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To: Chair Wood and Members of the House Human Services Committee
From: Rebecca Plummer, Vermont Legal Aid, Inc.
Re: Testimony regarding Reimagining GA Emergency Housing
Date: February 15, 2024

Good afternoon, Chair Wood and members of the Committee. My name is Rebecca Plummer, and I'm a lawyer at Vermont Legal Aid. I've been a civil legal services lawyer, in Vermont and Boston, for 25 years, and have worked in many areas of legal services – public benefits, eviction defense, expungement, emergency housing, disability law, family law, mental health involuntary treatment defense, and housing discrimination law. I am currently the director of our Medical-Legal Partnership Project, which provides legal services that address health-harming legal needs of patients throughout the UVMHC network, and of families with newborns at six sites around the state. Until last year, we also had a partnership, which we are hoping to reestablish, with several Medication Assisted Treatment clinics around the state. Through that partnership, we worked with a lot of people with SUD who were experiencing homelessness and seeking emergency housing.

In addition to that direct case work, I have been engaged in administrative and legislative advocacy on homelessness issues for the last few years. Specifically, I have been leading a task force within Vermont Legal Aid and Legal Services Vermont to share information about legal issues that we are seeing in emergency housing cases and to strategize about how to improve the systems serving people experiencing or at risk of homelessness in the midst of our severe housing crisis. I have also been participating in multiple coalitions of homeless service providers and advocates around the state, and am a member of the Homelessness Prevention Subcommittee of the Vermont Council on Housing and Homelessness. Through this direct service and coalition work, my colleagues and I have identified what we see as the biggest problems with the current design and implementation of GA emergency housing and how we think the system could be reimagined to protect the most vulnerable Vermonters through this housing crisis.

Thank you for the opportunity to speak with you today, and thank you for all the thoughtful, hard work you have been doing to understand and reimagine Vermont's emergency housing system.

Big Picture: What we need

Vermont urgently needs an emergency housing program that provides shelter to all Vermonters who are without shelter, for as long as needed until they can find longer term shelter or housing. We believe that the only requirement for accessing emergency housing should be current or imminent lack of shelter. Emergency housing should be available in all regions of the state, to allow people who become homeless to stay near their schools, medical providers, jobs, and support networks. The program should employ Housing First principles to ensure that, when a person or household is not a good fit in a hotel or shelter, they are supported with a new placement.

We know that this is possible. The expanded eligibility for emergency housing during the public health emergency of the pandemic and the Adverse Weather Conditions periods has shown us that operating this program in a simpler, more humane, and more effective way is possible. Yes, broadening the program to address our housing and homelessness crisis will certainly require greater expenditure, though savings will be found in capping and negotiating lower motel room rates, leasing and buying blocks of motel rooms, and diversifying our emergency housing stock to include former dormitories, pods, and more non-congregate shelter beds. But more importantly, sheltering Vermonters through periods of homelessness, as described last Friday in testimony by Anne Sosin of Dartmouth, avoids the huge costs, both financial and human, of unsheltered homelessness - to our communities, to our schools, to our workforce, to our health care system, and to the long-term well-being of people experiencing homelessness themselves.

This is what we believe an emergency housing program during a housing crisis should look like, to avoid shifting of costs and the long-term harms of unsheltered homelessness. We recognize that a reimagined program is likely, however, to have some restrictions and limitations. In light of this, we have proposals for this Committee of how to make Vermont's emergency housing system fair and humane.

Our proposals fall into three broad categories:

1. Fairness for people with disabilities and serious medical conditions;
2. Fairness in the appeals process; and
3. Simplification of eligibility criteria and application process.

1. Fairness for people with disabilities and serious medical conditions

People experiencing homelessness in Vermont are disproportionately people with disabilities and serious medical conditions. The current GA emergency housing system is profoundly inaccessible and unfair to people with disabilities, at every step in the process. We have four specific recommendations to make emergency housing fairer for people with disabilities: expand the definition of disability, allow variances for people with serious medical conditions that do not meet the definition of disability, provide reasonable accommodations to people with disabilities at every stage in the process, and eliminate periods of ineligibility.

A. Expand the definition of disability.

The current definition of disability that includes only those people who have been found eligible for SSI or SSDI by the Social Security Administration leaves out many people with disabilities under Vermont law. Over the years that I have worked in legal services, I have spoken with countless people who have simply been unable to complete the Social Security disability determination process. It is particularly difficult to navigate the SSA application process and periodic recertifications when one is precariously housed or experiencing homelessness. Indeed, a huge hurdle for many is that SSA requires that applicants provide a reliable mailing address to which they send notices of appointments and requests for information. It is also extremely difficult to navigate these processes when the symptoms of one's disability make understanding and follow-through difficult (such as PTSD, anxiety, depression, learning disabilities, cognitive disabilities, and chronic pain). And, if one does manage to complete the whole process, it is very common to be initially denied by SSA,¹ and then to have to go through a long and complicated appeal process. There are very few case managers, service providers, or legal advocates available in Vermont to help people through all the steps of this process.

We believe it is not only possible but critical to expand the definition of disability and provide other ways for people to verify disability for emergency housing. **We propose that the Department adopt a definition of disability that includes:**

- (1) people who have been found to have a disability by the Social Security Administration, the Veterans' Administration, or Vermont Medicaid; and**
- (2) that provides a simple verification process for people who do have a determination of disability by one of these entities but who meet the definition of disability in the Vermont Fair Housing and Public Accommodations Act (9**

¹ In Vermont, fewer than half of initial applications for SSI/SSDI are approved.

V.S.A. 4501(3)): A person with a physical or mental impairment that limits one or more major life activities.²

Verification of disability is not, as the Department has repeatedly argued, overly complicated or burdensome for the Department. After VLA challenged the Department's restriction of disability criteria without rulemaking in June 2021, VLA and the Department reached a settlement that included the Department implementing a Disability Verification Form (attached)³, signed by a healthcare professional (which could include a substance abuse counselor) or vocational rehabilitation counselor, verifying that the applicant met Vermont's definition of disability.

Arguments that this is a burden on doctors or that some providers will sign anything that they are asked to sign are cynical and disrespectful of providers and the people they are caring for. These are Vermonters with disabling impairments who have reached out to the providers who know them best. This is a core part of a medical provider's job. The Department need only provide the form and approve emergency housing for people who are able to submit it.

² Physical or mental impairment is then defined at length in that statute at 9 V.S.A. 4501(1)(3):

- (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine.
- (B) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental condition, and specific learning disabilities.
- (C) The term "physical or mental impairment" includes diseases and conditions such as orthopedic, visual, speech, and deafness or being hard of hearing, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, developmental disability, emotional disturbance, and substance use disorders, including drug addiction and alcoholism. An individual with a disability does not include any individual with a substance use disorder who, by reason of current alcohol or drug use, constitutes a direct threat to property or safety to others.

This detailed definition could be provided on the back of the form for providers who are curious, or the form could refer applicants and providers who want more information to a link on the Department's website or to 9 V.S.A. 4501(3).

³ We provide this verification form as an example of a relatively simple process that was used in the past. We note that this verification form was the result of a negotiated settlement and includes considerations of inability to work that we do not think should be included, particularly during a housing crisis when there is no affordable housing available, and are not proposing as a definition of disability.

B. Allow variances for people with serious medical conditions that do not meet definition of disability.

It is critical that, in addition to expanding the definition of disability, there also be a simple and clear path to emergency housing for people experiencing serious medical conditions, such as recovery from surgery or injury or serious illness. These are people whose impairments may not qualify them for disability benefit programs, which often require that the condition have lasted or be expected to last for a long time, but whose significant current medical vulnerabilities make being unsheltered especially dangerous.

Also as part of our settlement with the Department in 2021, a variance process was put in place that allowed an applicant or participant who was denied emergency housing under the disability criterion to request a variance, through submission of a Variance Request Form (attached), signed by an applicant or participant, or a service provider, explaining how being unsheltered would be particularly dangerous to the person's health or welfare. This process does not have to create a bottleneck, as the Department has argued, if ESD staff are authorized to accept variance forms and grant emergency housing, rather than leaving these decisions to a deputy director or other upper management. ESD management could periodically review variance forms to determine whether there are concerns that need to be addressed.

A broader definition of disability, alternative ways of applying such a definition, and a clear path for medical conditions variances, are not impossible or unduly burdensome for the Department to administer. They have been done before, and they save lives.

C. Provide reasonable accommodations to people with disabilities in the application and recertification process and in their emergency housing.

The current emergency housing program is extremely difficult to access and navigate for people in crisis and people with disabilities, particularly disabilities affecting mental health or cognition. Under the Americans with Disabilities Act, it is the responsibility of the Department, as a government agency, to provide reasonable accommodations to people with disabilities to allow them to engage in this program in the same way as a person without disabilities. The Department's current practice of requiring people to know when they need an accommodation, how to ask for it, and how to verify it, and then frequently denying those requests, reinforces systemic inequities.

Reasonable accommodations for people with disabilities should be a core principle of a reimagined emergency housing program. ESD staff should be trained and encouraged to recognize, offer, and carry out reasonable accommodations for people with disabilities in the application and recertification process and in the administration of the program.

D. Eliminate periods of ineligibility, which primarily punish people with disabilities.

The current GA rules (2652.3) provide for a “period of ineligibility” of 30 days for any household that “was denied further accommodations at a motel, or similar establishment, for not following the rules of the establishment.” In our work, we have seen that motel staff, who may be inexperienced or biased and are often not trauma-informed, are able to kick out emergency housing participants with impunity, without providing any proof of a violation of rules. The Department then imposes a 30-day period of ineligibility (“POI”) from emergency housing. Yet, if the POI is challenged through a fair hearing, the motels often cannot or do not provide any proof of the violation, the decision is reversed, and the household is allowed to relocate to a room in another motel - if one is then available.

When a participant’s behavior is shown to have been the cause of the motel’s decision, we have seen that this behavior often stems from a disability or trauma history. Likewise, POIs are often imposed on people who are ejected from shelters because of behavior that stems from their disability or trauma history, when they might be better served by being placed in a less congregate setting such as a motel room. While these situations may be addressed by requests for reasonable accommodations if the person is lucky enough to be assisted or aware of this, many people with disabilities are simply kicked out and unsheltered for thirty days.

Periods of ineligibility, after removal from motels or emergency shelters, fly in the face of Housing First principles and do real damage to people with disabilities who are in crisis and have nowhere else to go. (If this Committee envisions a system that keeps POIs, we have ideas for how they could be made more fair for people with disabilities which we would be happy to share.)

2. Fairness in the appeals process

A. Provide written notice of all Department decisions.

The Department should provide clear notices of decisions regarding eligibility and time limits so that applicants and participants know what to expect and how to appeal. The current GA rules (2601) technically require written notice to be

provided if an applicant is denied emergency housing in whole or in part. Yet we do not see notices being provided in the cases that come to us – for outright denials of emergency housing, for denials of catastrophic eligibility, or for terminations and periods of ineligibility. And indeed, representatives of DCF acknowledged in testimony before this Committee last week that they have not had the technology to issue these notices consistently until recently.

This lack of notice is not just contrary to the rules; it causes significant confusion and uncertainty for applicants and participants who may not know (beyond what they hear in a phone call with ESD) when their emergency housing will end, when they may be eligible again, what information they need to provide in order to prove their eligibility, and what they can do to appeal if they disagree. And it makes it difficult for advocates to quickly determine what the Department's decision was and whether it should be challenged, in what is almost always a crisis situation. The confusion is compounded at times of transition, like the end of the Adverse Weather Conditions period, when participants do not know what their current eligibility is based on and when their shelter will end.

Written notices of denials are legally required, and written notices of all eligibility decisions would help applicants and participants and their advocates to understand what is happening, plan for their next steps, and correct critical mistakes.

B. Clarify and codify the appeals process for emergency housing.

As you know, GA was first put into law in the 1960s, and the rules have been revised and interpreted many times over, with many of those changes happening as emergency rules for interim periods of time. It is a very confusing and convoluted program, governed by three different rule sets, with numerous interpretive memos. A prime example of this is in the area of appeals. The current GA rules set forth no appeal process. The only guidance on expedited appeals is an interpretive memo from 1986 (interpreting Rule 2606), several parts of which are not being followed in practice. The All Program Rules, governing AHS generally, refer to an expedited fair hearing process for GA and direct us to a rule that no longer exists. The Human Services Board rules do not address expedited hearings or how the decisions in expedited cases will be handled.

As a result of this lack of guidance, the appeals process for denials and terminations of emergency housing is haphazard and inconsistent, and it does not address critical issues of urgency, notice, what happens while the appeal is pending, and how the decision is implemented by the Department. We are learning that, because of the way these appeals are handled by the HSB, the Department is able to correct their errors in individual cases but continue to engage in the same

practice in other cases. A reimagined GA emergency housing program must have a clear appeals process with due process and clear rules for participants, the Department, and the Human Services Board. These rules must hold the Department accountable not just to implement Human Services Board decisions in individual cases but to make changes in their policies and practices according to those decisions.

C. Provide continuing shelter pending resolution of fair hearings.

There is currently no continued shelter pending the outcome of a fair hearing. This has been done at times in the past, particularly for terminations or periods of ineligibility, but it is not happening now. In our experience, fair hearings are generally not being resolved in an expedited manner so the wait time can be weeks or even months. As you heard a few weeks ago from Brenda Siegel of End Homelessness Vermont, it can also be extremely difficult for households to pursue their appeals (gathering information, communicating by phone or email, and participating in the hearing) when they are unsheltered. As a result, people whose applications are incorrectly denied or whose vouchers are incorrectly terminated may experience irreparable harm by being unsheltered while the issue is resolved. Though the Fair Hearing Rules (at 1000.4(I)) require retroactive benefits to be given if the issue on appeal is resolved in the participant's favor, this is not provided in cases regarding emergency housing because shelter is of course not something that can be retroactively awarded. In short, without continued shelter pending a fair hearing, the damage is done.

3. Simplification of the eligibility criteria and application process

A. Eliminate catastrophic and vulnerable eligibility criteria and distinctions, and their corresponding time limits.

We believe that the GA rules, in addition to being confusing and conflicting, are generally interpreted and applied by the Department for Children and Families in the most restrictive manner, when, as the agency whose stated mission is "to foster the healthy development, safety, well-being, and self-sufficiency of Vermonters," the Department should be applying these rules in the least restrictive manner in order to help as many people as possible. This is only more true in this housing crisis, as more and more Vermonters are losing their housing and unable to find a safe, affordable place to live.

As the program is currently configured, applicants, ESD staff, advocates, and homeless service providers expend phenomenal time and effort to verify and determine eligibility for catastrophic versus vulnerable eligibility. Indeed, we

believe that the Department is not just restrictively applying but routinely misapplying and failing to apply several of the catastrophic eligibility criteria – emergency medical need, constructive eviction, and domestic and other violence – despite Human Services Board decisions to the contrary. The importance of this distinction to applicants is huge: the difference between 28 and 84 days in a 365-day period can bridge a household to an Adverse Weather Conditions period and can save lives. And yet, realistically, neither 28 nor 84 days is enough time for a family to find long-term housing during this housing crisis. The fact that only a small portion of the June cohort, with significant services, has moved on to positive housing outcomes in the seven months since the Legislature extended their emergency housing shows just how extraordinarily difficult it is to find affordable housing in this housing crisis. Limiting emergency housing to 28 or even 84 days does not provide emergency shelter for Vermonters who are trying to get back on their feet. It simply provides a respite from the street.

We acknowledge that the Department’s FY’25 budget proposal effectively eliminates this distinction, but it does so in the service of limiting this benefit even further. We hope that the Legislature rejects this proposal, and that a new emergency housing program emerges that shelters Vermonters who need shelter. A reimagined emergency housing program could, for example, approve households for thirty-day periods, with the opportunity for renewal if the household’s situation remains the same.

Simplifying the rules to only a few key eligibility criteria, as happens during Adverse Weather Conditions periods, and eliminating vulnerable and catastrophic eligibility criteria and their corresponding time limits, would save an enormous amount of hardship and confusion for applicants and for ESD and would free everyone up to work on the critical goal of finding more stable housing for households experiencing homelessness.

(If this Committee decides that vulnerable and catastrophic eligibility criteria should continue, we would be happy to provide testimony or further information about how these criteria are being misapplied and how we believe they should be clarified.)

B. Simplify and modernize the application and recertification process.

In addition to simplifying the eligibility criteria, we must simplify the application and recertification process. The requirement that households contact the Economic Services Division by phone or in person in order to apply, obtain motel placement, and renew vouchers, has created a profoundly inaccessible system. And yet we impose this system on households who are in the most unstable situations, often

without reliable phone service or transportation, and who may be the least able to manage this process due to mental health or cognitive disabilities. There is no reason for this program to require phone or in-person contact with short-staffed phone lines and offices for every required step. An online portal could be established to handle applications, verifications, and recertifications for everyone who can use it, perhaps in the office of a service provider, with the phone line being available to people who have no other way to access the process.

Moreover, the application and recertification process could be enormously simplified by limiting the required information to only what is needed. For example, as Chair Wood recently noted during testimony by DCF, is it really necessary to require people in crisis to verify their homelessness? The overwhelming eligibility process and the huge amount of person-power required to carry it out could be greatly simplified by eliminating any unnecessary requirements for verifications, minimizing recertifications, and providing alternative methods for connecting with the Department.

As this Committee heard last week from Anne Sosin, data shows that unsheltered homelessness causes a cascade of costly and lasting harms to people, to communities, and to society. If we plan and invest, we can avoid this and save lives and resources in the long run.

Thank you for the opportunity to speak with you today, and thank you for the difficult and vitally important work that you are doing.

General Assistance: Emergency Housing Disability Verification

To the physician/provider: To be found categorically eligible for GA emergency housing assistance through the State of Vermont based on disability, the patient must meet certain disability and employment standards.

To be eligible for GA emergency housing benefits as a person with a disability, a person must fall into one of the following three categories: (1) they receive SSI, SSDI, VA benefits, or MABD; or (2) a health care provider indicates that they have a disability, and because of their disability, they will be unable to work more than an average of 20 hours a week over the next 3 months; or (3) a healthcare provider indicates that they have a disability, and because of their disability, they were unable to work more than an average of 20 hours a week over the last 3 months. *This patient does not fall under category (1) and is seeking your help verifying that they meet the criteria in (2) or (3).*

Please complete and return this form to your patient or directly to the Economic Services Division as directed below as soon as practicable so this person's eligibility for emergency housing benefits can be established. Applicants are not eligible for emergency housing until documentation has been provided. Payment for the examination needed to complete this report will be made to you on the same basis as payment under Medicaid. No payment will be made solely for completion of this report.

Fax or email the completed report to: 802-xxx-xxxx; xxxxxxx@vermont.gov.

Patient Name: _____ **DOB:** _____ **SSN:** _____

1. Are you currently treating this person? Yes No Last appointment date: _____
2. Does this individual have any illness, injury, or physical or mental impairment, or disability?
 Yes No
3. Impediments to employment:
 - a. Will this patient's condition prevent them from working more than 20 hours/week, on average, over the next three months? Yes No
OR
 - b. To the best of your knowledge, has this patient's condition prevent them from working more than an average of 20 hours/week over the last three months? Yes No
4. People with disabilities that significant impair activities of daily living may request emergency housing beyond normal time limits. Does this individual have a disability significantly impairs activities of daily living (ADL)? Yes No

Comments/Remarks:

Provider name (please print):
Address:
Provider Signature:

Provider number:
Telephone number:
Date:



201G-VR (201G in OnBase)

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Emergency Housing Disability Variance Request Form

This form may be used to apply for a variance if you have been denied Emergency Housing under the disability category in rule EH-720. Applicants, participants, and service providers may request a variance for an applicant or participant who is denied under the disability prong if being unsheltered would be particularly dangerous to the applicant's or participant's health and welfare.

Applicant Name: _____ DOB: _____ Last 4 SSN: _____

1. Please provide a description of the need:

2. Please explain the unusual risk posed to the individual's health, safety, or welfare if GA emergency housing is not authorized:

- To request a variance, you may call the Benefits Service Center at 1-800-479-6151 or visit a local district office.
- Supporting documentation may be submitted via the uploader (<https://dcf.vermont.gov/doc-uploader>) or delivered in person to a local District Office.
- District Office locations can be found at <https://dcf.vermont.gov/esd/contact-us/districts>.
- For free legal help contact Vermont Legal Aid, Inc. at 1-800-889-2047.

Name of person completing this form (Please print): _____

Relationship to applicant: _____ Phone number: _____

Name of business (if applicable): _____

Signature of person completing this form: _____ Date: _____