

August 3, 2020

Heidi Marston, Executive Director
Los Angeles Homeless Services Authority (LAHSA)
811 Wilshire Blvd., 6th Fl.
Los Angeles, CA 90017

Re: LAHSA's Policy of Denying Project Roomkey Services for Homeless Individuals with Disabilities, including Those who Need Help with ADLs (Activities of Daily Living)

Dear Ms. Marston;

The Los Angeles Aging Advocacy Coalition is a community-based coalition working to increase awareness of the needs and create solutions to the crisis of elder housing insecurity and rising homelessness among older adults. As you know, Project Roomkey (PRK) is administered by the Los Angeles Homeless Service Authority (LAHSA) and provides temporary housing services and shelter to those experiencing homelessness with the goal of transitioning people into permanent housing.

Homelessness always puts people's health at risk, but COVID-19 has made it significantly more dangerous to live on the street, especially for persons age 65+, who are at [significantly increased risk for serious health consequences and death due to COVID](#), and people with health-compromising disabilities. Therefore, LAHSA has prioritized housing under PRK for persons over the age of 65. Unfortunately, LAHSA's current implementation of PRK has resulted in a policy that denies housing services and shelter to homeless individuals with certain disabilities, including those who need help with Activities of Daily Living (ADLs). The result of this policy is a disproportionate denial of housing and housing services to the very older adults and people with disabilities who are most at risk of severe symptoms or death as a result of COVID-19.

Many older adults and people with disabilities experiencing homelessness have a need for assistance with some basic personal care or activities of daily living (ADLs) such as bathing, dressing and grooming. Several counties have paired personal care services with PRK in order to ensure that they do not leave their most disproportionately impacted elders on the street; it is unconscionable to deny older adults and people with disabilities pandemic-related shelter based on their need for personal care services.

Los Angeles County leadership has acknowledged that older adults experiencing homelessness are at substantially increased risk of COVID, and has adopted the [CDC](#) and its own public health guidelines to prioritize for PRK housing services [anyone age 65 and over](#). Given this prioritization, we would expect that the majority of the 15,000 PRK motel rooms would have been filled with seniors. Yet, LAHSA data indicates that as of June 3rd, only 932 homeless individuals age 65 or older had been approved for PRK, out of a total of 3,995 persons, or 18% of total housed.¹ and far less than the number of elders who should be housed under this age-based prioritization.

¹ Culhane, Dennis, et al., Piloting a Comprehensive Response to Ensure Post-COVID-19 Housing for Homeless Older Adults in Los Angeles County. June 23, 2020 Report back to the Los Angeles County Board of Supervisors, (Item No. 8, Agenda of April 14, 2020).

This is not by chance. LAHSA has instructed its service providers to deny access, and has a policy of denying access, to Project Roomkey motel rooms for many individuals with physical accessibility issues, disability-related needs and those needing help with personal care or ADLs. This policy disproportionately affects older adults, and also affects non-elder homeless persons with disabilities. Attached is a screen shot of the Intake and Assessment Form being used for PRK, which states:

PART 2: TIER 1 ADL ELIGIBILITY QUESTIONS

ALL PRK CLIENTS NEED TO BE ABLE TO COMPLETE THEIR ADLS (ACTIVITIES OF DAILY LIVING) INDEPENDENTLY. (it then allows an exception if the person has a companion or caregiver who can support their need for assistance with ADLs).

It goes on to instruct:

... CLIENTS WHO CANNOT ATTEND TO CERTAIN ACTIVITIES OF DAILY LIVING MAY NOT BE SUITABLE CANDIDATES FOR REFERRAL. BELOW ARE THREE CORE INDICATORS THAT A CLIENT IS POTENTIALLY INELIGIBLE FOR PRK.

It then names three things that the client must be able to do without assistance (1) urination and defecation control; (2) getting on and off the toilet; and (3) moving in and out of bed and chair. See, Attachment A.

We have heard from many service providers that they have been unable to obtain PRK approval for their clients who are older individuals with a range of disabilities, and who have been denied PRK or other emergency housing as a result of LAHSA's policy.

I. LAHSA's Policy and Practice of Denying Access to PRK for Homeless Individuals who Need Help with ADLs or have other Disabling Conditions Does Not Comply with State and Federal Civil Rights Laws

LAHSA has received hundreds of millions of dollars in state and federal COVID-19 emergency funds to carry out the public health guidelines to immediately house its most vulnerable homeless residents. As a condition of receiving these funds, LAHSA agrees to comply, and requires its contracted housing service providers to comply, with state and federal disability laws. LAHSA's denial of access to PRK for qualified homeless individuals with certain disabilities, and its refusal to modify its policies to accommodate persons with certain disabilities, is not in compliance with several state and federal civil rights laws, including:

- The Americans with Disabilities Act (ADA), which requires that LAHSA and its contractors not discriminate against homeless individuals on the basis of their disabilities, and afford reasonable accommodations or modifications of program policies so that persons with disabilities are not denied equal access to these homeless services and programs;²
- Section 504 of the Vocational Rehabilitation Act of 1973, which forbids organizations and employers that receive any federal financial assistance from excluding or denying individuals

² The Americans with Disabilities Act, 42 U.S. Code § 12101 *et seq.*

with disabilities an equal opportunity to receive program benefits and services;³

- The Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act), under which FEMA along with its state and local partners must distribute relief and other assistance in an equitable and impartial manner, without discrimination on the basis of, among other things, disability or age.⁴ FEMA has issued special instructions on how to ensure the civil rights of all participants during the COVID-19 response, and specifically reference the applicability of these civil rights protections to persons residing in shelters or other emergency housing.⁵ The FEMA Office of Equal Opportunity receives and investigates complaints for violations of these rules in FEMA-funded programs;⁶
- The federal Fair Housing Act⁷ and the California Fair Employment and Housing Act⁸ which prohibits discrimination based on, among other things, age and disability. These state and federal fair housing laws make it unlawful to discriminate by making unavailable or denying access to a dwelling, which has been held to include temporary, emergency shelter;⁹
- California disability laws, including the Unruh Civil Rights Act, California Civil Code Sections 51 and 52, which protects against discrimination and guarantees equal and full access to public accommodations, and the California Disabled Persons Act (CDPA), Civ. Code §§ 54 *et seq.*, which requires that individuals with disabilities have the same right as the general public to the full and free use of public facilities and other public places.

³ 29 U.S.C § 701 *et seq.*; 45 CFR Part 84.

⁴ Section 308 of the Stafford Act, 42 U.S.C. § 5151. *See also* 44 C.F.R. § 206.11(c), requiring organizations or governments receiving assistance under the Stafford Act to provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

⁵ See, FEMA Civil Rights Bulletin: Ensuring Civil Rights During the COVID-19 Response, available at: <https://www.fema.gov/media-library-data/1586893628400-f21a380f3db223e6075eeb3be67d50a6/EnsuringCivilRightsDuringtheCOVID19Response.pdf>. This FEMA Bulletin states that LAHSA should engage with various disability and aging non-governmental organizations in order to “meet the needs of individuals with disabilities and older adults during response and recovery.”

⁶ FEMA Office of Equal Opportunity fact sheet available at: https://www.fema.gov/media-library-data/1466783771992-ed90ca888dbe1a2eade70bd46552029b/FACT_SHEET_IAPProgram2016.pdf.

⁷ Federal Fair Housing Act Amendments, 42 U.S.C. 3601-3619. HUD-DOJ has issued a joint statement re: reasonable accommodation requirements under the Fair Housing Act, available at:

https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf. The Act considers it to be unlawful disability discrimination “where the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.” Courts have found that shelters, and motels providing transitional housing would be considered a “dwelling” covered under the Fair Housing Act.

⁸ Cal. Gov. Code §§ 12920, 12955-12955.8.

⁹ Several cases interpreting the Federal Fair Housing Act, [42 U.S.C.A. § 3602\(b\)](#) have held that it encompasses shelters. For example, a shelter for homeless families was a “dwelling” within meaning of the FHA, notwithstanding that the facility was not designed to be a place of permanent residence, given that they had nowhere else to “return to.” Civil Rights Act of 1968, § 802(b), as amended. Additionally, if the shelter receives federal funding, that is enough to invoke that portion of the FHA that prohibits discrimination in the “sale or rental” of a dwelling; the statute does not require that consideration be provided by the occupant. Civil Rights Act of 1968, § 804(b, c), as amended, [42 U.S.C.A. § 3604\(b\), \(c\)](#).

Despite its clear instruction to service providers to *exclude* from PRK almost all homeless individuals who need assistance with ADLs, LAHSA requires its contactors to certify that they are complying with the Americans with Disabilities Act and providing persons with disabilities any reasonable accommodations that will allow them to enjoy equal access to these federally financed services and benefits. The certification states:

AMERICANS WITH DISABILITIES (ADA) COMPLIANCE AND REASONABLE ACCOMMODATIONS

Each PRK-IH will ensure that it is accessible to and usable by persons with disabilities, as required by the Americans with Disabilities Act (ADA) of 1990. Each PRK-IH will ensure that program participants are made aware of the program's ADA policy as well as how to request a Reasonable Accommodation (e.g., participant is notified at the commencement of services, policy and/or contact information for the responsible party to receive/consider Reasonable Accommodation requests is posted in conspicuous location(s) in the common area and accessible to program participants, etc.)

<https://www.lahsa.org/documents?id=4464-project-roomkey-interim-housing-program-policies-and-procedures.pdf>, at p. 14.

The California Department of Social Services, Adult Programs Division, has confirmed that there is no requirement that hotels/motels be certified or licensed to provide IHSS. Thus, there is no barrier to LAHSA allowing for personal care services to be provided in a motel or "unlicensed" setting. While it is true that an unlicensed setting that provides 24-hour care and supervision equivalent to a licensed board-and-care facility might require a license, it is incorrect to say that any setting that serves people with personal care needs must be licensed. By that argument, an individual getting personal care services at home would have to "certify" their own home. And, no one is suggesting that PRK provide 24-hour care and supervision.

Any argument that PRK sites are akin to homeless shelters and therefore can't provide personal care services is likewise unacceptable. Homeless shelters currently serve recipients of Medi-Cal-funded In-Home Supportive Services (IHSS) - personal care services for people who require assistance with activities of daily living. See, for example, the May 2018 L.A. County DPSS policy titled "Expedited Application Processing" that enables expedited IHSS referrals for people in interim housing, prior to transitioning to permanent housing, and allows IHSS to begin while the person is still in the shelter setting.¹⁰ This expedited process should likewise apply to PRK sites, and the partnership LAHSA has forged with the IHSS public authority to furnish IHSS workers in one PRK hotel is a model to replicate.

THERE IS AN URGENT NEED TO PROVIDE THE REQUESTED RELIEF

We understand that due to our inability to meet in person, we have consolidated the information and the request for a meeting into one letter. We ask that you schedule a meeting **within the next ten (10) days** (any day except 8/11 or 8/12), bringing to the meeting those individuals with the knowledge and authority to discuss how LAHSA will quickly move forward on:

¹⁰ "If the applicant needs IHSS at the interim housing location; has provided all required documentation, including the SOC 873; and has active Medi-Cal, then the SW will authorize IHSS effective the date of application." Los Angeles County DPSS, "Expedited IHSS Application Process for Individuals Transitioning from Interim to Permanent Housing," January 2020.

- (1) Revoking the discriminatory and unlawful policy that denies PRK housing due to a disability, physical access issue or need for assistance with ADLs;
- (2) Clarifying that the positive, equity-focused PRK Prioritization Provider Notice updated on June 25, 2020 does not remove the prioritization of persons aged 65+, but is embedded in it;
- (3) Issuing written instructions and just in time training advising all service providers and contracted motels of the new policy that mandates providing for reasonable modifications of premises, or accommodations in the form of allowing IHSS or other personal services to be provided in PRK rooms;
- (4) Identifying the number and the specific individuals who were denied PRK housing as a result of the former policy, and offering them housing;
- (5) Reporting to the Board of Supervisors on steps 1-3 no later than August 30, 2020;
- (6) Building upon and adapting other counties' solutions to serving those homeless individuals with special needs to incorporate into LA's homeless programs integrated IHSS or other personal care services.

The city, the county and LAHSA have stepped up to face the challenges created by the pandemic, finding extraordinary ways to rapidly get people housed. We believe we can do no less, and must eliminate barriers, for those homeless individuals who need personal care or other assistance. We understand that PRK is wrapping up, and we expect that we will solve this problem as we transition to Project Homekey. We look forward to your prompt response, and to partnering with you to create humane, effective solutions that speak to the specific needs of this disproportionately impacted older population with disabilities.

Sincerely,

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Encl. (1)