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COALITION
FOR THE HOMELESS

MLRI MASSACHUSETTS
LAW REFORM
INSTITUTE

To: Interested Parties

From: Ruth Bourquin (MLRI) and Kelly Turley (Massachusetts Coalition for the Homeless)

Date: November 20, 2012 – Updated on November 26, 2012

Re: DHCD's Changes to "Final" Emergency Assistance (EA) Regulations and Guidance

Introduction

On November 20, 2012, we received from DHCD a memorandum outlining certain changes they intended to make to the emergency EA regulations and related pieces of Guidance before they became final on November 23, 2012. Although DHCD did not make them available, we also received from a third party the actual language of the revised regulations and guidance.

As discussed on November 20, 2012, a few of the planned changes are very important and meaningful, for which we thank the Administration. But the proposal on the key issue of "imminent risk of having to stay in a place not meant for human habitation" is unsatisfactory and will continue to leave too many children at risk. Indeed, at a meeting on November 20 and in subsequent correspondence, DHCD admitted that some of the purported changes, as written, will have no substantive effect. In particular, they clarified that they are not adding eligibility even for families with a child under the age of 6 months or those with medical conditions or disabilities who are at imminent risk of staying in a place not meant for human habitation. They also clarified that the new language referencing the State Sanitary Code is so limited that it adds nothing new. As explained below, this means that families at imminent risk of staying in a place not meant for human habitation are still not eligible for shelter placement.

For this reason, we urge the Legislature to mandate additional changes to keep at-risk children safe.

1. "Imminent risk of staying in a place not meant for human habitation."

In its memorandum entitled "Further Actions to Strengthen the Safety Net for Homeless Families" dated November 19, 2012, DHCD states on page 2 that certain families at "imminent risk" of having to stay in a place not meant for human habitation will be referred for a health and

safety assessment. Certain interested parties read this as if it meant that these families would be eligible for emergency shelter. Sadly, this is not the case.

Under Housing Stabilization Notice 2012-06B, the only families at “imminent risk” who will be referred for an assessment are: (a) those with a child under the age of **6 months**, (b) households with a family member with a documented **medical condition or diagnosed disability**, and (c) those in double up situations in which the presence violates the lease **and** there is documentation that the landlord will take action to terminate the tenancy if the homeless family remains. These categories leave out most homeless families with children whose health could be severely impaired by staying in a place not meant for human habitation.

But, even more importantly, based on a review of the actual language of the Notice, as well as subsequent communications with DHCD, it is now clear that **DHCD is not agreeing to confer eligibility on any families based on imminent risk of staying in a place not meant for human habitation.** While some families will be referred for an “assessment,” they will not be placed in shelter unless and until they stay in a place not meant for human habitation, even if the assessment confirms they are at imminent risk of staying in such a place.

On the other hand, DHCD officials have said that if a family has verification that a household with which the homeless family is “doubled up” is at risk for eviction, the homeless family can access shelter on the grounds they are engaged in an “irregular housing” situation. This is a positive policy change, but even this protection is not contained in the actual regulations.

While we appreciate that the Administration has made some movement with respect to “double-up” situations that threaten tenancy, we remain extremely concerned that families who have no place to “double up” still have to sleep in a place not meant for human habitation *with their children* before they are eligible for emergency shelter.

We urge the Legislature to amend the EA line item (7004-0101) to require DHCD to provide shelter to families “at imminent risk of staying in a place not meant for human habitation.”

2. Positive Changes.

A. The regulations are being amended to provide:

1) that a family **evicted for purely no fault reasons** can be eligible for shelter without first staying in a place not meant for human habitation or engaging in irregular housing, 67.06(1)(a)3.e; and

2) that the **exhaustion of time limits in a time-limited emergency family homeless shelter not funded by EA qualifies as “irregular overnight sleeping situation.”** As confirmed by DHCD officials at a meeting on November 20, this should cover the end of stays in motels paid for by Travelers Aid, regional networks, faith community groups and others.

B. Certain sub-regulatory Guidance is also being amended as follows:

1) DHCD sub-regulatory Guidance on Domestic Violence is being amended to allow required third-party professional documentation to be dated close in time to the EA application even if the domestic violence that was fled occurred more than 60 days before the application. To avoid confusion, we would continue to suggest that DHCD simply remove the language about requiring documentation “dated close in time to the domestic violence incident” on page 7 of the Notice 2012-07A, instead of keeping that requirement and then creating a fiction that more recent documentation meets that standard.

Most importantly, the DV Guidance has not yet been amended to allow crediting of a domestic violence survivor’s own declaration of the violence or of statements by family members, friends, neighbors or other third parties who do not meet the definition of a “professional” yet have knowledge of the violence.

2) As noted above, a new provision has been included in new Housing Stabilization Notice 2012-06B saying that a family that is being kicked out of a “double-up” because their presence violates a lease and can document that the landlord will take action to enforce the lease will be referred for an “assessment.” Although not stated in the Notice, DHCD says such families will be eligible for shelter. This is a positive policy change, but is too limited. For one thing, it is not in the regulations. For another, **many host tenants will reasonably not want to tell their landlords that they have violated the lease by having guests. Proof that the presence of the EA applicant family violates the lease should be enough.**

3) Former homeowners who were foreclosed upon and then evicted may qualify under the “no fault” eviction provisions but only if their foreclosure was based on failure to make mortgage payments due to decreased income within the past 12 months or due to a disability or medical condition. **No provision is made to confer eligibility on victims of predatory lending.**

3. New Reference to the State Sanitary Code.

In its November 19 memorandum, DHCD emphasized that the regulations will be revised to say that a double-up housing situation will qualify as a significant threat to health and safety if it qualifies as “unfit for human habitation” pursuant to the State Sanitary Code, 67.06(1)(f)6.d.(iv). However, at a meeting on November 20, DHCD expressed the view that this change is largely meaningless because it is not intended to cover those subject to Sanitary Code violations such as severe overcrowding. Those covered by the new language are already covered by the language concerning housing situations not meant for human habitation.

Conclusion

We thank the Administration for making a few positive changes and Legislators for helping to make them happen. But we look forward to continued dialogue and further, much-needed changes, particularly with respect to families at “imminent risk of staying in a housing situation not meant for human habitation.”