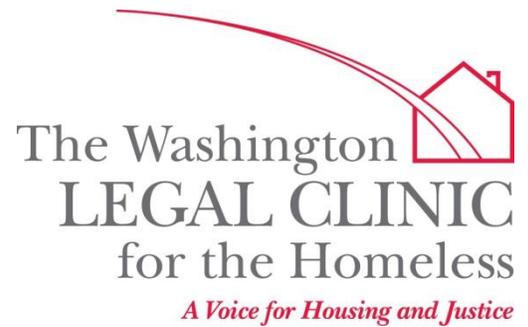


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**Testimony before the DC Council Committee of the Whole  
Public Oversight Hearing on Contracting for Homeless Services Continuum  
Presented by Patricia Mullahy Fugere  
September 28, 2015**

Good morning, Mr. Chairman and Members of the Council. My name is Patricia Mullahy Fugere, and I am the executive director of the Washington Legal Clinic for the Homeless. The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for *all* residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive.

I appreciate the opportunity to testify before you this morning about the contracting for homeless services here in the nation’s capital. I think it might be helpful to share a bit of history on how the system came to be structured as it presently is. Several years into my tenure with the Legal Clinic, the US Department of Housing and Urban Development in 1993 designated the District of Columbia as one of the pilot sites for a new approach to addressing homelessness. This approach, the “Continuum of Care,” was developed by then-Assistant Secretary of HUD Andrew Cuomo, when he worked in the non-profit sector in New York City several years earlier. HUD was eager to test out this “Continuum” concept in DC, but not so eager to invest federal resources directly in the DC Government. At the time, the city was on the verge of bankruptcy, human services programs were in disarray, and virtually every government program that touched the lives of low-income DC residents was under some sort of court intervention, with receivers, masters and monitors playing more significant roles in managing DC agencies. HUD agreed to invest in DC’s continuum of care *only if an independent, non-governmental organization was established to take on the coordination of the effort*, which became known as the “DC Initiative.”

HUD ultimately designated The Community Partnership (TCP) to play this coordinating role, rather than requiring the establishment of a new non-profit. TCP, HUD and the DC government entered into a three year agreement under which HUD’s Continuum of Care funding, as well as DC’s appropriated funds for homeless services, would flow to TCP, which would then contract out with other non-profits for the direct provision of services. In addition, TCP, with a board of directors comprising representatives of various stakeholder communities, would develop policies governing, as well as programs implementing, the Continuum of Care. I believe the TCP board included representation from federal and local government, business, service provider non-profits, philanthropy and possibly the faith community.



\* admitted only in Australia

From the outset, we had concerns about this arrangement, especially the extent to which a core government function – policy-setting – was delegated to a non-governmental entity. TCP was insulated from the accountability and transparency requirements that should be in place to assure effective oversight. It was not FOIA-able, its meetings were not required to be open meetings, and there was no mandate to seek public comment before developing new policies. We were also concerned that the ultimate decision-making body, TCP’s board, included representatives from some of the non-profit organizations that would be contracting with TCP to provide the front-line services.

Even with these limitations, though, TCP seemed at the time a better alternative than the District government, which had even more serious limitations. In any event, it was to be only a three year effort. While the original agreement did not set out specifically what would happen at the end of three years, we assumed that there would be an opportunity to review the agreement and assess TCP’s performance, as well as the performance of its contractors. Unfortunately, that was not the case, and the arrangement continued on for several years as a “sole source” contract. We pushed for competition and transparency. When a “competitive” bidding process ultimately was established, the solicitation was based upon TCP documents and data, making TCP uniquely (and possibly unfairly) situated to respond to the RFP. The contract responsibilities were so broad, and TCP had performed these duties for so many years, there had been little or no interest amongst other non-profits in taking on the full scope of the contract. In addition, any potential competitors were most likely subcontractors to TCP, and thus understandably reluctant to even try to compete.

Without the threat – or perhaps motivation – of competition, homeless services have not been performed to the standard of excellence that one would hope for this system. I would like to highlight three areas of concern: oversight of subcontractors; payments to landlords in the rental subsidy programs; and operation of DC General.

Briefly with regard to oversight, in more than one instance we have been left to wonder why year after year, subcontracts were renewed by TCP with providers that were racking up scores of complaints and documented violations of the law...why it took scandalous headlines about security guards trading blankets and juice boxes for sex, or Justice Department investigations into disability rights violations, for there to be positive change. We have been left to wonder why some subcontracts remain in place, in spite of serious and repeated deficiencies in performance that have caused real hardship and pain for our clients and many others who struggle with homelessness. We have been left to wonder whether such is the necessary – and unfortunate – consequence when a system is built by an entity that is governed by a board that includes providers that have subcontracts to run parts of that system. The homeless services continuum must not be a system built for the ease of the providers; it *must* be a system built for the well-being of our neighbors experiencing homelessness.

With regard to rent subsidy payments, TCP has responsibility for paying the subsidy portion of the rent to landlords for many individuals and families who have moved out of shelter into programs such as Permanent Supportive Housing and Rapid Rehousing. We have heard of numerous instances over the years in which TCP has paid the subsidy portion of the rent late. I’d like to share with you several of examples that have been highlighted by my legal services colleagues.

Ms. X was a tenant with rapid rehousing who was sued in summer 2013 for non-payment of rent for payments that TCP missed or didn't fully pay - Ms. X had been paying her portion of the rent. Attempts to contact TCP and the case manager were unsuccessful and TCP's portion was never paid. In addition, during the course of the litigation, Ms. X’s rapid rehousing assistance expired but she never received written notice of the expiration. Ms. X’s attorney spoke with TCP and they said

they would reinstate Ms. X as long as they received a recommendation for reinstatement from her case manager. The attorney spoke to the case manager and he said he had already recommended her for reinstatement, but that TCP had denied the request because Ms. X had been in the program for more than a year and had recently lost her job. Eventually, after two years of litigation, TCP ended up extending the client's rapid rehousing, paying its portion of the rent and the client's portion that she had not paid due to her termination from the program (payment made in August 2015).

Ms. Y entered rapid rehousing and later became disabled and lost her job. She was threatened with termination from the rapid rehousing program and, when she reported her decrease in income, her case manager refused to recertify her, so the rent did not decrease. She was sued in Landlord Tenant court. Ms. Y's attorney was finally able to connect with someone at TCP and they paid TCP's portion of the back rent that had gone unpaid because of the incorrect recertification. TCP also assured the attorney that they would pay Ms. Y's portion as well because the collaborative had failed to notify her of the correct rental portion and she was not able to save money accordingly. Despite these promises to pay, TCP did not promptly make the payment but, luckily, the landlord chose not to reinstate the writ because of the attorney's involvement. TCP finally made the payment two months later (May 2015) after several additional emails and phone calls from Ms. Y's attorney.

Ms. B was wrongly terminated from rapid rehousing by her first case management provider, but Ms. B's attorney was able to contact DHS and have her reinstated without having to file a case at OAH. Despite her reinstatement, TCP failed to make any payment on the client's behalf for the next two months. She also went three months without any case management or even an assigned provider. The attorney was eventually able to get TCP to assign a new case management provider and the client received a 4-month extension in the rapid rehousing.

These are just three examples, none of which ended in the tragedy of an eviction, but all of which would have had not a lawyer been involved. We worry about the program participants who never had the opportunity to connect with a lawyer, who may not have fully understood the consequences, or even been aware, of a late subsidy payment.

Regarding DC General, TCP stepped in to take on the contract when Families Forward's contract was pulled after the security guard sex-trading incident. It stepped in at a time when reportedly no other contractor would, and that should be commended. TCP is operating the shelter in a building that never was intended, and truly is inappropriate, for that use; even the very best of providers would be challenged in that setting. Still, we hear reports time and again about physical conditions and lack of services and supports for residents, some of which are in the control of the contractor, and some not. We think that the best way for the Council to learn about how TCP is operating the facility is to observe it directly and to be in conversation with the residents who experience it daily. Ultimately, the solution is to close DC General, and we are grateful that the Bowser Administration is moving forward towards that goal.

We would be remiss to paint a wholly negative picture. TCP does have some dedicated and hard-working staff members who often work against the odds to help homeless residents achieve success.

Looking forward, we suspect that the option year renewals that are before the Council now will be approved. Reluctantly, we urge that approval, because the consequences of a disapproval would be dire, not only for the hundreds of tenants whose subsidies would go unpaid, but especially for those who will

be seeking shelter as the weather turns harsh. A management contract must be in place for the hypothermia system to function.

Thus, our “looking forward” recommendations are really focused on what should happen as the Administration prepares for next year when it can rethink the contract in its entirety. We urge the following.

- The contract should be broken down into smaller components. There is no reason that all of the functions currently in the contract must be performed by the same contractor; in fact the system would be stronger if they weren't. Towards the end of the Fenty Administration, there was a move to break out pieces of the contract. We're not sure what happened to that effort, but hopefully the Bowser Administration will consider something similar.
- Some functions presently performed by TCP can probably be pulled back into the government. We should assure that an emergency system is actually flexible enough to respond to emergencies. This means that some functions should probably remain with an outside contractor, but to the extent DHS has the capacity to take on parts of the system, it should do so. This is no longer 1993, and while our local government is not perfect, it operates far more effectively than it did when TCP was first designated to be the conduit for the DC Initiative. Pulling some functions back into DHS will subject them to requirements of transparency, participation and accountability that are missing from a contracted-out system.
- Policy setting is happening at the Interagency Council on Homelessness, within the Administration and here at the DC Council, so the government need no longer contract out that function to a non-profit entity, especially if a non-profit entity has a self-interested board.
- To guard against self-interest, any entity that the District uses to manage or deliver services within the homeless continuum should have strong internal safeguards against conflicts and the highest standards of accountability.
- In line with DC being a “Human Rights City,” the input of residents who utilize programs that are within the homeless services system is critical. As noted most eloquently by the UN Special Rapporteur on Human Rights and Extreme Poverty, “Poverty has many dimensions, extending far beyond a lack of income to include deprivation of choices, capabilities and power. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation. Lack of participation in decision-making is thus a defining feature and cause of poverty, rather than just its consequence.” The District's efforts to end homelessness will be most effective when they are rooted in the input of DC residents who have a lived experience of homelessness, and when they are based on the belief that these individuals and families know what will be most effective to help them move towards stability.

The Bowser Administration has begun to make progress on some of these fronts already. There have been some changes at the Family Resource Center to bolster accountability, and already DHS is contracting directly with one of the providers at the FRC. The ICH has formed a “consumer” committee to assure that community members who use the services have a real say on how this system unfolds.

Finally, we urge that the Council remain actively engaged in oversight of the homeless services system, to assure that the system is meeting the Mayor's, Council's and community's shared goals. We appreciate your leadership on this to date and look forward to continuing to work with you and the Administration on these important issues.

Thank you, Mr. Chairman, for the opportunity to share these thoughts. I would be happy to answer any questions you may have.