

October 19, 2009

Clarence H. Carter
Department of Human Services
64 New York Ave., N.E.
6th Floor
Washington, D.C. 20002

Re: Proposed Chapter 25 of Title 29 of the D.C. Municipal Regulations: Shelter and Supportive Housing for Individuals and Families

Dear Mr. Carter:

On behalf of the Legal Aid Society of the District of Columbia,¹ we write to comment in support of Chapter 25 of Title 29 Municipal Regulations: Shelter and Supportive Housing for Individuals and Families. Proposed Chapter 25 will improve compliance with the Homeless Services Reform Act of 2005 and other existing D.C. and federal law. The Legal Aid Society was a participant in the working group convened by the Department of Human Services (“DHS”) to provide community feedback regarding the proposed regulations. We commend DHS for this working group and for being so receptive to the input of stakeholders.

We wish to suggest certain modifications to the regulations. Our comments will concentrate on primarily on these critical modifications, which we believe will allow the regulations to better comply with the law and better serve clients within the Continuum of Care. We believe these comments to reflect the same principles as those to be submitted by the District Alliance for Safe Housing and the Washington Legal Clinic for the Homeless. To that end, we strongly support the comments submitted by those organizations on Proposed Chapter 25 of Title 29 of the D.C. Municipal Regulations.

Comments Related to Domestic Violence

The proposed definition of “Imminent threat to the health or safety” should be omitted because it is inconsistent with the definition of this term in the Homeless Services Reform Act, D.C. Code § 4-751.01(24).

A critical change is necessary with regard to the proposed definition of “imminent threat to the health or safety” in 2599, because it is inconsistent with the definition of “imminent threat to the health or safety” contained in the HSRA. The HSRA, D.C. Code § 4-751.01(24), defines the phrase “Imminent threat to the health or safety” as “an act or credible threat of violence on

¹ The Legal Aid Society was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is both the oldest and the largest general civil legal services program in the District of Columbia. Over the last 75 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers.

the grounds of a shelter or supportive housing facility.” However, the proposed definition in 2599 redefines the parameters of an imminent threat by adding the following language to the HSRA definition: “An imminent threat shall include (1) releasing confidential information regarding the location of a domestic violence shelter in such a manner as to endanger the residents, and (2) having a designated status as a predatory offender.” This additional sentence must be removed from the proposed definition because it is incompatible with the use of the term “imminent threat to the health or safety” in the HSRA.

The District of Columbia prohibits housing discrimination based on a person’s status as a survivor of domestic violence.² The D.C. Human Rights Act, D.C. Code §§2-1401, *et seq.*, includes status as a “victim of an intra-family offense” in the list of protected classes shielded from discrimination in housing. District-funded providers jeopardize victim safety and risk violating the law when they terminate victims on the ground that the batterer knows the whereabouts of the domestic violence shelter. This practice is often a form of veiled discrimination and is contrary to national best practices in the domestic violence field. It is easy to imagine a situation in which the proposed definition of “imminent threat to the health or safety,” would result in discrimination against a victim of domestic violence. Under the proposed definition, it would be permissible for a provider to terminate a victim even if the victim was not the party disclosing the location of the shelter to the batterer. For example, victims with children often have custody arrangements and a victim could be subject to a court order requiring the victim to keep the batterer informed of the children’s location. In addition, if the location is disclosed to a third party, such as a parent or relative, that information may be released without the victim’s consent. This definition of “imminent threat to the health or safety” penalizes the victim when the batterer learns the location of a domestic violence shelter and subjects the victim to the possibility of termination without any recourse.

Therefore, we urge adoption of the District Alliance for Safe Housing’s (DASH) proposed definition of “Actual and Imminent Threat.”

Actual and Imminent Threat: An actual and imminent threat consists of physical danger that: is not hypothetical, remote, or speculative; is extremely likely to happen in the event immediate action is not taken to remove the victim from the premises; and could result in death or serious bodily harm. An actual or imminent threat cannot be based solely upon a prior incident; however, prior incidents may be used as evidence bearing on whether there is a real physical danger or immediate injury.

DASH’s recommended definition adequately protects victims of domestic violence, and would still allow for emergency termination, transfer, or suspension if a client’s actions posed an actual and immediate threat to the client or any other person on a provider’s premises.

We recommend that Rule 2524: “Emergency, Transfer, Suspension, or Termination of Individuals and Families from Shelter and Supportive Housing” require Providers to show

² See Protection from Discriminatory Eviction for Victims of Domestic Violence Amendment Act of 2006.

an actual or imminent threat before transferring, suspending, or terminating a victim of domestic violence. To facilitate this change, we urge adoption of DASH’s recommended language in 2524.18.

We recommend that 2501: “General Eligibility Criteria for Shelter and Supportive Housing” explicitly state that victims of domestic violence are eligible for shelter and supportive housing services.

In 2009, Congress passed the “Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act³, reauthorizing the McKinney-Vento Homeless Assistance Act.⁴ The HEARTH Act modified the HUD definition of homelessness to explicitly include individuals and families fleeing or attempting to flee domestic violence.⁵ The District of Columbia should follow Congress’s example and explicitly state that applicants who are homeless or at imminent risk of becoming homeless because of domestic violence are eligible to receive shelter and supportive housing. Including victims of domestic violence in proposed Rule 2501 will ensure that the District of Columbia is in compliance with the recently amended HUD definition of homelessness and that victims of domestic violence are provided with as many housing options as possible.

We recommend adding domestic violence as an additional criterion under 2501.1(a) as follows:

2501.1 An applicant, whether an individual or family, shall be eligible to receive shelter and supportive housing services if the applicant:

- (a) Is homeless or at imminent risk of becoming homeless because the applicant:
 - (1) Lacks a fixed, regular residence that provides safe housing, and lacks the financial means to acquire such a residence immediately;
 - (2) Has a primary nighttime residence that is:
 - (A) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or
 - (B) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

³ Pub. L. No. 111-22, 123 Stat. 1632 (Section 1003) (2009).

⁴ Pub. L. No. 100-77, 101 Stat. 482

⁵ **Domestic violence and other dangerous or life-threatening conditions.** Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.

(3) Is likely, because of the applicant’s circumstances, to become homeless in the absence of prompt government intervention;

(4) Is a victim of domestic violence;

We recommend that 2508: “Intake for Families – Eligibility and Priority Determinations for Shelter or Supportive Housing” explicitly permit the intake center to prioritize the initial referral based on the presence of domestic violence.

Including individuals at risk of domestic violence in priority determinations is critical to addressing the needs of domestic violence victims in DHS-funded programs. Many women fall into homeless or decide to remain in abusive situations because of the scarcity of safe housing. Therefore, we support DASH’s recommendations to add the following clause to 2508.2(a)(1): “including an individual who is at risk of domestic violence if the individual remains in their current housing as well as victims who are temporarily placed by a government entity or non-for-profit in a hotel or motel, shall be given the highest priority” and to specifically enumerate domestic violence as an example of a relevant factor in 2508.2(b)(5).

Proposed Rule 2536: “Permanent Supportive Housing – Eligibility and Referral” effectively addresses the needs of domestic violence victims to remain in safe housing.

By recognizing that domestic violence is a substantial barrier to housing stability and explicitly including it in priority determinations for permanent supportive housing programs, 2436.1(d) ensures victims have access to housing along a continuum. Safe housing in both short-term emergency situations and longer-term transitions is essential to ensuring safety from violence and allow victims to rebuild their lives.

Proposed Rule 2515.16 improves compliance with the Violence Against Women Act, and the Department of Justice Reauthorization Act of 2005,⁶ by protecting the confidentiality of domestic violence victims and their families.

2515.16 improves compliance with existing local and federal law by specifying that domestic violence shelters may not reveal personally indentifying information about victims and are prohibited from disclosing personally identifying information to any third party.

Comments Related to Permanent and Supportive Housing

The inclusion of language noting that authority regarding transfers, suspensions and terminations under the regulations cannot interfere with any client’s tenancy rights will improve compliance with existing landlord-tenant law.

Chapter 14 of the D.C. Municipal Regulations confers certain rights to tenants in the District. See generally 14 D.C.M.R. 4300 et seq. Throughout Proposed Chapter 25 (i.e., 2521.25, 2522.6, 2523.6, 2524.2), Providers are reminded that the regulations cannot interfere

⁶ Pub. L. No. 109-162, 119 Stat. 2960 (2006)

with a client's tenancy rights under a lease agreement. These inclusions will improve compliance with existing law by distinguishing a client's rights to services under the Continuum of Care from her rights to a tenancy under D.C. landlord-tenant law. The conflation of these two, separate rights risks both the infringement of a client's legal rights and the exposure of Providers to liability for, among other things, wrongful eviction. We support the inclusion of this language throughout the proposed regulations.

We recommend amending Proposed Rule 2521.17 to allow clients to stay in their current placement in the case of a non-emergency transfer to a lower level of service under proposed section 2521.

Under the proposed regulations, Providers "are strongly encouraged to use transfer as the primary mechanism for assisting clients to find the most appropriate placement and services within the Continuum of care" including considering transfer prior to termination. See Proposed Regulations at § 2521.1. We support this language and the spirit behind provision. However, due to the ability of Providers to transfer clients to a different level of service under 2521.2(c), we recommend changing Section 2521.17 to allow clients to remain in their original placement pending the outcome of an appeal.

The HSRA requires Continuation of shelter and supportive housing services without change pending appeal except in cases of "transfer pursuant to section 20 or emergency transfer, suspension, or termination pursuant to section 24." HSRA at § 9(18). But section 20 of the Act does not mention changes in the level of service. See *id.* at § 20. Because emergency situations are covered by section 2524 et seq. of the proposed regulations, we recommend amending section 2521 to allow for benefits pending in cases where clients are transferred to a lower level of service pursuant to 2521.2(c). This change would reflect the spirit of the Act, where clients who face termination or suspension of current benefits continue receiving those benefits pending appeal. It also would not burden Providers who, in true emergency situations, have access to the provisions of 2524 et seq.

In the event that the proposed change above is not made, certain clients facing non-emergency transfers to a lower level of service might be better served by electing termination. This nonsensical result suggests that the gap between no benefits pending in emergency situations and full benefits pending in regular terminations must be filled. Our recommendation is to do just that by amending proposed section 2521.17 to allow for benefits pending for non-emergency transfers to a lower level of service.

We recommend additional regulations for the System Transformation Initiative Program in order to make it a functional housing subsidy program that protects both clients and Providers.

Proposed sections 2525 et seq. set out the regulations for the Systems Transformation Initiative Program ("STIP"). As the "Purpose and Scope" sections point out, STIP is a scattered-site program designed to provide supportive services along with rental assistance. See Proposed Regulations at § 2525.1. The D.C. Housing Authority's Housing Choice Voucher Program

("HCVP") is analogous to the scattered-site nature of STIP. As such, comparison of STIP and HCVP is useful to note considerations missing in the current STIP regulations.

STIP regulations should include a requirement for three-party contracts similar to those used in HCVP. That is, contracts between the Provider, the client(s), and the landlord, in addition to the standard lease agreement. These contracts will protect clients and providers in numerous ways. First, these contracts can allow Providers to abate rent payments for properties that have violations of the D.C. Housing Code, saving Providers money and giving clients a mechanism for addressing such problems with their units. Second, these contracts could be a useful tool for STIP by requiring that landlord's contact case managers before serious problems arise, and certainly before landlords institute eviction proceedings. Third, these contracts will protect families in STIP by making absolutely clear that (1) a landlord is not allowed to sue a participant for rent owed by STIP and (2) that the landlord and the tenant are not allowed to have side agreements for other fees or additional rent. These issues are frequently faced by HCVP tenants. Fortunately, HCVP regulations go a long way to protecting both the tenants and the Housing Authority from landlords acting in bad faith. STIP regulations should be amended to similarly protect clients and Providers.

We recommend deleting the requirement that families must be "willing and able to . . . comply with the terms of [a] lease" in proposed Section 2526: "Systems Transformation Initiative – Eligibility Requirements."

Proposed Section 2526 sets out eligibility requirements for STIP. Among the requirements is that families shall be "willing and able to . . . comply with the terms of [a] lease." We support language that puts families on notice that they will have to comply with the terms of their lease in order to maintain their tenancy. The concern here is that this language might be used to require families to prove that they could enter into and comply with a lease. Families within the Continuum of Care may face realities, such as problematic credit histories, that could make this latter reading of the regulation as a serious barrier to accessing STIP.

A requirement regarding compliance with a lease also raises concerns under the Fair Housing Act, the Rehabilitation Act, and the D.C. Human Rights Act. See 42 U.S.C. § 3604(f); 29 U.S.C. § 794(a); D.C. Code Ann. § 2-1402.21(d). These Acts prohibit discrimination in housing based on disability. The Fair Housing Act and the D.C. Human Rights Act contain requirements for all forms of rental housing. See generally 42 U.S.C. §§ 3601-3604; D.C. Code Ann. §§ 2-1402.21-2-1402.24. All three of these statutes apply the same legal principles for defining "disability," "reasonable accommodation," and the scope of the requirement to provide reasonable accommodations to individuals with disabilities. See, e.g., Douglas v. Kriegsfeld Corp., 884 A.2d 1109, 1115 n.1, 1122 n.22, 1130 n.49, 1132 n.53, 1135 (2005) (comparing the requirements of the three statutes). A failure to provide a reasonable accommodation is a form of disability discrimination and is illegal under each of these statutes. See id. at 1120, 1122 n.22, 1134-38. A family within the Continuum of Care could realistically not be able to comply with a lease without any real effect on their tenancy – or their ability to participate in STIP – if they are reasonably accommodated according to existing law. Any other violations of a lease have adequate remedies under current D.C. landlord-tenant law.

Because existing law is sufficient to regulate the compliance of tenants, we recommend removing language requiring compliance with a lease as an eligibility factor from Section 2526.

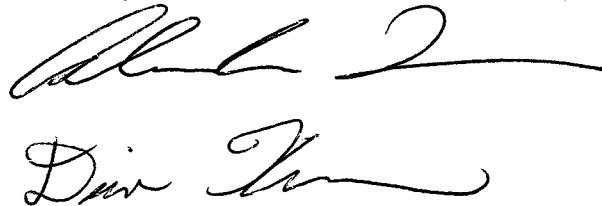
We recommend additional regulations for the Permanent Supportive Housing Initiative (“PSH”) in order to make it a functional housing subsidy program that protects vulnerable clients and Providers,

Proposed sections 2535 et seq. set out the regulations for DHS’s Permanent Supportive Housing Initiative (“PSH”). As the “Purpose and Scope” sections point out, PSH is designed to “provide a compassionate and cost effective strategy to solve homelessness for the hardest to serve and most vulnerable individuals and families, using a Housing First Model.” See Proposed Regulations at § 2535.1 (emphasis added). The analysis of the STIP regulations through the lens of the D.C. Housing Authority’s HCVP is useful to note considerations missing in the current PSH regulations as well.

As with STIP, PSH should require three-party contracts between Providers, clients, and landlords. As explained above, these contracts will protect clients and providers in numerous ways. This is even more important in the PSH context because clients are, by definition, “the most vulnerable individuals and families.” First, these contracts can allow Providers to abate rent payments for properties that have violations of the D.C. Housing Code, saving Providers money and giving vulnerable clients a mechanism for addressing such problems with their units. Second, these contracts could be a useful tool for STIP by requiring that landlord’s contact case managers before serious problems arise – exactly what Providers would want in PSH. Third, these contracts will protect families in STIP by making absolutely clear that (1) a landlord is not allowed to sue a participant for rent owed by STIP and (2) that the landlord and the tenant are not allowed to have side agreements for other fees or additional rent. Both of these issues would be particularly daunting obstacles for vulnerable clients. Indeed, avoidance of these issues should be priorities under a Housing First model.

For the above reasons, we support Proposed Chapter 25 of Title 29 Municipal Regulations: Shelter and Supportive Housing for Individuals and Families with the recommended changes. We thank you for the opportunity to submit our comments.

Sincerely,

The image shows two handwritten signatures in black ink. The first signature is for Alessandro Terenzoni and the second is for Diana Krevor. Both signatures are fluid and cursive.

Alessandro Terenzoni
Diana Krevor⁷
Legal Aid Society of the District of Columbia

⁷ Law school graduate. Not yet licensed to practice law in any jurisdiction.