate to the Chapter 689 Program and have been working with human service and DHCD officials who have been organized to address their concerns.

Years of underfunding of both operating and capital budgets have resulted in the deterioration of the state-aided housing programs and LHAs being forced to defer maintenance and close units to potential residents. The LHAs have been provided with fewer funds to make significant

modernization and capital repairs such as roof, window, door, and heating system replacements; bathroom and kitchen modernizations; and floors, siding, and other interior and exterior repairs. Chapter 121B, Section 32, of the Massachusetts General Laws states, in part:

It is the policy of the Commonwealth that each Housing Authority provides decent, safe and sanitary housing at the lowest possible price.

According to a report dated February 4, 2008, The “Real Cost” of Operating Massachusetts Public Housing, issued by DHCD and presenting a Task Force’s analysis and recommendations for preserving the state’s public housing units:

The new Administration was elected last year on a message of hope and optimism, with a pledge to foster equality and opportunity for all citizens, particularly the poor and others outside the mainstream of the economy. It is understood that, with Massachusetts housing costs among the highest in the Nation, such a pledge could only be met by preserving and expanding the state’s public housing stock. And so the Administration signaled its intention to reverse 16 years of disinvestment in public housing by immediately increasing public housing subsidies by 33% nearly doubling the annual allocation for Capital improvements, and providing a precedent-setting volume cap allocation, bringing millions in private equity to public housing restoration.

Among the report’s findings was that the average age of a public housing unit in Massachusetts is over 40 years old and that the typical Chapter 667 (elderly housing) unit was over 35 years old. The report noted that, as housing units get older, they require more funding to maintain their condition and avoid what the report describes as the “obsolescence factor.” The report stated:

*At an age when routine real estate management practice dictated an increase in operating costs and capital improvements to keep pace with the cost of maintaining these aging structures, the state portfolio instead entered into a long period of neglect. Funding declined precipitously during the recession of the early 1990’s and never recovered to a level sufficient to keep pace with rising inflation, declining physical conditions, and skyrocketing utility costs. Today the average state public housing unit is more than **forty** years old and yet . . . significant funding increases were only realized in FY’07 and FY’08.*

The report noted that in fiscal year 2008 the state’s public housing authorities received \$60.1 million in operating subsidies and \$90 million in capital funding and estimated that the current real cost of operating the state’s public housing portfolio requires operating subsidies of roughly \$115 million, nearly double the \$60 million received in fiscal year 2008. For fiscal years 2009 and 2010, the operating and capital subsidies were decreased from \$66.5 million to \$62.5 million for operating subsidies and from \$109 million to \$87 million for capital funding, respectively.

The report went on to state:

Housing authorities have repeatedly been forced to artificially depress their budgets to minimize recorded operating deficits in order to justify the low levels of operating subsidy of various prior administrations. In fact, housing authority non-utility budgets were frozen for four consecutive years (2003-2006) in spite of rising costs. These findings corroborated the State Auditor's statewide report on the physical condition of Public Housing Units (NO. 2005-5119-3A).

The deteriorated physical condition of housing units noted in that report also identified serious problems in Chapter 689 housing; therefore, we decided to examine this program separately.

At the beginning of our fieldwork, DHCD was completing a capital needs assessment for all of the state's public housing units. We obtained a copy of the capital needs assessment for all of the Chapter 689 housing units.

Unfortunately, due to the difficult economic times facing the nation, states, counties, and municipalities, and Massachusetts in particular, LHAs are again facing DHCD-imposed cuts in operating subsidies or capital funding, with planned projects in the pipeline being cut out or scaled back.

We recognize that the Chapter 689 housing program generally does not receive operating subsidy and is dependent on rent revenues, which have been insufficient to cover costs.

Audit Scope, Objectives, and Methodology

The Office of the State Auditor (OSA) has conducted a review of physical conditions of the housing units in the state's Chapter 689 housing program for special needs individuals. This audit was conducted to determine whether units in the Chapter 689 Program were being maintained properly so that decent, safe, secure, and sanitary housing was being provided to individuals housed through this program and to recommend appropriate corrective action to provide for upkeep on a continuing, uninterrupted basis in a more efficient, economical, and timely manner.

To achieve our audit objectives we (1) conducted a survey to determine how many public housing units were available to house special needs individuals, (2) reviewed documentation to determine whether Chapter 689 housing was being maintained properly, (3) examined program leases to determine responsibilities for property maintenance and related funding, and (4) interviewed program officials for their input on ways to improve the effectiveness of the program. Our review

also followed up on issues regarding the condition of Chapter 689 housing that were disclosed in a prior OSA audit report (No. 2005-5119-3A) that examined the overall condition of the state's public housing stock.

As part of our audit we met with LHA and MassNAHRO officials, who expressed concerns regarding common observations of the condition of public housing stock identified in our audits of individual LHAs or disclosed in recent individual, separate reports. We also met with DHCD officials to discuss their recently prepared assessment of capital needs conducted on all of the Commonwealth's public housing stock. The assessment ranked the physical conditions found on a scale of 1 through 10, with a priority 1 indicating that conditions found required substantial and urgent renovations.

To accomplish our objectives, we selected 30 LHAs with priorities ranging from 1 through 3 to evaluate the problems experienced in their administration of this public housing program and to recommend policies and procedures to increase the efficiency and cost-effectiveness of the program. The 30 LHAs we selected for review had 652 units in the Chapter 689 Program.

We also obtained inspection reports and capital needs reports from DHCD for the selected LHAs and compared this data to inspection reports prepared by the LHAs and to conditions we observed during our site visits.

We reviewed the recently released report, The "Real Cost" of Operating Massachusetts Public Housing. We compared the report's findings to a subsequently completed assessment of capital needs of the state's public housing stock prepared by DHCD.

As detailed in the Audit Results section of our report, our site visits found that the physical conditions of the Chapter 689 special needs housing properties has deteriorated to the point that many residents are being deprived of decent, safe, secure, and sanitary housing that the law mandates (see Appendix B for photographs of conditions that we observed at various Chapter 689 properties throughout the Commonwealth). Examples of the conditions noted include extensive mold and mildew damage to the interior walls, especially in bathrooms; rotted and weather-damaged window frames, roofs, siding, and shingles that, left unrepaired, result in leaks and further damage that will be more costly to repair; rust and other foreign material from a rusted stove range hood that was falling into food as it was being prepared; bird droppings and feathers in living areas from

birds nesting in the exposed eaves of the structure's roof; and rat droppings in a building's basement.

AUDIT RESULTS

IMPROVEMENTS NEEDED IN CHAPTER 689 HOUSING PROGRAM

Our survey and site visits at 30 local housing authorities (LHAs) throughout the state revealed serious deficiencies in (a) the physical condition of properties and (b) the lease agreements of the Chapter 689 housing program. As a result of these deficiencies, many special needs residents are being deprived of the much-needed safe, decent, and sanitary housing that the law mandates, as discussed below.

a. Physical Condition of Chapter 689 Properties Has Deteriorated

Our survey and site visits found that the physical condition of some Chapter 689 housing stock has been allowed to deteriorate to the point that many special needs residents are being deprived of decent, safe, and sanitary housing that the law mandates. Specific examples of health and safety hazards observed in both the interior and exterior of the properties include extensive mold and mildew damage to interior walls; rotted and weather-damaged window frames, roofs, siding, and shingles in need of replacement; broken and missing floor and bathroom tiles, safety railings, and cabinets; failing heating systems and boilers in need of repair; animal infestation of units; and debris and shrubbery overgrowth in yard areas (see Appendix B for photographs of specific conditions observed). Conversely, our survey and site visits also found that the general physical condition of federally subsidized housing operated by these same LHAs for their other programs has not deteriorated and has provided a higher standard of quality and dignity to those tenants residing therein because they are provided with a higher monthly subsidy than that provided by the Commonwealth through the Department of Housing and Community Development (DHCD).

As noted in the Introduction of this report, according to the Task Force report analysis, many of the state's housing units are over 40 years old and accordingly require more extensive renovations and repairs in order to preserve this valuable commodity and keep them in service to meet the growing demand. The report refers to an "obsolescence factor" that should be factored into the subsidy of older housing units to reflect the age of the unit and the increased cost of maintaining and renovating these older units.

There are 115 LHAs that have Chapter 689 Program housing for special needs individuals. According to DHCD there are approximately 1,904 units in the Chapter 689 Program throughout the state. As part of our review, we requested the latest lease agreements and inspection reports from the LHAs. Seven of the 30 LHAs surveyed did not respond to our request, some because they were waiting for the leases to be approved.

We also requested financial statements (balance sheets and operating statements) for fiscal year 2007 to analyze and compare the total revenues and expenses for the period as well as reserve balances to capital needs amounts. When we compared the operating reserves and the capital needs amount, we found that only one LHA had available funds that would be able to cover the cost of the work.

We obtained inspection reports and capital needs reports from DHCD for the selected LHAs and compared this data to inspection reports prepared by the LHAs and to conditions we observed during our site visits. We found that the DHCD inspection reports were not complete, clear, or accurate in comparison to our review of conditions, not all of which can be explained as to timing. For instance, at one site there was no chair lift, even though one was listed.

During our audit fieldwork, several LHA officials offered their observations and comments, including the following:

- One LHA official stated that, as much as she is delighted to have the Capital Planning System as a tool, she believes that the value of the building is a missing piece of the calculation. She noted that one particular Chapter 689 property is approximately 100 years old. It has steep narrow stairs; transition steps between rooms, which are tripping hazards; a small, outdated kitchen that cannot accommodate the residents for group meals; and a laundry room in the basement that is not accessible to all residents. Over the past few years the authority has partially renovated all of the bathrooms and the upstairs hallway.
- Another LHA official expressed concern over the lack of communication between the LHA, DMH, and the provider and indicated that there is much frustration and lack of follow-through by these agencies. There was believed to be a lack of adequate oversight, client management, and reasonable care by the provider for the occupants and for the interior and exterior of the property. There was also the belief that DMH should be more diligent in making certain that these services are provided in a reasonable manner. Furthermore, it was believed that there is inadequate case management to educate residents on “daily living activities” such as personal care, home

care, etc. This raises serious issues beyond the financial and administrative responsibilities LHAs have for these facilities. Overall, there is concern for the long-term viability of these sites, since the lack of routine residential maintenance (i.e., routine cleaning of apartments, appliances, and common areas) leads to the need for more costly capital improvements in the long term as well as less-than-adequate living conditions.

- Another LHA with 52 special needs units at four different sites over a 30-mile radius expressed concern over the lack of a full-time maintenance person for day-to-day repairs and upkeep that may be necessary.

Other unacceptable conditions noted during our site visits included the following:

- Cracked, loose, raised, missing, and worn floor tiles in kitchens or bathrooms creating potential tripping or injury from falling
- Mold, mildew, and water damage in bathrooms and basements
- Trees and shrubberies that were overgrown, inhibited access, and increased the risk of tenants tripping and falling
- Rusty baseboard heaters
- Broken and missing roof and siding shingles
- Damaged screen doors, windows, and walls
- Drafts caused by poor window conditions
- Failing heating systems
- Stairs that were steeper than normal, with ineffective and worn-out grip pads
- Birds inhabiting ceilings with droppings, feathers, etc., falling into living areas
- Boilers in need of repair or replacement
- Broken drawers, cabinet doors, and light fixtures
- Broken gutters and downspouts
- Debris in yard areas and standing water in trash cans providing breeding grounds for mosquitoes
- Broken toilets and broken or missing shower heads
- Vacant units pending major repair and renovation

- Inoperable windows
- Exposed wiring
- Uncovered and overflowing trash and garbage cans

As a result of such deficiencies, many Chapter 689 special needs residents may be deprived of the much-needed safe, decent, and sanitary housing that the law mandates.

b. Lease Agreements Do Not Adequately Address the Physical Needs of Chapter 689 Properties

According to DHCD, there are approximately 1,904 Chapter 689 special needs housing units owned by 115 LHAs throughout the Commonwealth. Various human service providers manage these units under contract with the Local Housing Authorities and certain Executive Office of Health and Human Services (EOHHS) agencies, including the Departments of Mental Health (DMH), Developmental Services (DDS), Social Services (DSS), and Public Health (DPH). The human service providers or vendors operate these programs under contract with these state human service agencies.

As part of our review of the Chapter 689 Program, we requested that the 30 LHAs in our sample provide us copies of the current operating lease between them and the relevant human service provider. Of the 23 LHAs that responded to our request, six LHAs provided leases that were either operating on automatic extensions or were unsigned, and five LHAs provided leases that had expired altogether, including one LHA that has been waiting 18 months for a new lease.

In addition to the fact that leases were not renewed on a timely basis, we found the following lease terms to be administratively inefficient and potentially detrimental to the timely maintenance and repair of the conditions we noted as being unsafe and unhealthy for these residents. Specifically, Item 4 of the lease stipulates that the amount of the rent for the premises as indicated includes “repairs to the premises.” But Item 6 of the lease under “care and maintenance of the premises” stipulates that the provider is responsible for the care and maintenance of the premises, as follows:

Routine care of, including but not limited to, interior cleaning, general custodial maintenance of exterior grounds, walkways, parking areas, trash and snow removal;

Preventive Maintenance plan to be jointly developed by the LHA and the Provider which must be updated annually. Quarterly walk through would be conducted to identify items that must be replaced periodically or annually; routine repair items; and major system items.

The LHA may agree to assume any of the Provider's responsibilities under Items 6 (a) and (b) above, provided the rent is increased to cover the actual cost of such service. [Emphasis added]

Item 6.d of the lease states, in part:

Emergency Repairs: the Provider agrees to repair or correct immediately any condition posing an imminent threat to a resident's life, health or safety.

Routine Repairs: The Provider agrees to make any and all routine repairs with reasonable promptness, provided the LHA is first given the option of utilizing its own staff to make such repairs.

Major System Repairs: The lease stipulates, that notwithstanding the provisions of subparagraphs (1) and (2) above, the LHA shall be responsible for repair of any condition on the Premises requiring major repair to or replacement of any building system or structural or exterior component, and

Finally, Item e states:

Costs: the Provider agrees to make and pay for all costs of all repairs including both labor and materials to the Premises up to \$2,000 per year, exclusive of any routine care and preventive maintenance under subparagraphs (a) and (b) above. To the extent that the parties to this contract cannot agree on whether any particular expenditures are for work required by subparagraphs (a), (b) or (d) above DHCD shall be the arbiter. Any aggregate cost of repairs (including emergency repairs) in excess of \$2,000 per year shall be paid by the LHA, provided that the LHA is given prompt notice of the need for repair and the Provider submits proof of expenditure which is reviewed and approved by the LHA.

Obviously, if the physical conditions, particularly those affecting the health, security, and safety as noted in Section (a) and depicted in Appendix B, remain uncorrected for excessive lengths of time, given the administrative process of the lease (e.g., the opportunity for dispute, assumption, arbitration, prior approval) as well as the need to reinspect, delays in repairs and exposure of residents to continued risk is unavoidable.

Recommendation

The health, safety, and security of the special needs occupants need to be foremost and a new lease agreement needs to be crafted accordingly. The arrangement should be more straightforward and efficient and should emphasize the need for timely attention, given the potential for injury or illness

that may occur on these premises to the tenants. In this regard, it should be clear that the provider should be responsible for servicing its clients (tenants) and the LHA as the property owner should be responsible for providing the housing for the tenant. The community looks to the LHA to maintain the property's value so as not to be a detriment to the values and tax base in the neighborhood and community, further substantiating the need for upkeep and modernization of these properties. Furthermore, the local building inspector, health department, and police and fire departments look to the property owner (LHA) as the responsible party in case of violations or safety hazards. In addition, the LHAs are required to pay the community an annual payment in lieu of taxes (PILOT) to contribute to the community, to a degree, for the impact on the community.

Therefore, it is necessary to develop a new lease agreement that is less cumbersome and recognizes these simple facts and eliminates these splits in responsibility and the need for excessive recordkeeping, dispute resolution, etc. Routine janitorial services should be borne by the provider, and, accordingly, the LHA should be compensated through rent sufficient to cover all of the remaining maintenance and repairs to its property. The parties should recognize that \$2,000 per year is insufficient to cover prices of materials and labor.

Accordingly, although we understand that all the parties involved are rethinking and revising the monthly rent and maintenance fee along with other terms of the lease, we strongly urge that the result be responsible, reasonable, less administratively inefficient, and financially adequate, and recognize that the LHAs are in the best position to determine what steps are necessary to maintain and operate housing units.

SUBSEQUENT EVENTS AND CONCLUSION

As identified and documented within this Audit Report, it is evident that the Commonwealth's LHAs have been severely underfunded, undersubsidized, and financially restricted for a number of years. Although the current administration has provided increased funding in the DHCD budget for operating subsidies and capital projects, the current fiscal crisis has curtailed these funding increases, and has not provided for adequate monthly rental levels or annual maintenance fees to cover capital or operating needs.

Prior to the issuance of this report, DHCD, after over a year of discussions with a streamlined representative committee of LHAs, MassNAHRO, providers, DMH, and DDS, has made some basic changes in the revised version of the standard contract. The changes were promulgated by DHCD via Public Housing Notice 2009-14 on August 14, 2009, to be effective September 1, 2009, for LHAs with fiscal years ending on June 30. The notice states, in part:

The program and its housing stock face many budgetary and operational issues while capital and deferred maintenance demands continue to grow. In addition, the state's current financial crisis has imposed additional restrictions and challenges to the efforts made to preserve this valuable program in a climate of limited resources. The modifications to the contract, rent/payment structure and communication patterns cannot fully solve these problems These modifications will be a positive step forward to further capacity, identify and act on priorities, and promote cooperation among parties.

- *Baseline target rent will be the equivalent of \$216 per unit per month. However, current state budget funding restrictions may limit the ability to reach this target in FY10. Rents currently above this baseline standard will not be reduced. DMH and DDS will continue to work toward fully funding the target level at all developments.*
- *A monthly maintenance fee of \$167 (\$2000/12) per development is now to be paid by the provider to the LHA and will be included as part of the total monthly rent payment. The LHA will assume responsibility for all repair work for the development as opposed to the provider being responsible for the first \$2,000 in repairs.*
- *An attachment to the contract outlines the responsibilities of the provider and the LHA for minor repairs, routine and preventive maintenance, major system repairs and emergency repairs. Adjustments to responsibilities in Attachment A are allowed subject to negotiation and agreement among the parties, but such changes should only be made in cases of extenuating circumstances.*
- *The LHA will convene an annual meeting with all parties of the contract to review the rent level, capital needs and priorities, program changes, reserve levels, budget information, communication patterns, etc.*

- *Following the annual meeting, there will be an annual adjustment in total rent, tied to the federal Cost of Living Adjustment (COLA, published by the Social Security Administration). In years where there is a COLA increase, it will be applied on the anniversary date of the contract execution.*
- *Each development is expected to maintain a minimum operating reserve, which should be the equivalent of six months worth of operating expenditures. Funds in excess of this amount will be available for capital improvements.*
- *An approved capital plan (using the new Capital Planning System) will target needed improvements at each development, and the parties will jointly seek to identify resources that can be brought to bear beyond formula funding. Resources will be limited, and projects may be deferred based on availability of funds and state bond cap.*

These efforts result from recognition by all parties that something needed to be done to remedy the concerns surrounding the program. Accordingly, a baseline target rent of \$216 per unit per month was established but may not be achievable in fiscal year 2010 and thereafter pending budget conditions, and the \$2,000 annual maintenance fee will be provided over the year at \$167 per month. However, although this represents progress, it does not go far enough to address the overall severity of the problems noted in our report. Some administrative inefficiencies remain, which require time-consuming arbitration and negotiation that does not recognize the basic principles previously outlined and results in delayed repairs. Specifically, human service agencies should be concerned with delivering services, and the LHA owners (landlords) of the property should be ultimately responsible for the property's condition, safety, and security. After all, it is the LHAs, as property owners, that the community looks to when problems occur at these community-based residence.

Therefore, it is strongly recommended that the parties reconvene to further improve the 689 Program lease to provide for timely repairs and renovations for the health, safety, and security of these special needs tenants, because the new lease agreement does not provide any remedy for those existing severely deteriorated units and conditions that have resulted from neglect or inability to confront the problem. To address the repairs and renovations that have resulted from long-term underfunding, DHCD and its human service partners should identify a source or sources of modernization, capital-type funds to address these conditions. Otherwise, the safety of special needs residents is compromised. Closing units and relocating these tenants or selling off these units does not serve this population of deserving citizens.

AUDITEE RESPONSES

We asked for and received a representative, coordinated response from LHA officials through MassNAHRO, their representative association. We also provided a draft copy of this report to DHCD officials for their review and response and have taken their comments into consideration in preparing this final report.

LOCAL HOUSING AUTHORITY RESPONSES

The response reflected LHA officials' frustration with the process to revise the lease and preserve these special needs residences. Specifically:

- They felt their input was restricted and inadequately responded to, even though they are the landlord of the property under lease,
- Daily housekeeping was not adequate unless an inspection by the LHA was expected,
- There was no established communication process to resolve ongoing/reoccurring maintenance and administrative issues with the human service agencies,
- The LHAs are unable to fulfill the covenant they made with the community concerning residents' and safety as it pertains to within and outside the residence; critical to this is the fact that LHAs who perform Criminal Offender Records Information (CORI) checks for their own tenant applicants are not provided access to CORI information by the human service agencies for these particular tenants. Local law enforcement agencies have raised these same concerns with the LHA officials, and
- The new maintenance fees and rent levels are grossly inadequate given the backlog of repair and failing building components, and are not comparable with what these same human service agencies pay other providers in the community.

The frustration level of the LHAs is such that some want DHCD to develop a policy to dispose of these properties.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S RESPONSE

Excerpts of DHCD's response follow:

The Department of Housing and Community Development (DHCD), in partnership with the Local Housing Authorities (LHAs), the Department of Mental Health (DMH), the Department of Developmental Services (DDS) and the service providers, has either implemented a plan or is in the process of implementing a plan to address many of the concerns you raised in your audit report. Also, we have provided clarification of several comments noted in your audit, which more accurately describes the state of this program and potential funding resources, which can be used to address the deteriorating conditions of these properties.

It is important to note that rents received from vendor leases/management contracts are used to help fund capital improvements and major repairs, which are financed from operating reserves generated by these rents. In many cases rents were kept artificially low, recognizing the limited funding the vendors received for both rent payment and resident services. DHCD has been working in partnership with DMH and DDS to increase the established minimum rent of \$216 and improve the physical condition of the properties. Funding availability to these agencies has been cut due to the economic crisis in Massachusetts. In addition, there were at times discrepancies in areas of shared responsibility for maintenance and upkeep. This coupled with the lack of operating reserves led to delays in needed work.

That being said, the timing and release of this report is such that it examines a number of management and administrative functions which DHCD, DDS and DMH were in process of modifying. With input from a C.689/167 Task Force, a new lease document is now in place, with a revised rent structure, inclusive of a "maintenance fee" in the rent, and more clearly stated maintenance responsibilities. We are requiring all LHAs to adopt and implement the new lease during the current fiscal year. While there are still challenges to be faced, this is an important and necessary step to stabilize the program and strengthen communications among all parties.

It must also be noted that responsibility for conditions of the units is borne by both the LHA and the vendor in most instances.

Improvements Needed in Chapter 689 Housing Program

a. Physical Condition of the Properties Has Deteriorated:

Given all the premises outlined above, it is no surprise that there are incidences of deferred maintenance at a number of C.689/167 developments. We must point out that under the former lease agreement, the vendor was responsible for the first \$2,000 in annual repairs, and was also responsible in full for any tenant related damages to the property. Several of the conditions cited on Page 7 fall into these classifications, and therefore responsibility is shared with the vendor. In some cases, the LHAs may not be informed of the damage or needed repair in a timely manner. The new lease more clearly identifies roles and responsibilities and several processes for better communication. In addition, it provides a means to identify and create a plan of action to address maintenance needs in a timely manner.

Major system repairs and upgrades have some times been deferred due to lack of resources. Along with modifications to the lease document, DHCD is also introducing

Formula Funding for all LHAs as a means to allow for some regular flow of capital monies which the LHA can control and spend according to an approved plan. DHCD is transitioning our system of allocating capital funds, from one in which local housing authorities apply for each project need to one in which funds are allocated to all authorities based on a formula that considers age and condition of buildings. The goal is to have a transparent and predictable system, where housing authorities can set priorities within available funding. To make it work, we have completed a Capital Planning System which provides data on the condition and repair needs of all building systems and components for every development in the portfolio. Housing authorities will submit 5-year capital plans and, once approved, will have leeway to implement those plans.

Technical assistance is being provided to develop these plans. Where the needs are most severe, in the C. 689/167 developments, the LHAs are required to allocate some of these funds to the C. 689/167 Program in accordance with the Formula Funding Guidelines.

Obviously higher levels of funding or alternative sources would be required to address all priority needs at these properties. Unfortunately, funding is limited. DHCD has been working in partnership with DMH and DDS, to secure more funding. DHCD is also working with Massachusetts Housing Partnership (MHP) on a training program for LHAs to help them identify and access local resources, such as Community Preservation Act (CPA) funds and Community Development Block Grants (CDBG).

Please note that the two Barnstable properties featured in your report have in the past six months undergone a kitchen remodeling, received a new bathroom floor, and have had exterior repairs/cleaning for roof and gutters. These improvements were under discussion with the LHA and vendor prior to your audit, and we are pleased that the Housing Authority was able to accomplish this important work. We will look for additional follow up from the other sites presented in the draft.

b. Leases Agreements Do Not Adequately Address the Physical Needs of Chapter 689 Housing:

While we would agree with the premise that the pre- 2009 form lease needed updating and restructuring, we contend that the newly adopted lease document addresses several issues around management of the property and looks to better clarify roles and procedures. The wording you quote on pages [9] and [10] of the report are from the pre 2009 lease and that language and process has been transformed in terms of financial and lead responsibilities. We would anticipate that with the LHA being designated as the lead entity in property management there will be more timely and appropriate responses to repairs generated by a work order system.

We recognize that even revised minimum rent levels may not be fully adequate. However, coupled with the \$2,000 maintenance "conversion" and the accumulation and use of operating reserves to contribute to major repairs, the LHAs will have more resources to contribute to property maintenance. Together with DHCD Formula Funding, there will be an improved base to provide capital improvements.

As the physical condition of the properties come more into focus, annual rent negotiations will allow for further rent adjustments as needed, dependent upon what the state budget can provide via our sister agencies. The transition to a new lease was a slow process, and caused some gaps in signed and active agreements being in place.

Again we anticipate the revised document will be a fresh start in this regard, and strengthen regular communication among the parties.

We also recognize the new lease now provides a better base to move forward toward keeping this valuable housing asset as a viable alternative for serving disabled citizens. There may be other adjustments and refinements to come once implementation has been established.

Rent levels have been limited over the years and while we are adjusting upward as budgets allows, these revenues will never be able to fully support the vast majority of physical and operating costs.

FUTURE ACTION

After a lengthy process, working with Mass NAHRO, DMH and DDS, DHCD has implemented a new lease for the C. 689/167 Program. We all agree, this new lease does not resolve all of the challenges we face in implementing this special needs housing. It begins to address the need for increased funding through an increase in the minimum rent. It more clearly defines roles and responsibilities for property maintenance and program operation, with the LHA being designated the lead entity in property management. It also mandates an annual review of the property and operations by all parties associated with the program, where problems can be discussed, action plans formulated, and a rent levels reviewed. We will continue to monitor the program and address problems and processes each year.

With the implementation of Formula Funding, there is a process to begin to identify and address some of the capital needs and the LHAs will be required to allocate some of these funds to the C. 689/167 Program in accordance with the Formula Funding Guidelines. However, in that the program was established as a self sustaining endeavor, with no DHCD operating subsidy for ongoing operations, the need for substantial resources and increased funding will continue to be the greatest challenge, given the age and condition of the portfolio.

We recognize the comments made by local housing authorities as presented to you and are attempting to incorporate those into future actions around the C. 689/167 Program. It should be more clearly stated in your audit that the LHA observations are a representative sample of LHA comments and do not necessarily reflect all opinions and/or conditions related to the program.

In response to the specific comments, we offer the following:

DHCD and Mass NAHRO have agreed to reconvene the C. 689/167 sub-committee in 2010 to discuss the implementation of the new lease and other policies for all special needs residents. The sub-committee will meet with DMH and DDS in January of 2010.

With the implementation of the new lease, routine maintenance, including daily cleaning is clearly stated in the lease/attachment as the responsibility of the vendor and can be more closely monitored in accordance with the lease.

The lease clarifies the roles of the parties, requires documented work orders and calls for an annual inspection and review of the physical condition and overall operation of the properties.

The issue regarding the release of CORI information for the special needs residents will be discussed with the NAHRO sub-committee. DDS has agreed to run a CORI report on all of their C.689 clients. However, due to restrictions regarding confidentiality, DDS cannot release this information to the LHAs. DHCD has requested that DMH follow a similar process for the processing of CORI reports on their clients. The same type of confidentiality restrictions will apply to the release of this information to the LHAs. However, if both vendors run CORI reports on their C.689 clients, the LHAs can help fulfill their covenant made with their communities about residents' safety.

We acknowledge that the new maintenance fees and rent levels may still be inadequate given the backlog of repair and failing building components. We can state that these vendors, like many other Human Service agencies across the state have experienced budget cuts, limiting their resources. The increase to \$216 per unit per month and the \$2,000 annual maintenance fee are important improvements. We will continue to work with DMH and DDS to increase the rent and fee structure, as appropriate.

Finally in closing, we acknowledge the effect funding limitations and capital availability has had on this program, and may continue to have. We agree that we "should identify a source or sources of modernization, capital type funds to address these conditions." The current economic circumstances preclude any easy solutions. DHCD is attempting to move forward with a revised capital allocation system and improved rent structure as a start to this challenge.

APPENDIX A

List of Chapter 689 Program LHAs Reviewed

The following is a listing of the 30 Local Housing Authorities selected for a review of conditions of their Chapter 689 housing units.

Housing Authority	Total Chapter 689 Units
1. Amherst	29
2. Attleboro	20
3. Barnstable	52
4. Boston	56
5. Bourne	16
6. Brockton	20
7. Chelmsford	8
8. Cohasset	12
9. Dennis	8
10. Fall River	40
11. Fitchburg	26
12. Framingham	24
13. Grafton	20
14. Hingham	14
15. Hudson	16
16. Mansfield	8
17. Methuen	48
18. Milton	14
19. Needham	8
20. Norwell	16
21. Orleans	16
22. Plymouth	8
23. Quincy	29
24. Sandwich	12
25. Sharon	8
26. Somerville	40
27. Taunton	8
28. Waltham	22
29. Westfield	14
30. Worcester	40
TOTAL UNITS	<u>652</u>

APPENDIX B

**Photographs of Conditions Found at Various
Chapter 689 Locations**

Barnstable Housing Authority



Barnstable Housing Authority



Dorothy Bearse House - Bird droppings from
hole in roof

Dorothy Bearse House – Hole in roof

Barnstable Housing Authority



Barnstable Housing Authority



Dorothy Bearse House - Broken window

Dorothy Bearse House - Weeds growing in
gutters, moldy siding, roof, and gutters

Barnstable Housing Authority



Kit Anderson House - Broken and missing bathroom tiles

Barnstable Housing Authority



Kit Anderson House - Makeshift and deteriorating cabinet doors in kitchen

Sandwich Housing Authority



Broken drawer in kitchen

Orleans Housing Authority



Rusted and broken baseboard heater

Waltham Housing Authority



Old and rusty fire escape

Framingham Housing Authority



85 Alexander St. - Trash in basement

Somerville Housing Authority



17 Monmouth St – Missing cover on sump pump, moldy insulation

Somerville Housing Authority



17 Monmouth St – Mold and mildew in basement

Somerville Housing Authority



17 Monmouth St - Water damaged and crumbling walls

Somerville Housing Authority



386 Broadway - Missing front porch railings, makeshift railing

Needham Housing Authority



Overgrown foliage, roof and screens in need of repair

Orleans Housing Authority



Foliage blocking window