



# FAIR HOUSING GUIDES FOR SHELTER PROVIDERS

## FACT SHEET # 18

**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. Housing shelters which allow stays of certain amount of days or receive federal funding must abide by fair housing laws.

**Religious Organizations:** Religious organizations and non-profits operated by them are permitted to reserve housing or shelter to members of the same religion or to give preference to their members. This does not mean a religious entity can discriminate against any other protected class. For example, it would not be permissible to discriminate against applicants or residents on the basis of their disability (such as people who are HIV+ or recovering addicts, etc.), sexual orientation (if publicly funded or under local ordinance protection in Indiana), or gender identity.

Requiring residents to attend religious services may violate fair housing laws. Providers should consult with their legal counsel. If the provider receives federal funding, they are not permitted to provide housing or shelter contingent on attendance at religious services. Even if there is no federal funding involved, there is the risk that any behavior related to proselytizing could be considered coercion” and prohibited by fair housing. All residents should have the option to obtain a waiver from attending services if it conflicts with the person’s religious beliefs or lack of such beliefs.

**Clean and Sober Housing:** Alcoholism is considered a protected disability when someone is in recovery, and cannot be a basis to exclude a person from housing. A program with a "clean and sober" requirement may require that its residents not have drugs or alcohol in the housing facility, or may have rules that prohibit being under the influence. Please note that current unlawful drug use is not considered a disability. Therefore, it is lawful to deny someone housing on the basis of their current illicit drug use, even if s/he has a dependency. Fair housing laws do protect *former* alcoholics and drug users, so housing should never be denied to a person because of their *history* of a former addiction. To avoid legal challenges, fair housing attorneys recommend having rules based on resi-

dents’ behavior instead of blanket abstinence rules. A transitional housing program will have an easier time defending a clean and sober requirement in the event that it is challenged if the program holds itself out as a clean and sober rehabilitative program. When a resident violates the rule and requests that it be waived as a disability accommodation, a program operator could possibly deny the request as unreasonable because it would fundamentally alter the nature of the program. Please review FHCCI Fact Sheet 4 on Accommodations/Modifications for more guidance.

**Mandatory Recovery Requirements:** It is acceptable for a housing or shelter program for individuals in recovery from alcoholism or drug addiction to require participation in recovery-related services or groups. However, if they require participation in a 12-step program that includes the concept of a “higher power” and an individual resident feels uncomfortable with the program for religious (or lack of religion) reasons, the resident should be able to obtain a waiver from attendance if s/he can verify participation in another equivalent recovery program.

**Drug Testing:** Under fair housing laws, it is not unlawful to administer drug testing in housing and shelter programs, provided every applicant or resident is tested. Random drug testing in transitional housing is currently unchallenged. However, drug testing by publicly-funded entities raises the issue of a resident’s constitutional right to privacy. This means that should the practice be challenged in court, it would be upheld only if it were shown that the government (or program receiving government funding) had an overriding interest in doing the testing, such as public safety. Providers doing random testing should be very cautious that whatever procedure they use (such as testing every 12th individual or testing every week, etc.) has no risk of possible discrimination however unintended. Providers performing such tests should give applicants and residents opportunities to share information about any prescription medication they are taking that could influence the test results. Residents should not be charged for the tests. A program that receives only private funding does not appear to face the same legal dilemma. Regardless of whether the housing is publicly or privately funded, any transitional housing program that wants to perform random drug testing should inform applicants before move-in that random drug testing is part of the program; inform residents about

what substances will be tested for; and samples should be used only to test for the presence of those specific substances. Because of the high rate of false positives, any specimen that tests positive should undergo additional testing to confirm results. It is also recommended that any individual whose housing is threatened by a positive result should be permitted an informal hearing before beginning a formal eviction process, to hear the evidence and have a chance to refute it.

**Mandatory Case Management:** Providers should be very cautious about requiring residents to utilize case management, support groups, etc., as they may violate fair housing laws. Providers committed to such requirements should, at the very least, match services to the individual needs of their residents. For example, it is not acceptable to put a resident at risk of losing their job because the transitional housing program requires attendance at a support group at the same time the resident is required to be at work. It is similarly not acceptable to require a resident living on a disability income to attend job search classes or spend time searching for employment.

**Gender Discrimination:** Sex discrimination in housing is unlawful. This means providers are not permitted to segregate residents by gender unless they have shared sleeping areas, bathing areas, and/or bathrooms which would negatively influence the residents' right to privacy. Providers should also not mandate sleeping arrangements within individual units. For example, restricting children of the opposite sex from sharing a bed is unlawful. HUD rulings are clear that these decisions belong with the parent(s). In some instances, providers have expressed concerns about possible sexual abuse in shared sleeping arrangements. Fair housing laws do not allow a provider to dictate sleeping arrangements because they *presume* or *think* it will result in inappropriate conduct. If a provider has concerns about possible child abuse, they should contact the Indiana Department of Child Services.

**Domestic Violence Shelter Programs:** Housing and shelter providers who house domestic violence survivors and their children, or other women and children, should not refuse to house women with sons under 18 years of age. If there are no shared sleeping or bathing areas or shared bathrooms, such policies are likely unlawful. Even where there are shared

sleeping or bathing areas, providers should consider whether there is a way to modify floor plans or usage times to provide privacy. Funding sources may want to consider providing resources to providers to increase privacy. Please review FHCCI Fact Sheet 6 on Domestic Violence for more guidance.

Refusing to house teenage sons is an especially risky policy in smaller communities where few housing or shelter resources are available. It would be discriminatory if a family is not housed because they have teenage sons and they are not provided with alternative lodging and necessary services. Some providers have expressed concerns that teenagers *may* have had past arrests or other run-ins with the criminal justice system. Please review FHCCI Fact Sheet 16 on Criminal History for more guidance.

Remember, gender is a protected class under fair housing laws, and male domestic violence survivors need housing services similar to female survivors. There may be privacy reasons and compelling programmatic reasons for excluding adult men from domestic violence shelters that serve women, but communities and funders should have a mechanism in place for serving male domestic violence survivors in an alternative and equal fashion (for example, a separate facility for males or providing motel vouchers with counseling services).

Transgender domestic violence survivors may have particular housing needs that should be addressed. In the case of a homeless shelter that houses men and women separately, facility staff may ask whether a survivor is male or female, if they are unsure, in order to provide adequate housing. If asked, the survivor may state the gender they identify as. Please review FHCCI Fact Sheet 10 on Gender Identity for more guidance.

**Animals for People with Disabilities:** Under fair housing laws, if a person meets the definition of disability and has a need for an animal to assist them, the animal must be allowed. Size, weight, and breed restrictions cannot apply to animals needed for a disability. Please review FHCCI Fact Sheet 5 on Animals for more guidance.

Resources discussed above and more may be found at: [www.fhcci.org/programs/educational-resources/](http://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](mailto:info@fhcci.org) Web: [www.fhcci.org](http://www.fhcci.org)*

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