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

Analysis of Proposed HSRA Amendments (June 12, 2017)

Definitions

Current Law:

The HSRA begins by defining several key terms used in the subsequent sections of the law. The definitions of "homeless" and "at imminent risk of becoming homeless" are relatively short and open, but eligibility for programs is not just limited to whether or not someone is homeless. The definition of "permanent supportive housing" is fairly broad and includes supportive housing for an unrestricted time for anyone who is currently homeless and continues to be at risk, including persons with disabilities. The current definition of "youth" is anyone under age 24. There are no definitions of "affordable" or "chronically homeless."

Mayor's Proposal:

The Mayor's Administration has stated they would like to align some of the HSRA definitions section with the federal HEARTH Act, including aligning the definitions of "homeless" and "at risk of homelessness" and adding a definition of "chronically homeless." The proposal adds a few definitions related to administrative changes, including definitions of "centralized or coordinated assessment system," "collaborative applicant," "Continuum of Care Governance Board," and "Homeless Management Information System." The Mayor added a definition of "medical respite services," which was previously undefined. The proposal also changes the definition of permanent housing to include programs with time limits, such as rapid re-housing (RRH), and deleted the definition of "supportive housing." The Mayor proposed to change the definition of "permanent supportive housing" (PSH) to incorporate the proposed definition of chronically homeless, which is more restrictive and longer than the current PSH definition, and changed the RRH definition (explained further in RRH section of this document). For residency, the Mayor proposed to increase the requirement from one to two pieces of evidence from a new, enumerated list of documents (explained further in residency section of this document). The proposal also changes the definition of "youth" to anyone under age 25.

Questions/Concerns:

- The changed definitions are not consistent throughout the definition section.
  - Ex. "At risk of homelessness" has not replaced "at imminent risk of becoming homeless" in other definitions and in other parts of the document.
- "At Risk of Homelessness"
  - Changes the maximum income for eligibility for ERAP and homelessness prevention from $35,362.50 for a family of 4 to $32,580 for a family of 4.
  - Does not seem to cover someone who is behind on their rent and needs ERAP but has not yet received an eviction notice.
  - Seems to limit assistance to people who are at risk of homelessness due to economic reasons, but not due to conflict or other reason.
  - Refers to a process/notice that does not exist in DC: "Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days."
- "Chronically homeless"
  - Mentions "safe haven," which is not defined in the law.
  - The adult head of household in a family must have a disability to qualify. In other words, families with children with disabilities will not qualify as chronically homeless, and therefore

will not qualify for PSH. Many families will be affected by this restriction.
    - People who work with clients in nursing homes, St. Elizabeth's or jails have expressed concerns about the impact on their clients of the 90 day limitation and the requirement that clients must have met the definition prior to entering the institution.
- "Homeless"
    - Does not match federal definition, which includes families who are doubled up in some circumstances and which includes unaccompanied youth who meet other federal statutory definitions of homelessness
    - Proposed definition does not align with other definitions of "homeless" in DC Law
        - DC Code § 42-2141 under Subchapter II. Comprehensive Tracking Plan for Affordable Housing Inventory. (The definition of "homeless" in this provision.)
        - DBH
        - DCHA
        - DCPS
    - "Unaccompanied youth" may not include runaways or youth who have conflict at home on the first day—it seems to require a history of conflict and instability prior to becoming eligible for services. Also, it seems to require a psychosocial assessment prior to entry into shelter, which shifts DC away from its current low barrier model.
    - No longer includes the term "safe housing," which is later defined in the statute. This means people who are trying to leave unsafe housing for reasons other than violence (poor housing conditions, lack of utilities, criminal activity, emotional/psychological abuse, etc.) are not homeless.
    - Definition is backward-looking, not forward-looking. The main inquiry under current law is whether you have somewhere to go tonight.
    - 90-day restriction on institutions and requirement that client was homeless prior to entering institutions will mean people will be exited from institutions with no safe place to go.
    - Tenants will not know whether they will lose their housing within 14 days, since writs do not have dates on them.
    - Having a broader definition of homelessness would still confine the right to shelter to those who are homeless *and* have no "alternative housing arrangements," but it would allow DC to serve all those who have nowhere else to go.
    - "Congregate shelters" not defined in the HSRA but included in the proposed definition.
    - There is no definition of domestic violence in the law. DC's term of art is intrafamily violence.
- "Permanent housing"
    - The definition has been broadened to include a provision that states that time-limited Continuum of Care programs, such as rapid re-housing, are considered permanent housing. Yet "permanent housing" is defined as "housing without a designated length of stay."
    - Rapid re-housing is not a permanent solution and is in fact defined in the new proposed definition as assistance "necessary to help a homeless individual or family move as quickly as possible into permanent housing."
    - Stating that RRH is permanent housing means that people in RRH lose the homeless preference for the purposes of DCHA housing vouchers. There is no proposed safeguard in the law to ensure people do not lose the homeless preference.
    - Defining permanent housing as including time-limited means that PSH could be subject to time limits.
- "Permanent supportive housing"
    - Because families with a child with a disability whose head of household does not have a disability are no longer considered chronically homeless, they will no longer be eligible for PSH.

- "Resident of the District"
    - See section on residency below.

Medical Respite

Current Law:

The HSRA does not mention medical respite beds specifically. Right now, by default, medical respite beds are treated like any other shelter bed. This means that a provider could only suspend or terminate someone for the reasons laid out in the HSRA (mainly violations of law or program rules). The current law does allow a provider to transfer someone with 15 days' notice (and no right to stay in the bed during an appeal) if the provider secures a bed "that more appropriately meets the client's *medical*, mental health, behavioral, or rehabilitative service needs…" DC Code § 4-754.34(a)(2).

Mayor's Proposal:

The bill defines "medical respite services" as "limited-time acute and post-acute 24-hour residential care that is provided 7 days a week to eligible individuals who are (A) homeless; and (B) determined by a qualified medical professional, licensed in the District and regulated by and subject to the grievance processes of the appropriate professional licensing board, to require medical assistance." (Section 26A). Providers are required to give 24 hours' notice of the placement ending if the client "no longer requires medical respite services," but there is no right to appeal the decision—these services are exempt from all due process protections or requirements of the HSRA. The services are also exempt from all transfer and termination sections. § 4-755.02a.

Questions/Concerns:

- No review of the decision that the client no longer requires medical respite services, and therefore no way to catch mistakes.
- No due process at all for clients in medical respite beds, despite DC homeless services dollars funding those beds.
- It appears that under the law, clients cannot be transferred from medical respite to other shelters anymore, even though the Administration said that they can be transferred. They may just intend to do transfers outside of a legal scheme, without requirements for notice or due process.
- Clients cannot be terminated for anything but not needing medical respite services, not even assault.
- Does not fix the most common concern about transitioning people out of medical respite, which is that the low barrier system often doesn't work well for people recovering from a surgery or other medical issues, and they need reasonable accommodations to be secured prior to transfer.
- Definition does not appear to cover anything but Christ House, so it is unclear how it will impact future configurations of respite services.

Assumption of Safe Housing

Current Law:

The Mayor must provide shelter in severe weather to all DC residents who are homeless and cannot access other housing arrangements. DC Code § 4-753.01(c)(1). "Homeless" is defined as "lacking a fixed, regular residence that provides *safe housing*, and lacking the financial means to acquire such a residence immediately" or living in a shelter or place not designed for human habitation. § 4-751.01 (18). Safe housing is defined as "housing that does not jeopardize the health, safety, or welfare of its occupants and that permits access to electricity, heat, and running water for the benefit of occupants." § 4-751.01 (32A). In addition, last November, the HSRA was amended to allow for Interim Eligibility placements in situations where the family's eligibility was unclear. The Mayor now has the flexibility to place a family who may have another housing option, explore that option and terminate the family quickly from the placement if that option is in fact safe

and stable. § 4-753.02(c-1).

Mayor's Proposal:
"If the Mayor determines that the individual or a member of the family has an ownership interest in safe housing or is listed on a lease or occupancy agreement in safe housing, the Mayor may presume that the individual or family is not homeless unless the individual or family can establish by clear and convincing evidence that they cannot return to such housing. This presumption shall not apply to individuals or families seeking shelter services by reason of domestic violence, sexual assault, or human trafficking. Additionally, this presumption shall not affect an individual's or family's eligibility for crisis intervention services, including family mediation, conflict resolution, or other family stabilization services."

Questions/Concerns:

- Not everyone on a lease or occupancy agreement has access to that housing, and not all of that housing is safe.
- Clear and convincing evidence is a very high legal standard. It is a very high burden for a family to meet when they are in crisis and need safe housing. Sometimes all an applicant has is her own word that the housing is unsafe—that family will not get shelter under this standard.
- DHS does not need this legislative change to accomplish its goals—it can place these families via Interim Eligibility and determine if the family really has a safe alternative place without forcing the family to return to an unsafe situation during the determination period. In fact, this scenario was one of the key arguments DHS used to advocate for its Interim Eligibility proposal just last fall.
- Even an exemption for domestic (or intrafamily) violence survivors may not adequately protect their safety. In the current system, the screening for domestic violence is often inadequate, and as a result many survivors are denied shelter because their housing is deemed safe. Raising the barriers for these families may result in survivors remaining in unsafe housing.
- People experiencing domestic violence, sexual assault or human trafficking may not be willing to identify, or able to prove, that experience. Federal laws strongly discourage or forbid requiring survivors to divulge their status to access services.

<u>Re-determining Eligibility</u>
Current Law:
Under the HSRA, once placed, a client can remain in the program until the client voluntarily leaves or is transferred or terminated. A provider can transfer someone with 15 days' notice (and no right to stay during an appeal) if the provider secures a bed "that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs…." § 4-754.34(a)(2). This provision is regularly used to transfer people among programs when they no longer are eligible (youth aging out, families who no longer have children with them, etc.). A client who stays out of the shelter can be terminated for violating program rules such as curfew or unauthorized absences.

Mayor's Proposal:
Eligibility: "…The Mayor may redetermine the eligibility of an individual or family receiving services within the Continuum of Care at any time if new or relevant information becomes available to the Mayor regarding the individual or family's eligibility or the Mayor learns of changed circumstances which makes the individual or family no longer eligible for program assistance."
Transfers: "The client is no longer eligible to receive services from the provider's program, as determined in accordance with § 4-753.02 (b-1)"
Program exits: "A provider may exit a client from a shelter or housing program only when the client has: Is [sic]

determined to be no longer eligible for services within the Continuum of Care, pursuant to § 4-753.02." (This section also removes the right to adequate notice and the right to appeal via the fair hearing process. Instead appeals go to the Director of the Department of Human Services.)

Questions/Concerns:

- This provision would lead to unintended results as currently drafted. The Mayor (or a future administration) could, for example, terminate someone from Permanent Supportive Housing for no longer being homeless or for no longer having a disabling condition, as those are factors that would make someone ineligible for that program.
- Provisions convey broad power to DHS to terminate people in all types of programs and removes due process protections that now exist for eligibility determinations.
- Provision conveys so much discretion with so little client protections that it swallows all other protections drafted into the law for interim eligibility, eligibility, transfers, or terminations.
- The Gray Administration proposed a version of this twice, called "provisional placement," and it was rejected by the Council twice because it was unduly vague, had no time limitations, and had no due process for clients. The Bowser Administration proposed something similar when it first sought authority for interim eligibility and it was scaled back significantly to add time constraints, specificity, and due process.
- It is unclear what problem the Administration is trying to solve with this provision.
- Provision will either have a large fiscal impact if applied to all programs and clients, or it will be applied arbitrarily or discriminatorily.

<u>Residency</u>

Current Law:

The requirement to demonstrate residency only applies to homeless families applying for emergency shelter. It is a stricter requirement than exists in any other DHS public benefit program or than exists in order to comply with federal anti-terrorism laws for identification cards. Families applying for shelter or other homeless services must meet the definition of "resident of the District" under DC law to be eligible. A family meets this residency requirement so long as all 3 of the following prongs are met:

1. Is not receiving locally administered public benefits from another state; AND
2. Is living in DC voluntarily and not for a temporary purpose (i.e., has no intent of moving); AND
3. Can demonstrate residency by 1 of the following 4 methods:
    1) Evidence of a DC mailing address from the last 2 years; OR
    2) Evidence of receipt of or application for DC public benefits; OR
    3) Evidence that a family member is attending school in DC; OR
    4) Verification from someone who meets the definition of a "verifier."

See § 4-751.01(32). There is also a 3-day grace period to allow a family applying for shelter to establish residency while in shelter, a requirement that no one be denied shelter just due to documentation requirements, and the availability of (but not a requirement for) Interim Eligibility to allow for families to bring in proof of eligibility, including DC residency. The Mayor may exempt domestic violence survivors from documentation requirements, but does not at this time.

Mayor's Proposal:

The bill removes the ability to establish residency during the 3-day grace period, and now only allows that period to be used for documenting that the family was a DC resident the day the family applied. The bill also includes a longer list of documents to verify DC residency, but almost all of them are related to having housing. Now 2 documents would be required instead of one. The residency exemption for domestic violence, sexual assault, and human trafficking survivors is still permissive, not mandatory, and the exemption does not

include refugees. *See* § 4-753.01(c)(3)(B).

Questions/Concerns:

- Homeless services programs have always required that applicants be DC residents. The issue is how hard it should be for people seeking shelter to prove their residency. In 2010, it became harder to prove, and this proposal would increase the burden again on applicants to prove residency.
- Residency requirements for public benefits that, on their face or in practice, require people to be in the jurisdiction for a period of time before qualifying have been found to be unconstitutional. 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."
- This is a higher residency standard than for homeless applicants in:
    - Any public benefit program that DHS runs;
    - DC Public Schools; and
    - The Department of Motor Vehicles REAL ID which comports with federal anti-terrorism laws.
- Because of the emergency nature of shelter, it should have lower rather than higher standards to prove residency. Homeless individuals and families often lack access to the types of documentation that would be required.
- Many victims flee dangerous situations without the paperwork that would be necessary to prove they are District residents. Requiring additional documents would create situations in which District residents who are fleeing domestic violence or seeking asylum are denied life-saving shelter merely because they cannot obtain the necessary documentation in time. Section 4-753.01(c)(3)(B) includes an optional exemption for residency documents for survivors of domestic violence and trafficking, but it is not mandatory.
- The standard is discriminatory if only applied to homeless families.
- Advocates have stated that youth, people coming out of institutions, domestic violence survivors, undocumented persons, families with children who are not school age, and youth exiting foster care would have a particularly hard time with these documents.
- Grace period in § 4-753.03 is confusing given interim eligibility.
- The list of documents is incomplete (e.g. does not include VA benefits).
- There is no catch-all provision for DHS to consider any other documents.
- There is no requirement for DHS to search their own or other city databases to find relevant documentation.
- Service providers have reported that it can take weeks to get identification for someone who is homeless.

<u>DC General Replacement Units</u>

Current Law:

The HSRA was amended in November 2015 to set standards for DC General replacement units, including that there be a minimum of 280 replacement units built and that there be a minimum of one private bathroom per ten units, one family bathroom per five units and "at least 2 multi-fixture bathrooms per floor that shall include multiple toilets, sinks and showers." § 4-753.01(d).

Mayor's Proposal:

The bill reduces the number of replacement units to 270 and removes the multi-fixture bathroom requirement, leaving the bathroom requirements as 1 private bathroom per 10 units and 2 family bathrooms per 10 units. This reduces the total number of required bathrooms for families from 5 bathrooms per 10 families to 3 bathrooms per 10 families.

Assuming each multi-fixture bathroom has at least 2 toilets and that each family has an average of 3 people in it, the proposal reduces the number of toilets from 7 toilets per 10 families (30 individuals) to 3 toilets per 10 families (30 individuals). Because one of the bathrooms (per 10 units) is private, 2 bathrooms will be shared by 9 families (27 people).

Questions/Concerns:

- 3 bathrooms per 10 families is far below what the Council agreed to in the fall of 2015, which many community members and advocates felt was still inadequate.
- Requiring 27 people to share 2 toilets every day is not humane.
- DHS has stated that it believes each shelter will have at least one family bathroom for every two families, but that is not reflected in this bill.
- The designs for the shelters seem to have some public toilets on each floor, but that is not reflected in this bill.

Rapid Re-Housing (RRH)

Current Law:

Rapid re-housing is currently defined as a "program that provides a homeless individual or family with financial assistance to obtain permanent housing, by providing some or all of a security deposit, first month's rent, short-term rental subsidy, and supportive services to help the recipient become self-sufficient." § 4-751.01(31A).

There is currently no separate termination provision that only applies to rapid re-housing. Rapid re-housing participants are subject to the same termination provisions that apply to all other programs in the Continuum of Care, which means that program participants should only be terminated for cause. In practice, and in direct conflict with the current law, DHS claims the authority to terminate rapid re-housing assistance based on the length of time that a family or individual has been participating in the program. Such terminations from rapid re-housing can currently be appealed to the Office of Administrative Hearings.

Mayor's Proposal:

The definition of rapid re-housing is modified in the bill: A "program that provides housing relocation and stabilization services and time-limited rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing and under which the individual or family has a lease in their own name and may remain in the housing when the program assistance ends." § 4-751.01(31A).

The bill would authorize the current DHS practice of terminating families based on time limits by adding a "Program Exits" section to the HSRA. The new section states that "a provider may exit a client from a shelter or housing program only when the client has: reached the time limitation in a program that is intended to provide housing support for a certain period of time; and based on the criteria in the regulations regarding recertification, meets the standard for not being recertified in the program." § 4-754.36b(a). If DHS ends a client's services for reaching a time limit, the client would no longer have the right to appeal to the Office of Administrative Hearings. Instead, they would only be allowed to appeal the "exit" to the director of DHS. § 4-754.36b(c). The notice requirements for "program exits" are not as clear or strict as the notice requirements

for other provider actions under the HSRA such as suspensions, transfers, or terminations. *See* §§ 4-754.36b(b) and 4-754.33.

The bill would also:

- Allow rules for rapid re-housing to be set "in contract with the Department" instead of a public rulemaking. § 4-753.01(b)(4)(A).
- Allow DHS to make decisions about whether a client is eligible for PSH or RRH based on a "coordinated assessment protocol" rather than a public rulemaking. § 4-753.01(b)(4)(B).

Questions/Concerns:

- Authorizing terminations based on time limits is an arbitrary means of ending housing services and puts many families at risk of cycling back into homelessness after their RRH subsidies are cut off.
- The bill removes or degrades current due process rights of RRH program participants (in addition to all Continuum of Care (CoC) clients that have their eligibility for services "re-determined"). Having DHS review its own decisions is problematic. There is no reason that RRH participants should have lesser due process rights than every other client of the CoC.
- Rules for public benefit programs like RRH should be set through public rulemakings rather than through contract. The process proposed in the bill would likely be in violation of the DC Administrative Procedures Act. In addition, eligibility/referral determinations for targeted affordable housing (TAH) and permanent supportive housing (PSH) should be based on public rules, and clients should be allowed to appeal those determinations.
- None of the changes proposed resolve any of the serious concerns raised about the RRH program.

<u>Coordinated Entry</u>

Current Law:

Does not mention coordinated entry, other than for the family system.

Mayor's Proposal:

- New definition of "centralized or coordinated assessment system:" "a centralized or coordinated process designed to coordinate program participant intake, assessment, and provision of referrals." § 4-751.01(6A).
- Amended definition of permanent supportive housing for clients who are chronically homeless "as determined by assessment in accordance with the centralized or coordinated assessment system protocol." § 4-751.01(28).
- Amended family eligibility section removes "chronological order" for assistance and adds "based on the District's centralized or coordinated assessment system protocol." § 4-753.02(c)(2).
- Amends referral process for tenant vouchers from just "Department" to "Department pursuant to District's centralized or coordinated assessment system protocol." § 4-753.07.
- Amends right to return to permanent supportive housing after absence to "in accordance with the District's centralized or coordinated assessment system protocol." § 4-754.36a(c).

Questions/Concerns:

- The DC Administrative Procedures Act requires that government programs publish eligibility standards and receive notice and comment on them. Coordinated entry protocols do not meet this standard, and could be changed at any time without public notice or input.
- It's not clear if these changes formalize or institutionalize the parts of singles coordinated entry that most people think DC is doing well. This means that coordinated entry is vulnerable to changes under a different administration, or even different providers, and yet it will be the only entry point to many

services.

- Eligibility for permanent supportive housing is not now determined for families via a coordinated assessment system. How would these legal changes impact that practice?
- There is currently no centralized or coordinated assessment systems protocol for families.
- The right to return in the "discontinuation of permanent supportive housing services" section is critical to that section complying with disability rights laws and good public policy. It is not clear that someone returning to PSH would get the next available placement under coordinated entry protocol.

Emergency Transfers and Terminations

Current Law:

Currently, whenever a client presents an imminent threat to the health or safety of the client or any other person on a provider's premises, the provider – in light of the severity of the act or acts leading to the imminent threat – may immediately transfer, suspend, or terminate the client without providing prior written notice of the transfer, suspension, or termination as required by § 4-754.33(c). *See* § 4-754.38(a). "Imminent threat to the health or safety" means an act or credible threat of violence on the grounds of a shelter or supportive housing facility. § 4-751.01(24).

Mayor's Proposal:

The Mayor's proposal takes away "immediately" and adds "within twenty-four (24) hours of the imminent threat." There is also a new section that states, "The Department may also effect an emergency transfer of a client in the case of a loss of unit that is beyond the control of the Department or provider, such as in the case of an unexpected loss of a contract for shelter units, a fire, or other similar unexpected circumstance, or when a client's continued presence at a shelter location threatens the Department's ability to provide services to current clients." § 4-754.37(f).

Questions/Concerns:

- The emergency action section is supposed to be a very narrow authority because it allows for immediate terminations without the right to stay while appealing the decision. To justify the deprivation of due process, there must be a true emergency and it must be used in only the most dangerous situations.
- If a person is posing an "imminent threat," then presumably they should be removed from the premises immediately to avoid any violence against another person. The proposed 24-hour provision may reduce the threshold by which we can call something a truly imminent threat to the health or safety of oneself or others.
- Regarding the new section (f): "The Department may also effect an emergency transfer of a client . . . when a client's continued presence at a shelter location threatens the Department's ability to provide services to current clients." This must be further defined or narrowed. The first part makes sense, but the second part is vague and ripe for abuse.

Client Rights

Current Law:

As of now, the law states clients have a right to "participate actively in development of any service plan for the client, be told of the progress made toward the goals of that service plan, and receive a review of the service plan upon request." § 4-754.11(12).

Mayor's Proposal:

Amends § 4-754.11(12): Clients have a right to "[p]articipate in developing the client's service or case management plan, assess progress toward the goals of the plan, and review or update the plan on a regular basis (as specified per Program Rules established pursuant to § 4-754.32), with the assistance and support of a case manager[.]"

Amends § 4-754.11(13): Clients have a right to "[b]e free from testing for drugs or alcohol except when:

(A) Program guidelines prohibit intoxication and a licensed social worker *or licensed professional counselor* with experience identifying indications of drug or alcohol use or a certified addiction counselor determines that there is reasonable cause to believe that the client is engaging in drug or alcohol use; or

(B) A client consents to drug or alcohol testing as part of the client's case management plan developed in accordance with paragraph (12) of this subsection[.]"

Adds a new section § 4-754.11 (21): Clients have a right to "[a]ssociate and assemble peacefully with each other, during reasonable hours as established according to the Program Rules."

Adds a new section § 4-754.12a: "Additional rights for clients in permanent housing.

Clients residing in permanent housing shall have the right to:

(1) Receive visitors in their own housing unit or, if applicable, in the common area designated for such purposes, in accordance with their lease or occupancy agreement;

(2) Leave and return to the their own housing unit at will, in accordance with their lease or occupancy agreement;

(3) Be free from inspections more than once a year by a provider, by any person acting on behalf of a provider, or by a District agency administering this act, except:

(A) When, in the opinion of the provider, person acting on behalf of the provider, or District agency, there is reasonable cause to believe that the client is in possession of a substance or object that poses an imminent threat to the health and safety of the client or any other person in the client's housing unit, and such reasonable cause is documented in the client's record; or

(B) When necessary to provide maintenance or repair to the housing unit;

(4) Reasonable advance notice of any inspection, except in the circumstances described in subsection (3)(A) herein;

(5) Be present or have another adult authorized by the client be present at the time of any inspection, except in the circumstances described in subsection (3)(A) herein;

(6) Be free from drug and alcohol testing, except when the client consents to testing as part of the client's service plan or case management plan;

(7) Not be responsible for the provider's portion of the housing subsidy while the client is in the permanent housing program; and

(8) Conduct their own financial affairs, subject to the reasonable requirements of Program Rules established pursuant to § 4-754.32 or to a service plan pursuant to § 4-754.11(12)."

Questions/Concerns:

- The rights in permanent housing are incomplete, but a good start and directly responsive to community concerns.

Notice to Absent Client

Current Law:

§ 4-754.33(c): "All providers shall give written and oral notice to clients of their transfer to another provider or of their suspension, termination, or discontinuation from services at least 15 days before the effective date of the transfer or the suspension, termination, or discontinuation of services…."

Mayor's Proposal:

§ 4-754.33(c-1): "Notwithstanding subsection (c) of this section, when the client has been absent from the temporary shelter or transitional housing provider's premises for more than 4 consecutive days, the provider shall give written notice to the client at least 15 days before the effective date of the transfer or termination. The notice shall be mailed via certified mail, return receipt requested, or electronic mail to the client, if the client has provided such contact information to the provider, with a copy provided to the Department for verification of the issuance of the notice. A copy of the notice shall also be left in the client's unit or at the facility's sign-in location."

Questions/Concerns:

- As written, this is a change to how notice is given, perhaps exempting providers from the requirement to give oral notice if the client cannot be found.
- DHS explained the purpose of this section as if it provides another grounds for termination, which could be problematic if interpreted that way, or if they later attempt to add this to the termination section of the law.
- This section could be read to require providers to issue a notice of termination if a resident is absent for more than 4 days regardless of whether they have a permissible reason or have notified the provider of their absence. The term "shall give" could be interpreted to take away discretion from the provider.
- This section is not limited to shelter. Clients and providers have expressed concern that this could apply to transitional housing residents, who should be able to go on vacation without getting terminated.

Transfers

Current Law:

§ 4-754.34: "(a) A provider may transfer a client to another provider to ensure the client receives the most appropriate services available within the Continuum of Care whenever:

(1) The client consents to the transfer; or

(2) The provider identifies and secures for the client a placement with another provider that more appropriately meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's service plan."

Mayor's Proposal:

Adds these categories for transfers:

- "(2A) The client is no longer eligible to receive services from the provider's program, as determined in accordance with § 4-753.02 (b-1)."
- "(d) When a provider is unable to continue operating the program due to loss of funding or loss of control of the facility, the Mayor may transfer the affected client to a program with a vacancy that best meets the client's medical, mental health, behavioral, or rehabilitative service needs in accordance with the client's service plans and in accordance with the procedures in this section."

Questions/Concerns:

- The current practice is to transfer clients when they are no longer eligible for a program.
- This section may just be trying to clarify that that is a lawful practice; however, see the "Redetermining Eligibility" section of this document for concerns with the lack of a standard for what "no longer eligible" means.
- The "may" should probably be a "shall" in the second section to make it mandatory: When a program is closing, providers should be required to transfer clients so that their services are uninterrupted. This has been a problem with a few programs that have lost federal funding and closed their doors without transferring residents.

Interagency Council on Homelessness (ICH)

Current Law:

This section outlines the purpose and authority of the Interagency Council on Homelessness (ICH).

Mayor's Proposal:

Primarily technical changes: Changes number of representatives (range) for each category; adds a category for business, philanthropic representatives; changes the vacancy process; and allows City Administrator to "designate a subordinate to serve as chairperson in the City Administrator's absence." It also changes the date for reporting on budget proposals for serving people who are homeless from February 1 to May 1.

Shelter Monitoring

Current Law:

Monitoring unit is called the "Office of Shelter Monitoring." Upon request, shelter monitoring reports go to the Interagency Council on Homelessness (ICH).

Mayor's Proposal:

Changes "Office of Shelter Monitoring" to "Homeless Shelter Monitoring Unit." Shelter Monitoring reports used to go ICH, upon request, but will now go to Director to End Homelessness. The proposal also requires that the Unit adopt an "Annual Monitoring Strategy."

Concerns/Questions:

- Unclear how changing the name from "Office" to "Unit" will actually impact shelter monitoring.
- Does not address community members' concerns about not receiving feedback when submitting grievances about shelter conditions and case management.

Other Possible Additions/Amendments

The following are some suggestions we have for ways that the HSRA could be more responsive to the most common or serious concerns raised by clients in public meetings/forums or in our cases:

Definitions

Definitions to add to the law:

- Affordable
- Case management plan
- Individual
- Inspection
- Offer of housing
- Provider's premises
- Targeted Affordable Housing

Current definitions to amend in the law:

- Severe weather conditions
    - Proposed definition: "Severe weather conditions means the outdoor conditions whenever the actual or forecasted temperature, including the wind chill factor or heat index, falls below 32 degrees Fahrenheit, rises above 95 degrees Fahrenheit, or falls to 40 degrees Fahrenheit or below and the forecasted chance of precipitation is 50% or greater, or when the forecast calls for a tropical storm, hurricane, tornado, high winds, severe thunderstorm or significant snowstorm."
- Housing First (to add that addiction treatment is not a prerequisite)
- Resident (to add that clients are eligible if they have taken steps to terminate out-of-state public benefits, to change verification requirements, and to clarify that having children enrolled in school outside of DC is not evidence that the applicant is not a DC resident)
- Weapon (now includes razor and knife)
- Family (to include couples or non-minor caretaking situations)

Interagency Council on Homelessness

- Add Consumer Committee to ICH

Continuum of Care

- Add medical respite facilities and TAH to Continuum of Care
- Make residency exemption mandatory: "A person seeking shelter by reason of domestic violence, sexual assault, human trafficking or seeking asylum is a resident of the District without providing demonstration of District residency in accordance with § 4-751.01(32)."
- Require regulations and policies and protocols for eligibility determinations for all parts of the continuum, including TAH and FRC
- Take away mandatory escrow language, but require Mayor to offer escrow opportunities
- Address limited hours at low barrier shelters

Eligibility

- Streamline parts of eligibility that are in definition section now and move into eligibility section
- All severe weather shelters should be exempt from requiring residency proof
- Add a dignified safe eligibility and intake process here (including not waiting outside in the rain)

- Make intake lower barrier for families
- Make interim eligibility mandatory when homelessness or residency is at issue

Client Rights

- "Access safe, clean, and sanitary facilities that meet all applicable District health, sanitation, fire, building, and zoning codes, where repairs are made promptly and in a workmanlike manner;"
- "A shelter application and entry process that is not unduly burdensome to clients, recognizes the challenges that clients have providing documentation at entry and allows clients to undergo the process inside a building during inclement weather, including precipitation or severe weather."
- "Meet and communicate privately with *guests, other residents*, attorneys, advocates, clergy, physicians, and other professionals;"
- Right to organize
- "For children, have a parent, relative or caretaker visit them in the facility during regular visiting hours or care for the children in emergencies"
- "Be placed with entire applicant family and not be forced to separate caretakers from children or partners from each other."
- For permanent housing programs, additional rights:
    - "Privacy in caring for personal needs and in maintaining personal living quarters;
    - Be free from interference in personal health decisions, including mental health or addiction treatment;
    - Be subject to all the rights and protections of a District of Columbia tenancy, including the provisions of the Rental Housing Act;
    - Housing that is in substantial compliance with the DC Housing Code;
    - Not pay more than 30 percent of their income towards their rent, including utilities, and have rent adjustments made in a timely manner;
    - Withhold their portion of the rent if they have provided notice to the landlord of a need for repair of a substantial housing code violation and the landlord has not made the repair in a reasonable period of time;
    - Assistance relocating to a different housing unit if necessary to protect the health or safety of the client or a member of their household or for other good cause."

Client Responsibilities

- Remove escrow

Provider Standards

- "(a) If responsible for the maintenance or repair of the facility, develop system to respond to client complaints within 24 hours with plan and reasonable timeline for addressing complaints."
- "(b) If not responsible for the maintenance or repair of the facility, regularly inspect facility and forward inspection results and client complaints within 24 hours of notice of concern to the appropriate provider to resolve the concern"
- "Develop a system for the receipt of complaints, written and oral, including anonymous complaints"
- "For determining eligibility, assist clients in obtaining any required documents and develop list of alternative documents permitted, including client sworn statements, if clients cannot otherwise obtain

requested documents."

- Add new section for case management: Require specific training for staff on a periodic basis (at least every six months) to ensure compliance with "appropriately trained and qualified" definition, unbundle from shelter management, centralize, caseload ratios

Shelter Monitoring

- Shelter monitoring is underutilized and not very effective
- Need to restructure office (look at San Francisco model)
- Explore fines and incentives for compliance
- Require that the shelter monitoring division (unit or office) be independent from DHS, so DHS is not monitoring itself
- Add delayed implementation provision, and require DHS to implement specific policies and trainings for staff outlining the HSRA, client rights, and provider responsibilities in the interim period (six months?)

Notice

- Require Mayor to provide copies of program rules to clients upon request, post approved program rules online and update it annually

Terminations

- Add standard for when it is appropriate to terminate a client from rapid re-housing based on a time limit that takes the client's individual circumstances into account.

Emergency Actions

- Clarify that providers cannot emergency terminate someone with tenancy interest or it will be unlawful eviction

Fair Hearings

- Clarify what remedies are available in appeals
- Clarify that OAH can skip administrative review if emergency relief is requested