

**HSRA Regulations Subcommittee on
Legal Issues: Consistency in Legal Requirements, Waitlists,
Termination, Fair Hearings, and Administrative Review**

**Tuesday, December 18, 2007
9:30 – 11:30 AM**

MINUTES

Moderator: Ellen Chung, Hogan & Hartson, LLP

Secretary: Kendra Berner, Hogan & Hartson, LLP

Attendees: See Appendix

Location: Catholic Charities, 925 G Street, NW

Background

The purpose of this subcommittee meeting was to identify and prioritize legal issues relating to requirements and procedures for waitlists, emergency and non-emergency terminations, suspensions, and transfers, fair hearings and administrative review, and consistent requirements among applicable laws.

Topical Issues

The subcommittee raised the following topical issues that will be addressed in greater detail in future subcommittee meetings:

1. Clarify Terms Defined in the HRSA. The subcommittee determined that certain terms need to be clarified:
 - The definition of “family” in the Emergency Rules tracks the HRSA definition and includes a group of individuals with at least one minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit. It is not clear, however, what “dependent child” means. The phrase “intend to remain together” also is problematic if a family is separated but wants to be together.
 - Under section 2508 of the Emergency Rules, a provider may terminate delivery of services to a client if, among other things, the provider made “reasonable efforts” to help the client overcome obstacles to obtaining permanent housing. Providers need clarification as to the meaning of “reasonable efforts,” which may differ along the Continuum of Care (e.g., low barrier shelters versus transitional housing).
 - Clarify the meaning of “imminent threat.” *See next section.*
 - Clarify the meaning of “homelessness.” *See section 9.*

2. Emergency Termination. Emergency termination was an issue of particular concern, and the subcommittee raised several issues for follow-up:
 - Determine whether emergency termination applies to all programs in the Continuum of Care. For instance, if landlord/tenant laws apply, it would be unlawful for the provider to immediately terminate a client.
 - Clarify what actions will constitute “imminent threat” and trigger the provider’s authority to immediately terminate a client. The subcommittee recognized, however, the potential problem of interpreting “imminent threat” (defined as an act or credible threat of violence at the shelter or supportive housing facility) either too narrowly or too broadly.
 - Consider whether a different response is needed to address escalating incidents or dangerous confrontations.
 - Provide guidance to providers for training staff members to handle emergency termination. For instance, an incident occurring at night or over the weekend may require quick decisionmaking, but also need follow-up investigation.

3. Transfers. Several open issues were identified with respect to transfers:
 - Prioritization
 - Family reunification
 - Client safety
 - Accessibility of features based on the client’s needs (e.g., accessibility for the handicapped)
 - Health concerns
 - Transfers of persons violating the HRSA

4. Non-emergency termination and abandonment. The subcommittee acknowledged that different standards for abandonment apply as you move along the Continuum of Care. For instance, a 10-day absence likely would be considered abandonment for shelters but not for supportive housing. Thus, it may be more appropriate to tailor the standards for abandonment (e.g., how long a bed should be held for a client; decisions relating to a client’s property) by program in the provider’s program rules. Other issues identified for follow-up include:
 - Provide guidance to providers for training staff members to handle incidents that may be grounds for termination, suspension, or transfer.
 - Provide different timelines of abandonment for families versus individuals.
 - Develop procedures for notifying absent clients of termination decisions.
 - Determine whether a client’s termination from one provider would bar the client from other shelter or housing options if a centralized system were adopted.

5. Appeals process. The primary concern raised by the subcommittee is the time it takes to appeal a provider determination (e.g., termination, suspension, transfer, termination of services, removal of clients from waitlists) through fair hearings and administrative review. Providers are experiencing significant delays in the appeals process, which may impact other clients. A client’s conduct may not rise to the level of “imminent threat” and therefore justify emergency termination, but if the objectionable conduct continues pending the outcome of the appeals process, other clients may be placed at risk. There are concerns that repeat offenders will “tie up” the process by continuously appealing provider determinations. At the same time, it is not clear what options providers have to address “difficult” clients during the appeals process. With these issues in mind, the subcommittee offered the following proposals:

- Consider steps to improve and streamline the timeframe for the appeals process.
 - Consider developing a better integrated system for transferring “difficult” clients, with suspension as a meaningful step.
 - Provide guidance to providers as to what documentation should be presented, and clarify what timeframe the documents should capture. For instance, providers may be requested to provide for an administrative review only those documents from the past three years, but there may be records further back in time that may be relevant for the review.
6. Consistency of laws. The subcommittee acknowledged the lack of clarity about the intersection of different laws, which may vary by program. One issue was clarified by DHS: the term “supportive housing” includes permanent supportive housing, which is also covered by the McKinney-Vento Act (re: HUD-funded programs).

Matters for follow-up include:

- Clarify how different laws intersect and work with each other. For instance, how do landlord/tenant laws apply to HRSA-covered programs?
 - Develop procedures for notifying clients and providers as to what laws apply to them.
 - Grievance procedures:
 - Depending on the program, more than one set of grievance procedures may apply (e.g., HUD, ADA, HRSA, and provider’s internal procedures) and clarification is needed to determine if all procedures apply, and if so, whether they can be implemented concurrently. Issues to be considered include the following:
 - Clarify which grievance procedures apply to which programs.
 - Clarify how multiple grievance procedures are to be implemented in relation to each other.
 - Provide guidance to providers to develop internal dispute resolution procedures.
 - Develop regulations to separately address the compliance and complaint process.
 - ADA compliance:
 - Provide guidance about accommodating disabled clients in accessible programs.
 - Develop procedures for notifying clients of options to transfer to a more accessible shelter.
7. Sex Offenders. The subcommittee determined that providers need guidance on the following matters:
- Clarification of what steps, if any, providers may take to protect clients when sex offenders are housed in family shelters.
 - Explanation of the providers’ obligations, if any, for protecting the status of sex offenders.
8. Youth Shelters: The subcommittee will consider how to integrate youth shelters in the Continuum of Care.
9. Waitlists and Eligibility. The subcommittee identified waitlists and eligibility for shelter or housing as issues to consider:
- Develop procedures for managing the waitlist and identifying clients who are in real need of shelters versus which clients have several options.
 - Develop procedures for notifying clients about vacancies in shelters and housing.
 - Consider a central intake process for all programs.

- Clarify the eligibility criteria for “homelessness” with respect to different programs in the Continuum of Care. In particular, clarify what “lacking the financial ability” to acquire a residence means.

Wrap Up

The subcommittee prioritized the first set of issues to be addressed in future meetings:

- *Definitions*
- *Emergency Terminations*
- *Appeals Process*
- *Transfers / Suspension*

APPENDIX

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List of Attendees

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