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The Washington LEGAL CLINIC for the Homeless
A Voice for Housing and Justice

Testimony before the DC Council Committee on Human Services
B22-293, "Homeless Services Reform Amendment Act of 2017"
Presented by Amber W. Harding
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We believe every person in DC who has no safe place to sleep at night should have access to safe, humane shelter, unfettered by bureaucratic hurdles; that clients in shelter and housing programs deserve due process and fair, transparent policies; and that the root cause of homelessness, lack of affordable housing, cannot be solved by narrowing the front door to shelter or by imposing arbitrary time limits on housing. The Mayor's proposed amendments evince an ideology that is diametrically opposed to these principles—trading safety protections and legal rights of clients for massive and unchecked expansion of the Administration's power.

According to DHS, this bill is intended to "modernize" or "update" the Homeless Services Reform Act, align it with federal law, and "ensure that shelter is reserved for those individuals, families, and youth who truly have no other safe place to sleep." While there are some technical changes and a few, minor, positive changes to the law, my testimony today will focus on the serious consequences of adopting the Mayor's proposed amendments. (The Legal Clinic will be submitting more comprehensive written testimony and recommendations later.)

<u>Definitions</u>

- Vastly fewer people would be eligible for Emergency Rental Assistance.
  The definition of "At risk of homelessness" lowers the maximum income level, requires applicants have written notification that doesn't exist in DC and does not cover people just behind on rent with no eviction notice.
- Families with children with serious disabilities would no longer be eligible for permanent supportive housing (PSH).
  The definition of "chronically homeless" requires that the adult head of household in a family have a qualifying disability, and only those who are chronically homeless are eligible for PSH.
- People coming out of institutions who had been there more than 90 days would not be eligible for shelter or PSH, even if they had been homeless for years before going into the institution, and even if they were exiting to the street.
  Definition of "homelessness" and "chronic homelessness."
- Many runaways would not be considered homeless.

Definition of "unaccompanied youth" excludes anyone with an "occupancy agreement" in the last 60 days, anyone who has moved less than 2 times in the last 60 days and anyone who doesn't meet the list of barriers.

- Youth providers couldn't operate a low barrier system.
  Definition of unaccompanied youth requires pre-eligibility determination of health and psychosocial background.
- Families with kids wouldn't be considered homeless if doubled up.
  This is inconsistent with HEARTH Act as well as other local and federal definitions of homelessness. The Mayor removed a section of the federal definition that would have included some families who were doubled up. (Qualifying as homeless does not mean the family would have a right to shelter—another section of the HSRA confines the right to homeless families who have no alternative housing arrangements.
- People who newly have no safe place to go would be required to stay on the street or in places not fit for human habitation before qualifying as homeless.
  Instead of assessing applicants as to whether they have somewhere safe to go tonight, these definitions focus on what the applicant has been doing prior to seeking services.
- People in unsafe housing for reasons other than violence (conditions, lack of utilities, criminal activity, etc.) would not be considered homeless.
- Permanent housing could have time limits.
  Definition of permanent housing states both that it is "housing without a designated length of stay" and that assistance can be "time-limited or ongoing." Additionally, the program exit section that authorizes terminations for time limits is not limited to rapid re-housing.

<u>Re-determining Eligibility</u>: allowing terminations without due process whenever "new or relevant information" has become available or there are "changed circumstances."

- Unlike every other public benefit and service, shelter and housing could be taken away, with no due process, for virtually any reason at any time.
  Most public benefits have a different standard than initial eligibility to determine continued eligibility, have regular intervals for recertification, and provide full due process if someone is found to be no longer eligible based on a set standard. It would be administratively impossible and very expensive to adopt a recertification process for all shelter and housing participants, so this is likely a standard that will be applied either arbitrarily or discriminatorily. Currently, the Mayor can transfer clients to a placement that "more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs." It is unclear why this isn't sufficient to deal with situations where clients age out of youth programs or no longer comprise a family.
- This provision swallows the compromises and protections that the Council added in 2015 for Interim Eligibility-- no time limit, no due process, and no restrictions on how long the person has to have access to alternative housing arrangements.
  This section falls in the new Program Exit section, which exempts decisions from the regular OAH process and only allows review by the Director of DHS. After initially proposing that Interim Eligibility decisions only be reviewed by herself, Director Zeilinger testified in 2015 in support of all parts of the system having the same due process protections via the Office of Administrative Hearings. (This is perhaps the fourth time that an Administration has proposed that it have such broad discretion to redetermine eligibility—the first two times it was soundly rejected by Council and the third time it was converted into Interim Eligibility.)

- As written, this provision could lead to absurd results:
    - A person in PSH could be terminated for no longer being homeless.
    - A family in DC General could be terminated for having a safe place to go—DC General.
    - A person in PSH could be terminated for recovering from cancer, from successfully fighting addiction, or from recovering from liver disease after receiving a transplant.
- Shelters and housing programs are already places where vast gaps in power between residents and providers create serious problems and potential for abuse. This provision will further chill the willingness of clients to open up to providers about their situations and needs if they feel that the information could be used to terminate them with no chance to appeal.

Safe Housing: requiring shelter applicants to overcome a presumption that they are not homeless by "clear and convincing evidence" that they cannot return to housing or that the housing is unsafe

- Applies the highest burden of proof in civil cases to families experiencing conflict and trauma at the entry point to emergency shelter. Instead of erring on the side of safety and protection of families, the Mayor will err on the side of denying families shelter who cannot meet this burden.
- If grandma kicks mom and kids out of the house, and all mom has is her word, she won't get shelter.
  Statement from applicant alone is likely not "clear and convincing evidence." Even if it were a lower standard, requiring families to bear the burden of proving a negative, that they have no safe place to go, will mean that more families will experience unsafe environments.
- If a family gets in a fight with their host and gets kicked out and the host refuses to cooperate with the eligibility worker, the family won't get shelter.
- If mom flees her apartment because of domestic violence, but doesn't want to tell the intake worker that her partner beats her, she won't get shelter.
  Domestic violence exemption is included for "clear and convincing" requirement, but applicant would have to identify, and possibly prove that she qualifies for exemption. This requirement contravenes federal law and policy.
- If a refugee cannot clearly demonstrate that her country of origin is unsafe, she won't get emergency shelter.
  People seeking asylum and refugees are not exempt from this requirement.

Residency: requiring additional documentation to prove DC residency

- A family found to be DC residents by another part of DHS or by DC Public Schools would not get emergency shelter if they did not have any other documents from the list.
  Every other DC public benefit or service that requires proof of residency has a lower standard of verification for applicants who are homeless. Perversely, the highest documentation requirement for DC residency is the proof currently required by DHS on hypothermic nights when families with minor children are applying for emergency shelter. This bill will make it even harder for those families to document residency.
- Undocumented immigrants would likely not be found to be DC residents and would not get shelter, despite DC's claim that it is a Sanctuary City.
- Many runaways, youth aging out of foster care, people coming out of institutions, families or youth who have "couch surfed" for a long time, and domestic violence survivors are less likely to have the listed documents and would not get shelter on a hypothermic night.

- The current residency standard already causes many applicants with longtime connections to DC to be denied merely for not having the right documents—this problem would worsen under this proposal.
- Considering the stated intent of the Mayor to prevent people from moving here from other jurisdictions to seek shelter services, this provision could incur legal liability to DC for violations of the Constitutional right to travel.
  Much like Donald Trump's tweets have been admissible evidence of an unconstitutional intent for the Muslim travel ban, Mayor Bowser's statements to press and this Council in the fall will be admissible evidence if this provision is challenged in court. In Shapiro v. Thompson, a case involving welfare benefits, the Court held that the state's "purpose of inhibiting migration by needy persons into the state is constitutionally impermissible." In Saenz v. Roe, the Court deemed unconstitutional a California law which restricted a person's welfare benefits for one year to the same amount of the state from which the person moved: "[T]he right to travel protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State."

These three sections (redetermining eligibility , safe housing and residency) codify the myths that there are significant numbers of people in shelters who do not actually need shelter services, or who are somehow "gaming the system" to access housing programs, and that there are significant numbers of people flooding our shelters from other jurisdictions to get access to our housing programs. No data supports these myths. (The Mayor's data, in fact, shows that the current residency provision is being used to deny a significant number of people for residents, many of whom are able to prove residency on appeal, indicating that they were initially denied not for being out-of-state residents, but for not having the required documentation. Surrounding jurisdictions claim DC is sending all of its poor people to them for their affordable housing. DC shouldn't participate in a "race to the bottom" for serving poor people. We should instead demand that our regional partners provide more emergency shelter, and we should provide more affordable housing.) These provisions also affirms a troublesome culture of treating families like they are lying when they seek services.

<u>Rapid Re-housing</u>: codifies termination for time limits and eliminates due process

- Families could be terminated for reaching an arbitrary time limit, regardless of ability to pay rent or any other personal circumstance, like having a newborn baby, having a serious medical issue, or not having had quality (or any) services.
- Families facing time limit terminations no longer would have the right to a fair hearing—their appeal is to the agency that terminated them.
- Rapid re-housing participants will not count as homeless for the DC Housing Authority voucher preference because rapid re-housing is defined as permanent housing.

<u>Emergency Actions</u>: expands window for emergency terminations and adds new provision for emergency transfers

- Shelter residents could get terminated with no right to stay in shelter pending appeal not just when there is an "imminent" threat but up to 24 hours after such a threat has occurred, which lessens the chance that the threat needs to be dealt with by emergency action.
- Clients can be emergency transferred (no 15 day notice) "when a client's continued presence at a shelter location threatens the Department's ability to provide services to current clients." This is vague and ripe for abuse.

Medical Respite: removes medical respite beds from almost all due process protections

- People recovering from surgeries and with serious illnesses could be terminated from medical respite beds with 24 hour notice for not needing medical services—and with no appeal, no due process, no mechanism to catch mistakes.
- Residents of medical respite beds could be terminated or transferred for any reason at all with no due process.
  Medical respite providers are exempt from all termination, transfer and appeals provisions.

Coordinated Entry: removes right to return from institutions or long absences and codifies use of coordinated entry protocol

- A PSH tenant who is absent from his unit for substance abuse treatment or serious medical issues would no longer have a right to return to the program, particularly if the treatment was successful.
  The right to return was a protection added in 2013 to a new section on terminations in PSH for long absences, in order to comply with best practices and disability rights laws. The proposed language removes the right to return and requires that PSH participants go through coordinated entry as if they were new applicants. If the person's health has improved due to treatment, he may not ever be placed back in PSH via coordinated entry.
- The Mayor could change eligibility for any shelter or other housing program by changes to an unpublished "centralized or coordinated assessment protocol" not via rulemaking—which is a lower standard than any other DC-funded public benefit.

DC General Replacement Units: lowers unit numbers and lowers bathroom standard

- The Mayor will only have to build 270 units to replace the 280 unit DC General shelter.
- Roughly 27 people will share 2 toilets.
  The new shelters would no longer be required to have multi-fixture bathrooms. Instead, they would be required to have 3 bathrooms per 10 families, or 2 bathrooms for 9 families since one is private. If each family averages 3 people, that means 27 people will share 2 toilets every day.

Absent Clients: requires termination or transfer for absences of more than 4 days, possibly

- Shelter and housing providers would be required to give notice of transfer or termination whenever someone is absent for 4 days, no matter whether the client was in the hospital, was on vacation, or whether the client had received permission to be absent for that period of time.
  The intent of this section seems to be to expand termination provisions, although it arguably does not accomplish that as written.
- For transitional housing residents who are tenants, this provision could conflict with the Rental Housing Act and common law rights of tenancy.

While one would hope that these are unintended consequences, advocates and community members have been raising these concerns since last summer, and in some cases the language has become more, not less, draconian over time. The HSRA, and the homeless services system generally, exists to provide a safety net to people experiencing an affordable housing crisis. This bill unacceptably frays that safety net, putting people experiencing homelessness at serious risk.