

Testimony of
Coalition for the Homeless
and
The Legal Aid Society

on

Proposed Rule Regarding Homeless Adults Returning to Shelter

Presented before

The New York City Department of Homeless Services

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We present this testimony on behalf of the Coalition for the Homeless and The Legal Aid Society. We welcome the opportunity to express our strong concerns about the proposed rule – Rules of the City of New York, Title 31, Section 3-01 “Single Adult Resource Assessment” – which will create obstacles for many homeless adults seeking emergency shelter. Nothing in this testimony constitutes a waiver of any legal claims and/or arguments that The Legal Aid Society and Coalition for the Homeless may make on behalf of individual clients or groups of similarly situated clients.

About Coalition for the Homeless

The Coalition, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to the crisis of modern homelessness. The Coalition also protects the rights of homeless people including the right to emergency shelter, the right to vote, and life-saving housing and services for homeless people living with mental illness and HIV/AIDS.

The Coalition operates eleven direct-services programs that offer vital services to our homeless, at-risk, and low-income neighbors – which also demonstrate replicable, effective, long-term solutions. These programs include supportive housing for families and individuals living with AIDS, job-training for homeless and formerly-homeless women, rental assistance to help working homeless people move into private-market apartments, and permanent housing for formerly-homeless families and individuals. Our summer sleep-away camp and after-school program provide hundreds of homeless children with a critical respite each year. The Coalition’s mobile soup kitchen distributes more than 900 nutritious meals each night of the year to homeless and hungry New Yorkers. Finally, our Crisis Intervention Department assists more than 1,000 homeless and at-risk households each month with daily necessities, such as food, clothing, and transportation – as well as eviction prevention assistance, client advocacy, referrals for shelter and emergency food programs, and assistance with public benefits.

The Coalition also represents homeless men and women as plaintiffs in Callahan v. Carey and Eldredge v. Koch. In 1981 the City and State entered into a consent decree with the Callahan plaintiffs providing that, “The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.” The Eldredge case extended this legal requirement to homeless single women, and is now consolidated with Callahan. The consent decree guarantees basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless adults.

About The Legal Aid Society

The Legal Aid Society, the nation’s oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 1,000 of the

brightest legal minds. These 1,000 Legal Aid Society lawyers work with more than 700 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some two million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the Callahan/Eldredge case. The Legal Aid Society is also counsel in the McCain/Boston litigation in which a final judgment requires the provision of lawful shelter to homeless families.

The Proposed Rule

The proposed rule threatens to create significant obstacles for many homeless adults seeking emergency shelter to which they are entitled pursuant to the 1981 consent decree in Callahan v. Carey. In particular, the proposed rule (1) erects unnecessary and burdensome bureaucratic barriers in the way of homeless adults seeking shelter; (2) fails to accommodate the needs of homeless adults living with physical, mental and social dysfunction; (3) is unreasonably ambiguous and vague in describing how the City will provide legally-mandated shelter to many homeless adults seeking shelter; (4) fails to accommodate for the needs of homeless adults who do not participate in assessments or appear in diversion offices; and (5) ultimately is both an unnecessary and significant alteration in the City's procedures for providing emergency shelter to homeless adults.

More than three decades into the crisis of modern mass homelessness, experts and service providers across the nation have embraced this essential lesson: Ensuring simple access to emergency shelter and vital services saves lives and connects vulnerable homeless individuals with the help they need. Erecting complicated barriers to shelter and services by imposing burdensome requirements and forcing homeless adults to move from place to place and negotiate bureaucratic procedures, will cause many homeless adults — in particular those living with mental, physical or social dysfunction — to lose shelter altogether and wind up living in public spaces.

Indeed, this was the very essential reason that the first paragraph of the Callahan v. Carey consent decree set forward in simple, elegant language ensuring that the City would provide shelter and board to all homeless adults who met the need standard for public assistance or who were homeless "by reason of physical, mental, or social dysfunction." Both the City and

State government defendants and the Callahan plaintiffs agreed no bureaucratic barriers should exist, which would prevent homeless people attaining shelter from the elements – particularly at a time when so many homeless New Yorkers were living and dying on the streets of New York City.

Sadly, the City has proposed a rule which would create exactly such obstacles, as it would impose burdensome new requirements for many homeless adults seeking shelter. These needless requirements threaten to deter the most frail homeless adults seeking shelter, and could prove deadly during times of extreme weather.

We therefore urge the City to abandon these proposed rules. Simply put, there are far better ways of assessing homeless adults' access to housing and other resources. Indeed, such assessments ought to be, and often are, part of routine shelter case management. There is no good reason to impose these burdensome new requirements on homeless adults before the provision of shelter.

Below we detail some of our strongest concerns about the proposed rule.

1. The proposed rule places unnecessary bureaucratic obstacles in the way of homeless adults seeking shelter.

Throughout its text, the proposed rule places new burdensome and bureaucratic requirements on homeless adults seeking shelter, requirements which are nowhere contemplated in the Callahan consent decree. Indeed, the rule states flatly that many homeless adults “must be referred for a Single Adult Resource Assessment” and “must appear in person at a diversion office” before the homeless adult is assigned a bed and provided with meals and other vital services mandated by the Callahan consent decree.

Thus, the rule appears to make participation in assessments and appearance “in person” at a “diversion office” a pre-condition for receiving the emergency shelter to which these homeless adults are already legally entitled. And, as noted below, nowhere does the rule account for those homeless adults who cannot or do not, for whatever reason, participate in the assessments or appear at the diversion offices.

Ultimately, the proposed rule will create confusion for the most vulnerable homeless men and women seeking shelter. Indeed, even the referral form the City intends to utilize as part of implementing this proposed rule (see copy attached) is fodder for confusion. The form states in various places that a homeless adult “may” get a bed at this or that shelter facility, but nowhere does it state clearly, as it should, that the individual “will” get a bed.

2. The proposed rule fails to accommodate the needs of homeless adults living with physical, mental and social dysfunction.

As noted above, the first paragraph of the 1981 consent decree in Callahan v. Carey states:

“The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program [i.e., public assistance] established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter.”

On its face, the proposed rule purports to exempt homeless adults with “a mental or physical disability” from the requirement that they participate on the assessment or appear at the diversion office. However, the rule does not exempt homeless adults living with “social dysfunction,” a group specifically and intentionally identified in the language of the consent decree that was negotiated by the City and State defendants and the plaintiffs.

This is not the first time that the City has proposed harmful rules that fail to accommodate the needs of – indeed, even to mention – homeless adults living with social dysfunction. The homeless adult eligibility rules attempted by the City in November 2011, which are the subject of an ongoing legal challenge, similarly fail to account for socially dysfunctional homeless adults.

Dr. Ezra Susser of Columbia University’s Mailman School of Public Health, a psychiatrist, researcher, and renowned expert on the issues of homelessness and mental illness, discussed this failure in a recent affidavit submitted in our litigation challenging those eligibility rules, and we quote here at length from his affidavit (Callahan v. Carey, affirmation of Dr. Ezra Susser in support of amicus brief, New York State Court of Appeals, July 2, 2013):

Those with social dysfunctions constitute another category of homeless individuals to whom the Callahan Consent Decree promises shelter assistance. The Procedure does not honor the Callahan Consent Decree’s promise of safety-net shelter to people with social dysfunction. The Procedure makes no mention of social dysfunction; such dysfunction will evidently not excuse an applicant’s inability to complete the new assessment protocol and will not constitute an independent ground justifying the provision of shelter.

Social dysfunction falls outside conventional definitions of mental disorder. While social dysfunction is among the criteria used to diagnose a DSM-V mental disorder, social dysfunction in itself does not constitute such disorder. “Normal” persons can become socially dysfunctional when exposed to stressors such as homelessness. In these cases, the dysfunction that results may be reversible once the stressor is removed. Homeless people who are socially dysfunctional may have trouble coping while in the homeless state, but may be able to manage once the stressor of homelessness is removed. Other socially dysfunctional homeless people, however, will not be able to manage even if housed.

Of great concern is that those who are under stress in seeking shelter or being placed in shelter, yet are not necessarily suffering from mental disorder, will ultimately suffer such disorder if not provided with assistance and support. Access to decent, safe emergency shelter is one of those necessary supports. Denying shelter to people with social dysfunctions raises the risk of doing great harm—causing serious, long-term mental disorder with possibly life-threatening consequences—to socially dysfunctional homeless people. Post-traumatic stress disorder is just one disorder that a homeless person may suffer as a result of the homeless experience.

...

Current research suggests continuing high prevalence of mental disorders among homeless people today. Of great significance here is the 8 percent—nearly one in ten of the homeless population—that is possibly, though not certainly, psychotic. These individuals are socially dysfunctional. They often slip through cracks in the health-care safety-net and certainly will do so if the Procedure is implemented and they are left without a roof over their heads. These are exactly the people who will be turned away by operation of the Procedure. The

consequences of denying shelter to people with social dysfunction is likely to be life-threatening to those people and dangerous to the community.

Moreover, even for those homeless adults with “a mental or physical disability” that the proposed rule purports to exempt from the assessment requirement, there is a strong likelihood that many homeless adults living with “physical, mental or social dysfunction” will fall through the cracks and wind up living on the streets or in other public spaces.

First, the proposed rule simply states that “shelter staff” will make determinations whether homeless adults are exempt from the requirement or not, without specifying which “shelter staff” will do so (see discussion below) or what if any clinical expertise or qualifications those staff will have.

Second, as Dr. Susser also notes in his affidavit, determining the mental health status of homeless individuals, particularly in the mass shelter context, is extremely difficult and time-consuming. As Dr. Susser writes (emphasis added):

The Procedure will not permit proper assessments of mental health for women and men seeking shelter. It asks women and men seeking shelter to “claim[] to have a mental ... impairment” in order to excuse their inability to comply with the City’s new assessment procedure. Procedure at 9. But mentally ill respondents not in treatment are often afraid to reveal information about symptoms and treatment history, and they are also often too disorganized to provide such information. Mentally dysfunctional individuals who have never been diagnosed will not be able to document their mental conditions, as the Procedure demands that they do. Many mentally impaired individuals, even if they have received proper diagnoses, are unable or unwilling to describe their impairments.

For those mentally impaired women and men seeking shelter who fail to assert that they are impaired, the Procedure relies on “eligibility specialist[s]” to detect their impairments and refer them to licensed social workers. The notions that an “eligibility specialist” can meaningfully “suspect[]” the presence of a mental impairment, and even that a social worker in a shelter intake office or a shelter can reliably determine whether a woman or man seeking shelter is mentally impaired, presuppose a level of certainty in the assessment of homeless individuals’ mental status that is nearly impossible to attain in the overall shelter system, let alone in a shelter intake office at the entry point to that system.

Clinical diagnosis in shelters—or in shelter intake offices—is extremely difficult. The marginal nature of a shelter or shelter intake setting exacerbates distinct problems in diagnosis. Interviews are hard to conduct. Comfort and privacy are difficult to obtain. Records, when they exist, are far less complete than the records available in a formal treatment setting. The absence of records makes it impossible to rely on psychiatric history for guidance. As noted above, mentally impaired individuals are often reluctant or unable to provide information about their symptoms or treatment history. Without having a great deal of time—sometimes many months—a clinician sometimes cannot engage a homeless person sufficiently to piece together the person’s medical history, observe his or her behavior, and consider complex diagnoses.

Further, because unusual behaviors may be adaptive for survival in the streets, in unstable and/or doubled-up housing situations, or in a shelter setting, it is often unclear whether certain behaviors are consequent to homelessness or to mental disorders. To assess a patient accurately, a clinician must have significant diagnostic and clinical experience, must

be familiar with the norms and necessities of street life or of an unstable and/or doubled-up housing situation and must have sufficient time to consider the complexity of diagnosis in this context. As a result, many homeless individuals who suffer from diagnosable mental disorders have never been properly diagnosed.

Note that Dr. Susser is, in this affidavit, detailing the problems associated with conducting evaluations of homeless adults in the intake setting. However, the proposed rule would have unspecified “shelter staff” at any of dozens of different shelter facilities make such evaluations in a very short period of time, presumably often within moments, making accurate evaluations even more difficult to obtain.

Thus, the proposed rule threatens to require many homeless adults living with a “mental...disability” to undergo a “Single Adult Resource Assessment” and appear in person at a diversion office before receiving emergency shelter, even when the rule purports to exempt those adults from those requirements.

3. The proposed rule is unreasonably ambiguous and vague in describing how the City will provide legally-mandated shelter to many homeless adults seeking shelter.

Throughout its text, the proposed rule is unreasonably inexplicit in describing how homeless adults will receive shelter and other services mandated by the Callahan consent decree. This includes the following:

- As noted above, the proposed rule states at (b) that “shelter staff” will determine whether a formerly-homeless adult is subject to the requirement to undergo an assessment and appear in person at a diversion office. However, nowhere in the proposed rule does it describe which shelter staff will make those determinations, and what their qualifications and expertise will be. Of particular concern: there are currently more than 70 municipal shelter facilities for homeless single adults (including annex facilities, safe haven shelters, and veterans’ shelters), and thus any of dozens or even hundreds of shelter staff could be involved in making these determinations.
- The proposed rule also states at (b) that these determinations will be made “based on the entirety of the Returnee [homeless adult]’s circumstances,” but does not delineate in any way what that phrase means.
- The proposed rule also states at (b) that certain homeless adults will be exempt from the new requirements. But, when it goes on to list “factors” which would exempt some homeless adults from the requirements, it states that the “factors” “include but are not limited to” the six listed characteristics – but nowhere in the text of the rule does it describe what other “factors” might exempt a homeless adult from the new requirements.
- As noted above, one of the groups of homeless adults exempted are people living with “a mental or physical disability.” But in addition to all of the reasons detailed above that make it extraordinarily difficult to determine a “mental...disability,” nowhere in the proposed rule does it describe how “shelter staff” will determine that an individual has a “physical disability” and is thus exempt.

- In addition, at (b)(4) the proposed rule exempts homeless adults “recently discharged from a prison, hospital, residential treatment program, or other institution,” without defining what “other institution[s]” are included.
- At (b)(4) the proposed rule also exempts homeless adults who are “victim[s] of domestic violence” without describing how that determination will be made. (Note also that the last word of (b)(5) is “and” and evidently should be “or.”)
- At (b)(4) the proposed rule also exempts homeless adults who have “been living on the street” without describing how that determination will be made.
- Finally, while the proposed rule purports to exempt homeless adults who have previously resided in housing units with a vacate order or from which they or the primary tenant were evicted, the proposed rule fails to include other serious housing problems that should similarly exempt such dwellings, such as illegal boarding houses and illegally-converted housing units currently covered by a City administrative rule (Rules of the City of New York, Title 31, Section 2-01, “Single Adult Permanent Housing Referral Criteria”), dwelling units with serious health and safety hazards, or housing units governed by federal or other government subsidy rules and requirements.

4. The proposed rule fails to accommodate for the needs of homeless adults who do not participate in assessments or appear in diversion offices.

As noted above, the proposed rule creates new requirements – undergoing a “Single Adult Resource Assessment” and appearing “in person” at a “diversion office” – before the City provides emergency shelter, food, and other services to which homeless adults are legally entitled. These new and gratuitous requirements will undoubtedly create significant obstacles for homeless New Yorkers needing life-saving emergency shelter, particularly during extreme weather when the provision of emergency shelter can be literally a matter of life and death.

Most glaringly in this regard, the proposed rule fails to account for how such shelter and services will be provided to homeless adults who, for whatever reasons, do not comply with these requirements. And as noted above, in many instances homeless adults may not be able to comply with the requirements either because of a mental, physical or social dysfunction that is not identified by “shelter staff,” including errors made by any of the dozens or hundreds of such staff who will be involved with making those determinations. And in some instances, homeless adults may not comply with the requirements for other reasons altogether.

But while none of these occurrences should ever be reason for homeless adults who are protected by the Callahan consent decree to be denied vital shelter and services mandated by the decree, nonetheless the proposed rule does nothing to ensure that all homeless adults receive the shelter to which they are legally entitled.

5. The proposed rule ultimately is an unnecessary yet significant alteration in the City’s procedures for providing emergency shelter to homeless adults.

At (f) the proposed rule states, “For a Returnee [i.e., formerly-homeless adult] who is not referred to a diversion office for a Single Adult Resource Assessment, diversion staff may, at their discretion, conduct such an assessment over the phone with the Returnee at his or her official shelter.”

Thus, by the City's own admission in the plain text of the proposed rule, it appears that the new proposed assessments can be conducted over the phone or, crucially, after a homeless adult has been provided shelter and other services. Indeed, such assessments of homeless adults' housing and other resources would seem to be a routine part of shelter case management services, and are currently conducted routinely throughout the municipal shelter system.

It is therefore impossible to see why the City's proposed new requirements – that homeless adults undergo assessments and appear in person at diversion offices – are necessary at all, particularly before the homeless men and women are allowed in off the streets and given the life-saving shelter and services to which they are legally entitled.

For this reason and those detailed above, Coalition for the Homeless and the Legal Aid Society urge the City to abandon these proposed rules, and work instead to ease access to shelter and increase investments in permanent housing and other vital services.

Thank you again for the opportunity to offer testimony.