



INDEPENDENT LIVING AND FAIR HOUSING

FACT SHEET # 17

What is fair housing? Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act and Indiana fair housing laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability. Discrimination is unlawful in most housing transactions such as rentals, sales, lending, insurance, and zoning.

“Independent living” is a term used to describe senior housing communities that do not provide medical or other support services; however, the term often leads housing providers to unlawfully require that residents live “independently” or without help or aid. Residents with disabilities who need help with personal care, chores, maintaining their unit, etc. should not be excluded from independent living communities and must be allowed to bring in outside resources to assist them in those daily tasks. Further, if a resident becomes disabled during their tenancy, or their conditions worsen, they cannot be asked or forced to leave due to an “independent living” requirement.

The Fair Housing Act, as amended, prohibits discrimination in a variety of transactions, including but not limited to sales, rental, advertising, and financing, pertaining to housing properties referred to as “dwellings.” Almost all types of senior housing have been found to meet the Fair Housing Act’s definition of a dwelling, including independent living communities, assisted living facilities, residential care facilities, continuing care retirement communities, and skilled nursing homes. Therefore, most senior housing providers will be subject to the provisions of the Act, with many of the same responsibilities as those providing housing to the general public.

In situations where a resident needs additional assistance in their daily living, a housing provider cannot limit the amount of outside assistance that a senior with a disability provides or obtains for him/herself. Seniors with disabilities have the right to *reasonable accommodations* to allow for part-time, full-time, or even live-in care that may be necessary for them to remain in their home. Please note: If the housing provider does not normally provide any maintenance or other supportive services, it is usually the tenant’s responsibility to make suitable arrangements with outside resources to obtain any necessary assistance.

What are reasonable accommodations? The Fair Hous-

ing Act protects the right of seniors with disabilities to request reasonable accommodations to any policies or practices that might otherwise hinder their ability to receive the care or aid that they need. A housing provider may request appropriate documentation to establish the need for the aide or services.

Fair housing laws require providers to make reasonable accommodations in their rules, policies, practices or services to give a person with a disability an equal opportunity to use and enjoy a dwelling unit or common space. Accommodations are “reasonable” when they are practical and feasible. To deny an accommodation, a provider must show that it causes an undue burden or is unreasonable. (Under Section 504, government housing must allow reasonable accommodations.)

To make a request, the resident must meet the definition of disability under fair housing laws. A housing provider may request verification of a disability unless the disability is readily apparent. The housing provider may also request verification or information of the nexus between the requested accommodation and their disability. It is the responsibility of the resident to make any accommodation requests, not the provider’s to assume what is needed. A person with a disability is most knowledgeable about the accommodation(s) needed for their disability. Do not assume that the same disability in different residents will have the same accommodation needs. For more information on Reasonable Accommodations, review the FHCCI Fact Sheet 4.

Accommodations for animals to assist in service or emotional support: Individuals with disabilities may require the use of animals to assist them in coping and/or dealing with their disabilities. Under fair housing laws, an individual who is disabled and can show a “nexus” between their disability and their need of an animal may ask the housing provider for a reasonable accommodation in “no pets” policies. To deny the accommodation, the landlord must prove that such an accommodation is not reasonable or causes an undue burden to the landlord. Please note that if the property does not meet the definition of a “dwelling” under fair housing laws, then the American with Disabilities Act will likely apply. ADA’s guidance on animals is different from fair housing guidance and an attorney should be consulted. See FHCCI Fact

Sheet 5 on Animals for more information.

Accommodations for live-in aides and other in-home support:

One of the most common requests for a reasonable accommodation are for live-in aides or in-home support. All seniors with disabilities have the right to obtain and bring in the care they need to support their independence and ongoing well-being in their home. Some residents may only need occasional support from social service agencies or health providers, while others may need around-the-clock care or live-in aides.

HUD's regulations for public housing, project-based housing and the Housing Choice Voucher (commonly called Section 8) program specifically recognize the right for a resident to have a live-in aide when needed to assist in their daily living. As defined by HUD at 24 C.F.R. §5.403, a **live-in aide** means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities and who:

- Is determined to be essential to the care and well-being of the person(s);
- Is not obligated for the support of the person(s); and
- Would not be living in the unit except to provide the necessary supportive services.

Examples of common reasonable accommodations relevant to aides or in home support include:

- Not subjecting helpers or aides to “guest” or “visitor” policies that limit the times and/or duration of stay.
- Providing the tenant/resident an additional key for their helper/aide.
- Moving the tenant to a larger unit to accommodate the aide without requiring a new deposit or lease change fees.

Other issues regarding live-in aides:

- The income of live-in aides should not be counted in the calculation of the tenant's eligibility or rent obligation.
- Relatives may serve as live-in aides although public housing requirements may have different requirements.

- Live-in aides may be subject to standard criminal history policies or other standard policies where a housing provider can establish a legitimate business reason for doing so; however, live-in aides should not be subjected to more stringent or extra standards. Housing providers should be sure to review the April 4, 2016 guidance published by the HUD titled, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* for clarification and guidance on criminal history screening. See FHCCI Fact Sheet 16 on Criminal History for an overview.
- Live-in aides do not necessarily have to be professionally trained or licensed.
- In a 55 or 62 and older community, an aide or helper does not affect the community's ability to qualify for the housing exemption and does not have to meet the age restrictions.
- Allowing a live-in aide generally should not result in a rental increase, additional fees, or other additional costs to the resident.

Changes in disability: If a resident lives in the independent living, or non-supported, section of a continuing care retirement communities (CCRC) and develops a disability or their condition worsens, a housing provider cannot necessarily force the resident to move to the assisted living section of the community. If the resident's disability does not require any extra support services from the CCRC, then the CCRC could not require the resident to move to the assisted living section. Furthermore, the Fair Housing Act prohibits the segregation of individuals on the basis of disability. This may outlaw providing support services only in certain areas of the housing community or separating the assisted living sections of the community. For example, if a resident starts using a walker or a wheelchair but does not need additional assistance, that resident cannot be forced to move out of their current housing.

Resources discussed above and more may be found on the FHCCI Disability page at: www.fhcci.org/programs/educational-resources/

The mission of the Fair Housing Center of Central Indiana (FHCCI) is to ensure equal housing opportunities by eliminating housing discrimination through advocacy, enforcement, education and outreach. The FHCCI is located at 445 N. Pennsylvania St., Suite 811, Indianapolis, IN 46204. Phone: 317-644-0673 or 855-270-7280. Relay: 711. Email: info@fhcci.org Web: www.fhcci.org

The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in the publication. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney. Alternative formats for those with disabilities available upon request. Some of the material in this publication was adapted from publications of the Fair Housing Center Partners of Washington State and the Fair Housing Center of West Michigan with their approval. © Fair Housing Center of Central Indiana 2018. Do not use without the express permission of FHCCI. Version 1/2018. P027.

