

Chairman Phil Mendelson
Committee of the Whole
Public Hearing on
Bill 20-198, FY 2014 Budget Request Act of 2013
Bill 20-199, FY 2014 Budget Support Act of 2013
Bill 20-200, FY 2013 Revised Budget Request
Emergency Adjustment Act of 2013
May 3, 2013

Testimony of Marta Beresin

Good morning Chairman Mendelson and members of DC Council. My name is Marta Beresin and I'm a staff attorney for the Washington Legal Clinic for the Homeless (Legal Clinic), where I've worked with and on behalf of homeless families for 13 years. I'm here today to ask you to pull Subtitle D, the Homeless Services Reform Amendment, from the FY 14 Budget Support Act ("BSA").

We ask you to withdraw Subtitle D from the BSA due to serious concerns about the lack of community input and the high risk of unintended and serious consequences to both providers and participants in shelter and supportive housing programs. The Homeless Services Reform Act ("HSRA") amendments have had no community input whatsoever. The HSRA that this Council passed in 2005 was developed by a Workgroup (of which I was a member) that included homeless services providers, Department of Human Services ("DHS") employees, DC residents experiencing homelessness, and homeless advocates. The Workgroup researched and explored best practices, examined current laws and regulations, and drafted the HSRA. There was no attempt to reform the HSRA Workgroup in connection with the proposed amendments, no attempt to discuss the amendments with homeless advocates, and no attempt to engage homeless individuals in discussions around the amendments. Moreover, while the HSRA delegates the policy and planning responsibility for homeless services to the Interagency Council on Homelessness ("ICH"), to date the Amendments have not been distributed to or substantively discussed by that body.

As a result of the lack of vetting, the Amendments contain major drafting errors that we know DHS did not intend. For example, communal shelters such as CCNV and DC General, and supportive housing providers would no longer be able to terminate residents for possessing a weapon or drugs, assaulting someone, or engaging in other criminal activity.

In addition, as currently drafted, the amendments violate Constitutional due process by eliminating several important due process protections that are pillars of the HSRA. Again, in some places this may have been inadvertent – such as removing the right clients currently have to appeal the appropriateness of a Rapid Rehousing referral.¹ Others may have been intentional but are unlawful and could lead to very harmful consequences for our clients. For example, the provisional placement provisions would allow DHS to terminate any family in provisional placement status from shelter with only 24 hours’ notice and with no benefits pending appeal, not only for the narrow basis of failing to verify eligibility but for a wide array of reasons having nothing to do with initial eligibility or prioritization.²

How would this play out? A survivor of domestic violence could be forced, with just 24 hours’ notice, to move to a relative’s home where her abuser had easy access. If she didn’t feel the placement was safe, she’d likely have only two choices – the streets or move to the relative’s home and hope for the best. I don’t think anyone wants to put families in catch-22 situations like this, but that’s exactly what we risk when we deprive families of the due process right to challenge the appropriateness of a housing placement BEFORE they have to move.

The amendments also violate federal disability rights laws by legalizing terminations from housing due to “institutionalization” or “incarceration” for more than 60 days. Ignoring for a minute the questionable policy choice of terminating people from housing for seeking assistance with a crisis, the term “institutionalization” clearly refers to a disability-related placement in a treatment facility, and termination of that client would violate civil rights laws.

We do not believe that DHS or the Mayor intended to bring any harm to families when they introduced this bill. To the contrary, their goals are highly laudable and ones with which we completely agree: for families to move out of

¹ Under current law if a client turns down two offers of “appropriate” permanent housing, they can be terminated from shelter. The new provisions define any offer of Rapid Rehousing (“RRH”) as “appropriate permanent housing”. By making all RRH offers per se appropriate, the language removes the ability of a client to appeal a placement offer as inappropriate in size, accessibility, condition, or for any other reason. From speaking with a DHS representative, we do not believe DHS intended to remove this as a basis for appeal but that this is the product of a hasty, closed drafting process.

² Currently, families have the right to 15 days written notice of a termination of their stay in shelter or housing and, if they wish to appeal the termination, can remain in the shelter or housing in question pending the outcome of a timely filed appeal. The U.S. Supreme Court in Goldberg v. Kelly (1970) held that the due process clause of the 14th Amendment requires that public benefits recipients be given a “pre-termination hearing”, i.e., a hearing before their benefits can be cut off. While it might be constitutional to terminate benefits without a pre-hearing due to a failure to meet the initial eligibility requirements, it’s doubtful that a regular termination (i.e., for violating rules or not cooperating) without a pre-termination hearing (as contemplated here) would pass constitutional muster.

shelter and into housing more quickly, and for families with no safe place to sleep to have access to shelter year-round, no matter the weather. But these goals will not be met by Subtitle D as currently drafted. And we take little comfort in the government's promise to execute these laws in a more limited way than the language permits. The language of our laws is important – they must be written clearly and with basic protections to shield DC residents from harm no matter who is charged with administering those laws many years down the line.

Finally, there's simply no justification, fiscal or otherwise, for moving this legislation via the budget process. The CFO has certified that adoption of the amendments would have no fiscal impact or savings. Thousands of DC residents whose rights and responsibilities would be impacted by these amendments have had no opportunity to learn of the proposed changes, much less to give input to decision makers. We believe that District residents who are homeless deserve the same community process that every other DC resident receives when a major piece of legislation affecting their rights is proposed.

We hope that the Council will unanimously support Councilmember Jim Graham's recommendation to pull the HSRA amendments out of the BSA and reintroduce it as stand-alone legislation. He has committed to move the legislation and anticipates that the law can become effective prior to October 1, so there should be no "service impact" related to the delay (despite the Mayor's threat to close three shelters if these amendments do not pass).

I'm happy to answer any questions as to substance or process related to the amendments. Thank you for the opportunity to testify today.