

September 30, 2009

Helen R. Kanovsky, General Counsel
U.S. Department of Housing & Urban Development

RE: Homeless Management Information System (HMIS) Confidentiality Issue Under the Homeless Prevention & Rapid Re-housing Program (HPRP)

Dear Ms. Kanovsky:

We appreciate your letter of August 6, 2009. I have discussed your response with several legal aid programs around the country that have raised this issue and wanted to get back to you with some questions which we hope will clarify and resolve this matter.

The largest area of remaining uncertainty is the issue of the scope of information that has to be turned over to the Continuum of Care organizations and resulting requirement to reveal confidential or privileged information about clients being served. Your letter indicates “based on our review of the HMIS reporting requirements, the data standards used by HMIS for the HPRP do not impose a requirement to collect information that is confidential, attorney-client privileged, or that would over-ride an attorney’s rules of professional responsibility.”

The issue for legal services providers is that revealing information to local Continuum of Care organizations in and of itself violates ethical obligations of client confidentiality imposed on attorneys. Your letter suggests that the HMIS reporting requirement should not be interpreted to mean that legal services programs have to provide information that they cannot ethically reveal. This approach appears similar to the HPRP guidance that HUD recently issued for victim service providers allowing them to suppress potentially identifying data in the HPRP Annual Performance Report.

Assuming that we have interpreted your letter correctly, we believe that the simplest, most efficient manner to resolve the issue is for HUD to issue a directive to Continuum of Care organizations that defines your view of confidential fields that are protected under the rules of professional responsibility. We would suggest that these confidential fields include the client’s name, social security number, address, and date of birth. All other information would be routinely entered into the HMIS system, as specified in HUD’s Standards.

Understanding your need to have a means of identifying individuals so as to avoid duplicate counting of recipients of services within the HMIS system, we also suggest that an algorithm to “identify” someone within the system without using the above-mentioned confidential fields could be created with a minimum of difficulty. We have had experience developing such unique client identifiers within other programs, including the housing counseling program at HUD. We would be happy to discuss such an approach at any time.

In recent years there has been greater recognition of the role that access to legal services can play in homeless prevention. The HPRP program in fact requires legal assistance as a part of this comprehensive plan to address homelessness in the United States. We believe that resolution of this issue will in fact allow legal services providers throughout the country to be active participants in addressing this difficult issue.

We appreciate your assistance in resolving this issue and I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Donald M. Saunders".

Donald M. Saunders

Director, Civil Legal Services