

UNDERSTANDING THE NONCOMPLIANCE PROCESS

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Noncompliance 101 Training

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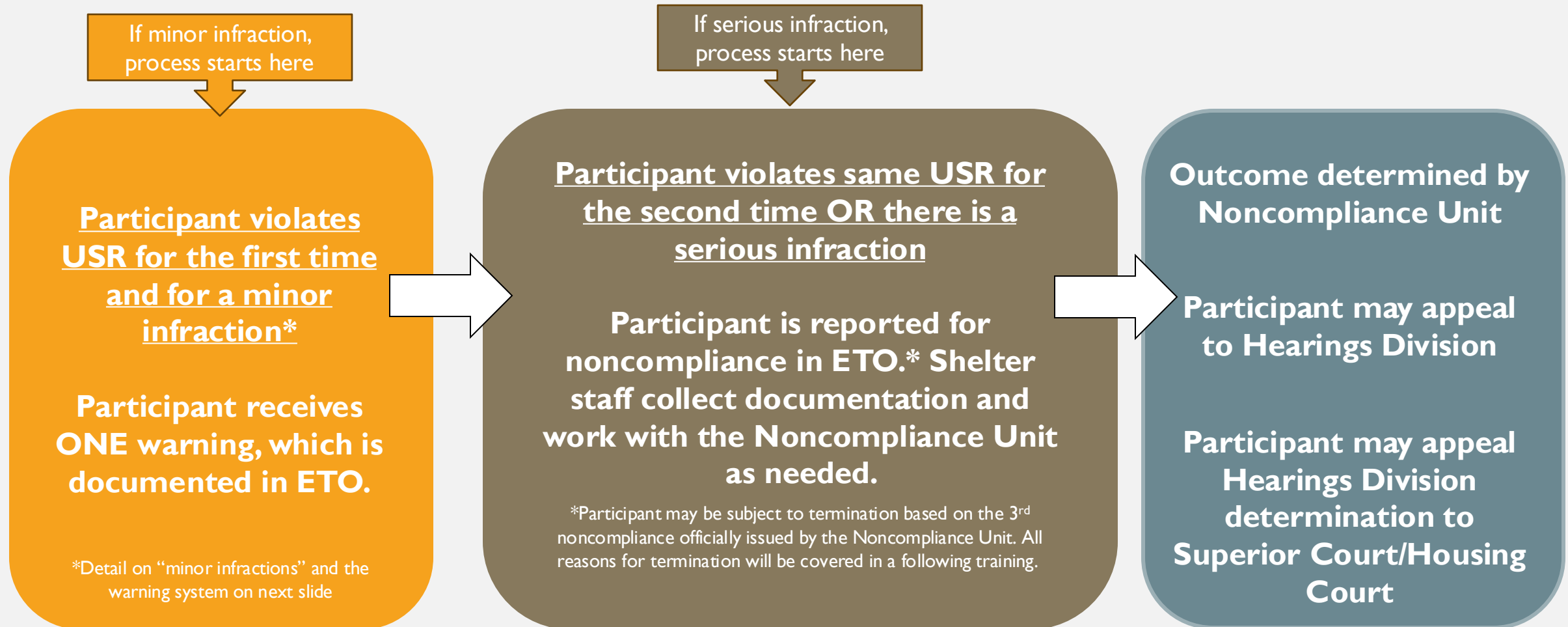
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NOTE: All families in EA shelter, **including those presumptively placed**, may receive warnings, noncompliances, and terminations.

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*More detailed information on terminations and appeals will be covered in a subsequent training.
Note: there are reasons other than for noncompliance for which a household may be terminated.*

THE BIG PICTURE: NONCOMPLIANCE PROCESS



WARNING SYSTEM

Why Have a Warning System?

The warning system is a trauma-informed approach to helping families understand the rules and adjust behavior, in situations involving minor infractions.

How does the Warning System work?

A participant’s first violation for a minor infraction results in a warning, not a noncompliance.

1. Staff inform the participant of the rule violation and warning. Staff should inquire with ADA Coordinator to determine if there is a relevant reasonable accommodation (RA). Staff may choose to ask participants to provide documentation of Good Cause.
2. If no de minimis, RA, or good cause identified, staff use the HLC-provided template to inform the participant of the warning. Hand-deliver a printed copy of the filled-in template to the participant. Also give a copy of the USRs.
3. Staff scan the completed written warning.
4. Staff complete the noncompliance touchpoint in ETO and choose the “warning” option. Upload the scanned copy of the Warning Template into the Touchpoint.

If the participant violates the same rule again, they are subject to receiving a noncompliance. If the participant violates a different rule involving a minor infraction (for the first time), they will receive a warning specific to that rule violation.

Violations that Warrant a Warning Before a Noncompliance (Unless Significant Threat to Health and Safety)	
Access to Units	EOHLC Requirements: <ul style="list-style-type: none">• Attending meetings• Developing Rehousing Plan• Participating in Rehousing Plan tasks
Babysitting	Fire Safety
Care of Children	Overnights
Child Left Unattended	Personal Belongings and Cleanliness
Curfew	Pets
Damage to Property	Prescription Medication
Disturbance of Quiet Enjoyment	Visitors

The first violation of each individual rule typically would trigger a warning unless there are significant health/safety concerns. Note that some infractions are so trivial as not to warrant either a warning or a noncompliance. These are called “de minimis” – see the [De Minimis slides below](#).

USR VIOLATIONS & SERIOUS VIOLATIONS THAT DON'T REQUIRE A WARNING

The following USR violations do not require a warning and must immediately trigger a noncompliance (and, depending on the circumstances, a termination).

- Drug Testing
- Harassing or Threatening Language
- Illegal Activity
- Legal Issues
- Sexual Harassment
- Substance Abuse
- Violent Behavior & Child Abuse and Neglect
- Weapons
- *Rejecting an opportunity for safe permanent housing without good cause
- *Criminal Activity presenting a threat to health and safety
- *Not Completing Rehousing Assessment
- Other threat to Health and Safety

*If found to be true, these three violations are grounds for immediate termination. The other violations, if found to be true, may not trigger an immediate termination from shelter. More details on terminations will be shared in a following training, which will include a full list of possible reasons for termination.

WARNINGS & REHOUSING PLANS

RHP ACTIVITIES*

1. **Written warning:** 1st instance of failing to participate in the RHP - Issue a written warning for Failure to Participate in RHP and for EOHLC Requirements in ETO.
2. **Request noncompliance:** 2nd instance (and every time after) of failing to participate in the RHP - Request a noncompliance for Failure to Participate in RHP and for EOHLC Requirements in ETO.

^Reminder: A RHP period is 30 calendar days.— participants have 30 days from date of notice to complete the activity.

^^Reminder: Unlike for USR violations, RHP warnings are not given for specific activities. After the participant receives their first Failure to Participate in RHP warning, every other instance they fail to participate should be a noncompliance request. The activities the participant did not complete don't have to be the same.

RHP MEETINGS*

1. **Written warning:** 1st instance of missing a RHP meeting: issue a written warning for EOHLC requirements and for Failure to Develop RHP in ETO.
2. **Request noncompliance:** 2nd instance and so forth of missing a RHP meeting: request a noncompliance for EOHLC requirements and for Failure to Develop RHP in ETO.

*Missing any meeting, failure to develop Rehousing Plan and not participating in Rehousing Plan may be subject to Good Cause, which we'll cover in [slides titled "Good Cause" later on in this presentation](#).

WARNINGS & REHOUSING ASSESSMENTS

Rehousing Assessments (RHAs)

- Required every 60 days
- Separate from the RHPs, which are completed every 30 days
- DO NOT trigger a warning or a noncompliance
- Failure to complete an RHA is grounds for termination

WARNING SYSTEM FAQs

Remember: a warning must be documented in ETO before you can request a noncompliance (for minor violations)

Can I still give verbal warnings?

Yes. You may give as many verbal warnings and offer additional interventions as appropriate. Verbal warnings, however, will not count towards the written warning requirement before requesting a noncompliance for relevant violations and may not hold up on appeal as they are not official HLC warnings.

HLC strongly encourages agencies to move away from informal verbal warnings and to partake in HLC's warning process for consistency and avoiding (unintentional) patterns of extended leniency.

Why do the 14 violations listed on a previous slide trigger a written warning before a noncompliance can be requested?

HLC had adopted a trauma-informed care policy intended to change behavior before seeking punishment. Except in the case of health and safety concerns, those USR violations listed will only be considered for noncompliance after the participant has received a written warning.

Can I issue a written warning and submit a request for noncompliance at the same time for the same violation?

No. Most violations warrant a written warning before a noncompliance request may be submitted. In these cases, the participant should receive a warning for the first violation and may receive a noncompliance request for the second violation of the same rule.

What if I need to rescind a written warning because a participant has evidence of good cause or a reasonable accommodation?

You may rescind written warnings in ETO if the participant provides proof within 3 business days of the warning being issued. You must complete the "warning cancellation" section of the Warning Template and give it to the participant again, so the participant knows the warning was rescinded. *(Good cause, Reasonable Accommodation, and ETO will all be covered later in this PPT or in a follow-up training.)*

What if I want to request noncompliance for a serious violation before giving a written warning?

There are few reasons why a noncompliance request would be considered if there was no written warning given for the same behavior. The reasons why a provider may request a noncompliance without first issuing a written warning are for health and safety concerns, serious incidents, or behaviors that are grounds for immediate termination as outlined in EA regulations. All other rules violations must receive a written warning first.

What if I have already given participants warnings?

All participant warnings reset on June 1. This means that any unofficial (verbal or written) warnings you have given to participants are not acceptable. You must complete the ETO TP for a warning the next time the participant violates the rule.

What should I do if I don't understand something or I have a question about the warning system?

Please contact the Noncompliance Unit with any and all questions 😊

UNDERSTANDING DE MINIMIS

DEFINING DE MINIMIS:

- *De Minimis* means too trivial or minor to merit consideration based on all relevant circumstances.
- In the context of the Uniform Shelter Rules, a *de minimis* violation is so trivial or minor that it does not warrant issuance of a warning or a noncompliance.
- In many cases, the Uniform Shelter Rules specify that *de minimis* violations **will not be counted toward a noncompliance or termination unless it is repetitive, and list factors that must be considered in determining whether a violation is *de minimis*.**
- Even where the Uniform Shelter Rules do not list specific factors, bear in mind that courts often will not take action where they believe a violation to be *de minimis*.

PROVIDER ACTION

- If *De Minimis* (and not repetitive): Provider should NOT issue a warning or noncompliance.
- If Provider submits a request for noncompliance and the Noncompliance Unit finds the violation to be *De Minimis*, the noncompliance request will be determined null/void.



Consider all relevant circumstances when determining De Minimis

DE MINIMIS IN CONTEXT

Example 1: Child Unattended

Scenario 1: 10-year-old, 10 mins

A 10-year-old child is left unattended in their hotel room for 10 minutes while their parent went to take out the garbage. **Given the age, time, and location of the violation, we could consider this *De Minimis* and not issue a warning or noncompliance.**

Explanation: USRs about Care of Children and Child Left Unattended states that age, length of time, location and risk should be considered for violations of these rules unless it is repetitive.

Considering these factors, we would consider this *De Minimis* (no warning or noncompliance).

Example 2: Breaking Curfew

Scenario 2: Adult is 15 minutes late to curfew

An adult arrives to shelter 15 minutes after curfew. **Given the time they arrived past curfew (less than 30 minutes), this is considered *De Minimis*.**

Explanation: USR about Curfew states that breaking curfew may be *De Minimis* based on all the relevant circumstances, including time and location unless it is repetitive. In general, we consider up to 30 minutes acceptable for *De Minimis*. *(Note that arriving late for curfew without prior authorization also may be justified by good cause, which we'll talk about next)*

Remember: Certain USRs have specific *De Minimis* considerations. Not all considerations listed here include all possible reasons for a violation to be *De Minimis*.

Always consult the USRs to check if a violation has specific considerations for *De Minimis* unless it is repetitive

GOOD CAUSE

What is Good Cause?

The “Good Cause Criteria” listed in 106 CMR 701.380 gives **specific reasons for when a participant is NOT in violation of the USR.**

When a participant meets the Good Cause criteria, they **should not be issued a warning or noncompliance.**



How does Good Cause impact warnings and noncompliances?

When the participant violates a rule or regulation, ask **WHY** they violated the rules before you request a noncompliance.

If there appears to be a good cause reason for violating the rules:

1. Ask for documentation (work schedule, date/time of appointment, repair or towing bills, etc.).
2. Don't issue a warning or request a noncompliance if you determine there to be Good Cause.

If there does not appear to be a good cause reason for violating the rules:

1. Issue a written warning or request a noncompliance.
2. If the participant submits documentation for good cause after a written warning is issued, the provider may rescind the written warning in ETO.
3. Remember: the NC unit may deny a request for noncompliance if they determine good cause.

COMMON EXAMPLES OF GOOD CAUSE

The following list outlines the most common reasons a participant may have good cause for violating a Uniform Shelter Rule or not participating in the Rehousing Plan:

- Transportation issues
- Lack of childcare
- Caring for an infant under 3-months
- Medical/Mental Health Issues
- Illness
- Personal Injury
- Domestic Violence
- Death in Family
- Family Crisis
- Emergency Situations
- Reasonable Response
- Possible Loss of Job
- Access Needed to Specialty Medical Providers
- Special Education Needs of Child
- Other compelling circumstance that is beyond the control of the applicant or client that includes conditions listed in 106 CMR 701.380(2)

Important Notes

- This list is NOT comprehensive
- Always check the CMR and USRs for specific examples of good cause relevant to a violation
- ADA and Reasonable Accommodation (RA) are not good cause reasons but may also excuse a noncompliance – please see the ADA slides in this training and reach out to your ADA Coordinator with specific questions

GOOD CAUSE IN CONTEXT

Examples: Breaking Curfew

Scenario 1: Adult is more than 30 minutes late to curfew (because they were working an evening shift).

An adult arrives to shelter 2 hours after curfew. They're late because they were doing the closing shift at the restaurant at which they're employed and missed their bus. Because **transportation issues and employment are considered Good Cause**, even though the adult was very late, no warning should be issued, and no noncompliance should be requested.

Scenario 2: Adult is more than 30 minutes late to curfew (because they were shopping).

An adult arrives to shelter more than 30 minutes after curfew because they were shopping at the mall with friends. Because shopping at the mall **is not considered Good Cause**, this conduct warrants a warning or a noncompliance. *If this is the first curfew violation, a warning should be issued. If this is the second (or more) curfew violation, a noncompliance should be requested.*

WHAT IS ADA AND REASONABLE ACCOMMODATION?

1

ADA: Americans with Disabilities Act

- Protects people with disabilities from discrimination
- Provides additional legal support for accommodating disability

2

Reasonable Accommodation (RA)

A modification or adjustment to meet the needs of an individual with a disability to equally participate in or benefit from the EA shelter program.

- Sometimes, RAs aren't granted until the EOHLC ADA Unit reviews the request.
- When the provider can clearly observe the impact of a disability or the need for the RA is otherwise known, providers should make adjustments immediately.
- Providers cannot deny an RA. Providers should inform the EOHLC ADA Unit of the RA request instead of denying an RA.

3

What Does this Mean in EA Shelter?

People with disabilities are protected by the ADA and other disability-rights laws and entitled to reasonable accommodation related to the rules, regulations, and practices of EA shelter.

An RA enables the participant to equally participate in or benefit from the EA shelter program.

4

Did you Know?

There is a designated ADA Coordinator at your agency. You can ask them for more detail on ADA and Reasonable Accommodations.

All RA requests and RA-related questions should be directed to the ADA Unit at ehlcadaa@mass.gov, or to Caro Narby, the ADA Manager, at caroline.narby@mass.gov or 617-833-3150

ADA AND RA IMPACTS TO NONCOMPLIANCE

How Does This Impact Your Work?

- I. Even if no good cause has been determined, providers still need to **consider whether the violation occurred because of a disability BEFORE issuing a warning or noncompliance.**
 - If the participant does indicate that the violation occurred because of a disability, then the provider should follow up with the ADA Unit (*to see if an RA has been submitted, to submit an RA request, to otherwise engage with questions around accommodation, etc.*) before submitting the warning/noncompliance.
 - Specific questions about how a participant's RA and/or disability-related need may impact issuing a warning or noncompliance should be discussed with your ADA Coordinator and/or the HLC ADA Unit and Noncompliance Unit.
2. If there is a direct health/safety issue relating to non-compliance, the **ADA Unit** and **noncompliance Unit** should be alerted and the issue may be escalated. Please also follow the process outlined for [Serious Incidents \(click to link to appropriate slide in this PPT or view in appendix\)](#).
 - Note: an RA request does not have to be submitted through an ADA/RA form. If good cause is not established and the participant indicates noncompliance is due to a disability, it should be treated as an RA request for review through the EOHLC ADA Unit. Providers should also check ETO for RA information.

ADA AND RA IN CONTEXT

Examples: Overnights and Visitors

Scenario 1: Adult is taking unauthorized overnights (because they cannot access their unit).

A participant has been placed in a third-floor unit, but they have a mobility impairment*. They have been taking several overnights and are in violation of the shelter rules. If they are having difficulty accessing their unit due to their disability, they may be entitled to have their overnights excused as an RA for their disability until they can be moved to a unit that better accommodates their disability-related needs. In that case, they **should not receive a warning/noncompliance for the overnights taken.**

Scenario 2: Adult has unauthorized visitors in room.

A participant with a mobility impairment had visitors without notice or approval for a birthday party. The participant has an RA on file for the mobility impairment. In this case, **they may not be entitled to a RA for the violation.**

That rule violation may warrant a warning/noncompliance unless visitors are also needed as a RA for a disability-related reason.

*In the example, **if the impact of the disability is obvious, the provider should take steps as quickly as possible to move the household to an accessible unit** and include all relevant HLC partners (like Placement, their contract managers, etc). If the impact is not obvious, the provider should immediately consult with the ADA Unit to determine whether an RA is warranted.

HEARSAY

With a few exceptions, we cannot issue a noncompliance based solely upon hearsay.

This means that staff must witness the violation or have independent evidence of the violation (ex. video).

- Staff #1 can request a noncompliance based upon what staff #2 saw, but staff #2 must be named in the request and available to testify at the hearing.

Examples

- **Staff #1 saw Ms. Gale slap another resident** = this is ok because staff #1 saw the conduct and can testify to what they saw at a hearing.
- **The resident in room #3 went to the office and told staff that she saw Ms. Gale slap another resident in the kitchen. Staff went to the kitchen, but the altercation was over and there was no camera footage showing the incident** = this is hearsay and cannot support a request for a noncompliance (because staff did not witness the violation or have independent evidence of the violation).
- **The resident in room #3 went to the office and told staff that she saw Ms. Gale slap another resident in the kitchen. Although the altercation was over by the time staff reached the kitchen, staff were able to review the camera footage from the kitchen area and saw Ms. Gale slap the other resident** = this is ok because staff can present the video at the hearing (must submit a copy of the video with the request for a noncompliance).
- **The resident in room #3 went to the office and told staff that she saw Ms. Gale slap another resident in the kitchen. Staff went to the kitchen and while they didn't see the slap, they did hear Ms. Gale call the other resident a "stupid bitch"** = because staff heard Ms. Gale curse at the other resident, they can request a noncompliance for harassing/threatening language.

EXCEPTIONS TO HEARSAY

1. Landlord Statements

- Reliable hearsay from the landlord of a building where a participant is in a scattered site unit is ok if the landlord can provide a written statement, swearing under the pains and penalties of perjury, that what he/she is saying is true and describes what he/she saw and heard.

2. Police Reports

- Police reports that describe what the officer saw and heard can support a request for a noncompliance.

3. Affidavits for Restraining or Harassment Orders

- The affidavit for a restraining order or harassment order, in which the petitioner describes the participant's behavior, may be enough evidence to support a request for a noncompliance.
 - If the petitioner goes back to court and is granted the permanent order, request a noncompliance for any violations described in the affidavit.
 - Include a copy of the affidavit and the petition for the order with the request for the noncompliance.

HEALTH AND SAFETY

What is Health and Safety?

- Health and Safety is alleged when the EA household is **posing a threat to the health or safety of a member of their own household, other residents, guests and/or shelter staff** for reasons other than criminal activity*
- The USR also includes a rule against violent behavior and child abuse or neglect, which is a type of a threat to health and safety. This includes:
 - Physical or sexual violence
 - Threatening conduct
 - Intimidation
 - Child abuse / physical discipline

*Criminal activity is handled separately. More information on criminal activity will be covered in follow-up trainings.

Health & Safety Warnings & Noncompliances

- In cases where a participant's behavior are both a Threat to Health and Safety AND a violation of USR(s), then you can submit NC Request with both violations noted (check off Health and Safety and check off appropriate USR violation).
- You may also submit a noncompliance request only for the health and safety (does not have to be tied to USR).
- The Noncompliance Unit will consider all the evidence and context available to determine if alleged threats to health and safety warrant a noncompliance.
- All threats to health and safety should also be submitted through a [Serious Incident Report](#).

HEALTH AND SAFETY

Examples: Child Unattended

Scenario 1: Child Unsupervised for 20 Minutes

At approximately 9:00 am, staff Glinda saw Ms. Gale's 10-year-old son alone in the living room area of the shelter watching TV for 20 minutes. Staff Glinda asked the child where his mother was, and he said she was in the unit. Staff Glinda went to Ms. Gale's assigned EA shelter unit and told Ms. Gale that she cannot leave her son in the living room alone.

A noncompliance should be requested, given the age and length of time the child was left unattended.

Note: if the 10-year old's mother had left him alone for 5 minutes while using the bathroom, that would be considered de minimis and no warning/noncompliance should follow unless it is repetitive behavior.

Scenario 2: Child Unattended with a Health and Safety Risk

At approximately 9:00 am, staff Glinda saw Ms. Gale's 2-year-old son wandering around the shelter parking lot by himself. Staff Glinda walked the child back to Ms. Gale's assigned EA shelter unit and told Ms. Gale that she cannot leave her 2-year old son alone, even for a short time

A noncompliance should be requested, given the age and length of time the child was left unattended. Given the young age of the child, a health and safety should also be reported.

LANGUAGE ACCESS: HIGH LEVEL OVERVIEW

Translations

- All participants are allowed to receive verbal translations.
- Translations may be completed by shelter staff or by using TransPerfect.

Using Forms*

Spanish, Portuguese, Haitian Creole, and Cape Verdean Creole

- Use version of form that is written in the participant's native language
- Complete all short response questions in **ENGLISH**
- Leverage a staff member or TransPerfect to explain the form to participant

**Does not apply to
NC Request Form.
See appendix.*

Other Languages

- Use English version of form and write in English
- Leverage a staff member or TransPerfect to explain the form to participant

Answering Short Response Questions

Always Answer Short Response Questions In English

- Yes, even when using a form written in a different language
- Yes, even when you can write in the participant's native language

*Why? To minimize the
risk of mis-translations
between documents.*

WHAT'S THE POINT?

CONSISTENCY FOR FAMILIES	SUPPORTING NEW EA POLICIES	DATA INTEGRITY	HELPING YOU!
<p>Families sometimes move between shelter providers. Following the same practices and standards makes the experience easier for families.</p>	<p>New changes to EA policies, including Length of Stay, make following noncompliance policies and practices very important.</p>	<p>Tracking data in ETO (like the warnings) is an important part of understanding what's happening in Shelter.</p>	<p>The changes & clarifications here should empower you to more effectively and efficiently serve families in shelter.</p>
<p>Following shelter rules can be confusing for families, especially when different providers have different standards and processes.</p> <p>The new warning system is intended to bring a trauma-informed approach to helping families navigate EA shelter. Closely adhering to HLC processes and guidance (as well as what the USRs and CMRs say about Good Cause, De Minimis, etc.) is also important for helping families understand and change behavior.</p>	<p>The effective and positive roll-out of the new EA policy around limiting the length of stay that families can remain in shelter is dependent on how shelter providers enforce noncompliance.</p>	<p>Following the rules for submitting data in ETO (<i>such as make sure that all answer options perfectly match what's written on forms given to families and writing all short response forms in English</i>) help ensure that the data EOHLC leverages to make decisions, seek funding, and guide policy is accurate.</p>	<p>Standardizing warnings, adding clarity around De Minimis and Good Cause, and providing additional details for disability-related and health and safety concerns were all suggestions that providers gave to the Noncompliance Unit when we asked how to improve the provider experience.</p> <p>We hope that these improvements make your roles easier!</p>

THANK YOU!

What questions can we answer?

APPENDIX SLIDES

Additional reference material

LANGUAGE ACCESS: DETAILED INSTRUCTIONS

Warning Template

English Speaking

1. Complete the English version of the warning template.
2. Write short responses in English.
3. Deliver to participant.
4. Finish warning submission in ETO.

Spanish, Portuguese, Haitian Creole, or Cape Verdean Creole

1. Use and complete the version of the warning template in the participant's native language.
2. Write short responses in English.
3. Use a staff member or TransPerfect when delivering the warning.
4. Finish warning submission in ETO.

Other Language

1. Complete the English version of the warning template.
2. Write short responses in English.
3. Use a staff member or TransPerfect when delivering the warning.
4. Finish warning submission in ETO.

Noncompliance Request

English Speaking

1. Complete the ETO TP in English.
2. Print the ETO TP.
3. Print and complete the HLC NC Request Supplement in English.
4. Deliver to participant.

Spanish, Portuguese, Haitian Creole, or Cape Verdean Creole

1. Complete the ETO TP in English.
2. Print the ETO TP.
3. Print and complete the HLC NC Request Supplement document in the participant's native language.
4. Use a staff member or TransPerfect when delivering the materials.

Other Language

1. Complete the ETO TP in English.
2. Print the ETO TP.
3. Print and complete the HLC NC Request Supplement in English.
4. Use a staff member or TransPerfect when delivering the materials.

SERIOUS INCIDENT REPORT

- ☐ A Serious Incident Report (SIR) can be submitted to document a serious event, threat to health and safety, disability-related event, criminal activity, violent behavior, etc. that occurs in the shelter.
- ☐ You must request a Noncompliance in addition to completing a SIR if the incident is also a violation of the USRs or CMRs.
- ☐ The narrative in the noncompliance request should be a condensed/summarized version of what is written in the Serious Incident Report. Pull out all the relevant facts that support the violation(s) while completing the NC Request form.
- ☐ **Include the Noncompliance Unit if the serious incident involved a Uniform Shelter Rule violation.**

Who to contact:

virginia.k.griffin@mass.gov; barbara.j.duffy@mass.gov; amy.greenwood@mass.gov; ita.mullarkey@mass.gov; amber.noyes@mass.gov; diana.santana@mass.gov; any appropriate staff from your agency. Please include Noncompliance team (if NC is requested); Inspections team (if unit condition is of concern); your contract manager