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A Voice for Housing and Justice

**Testimony before the DC Council Committee on Human Services
Performance Oversight Roundtable on COVID-19 and the DC Department of Human
Services (DHS)
Amber W. Harding
November 18, 2020**

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. My testimony will focus on the performance of the Department of Human Services (DHS) during the COVID-19 pandemic, particularly with regard to homeless services.

The matter of assessing the performance of DHS during the pandemic is a hard one—not because we are unaware of what they have done or not done, but because it is difficult to decide a fair metric for assessing their performance. The hand the agency was dealt was not a fair one. The federal government has bungled its response to the pandemic and failed to provide a coherent blueprint for states to follow. Federal funding has been inadequate and unreliable at times, making planning difficult. Science and recommendations have shifted over time, and have been politicized. The Bowser Administration has made grievous errors itself, taking too long to ramp up testing and even then failing to make testing available to everyone equitably, widening racial disparities in outcomes to COVID-19. Similarly, the Bowser Administration failed to provide funding that DHS needed to adequately respond, and is failing right now to take additional steps to slow the progression of the virus in the community, despite the worsening metrics. DHS is but one agency among many that need to function well and have support of elected officials in order for the pandemic response to be effective at protecting the health and lives of people experiencing homelessness.

The Council played a role in the hand DHS has been dealt as well. They approved a budget that they knew was inadequate to meet the needs. They approved a budget that contained dramatically inadequate amounts of emergency rental assistance to prepare for the lifting of the eviction moratorium, that included nowhere near what is needed for housing resources to move people out of the street, shelters, rapid re-housing or PEPV in order to keep numbers low in shelter. They failed to pass, or even introduce, legislation we drafted to protect the rights and health of our clients during the pandemic, choosing only to introduce and pass the provisions that increased the Mayor's power over the lives of people experiencing homelessness, like extending the Mayor's time to find a family ineligible for shelter without requiring the Mayor to be more flexible on documentation.

And really, that's just the past eight months. If you go back even further, you see that the hand DHS was dealt prior to the pandemic was truly unfair. The hand included

many broken political promises—chronic homelessness did not end by 2017, family homelessness did not end 2019, and all homelessness did not end by 2020, as promised by Mayor Bowser. It included decades of disinvestment in singles shelters resulting in old, dilapidated shelters where hundreds of people share communal sleeping, bathing and eating areas. It included brand new family shelters that Mayor Bowser and the DC Council decided didn't need to be apartment-style, which now means that families are sharing living space and bathrooms during a pandemic. It included a deliberately high barrier family shelter intake system, designed to deter and deny families emergency shelter, and a housing program that cuts people off when they reach an arbitrary time limit, no matter what is happening in the family's world or the world at large.

That's a lot for any agency to respond to. We all knew from experience with other outbreaks of communicable diseases that the virus would spread quickly once it hit the shelters. The first case in DC was March 7. The first case among people experiencing homelessness was March 31. In just one month, over 200 homeless persons were infected.

The first month of this pandemic brought shocking challenges.. DHS had to completely reconfigure all of its services to ensure that people had access to food, water, bathrooms, and basic hygiene supplies. If you remember, it was difficult to obtain basic supplies like hand sanitizer back then. The government wasn't recommending wearing masks to begin with, and even when people in shelters wanted to wear masks, they had a hard time getting them. From what we could see from the "outside," it was all hands on deck, and DHS was working as hard as it could to build systems while executing them, with the floor shifting underneath them as everyone learned more about transmission of the virus.

On our end, we had to rely on DHS to share information with us in ways that we never had before. We weren't allowed to see our clients in shelters or day programs anymore, and many of our clients no longer had access to email or internet when the libraries and day programs closed. They struggled to even keep their phones charged. DHS patiently responded to pages of questions from us on every aspect we were concerned about and later shifted to regular webinars to keep the community updated. We tried to be helpful where we could by contributing solutions, connecting people to resources, and providing feedback when we could. In many ways, I believe that we shared goals and worked together more collaboratively than we had ever done before with this Administration.

In April, it became clear that the actions DHS was taking were not enough to control the spread of the coronavirus in shelters and on the street. On April 24, we sent a letter to the Mayor. At that point 139 homeless people had contracted the virus and 8 had died. Only 112 people had been placed in PEPV at that point. We asked the Mayor to offer non-congregate placements to everyone who was homeless and drastically expand testing. We received no response. We started a petition and sign-on letter making the same demand. It has garnered over 800 individual signatures and 78 organizational signatures.

Some things did change after that. Eventually, the testing protocols and availability of tests caught up with science and best practices. For a long time, people who were homeless could not get tested unless they had symptoms even if they had been exposed to someone who had tested positive. (Note that this was more a Department of Health issue than something DHS had control over.) Eventually, the Administration followed the CDC protocol for unsheltered persons in that they stopped clearing encampments and provided bathrooms and handwashing stations. (The Administration resumed clearing encampments in June, but that was the decision of DMHHS not DHS.) Eventually, DHS

expanded non-congregate placements through PEPV, and now expect to be able to serve up to 650 individuals who are at high risk of dying from COVID-19 if they contract the disease.

By July 1, we finally saw the numbers of cases and deaths stabilize in the homeless population. But at that point 316 people had contracted the coronavirus and 20 had died, a rate far, far higher than the general population. And while it slowed down in July, the rate continues to be higher than any other institutional setting. (For comparison, since July 1 there have been 37 cases and 1 death in the homeless population. At St. Elizabeth's hospital, there have been 3 cases and 1 death. In DOC, there have been 10 cases and no deaths.)

Transmission among people who are homeless may have slowed down because of the increase in PEPV, better testing, lower numbers of people in shelter, and some improvements in cleaning protocols, but they also stabilized at a time that community spread slowed down. Now, DC numbers are starting to rise precipitously. I fear we are about to enter another phase of increased numbers in the homeless population as well. DHS is better prepared than they were the first time, of course, but there are some steps they need to take quickly to prevent tragedy:

1. Secure Appropriate Shelter for a Pandemic Hypothermia Season

DC has kept its numbers lower lately in no small part because people have been choosing to sleep on the street instead of in shelters due to their fearing of contracting the virus, and because people have been turned away when the shelters hit their reduced capacity (reduced to achieve some semblance of distancing). Hypothermia season will change that, both because more people tend to come in off the street to avoid frostbite or hypothermia and because people have a right to shelter when it is freezing outside. People shouldn't have to choose between hypothermia and COVID-19—so winter shelters need to be low barrier spaces that have low risk of virus transmission.

Unfortunately, the Winter Plan did not seem to make much headway at securing locations that are appropriate for this pandemic winter. First, there is not one non-congregate setting in the plan. Second, of all the shelters listed, only one co-ed and two women's shelters will have fewer than 50 people residing there. The Mayor has ordered DC residents not to congregate in groups greater than 50 in order to control the spread of the virus. If it is unsafe for DC residents to congregate even for short time periods in groups greater than 50, why is it safe for homeless persons to live 24/7 in an environment with a group of people that is greater than 50?

DHS should secure hypothermia shelter options that are 1) smaller (fewer than 50 persons) and 2) non-congregate.

2. Secure Additional PEPV Sites and Bring All Sites into Legal Compliance

Even though DHS has expanded PEPV and will soon be able to serve up to 650 individuals, there is still a waiting list and we know that the number of people who are "high risk" is much greater than 650. To prevent those individuals from serious complications or death in the second wave of the virus, DHS should expand PEPV until every high-risk person is placed.

As much as we support the expansion of PEPV, though, we do not endorse the position DHS has taken—that PEPV is not an Homeless Service Reform Act (HSRA)-covered program. While our position is that it is clearly an HSRA-covered program (see attached letter), the

bottom line is that DHS cannot operate a government-funded and controlled program without due process for its residents. They can comply with the HSRA or they can set up a parallel system of due process for appeals of adverse actions, but PEPV cannot be a blackhole of legal rights for its residents. High risk individuals should not have to jettison all of their rights to transparency and accountability just to survive the pandemic. (DHS, unfortunately, has a long, troubling history of trying to get out of providing basic constitutional rights to shelter applicants and residents.)

DHS needs to expand PEPV and bring all sites into compliance with due process or the HSRA. If they do not voluntarily come into compliance, the Council needs to amend the emergency authorization for PEPV to clarify that it is an HSRA-covered program.

3. Make Family Shelter Access Low Barrier for the Duration of the Pandemic

At the beginning of the pandemic, DHS came to the Council and asked for authority to extend Interim Eligibility decisions past the end of the public health emergency. They also shifted to a phone system for intake, since the Virginia Williams Family Resource Center building was closed. I was told by Director Zeilinger that they would increase their use of Interim Eligibility to place families who could not provide verification that they had no safe place to go. If they ever enacted that policy shift, they did not do it well or consistently, because families are still regularly being turned away when they say they have no safe place to go if they don't have the exact documents that Virginia Williams requests. This high barrier, unlawfully run, intake system is dangerous to families every day, but during a pandemic it is particularly cruel.

This week we had a case where the applicant was told that Virginia Williams would not process her application for shelter unless she brought in the lease of her grandmother, who she last stayed with in 2017 and who has since passed away. She and her three children slept in a car after being denied shelter. Not only is this shelter denial inconsistent with how DHS has said they will operate during the pandemic, it is in violation of the HSRA—which does not allow DHS to require that someone bring in a lease to prove they are not on it. (The burden is on DHS to prove that someone has a safe place to go, not on the applicant to prove that they do *not* have a safe place to go.)

While not unlawful, the practice of denying families shelter who have one night with a friend or family member also puts families, and our community, at risk during the pandemic. Even when DC had a stay-at-home order, homeless families were forced to stay with any stranger or friend who would agree to host them before they could enter shelter. As a result, families are forced to risk their own health and increase community transmission before they exhaust those temporary placements and are finally placed in shelter. At that point, if they have been exposed, they are bringing the virus to the family shelter.

DHS needs to recommit to a low barrier family shelter intake system during the pandemic, stop requiring families to stay with different households before being found eligible, and bring intake into compliance with the law.

4. Prioritize Funding for Permanent Housing to Ensure Housing Stability and Safety

We all know that DHS does not have enough permanent housing subsidies to move people out of PEPV into permanent housing or to move people out of Rapid Re-housing into permanent housing, much less the resources to prevent a tsunami of evictions and

homelessness once the eviction moratorium ends. We very much support the commitment of DHS not to terminate anyone from rapid re-housing during the public health emergency, but we know that fiscal pressure is building within the agency as the program's costs balloon, and we would like to see that pressure relieved with permanent housing, not terminations.

This pandemic has laid bare the core flaw of rapid re-housing: its arbitrary time limit leaves no room for crisis. DHS was quick to decide that it would be unfair and unwise to terminate families when a global pandemic interfered with a family's ability to increase their income and afford market rent. We agree. But the speed and clarity of that decision stands starkly in contrast with their refusal to consider a more individualized time limit policy for families in the program. The COVID-19 pandemic is not the only factor outside of families' control. What about the lack of available jobs that pay enough for families to be able to afford rent? Lack of affordable childcare? Lack of affordable education? Lack of affordable housing or meaningful rent control policies? Centuries of systemic racism? Individual decisions or motivation are not primary causes of lack of housing stability, so cutting families off from support before they can afford the rent is unjust, pandemic or no.

Ensure sufficient permanent housing and eviction prevention resources to ensure housing stability during and beyond the public health emergency.

Thank you for the opportunity to submit testimony on this important issue. I look forward to working with the agency and the Committee to ensure the safety and legal rights of people experiencing homelessness during the COVID-19 pandemic and beyond.