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

# Recommendations on Bill 22-293
# ("Homeless Services Reform Amendment Act of 2017")

**Submitted to the DC Council Committee on Human Services on June 28, 2017**

On May 15, 2017, Mayor Bowser introduced the "Homeless Services Reform Amendment Act of 2017" (the "Bill"), which makes significant changes to the primary law governing the District of Columbia's homeless services system. While a few of the changes proposed in Bill are positive, many of the changes would risk harming extremely vulnerable DC residents. Overall, 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. We bill fundamentally fails to live up to these values.

While an unacceptable number of DC residents experience homelessness, restricting shelter and housing access is not the solution. The root cause of homelessness is the lack of affordable housing in the District. We must focus on policies, programs and funding that preserve and create affordable housing for people with extremely low incomes. Particularly for homeless families, who undergo the most onerous application process of any DC public benefit in order to receive emergency shelter, turning them away from the front door will not solve family homelessness, and will not solve the financial pressures caused by failing to adequately invest in housing. Similarly, narrowing the definition of chronic homelessness and homelessness may get the District closer to its goals to end homelessness on paper, but will do nothing to meet the actual needs of the full population experiencing homelessness.

The following recommendations were developed to provide specific feedback to the DC Council Committee on Human Services on the various changes proposed in the Bill that could harm homeless individuals and families, as well as highlighting some other possible changes to the law that would be beneficial to our clients.

Along with a number of other organizations, the Legal Clinic has attempted to work with DHS on this legislation for several months. A bill similar to the one currently before the Committee was introduced in the fall, and after it was withdrawn by the Administration, there was discussion of making changes before it was reintroduced. We were very disappointed to see that the current Bill is nearly identical to the previous one in its most troubling aspects, and that it actually adds other amendments that are highly problematic. We, along with many other community organizations, had also repeatedly asked the District for specific data to support the need for such changes along with more clarity on the purpose of several of the changes. Data and purpose have shifted multiple times over the last year, sometimes in contradictory and mutually exclusive ways.

The Committee on Human Services held a hearing on the Bill on June 14, 2017. We understand that the Committee is considering a mark-up of the bill on July 12. While we understand that the Administration

believes that these changes are urgently needed, it is important to get this right. With that in mind, we urge the Committee not move forward with mark-up on the Bill prior to the summer recess on July 15. This bill is very complex, coming in at 28 pages and making dozens of modifications to the current law. The potential impacts of these changes are wide-ranging and still not well understood, including, it seems, among those that drafted the language. In addition to substantive policy changes and definitional changes that will impact the entire system, there are drafting and copyediting mistakes throughout the bill that need to be fixed. Even though a number of the proposed changes are deeply concerning to us, we are hopeful that with sufficient time to work with the Committee we will be able to find language that addresses any concerns of the Administration that are legitimate and well-supported, while still protecting individuals and families experiencing homelessness in the District. However, reaching this place of agreement will not be possible before July 15.

The Legal Clinic submits the following recommendations for consideration by the Committee:

**Retain the few positive changes proposed in the Bill.**

There are a few changes that would have positive impacts on the individuals and families that we represent, such as a definition of retaliation, the addition of the client right to assemble, and additional rights to those in permanent housing programs.

*Recommendation* – These changes should be retained by the Committee.

**Ensure that definitional changes do not result in restrictions in who is eligible for critical prevention, shelter and housing programs.**

The Administration has stated they would like to align some of definitions contained in the HSRA with the federal HEARTH Act, including the definitions of "homeless" and "at risk of homelessness," as well as adding a definition of "chronically homeless." Our local government has the autonomy to make different decisions than the federal government about who should be served and what our local values are. We must independently assess the federal definitions and determine whether they change our local practice, and if that's a change that is beneficial or harmful to District residents. We understand that the Administration believes that there is some bureaucratic efficiency to aligning our local definitions, but very little evidence has been provided as to the impact of having unaligned local definitions. In fact, many local jurisdictions choose to have different definitions of homeless than the federal definition. See e.g. MD. CODE REGS. 07.01.19.03(4) ("a resident or residents of Maryland without housing and lacking resources to provide housing."); 760 MASS. CODE REGS. 5.03; N.Y. COMP. CODES R. & REGS. 18 § 800.2(i) ("an undomiciled person who is unable to secure permanent and stable housing without special assistance, as determined by the commissioner"). Additionally, the proposed definitions do not match the HEARTH Act entirely, so this bill would not completely align definitions.

The Administration has stated both that these new definitions will not change our local practice or eligibility for programs *and* that they are critically necessary. Both those statements cannot be true. If our local definitions are exactly the same as the federal definitions, than there is no benefit to providers of aligning our local definitions. If the definitions must be changed because providers cannot certify that all the participants in their program meet the federal definitions, than the federal definitions are narrower than our local definitions and there will be an impact on who DC serves if we align the

definitions with federal law. Bureaucratic ease is not more important than safety and access to lifesaving services for District residents. That is not to say that the struggle of providers who must bill locally and federally is not legitimate. But the District should endeavor to solve that struggle in way that is not at the expense of District residents trying to access services.

If the Committee modifies the definitions to address the concerns discussed below, then our concern about gaps in services will be met. However, then the definitions will no longer be in line with federal law, which was the Administration's stated goal in modifying the HSRA in the first place, and DC law will have more complicated and unwieldy definitions for providers to interpret than the rather simple, common sense ones currently in the law. A better approach, in our view, is to amend current definitions when necessary for clarity (such as defining unaccompanied youth or individuals to ensure that minor youth are included, explicitly including survivors of violence in the definition of homeless, and adding a definition of chronic homeless that matches our current policy and plan to end chronic homelessness). In short, if there is a conflict between ensuring that everyone that is protected under the current law is able to remain protected on the one hand, and the bureaucratic efficiency of identical federal and local law on the other, the District should err on the side of protecting vulnerable individuals and families every time.

*Definition of Homeless*

First, the law changes the definition of "homeless," which determines whether someone is eligible for services in the Continuum of Care. Most critically, the definition of homeless comes into play when determining who has a right to access shelter in severe weather: only District residents who are "homeless and cannot access other housing arrangements." D.C. Code § 4-753.01(c). As you can see below, and by comparing this proposed definition with the HEARTH Act definition (42 U.S.C. §11302(a)), the proposed definition does not completely align with federal law, and will create substantial gaps in services for District residents.

Here is the proposed definition with comments:

**(18)** "Homeless" means:

**(A)** An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

**Comment [AH1]:** The HEARTH Act additionally includes "an individual who lacks a fixed, regular, and adequate nighttime residence" as a separate definition of homeless, as opposed to defining that phrase by these three sections (i, ii, and iii). Fixing this would probably resolve our concern about the definition only being backward looking, and might include people who have just lost their homes that day but have not yet lived in shelter or on the street.

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

**(B)** An individual or family who will imminently lose their primary nighttime residence, if:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, such as family, friends, faith-based or other social networks, needed to obtain other permanent housing;

**(C)** Unaccompanied youth who:

(i) Has not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(ii) Has experienced persistent instability as measured by 2 moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iii) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence, in the household, of a child or youth with a disability; or 2 or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

**(D)** Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, such as family, friends, and faith-based or other social networks, to obtain other permanent housing

**Comment [AH2]:** The 90 day requirement is not in the HEARTH Act and is quite limiting. Removing this language would be helpful, and align it with the statute, although the requirement that the person lived in shelter or on the street before entering the institution is still problematic, because that means that people exiting institutions who were not previously homeless, or could not demonstrate that, would be left on the street on a hypothermic night.

**Comment [AH3]:** This section is very different than the HEARTH Act. For instance it removes a critical section from federal law: "credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause."

**Comment [AH4]:** There is no way to know this in DC. Writs of eviction are good for 75 days and have no date certain for eviction. See http://www.dccourts.gov/internet/documents/writ-of-restitution_civil.pdf.

**Comment [AH5]:** The Administration removed the HEARTH Act language: "and homeless families with children and youth defined as homeless under other Federal statutes."

**Comment [AH6]:** This definition does not seem to cover youth who have just left home for the first time and are seeking the safety of shelter and services.

**Comment [AH7]:** It is unclear what an occupancy agreement is, because that does not exist in DC law. If it means a lawful occupant of a housing unit, than this would seem to exclude anyone who has been living with their family in the last 60 days and has just been kicked out.

**Comment [AH8]:** Again, this seems to exclude from services a person who has just left home for the first time.

**Comment [AH9]:** This language does not align with the HEARTH Act, although it may align with federal regulations. Federal regulations, however can be changed at any time and should not be institutionalized into DC statute.

**Comment [AH10]:** This section seems to require some psychosocial questioning, which is not how our low barrier youth shelter system operates, nor should it. These are inquiries that should occur after the person has entered the safety of a shelter.

**Comment [AH11]:** This is a good addition to our definition of homelessness. Note that here the language includes someone who "is fleeing" in contrast to the above sections that require that the applicant have already experienced homelessness prior to qualifying.

In addition to the specific comments again, we want to reiterate some of the major policy changes that this definition makes:

1. It is backwards looking rather than forward looking. Right now, the relevant question is whether an individual or family has somewhere to go tonight. Under the proposed changes in the Bill, it appears that the relevant questions would have to be "where did you stay last night?" As a

result, District residents would only be considered homeless *after* having slept in an unsafe environment, even on nights where it is below freezing.

2. The current HSRA definition of homeless includes applicants who do not have "safe housing." Housing that is unsafe would include someone living in a building without utilities, or in an apartment where children are at risk due to criminal activity of a host. It does not appear that people in such a situation would be eligible for shelter under the new law.
3. If we are to align DC law with federal law, it should be with the HEARTH Act, not HUD regulations. Regulations are subject to change at any time. It also does not seem wise to hitch our homeless services legal framework onto the whims of a HUD Secretary who believes that poverty is a state of mind.

*Recommendation* – The Committee should only modify the existing definition of "homeless" if these concerns are addressed. If the Council agrees that the front door should not be further restricted, then the law reflect should reflect that understanding. As written, the Bill risks excluding District residents in crisis from shelter in the name of bureaucratic efficiency.

*Definition of "at risk of homelessness"*

We assume that a change in the definition of "at risk of homelessness" will result in a change in eligibility for the Emergency Rental Assistance Program (ERAP) and the Homeless Prevention Program (HPP). More specifically, the Bill changes the definition of "at-risk" of homelessness. These changes would impact the District's "prevention" programs in a number of ways.

Proposed definition with comments:

**(5A)** "At risk of homelessness" means that an individual or family:

(A) Has an annual income below 30 % of median family income for the Washington DC Metropolitan area, as determined by United States Department of Housing and Urban Development (HUD);

(B) Does not have sufficient resources or support networks, such as family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in subsection 18(A) of this section; and

(C) Meets one of the following conditions:

(i) Has moved because of economic reasons 2 or more times during the 60 days immediately preceding the application for crisis intervention assistance;

(ii) Is living in the home of another individual or family because of economic hardship;

(iii) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

**Comment [AH12]:** ERAP eligibility is currently 125% of Federal poverty level ($28,290 for a family of 4)= $35,362.50. 30% of AMI ($108,600 for a family of 4)= $32,580. Therefore, this new standard lowers the income requirement for becoming eligible for ERAP. We are not aware if the HPP program currently has an income cap.

**Comment [AH13]:** It is unclear why the reason for the move can only be economic. Someone who has been forced to move due to conflict is equally in need of homelessness prevention services, particularly since the new HPP program is designed to include conflict resolution services.

**Comment [AH14]:** This written notification does not exist in DC with this date certain. Writs are valid for 75 days. In addition, this would exclude many ERAP applicants who are behind in rent but not yet in eviction court. It is generally less expensive and better for the applicant to start prevention earlier, rather than wait for a writ of eviction.

(iv) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, state, or local government programs for low-income individuals;

(v) Lives in:

(a) A single-room occupancy or efficiency apartment unit in which there reside more than 2 persons; or

(a) A housing unit, as defined by the United States Census Bureau, in which there reside more than 1.5 people per room;

(vi) Is exiting a publicly funded institution, or publicly funded system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(vii) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the District's approved consolidated plan.

*Recommendation* – Modify the definition to comport with current eligibility for prevention programs and DC practices.

*Definition of "chronically homeless"*

There is not currently a definition of chronically homeless in the HSRA. The Bill proposes a new definition of the term and ties it to eligibility for permanent supportive housing (PSH). See 14 DCMR §2536.1 for current eligibility for PSH.

The new definition with comments:

**(6B)** "Chronically homeless" means.

(A) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, in a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, in a safe haven, or in an emergency shelter continuously for at least one year or on at least 4 separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in D.C. Official Code § 21-1201(3)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(B) An individual who:

(i) Has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days; and

(ii) Met all of the criteria in paragraph (A) of this definition, before entering that facility; or

(C) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (A) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

**Comment [AH15]:** This is more restrictive than DC's current practice and could create a disincentive for de-institutionalization and Olmstead compliance. It is also unnecessarily proscriptive and means DC will not have the flexibility to consider these clients on a case by case basis.

**Comment [AH16]:** The adult head of household has to be the one who qualifies to make the family eligible. This is a drastic change in policy and practice. Families who have children with disabilities are eligible for PSH now. They would no longer be eligible under this definition. Nor would they be eligible under the "at risk of chronic homelessness" section because the adult head of household isn't "at risk" of developing a disability that the child currently has.

<u>*Recommendation*</u> – Expand the definition to include more people coming out of institutions and families with children with qualifying disabilities.

*Definition of "permanent housing"*

The proposed definition of permanent housing and comments:

> "Permanent Housing" means housing without a designated length of stay. The program participant must be the tenant on a lease that is subject to the Rental Housing Act, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3501.01 *et seq.*), and to other applicable law, and that is for a term of at least one year, renewable for terms that are a minimum of one month long. Program assistance provided through the Continuum of Care to help clients obtain and maintain permanent housing may be time-limited or ongoing, as determined by assessment.

**Comment [AH17]:** Written leases are not required under DC law to establish a tenancy.

**Comment [AH18]:** Tenants can have month to month tenancies.

**Comment [AH19]:** Defining rapid re-housing is also problematic for eligibility for DC Housing Authority vouchers (because will not be considered "homeless") and other assistance, which will compromise the goals of the program to do progressive engagement.

**Comment [AH20]:** This implies that permanent housing can be time-limited, which is counterintuitive at best, contradictory at worst. With this definitional change, nothing would stop DC from deciding to make PSH assistance time-limited.

<u>*Recommendation*</u> – Take out requirements for a lease. Remove reference to time limits. Separate rapid re-housing out of permanent housing with a separate definition for rapid re-housing.

**<u>Families Should Not Bear the Burden of Proving They Have No Safe Place to Go on Freezing Nights: Assumption of Safe Housing</u>**

The Bill proposes adding a requirement that applicants for shelter than are on a lease or occupancy agreement prove by "clear and convincing evidence" that they cannot stay at that location. There are a number of problems with this standard. This new provision does not just allow the Administration to screen out families who are "couch surfing"—the current law already allows that. The Administration's proposal would just make it much harder, perhaps impossible in some cases, for families to prove that they have no place to go or that the place they have is unsafe by requiring that families provide clear and convincing evidence, even on hypothermic nights. 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.

Clear and convincing is the highest civil burden of proof. Applying it to families in crisis on hypothermic nights subverts the very purpose of the District's right to shelter during freezing weather—to save lives. It will be nearly impossible for many families to meet this burden of proof even if they genuinely have no place to go. For instance, if grandma kicks mom and kids out of the house, and all mom has is her word, mom and children will not get shelter because a statement from applicant alone is likely not "clear and convincing evidence." 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. Forcing a family to elicit evidence that they do not have access to will result in more denials of shelter, i.e. more families in dangerous situations. Even if it were a lower standard, like preponderance of the evidence, 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.

This change also puts domestic violence survivors at risk. While there is an exemption, some may not be willing to identify themselves as domestic violence survivors, nor should they have to in order to qualify for seek shelter. In addition, the screening for domestic violence at Virginia Williams Family Resource Center 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. Requiring identification of domestic violence contravenes federal law and policy. Additionally, there is no exemption for refugees, who may have no, or insufficient, documentary evidence that their country of origin is unsafe.

It is also unclear why this change is needed given that the HSRA was recently amended to add IE based in large part on the Administration's insistence that it was a necessary tool to solve this same problem of wanting to divert families who make have other housing options. DHS now can make Interim Eligibility (IE) placements when an applicant's eligibility is in question, and the family is safe while that process is ongoing. There is no reason that such families should not be placed in shelter on an IE basis and then evaluated for whether they have a safe place to stay.

Finally, this section seems to be premised on a myth 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. No data supports this myth. This provision also affirms a troublesome culture of treating families like they are lying when they seek services.

*Recommendation* – remove this section entirely.

**Lower the Documentation Requirements Substantially to Prove District Residency**

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. The Bill would further restrict who is considered a DC resident, and, by extension, who is eligible for shelter services. As with safe housing, applicants for shelter already have to demonstrate residency under the law, this simply increases the documentation standards and makes it harder to prove residency. The Bill would increase the requirement from one to two pieces of evidence from a new, enumerated list of documents, almost all of which require an applicant to have or have recently had a residential address.

Low barrier shelters operating as severe weather shelters are exempt from residency requirements. In practice, that means the residency requirement is only used for emergency shelter for families and some transitional housing or permanent supportive housing programs. It could also be applied to youth shelter programs, unless they are low barrier severe weather shelter programs. The requirement to prove residency has the most serious consequences for families applying to emergency shelter because the family shelter application process is already incredibly high barrier and burdensome.

The current residency standard 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.

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. 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.

For instance, another aspect of DHS, the Economic Security Administration gives the following guidance on homelessness and residency: "A homeless person who generally resides within District borders is considered a resident of the District. Homeless persons should be encouraged to give a mailing address so that they can receive notices from IMA. However, a mailing address is not a requirement to receive benefits." See ESA Policy Manual, Part IV, Chapter 2, Residency: https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/ESA_Policy_Manual_Combined_Revised.pdf. It also states: "A person must not be denied program benefits because s/he does not reside in a permanent dwelling or does not have a fixed mailing address."

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."

The Bill also removes the ability to establish residency during a 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 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).

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 and does not include refugees.

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.

This section, like the above, codifies unsubstantiated 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. 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.

*Recommendation* – There are a number of changes that could be made to the language of the Bill to ensure that DC residents aren't turned away from emergency shelter simply because they do not have proper documentation:

1. Exempt all emergency shelters from residency requirement during severe weather.
2. Anyone who has been found to be a DC resident by any other DC agency or entity (DC schools, public benefit programs, DMV, etc.) should automatically be considered a DC resident for purposes of the HSRA. DHS should have an affirmative obligation to access government databases to provide this information so the applicant does not have to provide the documentation.
3. If residency is unclear, or documentation is unavailable, DHS should be mandated to place the family in Interim Eligibility while the person either establishes residency or provides sufficient documentation.
4. Only one document should be required, and the list should not be exclusive or should include a catch-all.
5. The exemption for domestic violence survivors, victims of trafficking and refugees should be mandatory, not permissive, and DHS should be required to accept a statement of falling into that category as sufficient proof (consistent with HUD guidance).
6. Parts of the current residency requirement result in injustice now and should be modified. For instance, the requirement that applicants cannot have benefits in other jurisdictions should be amended to clarify that applicants who have taken steps to terminate those benefits (but it has not yet taken effect) are DC residents.

**Require Private Bathrooms in DC General Replacement Units**

There have been many conversations about how many bathrooms are adequate for families in the shelters replacing DC General. Our position remains that the best, most humane thing for families is to provide private bathrooms. Having seen the designs of the replacement shelters, it is clear that 100% private bathrooms are entirely realistic and feasible, and that requiring them will not prevent DC General from closing. Nevertheless, the Administration is seeking to lower the standard even further than it already is, reducing the District's obligations to provide adequate bathrooms for the new family shelters.

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). 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). 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.

While DHS has stated that it believes each shelter will have at least one family bathroom for every two families, not even that standard is reflected in this bill. The designs for the shelters seem to have some public toilets (single, not multi-fixture but accessible to all residents) on each floor, but that is not reflected in this bill.

*Recommendation* – Now that the Council has the designs for each building, it should be easy to do oversight on whether the Mayor is keeping her commitment to "maximize private bathrooms." The legal standard should reflect what percentage that turns out to be, as well as requiring some single-stall bathrooms that are available to all residents on each floor for times when the single use full bathrooms are in use.

**The Administration Should Not Be Allowed to Redetermine Eligibility At Any Point for Any Reason and Due Process Should Be Required**

The proposed change conveys broad power to DHS to terminate people in all types of programs and removes due process protections that now exist for eligibility determinations. The end result would be complete discretion to providers and few client protections such that it would swallow all other protections drafted into the law for interim eligibility, eligibility, transfers, or terminations. A future administration could use this provision to devastating effect, especially given the lack of due process when such determinations are made.

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.

*Recommendation* – This language is too broad, it needs to be removed, with the legitimate issues addressed in other sections. For instance, if the transfer section needs to be clarified to support moving people throughout the continuum when they age out or no longer qualify as a family, we would support that.

**Emergency Transfers Must Remain A Narrow Exception to Due Process Protections**

The Bill adds a new section in the emergency transfer section of the HSRA that provides that "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."

*Recommendation* – The first part makes sense, but the second part is vague and ripe for abuse. This must be further defined or narrowed.

**Notice to Absent Client Should Not Be Interpreted as An Additional Termination Provision**

The Bill adds a section that would appear to be a change to how notice is given, perhaps exempting providers from the requirement to give oral notice if the client cannot be found. As written, it 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.

To further complicate matters, DHS has 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.

*Recommendation* – Tighten up language to make it clear that this is simply an exception to the oral notice requirement in some cases, not a basis for termination.

**Expand and Clarify Medical Respite Sections**

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.

As a result, there is no due process at all for clients in medical respite beds, despite DC homeless services dollars funding those beds. The Bill also 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.

We agree that medical respite beds should be exempted from parts of the HSRA and should be defined narrowly and carefully. The current bill, though, does not fully meet the needs of medial respite providers or the clients in those beds. We recently had a very productive meeting with a variety of stakeholders and will be developing a more nuanced proposal that we think covers the two different models we have for medical respite and clarifies the roles and responsibilities of the various providers and clients.

*Recommendation* – Expand definition to include both programs like Christ House and "hybrid" programs like Pat Handy. Draft new section on rights and responsibilities and decision-making for medical respite beds. Exempt medical discharge decisions from OAH review, but ensure that decisions about rule violations or other terminations will be part of the normal process, with some tweaks. Make sure that medical respite is listed in the Continuum of Care as an eligible activity.

**Emergency Terminations Should Be Very Narrow and Scope and Must Occur Immediately**

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.

This section of the HSRA was supposed to be a small exception from basic due process and the right to be heard before losing access to crucial services such as shelter. The Bill expands the hole in due process, without actually solving the issue that providers are concerned about.

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.

*Recommendation* – Remove the new language. If providers need longer to submit the appropriate paperwork, that is something that can be expanded via regulations. But the emergency termination itself must happen immediately, or it isn't necessary to remove an imminent threat.

**Memorialize Successful Singles Coordinated Entry System, But Do Not Remove Right of Return From 2013 Amendments**

While we support including coordinated entry throughout the HSRA, we do not think that the Council should remove the right to return to PSH from institutions or long absences that was a critical compromise in the 2013 HSRA Amendments. Under this Bill, 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 (because that tenant would score lower on the coordinate entry assessment than he would have pre-treatment). 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.

It is also concerning that 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.

Recommendation—remove the coordinated entry language from the section on discontinuation of PSH. Clarify that eligibility for public programs still must go through rulemaking.

**Use This Opportunity to Fix the Many Problems with the DC Rapid Re-housing Program Rather Than Formalizing the Current DHS Practices That are Failing Families**

The Bill would formalize the worst parts of rapid re-housing while simultaneously degrading due process rights for those participating in the program. Instead of doubling down on the current system, the Committee should use this opportunity to provide basic protections for individuals and families in rapid re-housing.

One of the more troubling provisions of the Bill, the proposed "Program Exits" section, would legitimize DHS's current unlawful practice of terminating rapid re-housing subsides based on arbitrary time limits. § 4-754.36b. The Bill does not contain any protections for families facing this rapid re-housing cliff. As a result, many families with children will continue to be at risk of losing their housing and cycling back into homelessness once again. For example, even if a family's case manager never actually helped them work toward self-sufficiency, the family could still be terminated based on a time limit. Even if their only income was $398 in TANF and their rent was $1200, their rapid re-housing subsidy could still be terminated based on a time limit. Even if their case manager never assessed whether they were eligible for other long-term housing programs, they could still be terminated based on a time limit. To be clear, these situations are not hypotheticals, but rather are a reflection of current practices that are resulting in substantial harm to hundreds of DC families.

Not only would the "Program Exits" section formalize the rapid re-housing cliff, but it would also remove crucial due process rights. As with any adverse action taken against under the HSRA, families can currently appeal time limit terminations to the DC Office of Administrative Hearings (OAH). All such actions may also be reviewed by DHS through its "Administrative Review" process. Under the Bill, families would only be allowed to appeal the termination to the director of DHS, not OAH. § 4-754.36b(c). Regarding the concern of DHS that OAH does not understand their policies or practices, there are two simple solutions that do not involve depriving clients of due process: 1) make sure that the standard in the law is clear and easily administered by a judge and 2) DHS can participate as a respondent in OAH appeals and testify as to why they took the action that did, illuminating their policies and practices more fully.

*Recommendation* – The HSRA should contain clear standards for when a rapid re-housing subsidy can be terminated, as well as protections for families at risk of cycling back into homelessness. The approach taken in the Bill – allowing crucial housing assistance to be terminated based solely on arbitrary time limits – is not sound public policy. Instead, families should be only be considered for termination from rapid re-housing if, at a minimum, they have received proper case management assistance during their time in the program, they has been assessed for other long-term assistance programs, and they are not at risk of cycling back into homelessness again. If a family's rent is more than their entire monthly income, it is not possible for them to remain stably housed after the program ends. The math simply does not add up.

In addition, the Committee should ensure that families can appeal the termination of their rapid re-housing subsidies to an impartial decision-maker. Due process is crucial to ensuring that families who are already on the edge are not harmed by mistakes or arbitrary decisions. Allowing the director of DHS to review the agency's own decisions would subvert fundamental due process by denying families an impartial review of the agency action. Furthermore, the decision of whether to terminate a family's rapid re-housing subsidy should be made based on the standards in the law, not the resource constraints of the agency. At the hearing on the Bill, the Administration acknowledged under questioning that DHS determinations of whether an "exit" was appropriate would be made in part based on resource constraints. Such biases would put families at risk of losing an appeal to DHS even when, under the law, they should not have been terminated from the program. Indeed, recipients of public benefits through any other DHS program, including all homeless services programs, are afforded an opportunity for an impartial review in front of OAH. There is no reason that rapid re-housing participants should have abridged due process rights as compared to every other client of the Continuum of Care.

Finally, the Committee should use this opportunity to make several changes to the HSRA to ensure that families in rapid re-housing can remain safe and stable while they are participating in the program. The two most crucial changes relate to families' rent burden and housing conditions. First, families in the program should be required to pay no more than 30 percent of their income towards their housing costs. This is the standard measure of affordability for housing programs nationwide, but families in rapid re-housing are currently required to pay between 40 and 60 percent of their income toward the rent, not including utilities, which is unsustainable for families with limited incomes. Second, there are

several changes that would help to improve the poor housing conditions that many families face in rapid re-housing units. These changes could include requiring a Housing Quality Standards (HQS) inspection prior to move-in and that a copy of the inspection report be maintained in the client's case file, allowing families to withhold rent if there are housing code violations without risking the termination of their rapid re-housing subsidy, and allowing families to relocate if their health or safety is at risk in a rapid re-housing unit.

**Require DHS to Develop Public, Transparent Rules for Homeless Services Programs that Comply with the DC Administrative Procedures Act (DCAPA)**

The Bill would allow rules for rapid re-housing and other housing programs such as TAH and PSH to be written via contract or non-public agency protocols that are subject to revision by the agency without any input from the public or the Council. § 4-753.01(b)(4). Section 4-756.02 of the HSRA already provides a process and authority for DHS to implement the programs authorized by the HSRA through public rulemakings that comply with the DCAPA and are submitted to the Council for review. DHS is currently operating a number of programs based on rules that were not published in accordance with this provision of the HSRA or the DCAPA, including the rapid re-housing program for single adults as well as TAH. The rules for these programs, such as eligibility criteria and standards for termination, are not easily available to the public and are subject to continuous revision by the agency. The proposed bill would allow DHS to further evade meaningful oversight of how it runs these programs, including by avoiding Council review of its rulemakings as currently required by the HSRA.

*Recommendation* – The Committee should seek to bring these programs out of the shadows. The District needs transparent, public standards on the key elements of its homeless services programs. While it is true that not everything needs to be in a statute or regulation, the basic outlines of these programs (who is eligible, what kind of assistance will they receive, how long will that assistance last, how can that assistance be terminated, what due process rights they have) should be clearly laid out in publically available rules. DHS administers a wide range of public benefits, each of which are subject to these basic standards imposed by the DCAPA. There is no reason that homeless services should have lower standards of rulemaking relative to these other public benefits. Rather than formalizing DHS's current practice of avoiding public rulemakings for homeless services programs, the law should specifically require that the agency issue public rules in the manner prescribed by the DCAPA and § 4-756.02 of the HSRA.

**Address the Most Pressing Concerns Raised by Community Members that Remained Unaddressed in the Bill.**

The following are some suggestions the Legal Clinic has for the HSRA to 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
- 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, including family shelters
- 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 and rapid re-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

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