



**Massachusetts Department of Housing and Community Development
Division of Housing Stabilization**

To: DHCD Field Staff
From: Ita Mullarkey, Associate Director 
Date: October 25, 2016
RE: Housing Stabilization Notice 2016-03, Guidance on Use of Terms Regarding Health and Safety

Introduction

This Housing Stabilization Notice (HSN) provides guidance on how Department of Housing & Community Development (DHCD) Division of Housing Stabilization (DHS) Homeless Coordinators and Department of Children and Families (DCF) Health and Safety (HAS) assessors are to work with terms used in regard to HAS assessments in applicable statute and regulations. The Fiscal Year 2017 budget granted DCF authority to perform HAS assessments to determine if a family whose head of household is a secondary tenant is eligible for Emergency Assistance (EA) on the basis that the family “faces a substantial health and safety risk that is likely to result in significant harm should the family remain in such housing situation.” 2016 Mass. Stat. c. 133 (FY 2017 Budget), § 2, line item 7004-0101. This has been a recurring EA line item language for several years. EA regulations and the DHCD-DCF HAS Administrative Plan provide a structure for implementing the new legislative requirements. *See* 760 C.M.R. § 67.06 (1) (a) 4., (e) 3.-4., (f) 6.-9. This guidance provides additional information in regard to terms used in those documents. This HSN supersedes and renders obsolete HSN 2012-06B.

Summary

- A regular guest’s repeated conduct may be attributed to the primary tenant.
- Whether conduct can or cannot “be addressed” through an intervention is dependent on DHS assessment.
- “Lack of” a basic necessity or an inability to access that necessity for personal needs is a health and safety risk.
- “Housing situation” means regular or irregular housing situation.

- “Risk to the family” focuses on the health and safety of the children, but is meant to review the situation of the entire family.

Discussion

The DCF HAS assessment process is meant to help families by providing access to trained social workers who can help them to overcome difficulties in their present housing situation that might enable them to remain in housing rather than resorting to an emergency shelter. The HAS assessor has the training to determine whether a situation poses a risk to the applicant family and, in particular, the children in the family. The HAS assessment process is not intended as a barrier to entry to emergency shelter, but as a means of ensuring that families maximize the availability of safe and healthy alternatives to emergency shelter, which is not an optimum environment for children. The statutory, regulatory, and subregulatory guidance provisions involving HAS assessments should be applied with these principles in mind. This HSN provides guidance on how to implement the HAS assessment process.

- **Guest’s conduct treated as the conduct of the primary tenant or co-tenant.**
Repeated conduct of a regular guest in the household is treated as the conduct of the primary tenant or co-tenant. If the primary tenant or co-tenant allows a guest to visit the unit on a regular basis and, as a result, the applicant family is repeatedly exposed to conduct on the part of the guest that would warrant EA placement under 760 C.M.R. § 67.06 (1) (f) 6. a.–c. (such as criminal or otherwise violent conduct or certain other behaviors that are likely to cause significant physical, psychological, mental, or emotional harm to the to the members of the applicant household), the guest’s behavior can be attributed to the primary tenant or co-tenant in assessing the risk to the applicant family.
- **Whether conduct can or cannot “be addressed” through an intervention is dependent on DHS assessment.** 760 C.M.R. § 67.06 (1) (f) 6. a.–c. all indicate that the behavior in question warrants placement if it “cannot be addressed” through intervention. Whether the behavior can or cannot be addressed through intervention is a determination to be made by DCF assessors. The regulatory definition does not mean that the applicant family must first try to remedy the

situation itself by accessing the named intervention before applying for EA. For example, a member of the primary tenant's family may borrow money from a member of the applicant family without asking. Misunderstandings can occur in these circumstances and the member of the applicant family may accuse the member of the primary tenant's family of theft. That does not mean that the applicant family must report the member of the primary tenant's family to the police in those circumstances before applying for EA. The DCF assessor may determine, however, after reviewing the circumstances with the applicant family and the primary tenant or co-tenant's family, that mediation might be an appropriate recommendation to resolve the interfamily tensions and improve interfamily interactions in the future.

In order to be considered "criminal conduct," the conduct does not first have to be proven in court. As with review of allegations of criminal activity under 760 C.M.R. § 67.01 (6) (a) 1., all that needs to be presented is evidence of facts that, if proved beyond a reasonable doubt in a court of law, would constitute the necessary elements of a crime. For administrative purposes, such evidence is evaluated by the preponderance of the evidence. In other words, if there is evidence demonstrating that it is more likely than not that the necessary elements of a crime occurred, that is sufficient for the purposes of a HAS assessment.

If the DCF HAS assessment indicates that an intervention is likely to be successful and that there is no immediate likelihood of harm to the members of the household, the DCF assessors will suggest that the intervention be undertaken and will then re-evaluate the family as indicated in the HAS Administrative Plan. If the HAS assessor determines that the intervention is unlikely to be successful or that there is an immediate likelihood of harm to the members of the household (including emotional or psychological harm induced by exposure to behavior physically directed at their parents), the assessor will determine that there is a substantial health and safety risk in the housing situation.

For example, if a child of the primary tenant and a child in the applicant household regularly are getting into fights, and that is the basis of the application,

the DCF HAS assessor will determine whether, with intervention, the children's fighting is likely to stop or be significantly reduced to such a level that there is no significant risk to the applicant family's child. Such an assessment would be appropriate if interactions among the children are age appropriate, not dangerous, and similar to those observed among siblings who may fight occasionally. In that case, the DCF HAS assessor would recommend that the intervention be tried before proceeding with the application.

- **“Lack of” a basic necessity or an inability to access that necessity for personal needs is a health and safety risk.** 760 C.M.R. § 67.06 (1) (f) 6. d. (ii) refers to lack of certain basic necessities (hot and cold water, heat in heating months, electricity, lighting, waste disposal) or inability to access them for personal needs as indicia that a location is not “meant for human habitation.” 760 C.M.R. § 67.06 (1) (f) 8. Inability to access those necessities means an inability to use those necessities in a manner consistent with meeting typical daily personal needs or, in the case of lighting, inability to access lighting for daytime use or to keep lighting to a minimum during evening night sleeping times. For example, some facilities may be heated during the heating season but are lighted at a constant level at all hours and do not provide access to hot and cold water sufficient for daily needs, or a place to wash privately. In such a case, the inability to control lighting for sleeping purposes and to access appropriate washing facilities would constitute “lack of” a basic necessity despite the availability of adequate heat. Also, access to electricity should be sufficient for regular daily personal needs, such as plugging in a personal care device like an electric shaver. A communal family shelter, such as one conforming to 780 C.M.R. §§ 3111.1 *et seq.*, has always been considered “feasible alternative housing” under 760 C.M.R. § 67.06 (1) (b). Lighting in such shelters may not be controllable by the individuals staying there, but lights are turned on and off at times commensurate with normal sleeping hours, and residents have the availability of some privacy in sanitation and washing facilities.

- **“Housing situation” means regular or irregular housing situation.** 760 C.M.R.

§ 67.06 (1) (f) 7. defines “housing situation” as follows:

housing situation shall mean, for purposes of 760 CMR 67.06(1)(a)4., either: a. a specific housing situation, being the location where the children of the applicant household are regularly sleeping overnight; or b. an irregular overnight sleeping situation. A regular overnight sleeping situation is one that is consistent and continually available, not intermittent or occurring for an individual instance. An irregular overnight sleeping situation is an overnight sleeping situation that is not regular.

This means the location where the children in the household typically or regularly spend the night is their housing situation in most circumstances. An irregular housing situation, in and of itself, does not constitute a health and safety risk. It is only when the irregular housing situation becomes *persistent* that it is considered to be a health or safety risk. 760 CMR 67.06 (1) (f) 6. d. (iii).

In determining what constitutes *persistent* irregular housing, the Homeless Coordinator should consider four factors: the length of stay at each particular location, the total number of moves, the number of different locations (as applicant families may return to particular host families repeatedly over a period of time), and the total amount of time that the family has consistently been moving from place to place since the last time that the applicant family stayed with a host family long enough to constitute regular housing. The determination of what constitutes “persistent irregular housing” in a particular case will vary dependent on a weighing of all the factors. The shorter the lengths of stay in particular places, the greater the number of total moves, the greater the number of different locations, and the longer the time since the family last had regular housing, the more likely that the family will be found to have had persistent irregular housing. For daily moves to a different place every night, the total time period might be relatively shorter; for weekly moves that do not result in any regular pattern of rotation forming, the total time period should be considerably longer.

A location where a child spends a single night or occasional intermittent nights visiting with a friend or family member does not constitute a regular

housing situation. If a child is in a housing situation that is irregular, with no regular pattern of overnight sleeping in a particular location (or locations, if such locations are an approved part of a shared child custody agreement) characterized by short stays at multiple and varying locations, that constitutes an irregular sleeping situation. A regular pattern, such as one week with an aunt followed by a week with a cousin, and returning again to the aunt constitutes a regular pattern of overnight sleeping. Similarly, a child who spends Mondays, Wednesdays, Fridays and every other weekend with the child's father is following a regular pattern of overnight sleeping.

In other words, if a child occasionally visits with friends or relatives, but overall sleeps in the same place regularly, then that regular overnight sleeping location constitutes the family's housing situation. If, on the other hand, the child does not have a consistent pattern of overnight sleeping over a period of time sufficient to indicate that the child has no regular overnight sleeping place and that lack of a regular overnight sleeping place becomes persistent (taking into account the four-factor test above), the family will be considered at a substantial health and safety risk. An occasional brief period of time lasting only a few days when a child sleeps overnight in the same location (assuming that this location is used rarely and irregularly for that purpose) will not break a persistent lack of a regular overnight sleeping situation. On the other hand, if the family as a whole stays with another family for a period of two or more weeks, that would likely break any persistent lack of a regular overnight sleeping situation.

A stay at a non-EA shelter that is *time-limited* is considered feasible alternative housing during the time that the family is allowed to stay there, but it is an irregular housing situation because it is not "continually available" due to the time limitation. When the time limitation expires, however, the family may be able to obtain feasible alternative housing in another time-limited shelter, or with relatives, friends, or other charitable organizations. Such a situation will qualify as a "substantial health and safety risk to the family that is likely to result in significant harm"—even if each individual overnight sleeping situation provides

the basic necessities outlined in 760 C.M.R. § 67.06 (1) (f) 6. d. (ii)—*only if* the DCF assessor determines that the situation is persistent (taking into account the four-factor test above), as opposed to occasional, and cannot be remedied immediately by access to feasible alternative housing.

- **Assessing risk to the family.** Assessment of “substantial health and safety risk to the family that is likely to result in significant harm should the family remain” focuses on the health and safety of the children, as the primary focus of the EA program and the expertise of DCF staff, but is meant to review the situation of the entire family. Physical, psychological, mental, or emotional harm to any member of the applicant family caused by the housing situation may be a basis for an assessment of the existence of a substantial health and safety risk.

When a family applies for EA and (i) the children in the family stayed the prior night with a primary tenant, (ii) no other substantial health and safety risk factors are present aside from persistent irregular housing, and (iii) the applicant presents written evidence that the primary tenant will no longer permit the applicant family’s child (or children) to stay with the primary tenant that evening or there is other persuasive evidence that the children will not have feasible alternative housing (which includes temporary housing with relatives, friends, or charitable organizations) that evening, the Homeless Coordinator shall request an urgent DCF health and safety assessment for the applicant family. If a health and safety assessment cannot be completed by the close of business of the day on which the health & safety assessment has been requested, and it is clear that the family has no feasible alternative housing that evening, DHCD will locate feasible alternative housing at a non-EA site in order to allow for the completion of the health and safety assessment. The EA application for any family that is located temporarily in feasible alternative housing (whether with relatives, friends, or charitable organizations or at a non-EA site located by DHCD) while awaiting a HAS assessment remains an open application in accordance with HSN 2012-12, Clarification of Procedures Involving Re-Application and Open Applications.

When a health and safety assessment is requested in these circumstances, the standards used by DCF in determining whether a substantial health and safety risk exists shall be the same as those used in all other cases applying for EA on the basis of a claim of a substantial health and safety risk. If the family is found ineligible under those standards, the DCF assessor may suggest or provide mediation services involving the applicant family, the primary tenant, and, if applicable, the property owner.

Conclusion

When interpreting the HAS regulations and guidance, Homeless Coordinators and HAS assessors should take into account that DCF is determining what types of housing situations truly cause the family to face a substantial risk of significant harm to an applicant family and, in particular, the children.