



Venice of America

CITY OF
FORT LAUDERDALE

December 6, 2012

Mariah Ybarra
Senior Technical Assistance Specialist
Building Changes
2014 E. Madison, Suite 200
Seattle, WA 98122

SUBJECT: Waiver Request related to an Agreement with Legal Aid of Broward County

Dear Ms. Ybarra:

The City of Fort Lauderdale, a Housing Opportunities for Persons With HIV/AIDS (HOPWA) formula grantee, seeks a **HUD waiver** on certain terms within a HOPWA Agreement with Legal Aid Services of Broward County, Inc. The City and Legal Aid are requesting that the following sections *NOT BE INCLUDED WITHIN THEIR HOPWA AGREEMENT* and thus the City not be penalized within its Agreement with HUD.

1. *Participant agrees that a Program violation by a client which impacts the integrity of all HOPWA funded housing programs will result in immediate termination of the offending client from the Program. Program violations may include, but not be limited to:*
 - a) *Fraud, bribery or any other corrupt or criminal acts in connection with any federally funded housing program. Such acts include failure by false statement, misrepresentation, impersonation, or other fraudulent means to disclose material fact used in making a determination as to the client's eligibility to receive or continue to receive HOPWA services;*
 - b) *Abandonment of assisted unit, defined as a failure to reside on the assisted premises for a period exceeding thirty (30) days, except in cases where the client is hospitalized or placed into residential housing with cause;*
 - c) *Threatening or abusive behavior toward housing and/or support services personnel, neighbor(s), and others. Threats of violence may be verbal or nonverbal and can occur explicitly or implicitly. When the behavior constitutes a legitimate threat of violence to themselves or others, immediate termination is warranted;*
 - d) *Commission by client, any member of the household, guests or any person under the client's control of any violent or drug related criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; and*
 - e) *Extreme or excessive damage caused to the HOPWA funded unit by the client, a client's guest, or member of his or her household. Extreme or excessive damage is characterized by deliberate destruction of property including vandalism, arson, and breaking or soiling fixtures, floors, walls, windows, doors or appliances.*
2. *Participant shall provide an appeal process as provided in 24 CFR 574.310(e)(2)(i)&(ii)(A)(B)(C) and shall keep records thereon. Upon the conclusion of the appeal process a determination shall be made whether to remove the client from the HOPWA program or continue on. The goal is for the Participant to begin the termination process when program violations of this nature occur.*

COMMUNITY DEVELOPMENT DIVISION

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3. *Procedure for Termination of HOPWA Assistance to any program client for violation of requirements, Participant must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of the formal termination process provided in 24 CFR 574.310(e)(2)(i)&(ii)(A)(B)(C):*

- a) Participant shall provide the client with a written notice containing a clear statement of the reasons for termination;*
- b) Permit the client to have a review of the decision, in which the client is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and*
- c) Provide prompt written notification of the final decision to the client.*

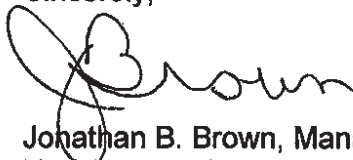
Legal Aid will be providing non-housing support services to HOPWA eligible clients. Legal Aid is concerned that if during the course of its representation of a client, it learns of a program violation, the above provisions would require Legal Aid to disclose such violation to the City of Fort Lauderdale. Disclosing this client confidence would constitute a violation of the Florida Bar ethical standards, which require an attorney to protect confidences of a client (i.e. the attorney-client privilege).

We are therefore jointly requesting this waiver that would exclude the above paragraphs from the Legal Aid agreement and exempt the City from any liability for these issues as they relate to their respective agreements with HUD and Legal Aid.

I have discussed this issue with John Quade and he asked that I forward the question to you. On December 18, 2012, our City Commission will be making a decision on this Agreement and we seek your input prior to the meeting.

Please let me know if we will be able to get a response to this question by that time. If you have any questions, I can be reached at (954) 828-4548.

Sincerely,



Jonathan B. Brown, Manager
Housing and Community Development Division

cc: Maria R. Ortiz-Hill, CPD Director
Sharon Swain, HUD Attorney
John Quade, CPD Representative
Cole Copertino, Assistant City Attorney