



Massachusetts Department of Housing and Community Development
Division of Housing Stabilization

To: DHCD Field Staff

From: Ita Mullarkey, Associate Director 

Date: July 23, 2015

RE: Housing Stabilization Notice 2015-02, Changes to the Noncompliance Process

This Housing Stabilization Notice (HSN) is intended to provide guidance to Emergency Assistance (EA) program staff and contractors on changes to the Noncompliance Process arising from the settlement in *Hayes v. DHCD*¹. This notice supersedes and renders obsolete Housing Stabilization Notice 2013-04, *Changes to the Noncompliance Process*.

Introduction

As a consequence of the *Hayes* litigation settlement, there have been a number of changes in the EA regulations², and the Uniform Shelter Program Rules. There are no longer separate Hotel Rules, as they are now incorporated into the Uniform Shelter Program Rules (USPRs). Any violation of the USPRs counts as a noncompliance, and three noncompliances result in a termination.

This HSN outlines the ways that noncompliances are processed in family shelters and hotels. Because the interactions between families and staff are closer in family shelters with trained staff than they are in hotels, the process is somewhat different in each setting, as outlined below. That is why different forms are used to report on incidents in each setting. Although there are some differences, a summary of the basic process in both settings is as follows: Shelter or hotel staff report incidents that they believe may be noncompliances by an EA participant to the Central Office Noncompliance Unit. The Noncompliance Unit contacts the EA program participant to solicit his or her side of the story. After considering the initial submission from the family shelter or hotel and the participant's side of the story (or reviewing the allegations from shelter or hotel staff without the participant's story if none is submitted timely), the Noncompliance Unit determines whether to issue a notice to the participant. The notice can be a Notice of Noncompliance for a first or second incident, a Notice of Termination for Third Noncompliance, or a Notice of Termination for Criminal Activity. After a notice has been issued, the participant can appeal the notice to the Hearings Division.

As of January 2, 2015, the following forms are discontinued and should no longer be used:

¹ *Docket No. 13-H-79CV-000108* (Housing Ct., Western Div.)

² 760 CMR 67.00

- Form HM-NT, *Notice to EA Families Placed in Hotels/Motels*
 - * This form detailed rules that applied only to EA participants placed in hotels. It is no longer necessary because the hotel rules have been integrated into the USPRs.
- Form HM-IR-2, *Family Response to Report of Violation of Emergency Assistance Rules in a Hotel*
 - * This form allowed EA participants to respond to the allegations made on a Form HM IR-1 by hotel staff of a rules violation that did not constitute a noncompliance. This form is no longer necessary because the *Hayes* settlement provides that all rules violations are now noncompliances.

The following forms modify older versions of similar forms that have been re-named and replaced. Only the new version of these forms, as included in the appendix to this HSN,³ should be used:

- Form EA-NDR/USR-1, *Noncompliance/Termination Determination Request/Notice of Infraction of Uniform Shelter Rules*⁴
 - * Part I is used by family shelters to forward requests for noncompliance to the Central Office Noncompliance Unit. Part II allows the EA participant to respond to the allegations of a noncompliance made by shelter staff in Part I.
 - * This form combines the former Form EA-NDR, *Noncompliance/Termination Determination Request*, and Form USR-1, *Notice of Infraction of Uniform Shelter Rules*.
- TES-NN-13, *Notice of Noncompliance*
 - * This form is issued to an EA participant by the Central Office Noncompliance Unit when it determines that a first or second incidence of noncompliance has occurred.
 - * This form updates and replaces the Form TES-WN-13, *Warning Notice of Noncompliance*.
- Form NFL-TT, *Notice of Termination of Temporary Emergency Shelter for Third Noncompliance*
 - * This form is issued to an EA participant by the Central Office Noncompliance Unit when it determines that a third incidence of noncompliance has occurred.
 - * This form updates and replaces the Form NFL-ST, *Notice of Termination of Temporary Emergency Shelter for Second Noncompliance*.

³ These forms may be updated in the future. If they are, please use the most recent version issued by DHCD.

⁴ In the future, this form may be referred to in abbreviated form as the "Form EA-NDR." It is important to note that this is not just an update of the old Form EA-NDR, but a combination of the functions of the old Form EA-NDR and the old Form USR-1.

- Form NFL-CA, *Notice of Termination for Criminal Activity*
 - * This form is issued to an EA participant by the Central Office Noncompliance Unit when it determines that an EA participant or family member has committed criminal conduct that threatens health or safety.
 - * This form updates and replaces the Form NFL-ST/CA, *Notice of Termination for Criminal Activity*.

The following forms have been updated to address the changes in the noncompliance process without changing the name of the form. EA program staff and contractors need to ensure the updated versions of these forms are used:

- Form TESR-1&3, *Participant Responsibilities while in a Temporary Emergency Shelter*
 - * This form is provided to EA participants at intake to inform them about their responsibilities while in the EA shelter system and the consequences for failure to follow the rules.
- Form HM IR-1 *Report of Violation of Uniform Shelter Program Rules or Emergency Assistance Regulation, or other serious incident*
 - * This form is used by hotel staff to forward requests for noncompliance to the Central Office Noncompliance Unit.
- Form HM IR-3, *Family Response to Request for Noncompliance Determination in a Hotel*
 - * This form allows the EA participant to respond to the allegations of a noncompliance by hotel staff made on a Form HM IR-1.

A list of the forms related to the noncompliance process, in chronological order based on the processing of a standard noncompliance request, is attached to this HSN as an appendix.

The noncompliance process is as follows:

For families in shelter - The EA-NDR is prepared by shelter staff, with a response to be submitted to the EA Central Office Noncompliance Unit.

For families in hotels/motels - The HM IR-1 is submitted to the Noncompliance Unit by the hotels/motels. The Noncompliance Unit then forwards the HM IR-1 to the EA participant with a blank Form HM IR-3, requesting that the participant respond directly to the Noncompliance Unit with defenses and explanations on the Form.

If the Noncompliance Unit determines that a family has violated the Uniform Shelter Rules, the Noncompliance Unit shall issue:

- A Notice of Noncompliance on Form TES-NN-13, or
- A Termination Notice for Third Noncompliance (Form NFL-TT), depending on the prior conduct of the family, or
- A Termination Notice for Criminal Activity (Form NFL-CA)

Discussion

Every separate incident should be written up as a separate rules violation. An incident is a single occurrence that takes place at one time, in one place, that results in at least one rule violation, even though more than one rule may be violated at the same time. Violations should not be allowed to accumulate before a rules violation notice is issued. If a violation is of a continuing nature (such as when an EA participant fails to store medications properly for several days), each day that the violation continues is considered a separate incident. All rules violations potentially applicable to an incident should be checked off on the rules violation form.

If the facts of a single incident could justify action under multiple violation levels (rule violation, health or safety, or criminal conduct), the person reporting the incident should write up the incident under each level that might apply. The Noncompliance Unit will then review to determine which level is most appropriate, given the alleged facts and the law.

For example, if there is an altercation involving unwanted physical contact by a member of an EA participant family, the incident should be written up as a request for a Notice of Noncompliance, a rule violation, conduct posing a threat to health or safety, and a Notice of Termination for Criminal Activity.

Response Process for Families Placed in Hotels

Noncompliance Requests

All noncompliance requests arising from conduct of hotel families must be submitted to the Noncompliance Unit on a revised HM IR-1 form. Incomplete or missing forms must be submitted prior to the Noncompliance unit taking any action.

When the HM IR-1 is received, the Noncompliance Unit will forward that HM IR-1 directly to the EA participant with an HM IR-3 response form. The Noncompliance Unit will ensure that the person who delivers the HM IR-3 response form to the EA participant checks the correct box referring to the method of delivery and signs and prints his or her name, title, and the date of delivery.

The HM IR-3 instructs families to contact their Homeless Coordinator or FOR Families worker with questions regarding filling out and returning the response form. Homeless Coordinators and FOR Families workers should be ready to advise and assist families in understanding and taking advantage of the opportunity to tell their side of the story before a notice is issued. A participant is given 7 business days to respond, if the HM IR-1 and HM IR-3 were mailed, or 3 business days to respond if delivered by hand.

Upon request by a member of an EA participant family, hotels/motels must promptly fax responses on Form HM IR-3 to the Noncompliance Unit at no charge to the family and provide the family with a confirmation of receipt.

The Noncompliance Unit will maintain a log of the date that the Form HM IR-3 was delivered to the participant, the method of delivery, and when the response is due. The Noncompliance Unit will enter into the log whether a Form H/M IR-3 response was received and, if so, the date it was received, , or if no timely response was received. The

Noncompliance Unit will review any HM IR-3 responses together with the Form HM IR-1 and any supporting documents in determining whether to issue a notice of noncompliance or a termination notice.

After the Noncompliance Unit receives a completed noncompliance packet, if timely submitted, or the time for an HM IR-3 response has passed without a response having been received, the Noncompliance Unit reviews the packet. If, on review, the Noncompliance Unit determines that (1) the documentation provided by the party submitting the HM IR-1 is insufficient to substantiate by a preponderance of the evidence that a member of the participant family or guest committed a rule violation, a rehousing violation, a health and safety violation, or criminal conduct, or (2) the response provided by the participant is adequate to lead to a determination that a violation did not occur, the Noncompliance Unit will make a note to that effect on the H/M IR-3, date and sign the note, and forward a copy to the EA participant.

If, on review, the Noncompliance Unit determines that (1) the documentation provided by the party submitting the HM IR-1 is sufficient to substantiate by a preponderance of the evidence that a member of the participant family or guest committed a violation, and (2) that the response provided by the participant, if any, is insufficient to support a good cause or other defense or an adequately supported explanation that a violation did not occur, the Noncompliance Unit will issue a Form TES-NN-13 for a first or second noncompliance, a Form NFL-TT for a termination for a third noncompliance, or a Form NFL-CA for criminal conduct. A copy of the form will be provided to the EA participant.

Response Processes for Families in Shelters

All noncompliance requests arising from conduct of shelter families must be submitted to the Noncompliance Unit on a revised EA-NDR form except in the case of a Serious Incident Report Form, discussed in greater detail below. Incomplete or missing EA-NDR forms must be completed and submitted prior to the Noncompliance unit taking any action.

The completed Form EA-NDR, and any supporting documentation, should be submitted by the shelter staff directly to the Noncompliance Unit. At the same time, shelter staff should provide a copy of the same documentation to the EA participant. A family served with a Form EA-NDR may request assistance in filling out the form from the family shelter staff. If requested by the EA participant, family shelter staff will fax the Form EA-NDR response pages to the Noncompliance Unit, or the participant can choose to fax, mail, or email the form directly to the Noncompliance Unit. A participant is given 7 business days to respond, if the EA-NDR form was mailed, or 3 business days to respond if delivered by hand.

Upon receipt of a Form EA-NDR from a shelter with a blank response page, the Noncompliance Unit will log the date that the Form EA-NDR was delivered to the participant, the method of delivery, and when the response is due. The Noncompliance Unit will enter into the log whether a Form EA-NDR response was received and, if so, the date it was received. If no timely response was received, the Noncompliance Unit will note that in the log. The Noncompliance Unit will review any EA-NDR responses

together with the shelter-provided Form EA-NDR and any supporting documents in determining whether to issue a notice of noncompliance or a termination.

If, on review, the Noncompliance Unit determines that (1) the documentation provided by the party submitting the EA-NDR is insufficient to substantiate by a preponderance of the evidence that a member of the participant family or guest committed a violation or (2) the response provided by the participant is adequate to lead to a determination that a violation did not occur, the Noncompliance Unit will make a note to that effect on the Form EA-NDR, date and sign the note, and forward a copy to the EA participant, and shelter staff ?.

If, on review, the Noncompliance Unit determines that (1) the documentation provided by the party submitting the Form EA-NDR is sufficient to substantiate by a preponderance of the evidence that a member of the participant family or guest committed a violation, and (2) that the response provided by the participant, if any, is insufficient to support a good cause or other defense or an adequately supported explanation that a violation did not occur, the Noncompliance Unit will issue a Form TES-NN-13 for a first or second noncompliance, a Form NFL-TT for a termination for a third noncompliance, or a Form NFL-CA for criminal conduct. A copy of the form will be provided to the EA participant and the shelter staff.

Serious Incident Report Forms

Serious Incident Report forms should be submitted by family shelters when a serious incident occurs, as they have been historically. In hotels, the HM IR-1 serves this purpose. Serious incidents warranting submission of a Serious Incident Report include cases when a significant or concerning incident occurs that is not adequately covered by requesting a termination for criminal conduct or a noncompliance for a USPR violation or a threat to health and safety. Circumstances in which a family shelter might issue a Serious Incident Report include: (1) incidents involving EA participants placed at a family shelter when shelter staff are not sure whether an EA rule or regulation was violated or which rule might have been violated; (2) incidents involving two or more EA participants placed at a family shelter when it is not clear to shelter staff who was the perpetrator or instigator of the incident and/or whether other EA participants involved reacted appropriately or inappropriately in response; (3) incidents involving non-EA participants whose activities on or near shelter premises caused concern for the health and safety of EA participants placed at the family shelter or to shelter staff or visitors; (4) any time when an incident at a shelter is reported to the police, police otherwise come to the family shelter in response to an incident, or police inform shelter staff that an incident at or near the family shelter is under investigation; (5) circumstances when the shelter staff feel that the general well-being of the family shelter, EA participants placed there, and shelter staff are adversely affected by behavior at the shelter; (6) circumstances occur that jeopardize the work of shelter staff in assisting rehousing efforts of EA participants placed at the family shelter; (7) an accident or intentional conduct occurs that places EA participants placed at the shelter or shelter staff in danger; (8) complex situations that are not able to be described adequately or completely in an EA-NDR; or (9) when naming of individuals involved in an incident in a Form EA-NDR other than the EA participant

alleged to have violated an EA rule or regulation might violate the privacy rights or safety or security of that other individual.

In the circumstances described above, the family shelter should submit the Serious Incident Report Form to the Noncompliance Unit and the Contract Unit's Contract Manager assigned to that family shelter. If a Form EA-NDR is submitted for an incident, a Serious Incident Report does not also need to be submitted.

The Noncompliance Unit, upon receipt of the Serious Incident Report, shall review the report and determine whether the reported serious incident warrants issuance of a Form TES-NN-13, Notice of Noncompliance, or an appropriate termination notice. The Noncompliance Unit may also decide that the Serious Incident Report raises issues warranting referral to the Central Office Terminations Coordinator (who handles terminations other than those handled by the noncompliance process); to the Placement Unit with a recommendation for a transfer; to other government agencies such as FOR Families, a Department of Transitional Assistance Domestic Violence specialist, the Department of Children & Families, or law enforcement officials; or to social service providers, such as addiction counselors. If the Noncompliance Unit determines from this initial review that it is more likely than not that the incident underlying a Serious Incident Report warrants submission of a Form EA-NDR, the Noncompliance Unit will forward the Serious Incident Report to the relevant family shelter with instructions about the appropriate violations to be checked off on the Form EA-NDR.

Noncompliance Tracking System

All noncompliances by EA participants will be tracked by the Central Office Noncompliance Unit. All noncompliances by EA participants placed in family shelters will also be tracked by the contracted family shelter service provider with whom the EA participant family is placed.

If an EA participant is transferred from a hotel to a family shelter, or from one family shelter to another family shelter, the Noncompliance Unit will forward to the family shelter a copy of the existing noncompliance notices so that the family shelter will be aware of the number of prior violations.

Investigations and Processing by the Noncompliance Unit

In any matter that is forwarded to the Noncompliance Unit through a Form EA-NDR, a Serious Incident Report, or a Form HM IR-1, the Noncompliance Unit may consider whether additional information is needed from shelter staff, DHS staff, hotel staff, an EA participant (either the individual alleged to have violated a rule or regulation or a victim or witness), or other person involved before a determination is made as to whether Form TES-NN-13, Notice of Noncompliance, or an appropriate termination notice is warranted. If so, the Noncompliance Unit may investigate further through whatever additional inquiries Noncompliance Unit staff deem appropriate before making a decision about whether to issue a Form TES-NN-13, Notice of Noncompliance, or an appropriate termination notice.

It is important to note that a Termination for Third Noncompliance, Form NFL-TT, can be based on any three incidents warranting an immediate Notice of

Noncompliance, regardless of the order in which they occurred. The Notice of Termination for Third Noncompliance may only be issued, however, after at least two Notices of Noncompliance that remain valid have been issued, even if one or more of the Notices of Noncompliance is based on conduct that occurred after the additional conduct underlying the Notice of Termination for Third Noncompliance. This can happen, for example, when staff is not aware of an earlier incident until it is brought to their attention by police or another resident. In other words, a USPR violation, or other incident constituting a noncompliance, can be the *basis* for a second Noncompliance Notice or a Notice of Termination for Third Noncompliance, even if a noncompliance notice has not yet been issued or fully appealed for earlier conduct.

Treatment of Existing Noncompliances, including currently pending noncompliance requests

Under the terms of the *Hayes* settlement, Warning Notices of Noncompliance issued on or before March 3, 2015, for conduct before January 2, 2015, that would constitute a violation of the USPRs that took effect on January 2, 2015, will be considered the equivalent of a first Notice of Noncompliance issued under the rules and regulations in effect as of January 2, 2015, provided that such notices:

- (1) have not been rescinded, and
- (2) are beyond the appeal period and either no appeal was filed, or an appeal was filed, but the notice was upheld on appeal.

Such Warning Notices of Noncompliance for conduct prior to January 2, 2015, even if issued for three or more rules violations under the regulations then in effect, should be considered as equivalent to one of three instances of noncompliance leading to possible termination.

Six-Month Look-Back Rule

Both Warning Notices of Noncompliance issued for conduct before January 2, 2015, and Notices of Noncompliance for conduct on or after January 2, 2015, will be deemed rescinded and may not be used as a basis for termination of benefits if no further violation of 760 CMR 67.06(5)(a) and no violation of 760 CMR 67.06(6)(a) has occurred within the six months following the most recent incident underlying the notice.⁵ (1) An incident counts under the “look-back” rule if it was less than six months before the most recent incident. (2) Earlier incidents count if they occurred less than six months before an incident that counts under (1) above. Notices of Noncompliance for threats to health and safety are not subject to the “look-back” rule and remain valid so long as an EA participant remains in the shelter system.

Challenging Earlier Noncompliance Notices on Appeal

If a Notice of Noncompliance was not timely appealed after issuance, the notice may be contested in a hearing on termination for a third noncompliance. In that case, however, the burden of proof will be on the EA participant to prove by a preponderance of

⁵ See 760 CMR 67.06 (5) (e); Uniform Shelter Program Rules, Notes, *Important: Rules Violations Not Counted towards Discipline*.

the evidence that the noncompliance notice should be overturned. 760 CMR 67.09 (2) (a) 2. a. If the Notice of Noncompliance was timely appealed and upheld on appeal, it cannot be contested in an appeal of a termination for third noncompliance.

Terminations not Covered by the Noncompliance Process

It should also be noted that the EA Program currently uses 4 different termination notice forms. All terminations, other than those processed through the Noncompliance Process, as outlined above,⁶ are to be processed by the Central Office Terminations Coordinator or assigned Homeless Coordinator (or one of his/her supervisors) on the Form NFL-6 for six-month over-income terminations or on the Form NFL-9-T for all other terminations.

Use of Multilingual Notice

Because this HSN introduces several new forms and updates others, it is an appropriate time to remind all DHS staff and EA Program provider staff (including FOR Families visitors, DTA DV specialists, and contracted family shelter staff) who communicate with EA participants to include a copy of the DHCD Multilingual Language Assistance Notice, available on the DHS SharePoint site, with all documents given to EA participants, even when forms are translated into the primary language of the participant. If a form is provided to an EA participant in both English and another language, the English language version of all forms provided to EA participants is the official version of the form in case of conflict, and the non-English communication is provided for the convenience of the participant.

⁶ The termination forms used in the Noncompliance Process are the Form NFL-TT, *Notice of Termination of Temporary Emergency Shelter for Third Noncompliance*, and NFL-CA, *Notice of Termination for Criminal Activity*.

Appendix of Noncompliance-Related Forms in Chronological Order

Noncompliance-Related Forms Provided at Intake:

Form TESR-1&3, *Participant Responsibilities while in a Temporary Emergency Shelter*

Uniform Shelter Program Rules

Summary of Uniform Shelter Program Rules

Babysitting Guidelines

Babysitting Agreement and Request Form

Babysitting Child Information Sheet

Overnight Request Form

Reporting on a Noncompliance

In a Family Shelter: Form EA-NDR/USR-1, *Noncompliance/Termination Determination Request/ Notice of Infraction of Uniform Shelter Rules, Part I; or Serious Incident Report*

In a Hotel: Form HM IR-1 *Report of Violation of Uniform Shelter Program Rules or Emergency Assistance Regulation, or other serious incident*

Participant Reponse to a Reported on a Noncompliance

In a Family Shelter: Form EA-NDR/USR-1, *Noncompliance/Termination Determination Request/ Notice of Infraction of Uniform Shelter Rules, Part II*

In a Hotel: Form HM IR-3, *Family Response to Request for Noncompliance Determination in a Hotel*

Notices Issued for Noncompliance

TES-NN-13, *Notice of Noncompliance*

Form NFL-TT, *Notice of Termination of Temporary Emergency Shelter for Third Noncompliance*

Form NFL-CA, *Notice of Termination for Criminal Activity*