Fair Housing and Disabilities

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Celebrating the 50th Anniversary of the Fair Housing Act (1968-2018)

For more information, go to our website at www.hud.gov/fairhousingis50

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Expanding the world of possibilities for aging.
Civil Rights Act of 1968
Fair Housing
Federal and State Laws

• Federal Laws
  – Fair Housing Amendments Act
    42 U.S.C. 3604(f), et. seq.
  – Americans with Disabilities Act
    42 U.S.C. 12101, et. seq.
  – Section 504 of the Rehabilitation Act of 1973
    42 U.S.C. 794

• State Laws
Protected Classes

Protected Classes for MD providers:

- Federal - Race, color, religion, national origin, sex, familial status (exemption for senior housing), and disability

- MD protected classes – race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, or disability.
Areas of Concern for Providers

• Advertising & Marketing
• Admissions and Tenancy
• Reasonable Accommodations
  – Animals and Marijuana
• Accessibility and Use of Facility
  – Mobility Devices
Advertising & Marketing

• Unlawful to indicate any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.
• Applies to all forms of advertising and marketing.
• Still litigated and monitored by watchdog groups, HUD/DOJ, and individuals

https://www.hud.gov/sites/documents/DOC_7781.PDF
Advertising & Marketing

• Areas of concern
  – Program descriptions
  – Religious affiliations/preferences
  – Photographs/Visual Representations
    • Gender and racial diversity
    • Mobility of residents

• Complying with the law
  – Follow HUD guidance (AFHMP, etc)
  – Use Equal Housing Opportunity Logo and/or Statement
  – Review your website & print marketing
  – Train your employees & keep a file of all advertising
Application and Admission

• Be consistent with all applicants

• Tell them who you are and what you do
  • Explain what services you provide and what services you do not provide
  • Explain licensure regulations and levels of care, if applicable

• Reasonable Accommodation Analysis
Admissions

• Generally Fair Housing law prohibits housing providers from asking “disability-based” questions of applicants (24 C.F.R. 100.202)

• Exceptions
  – Ability to meet tenancy requirements
  – Qualification for preference
  – Current illegal drug convictions
  – Direct threat to health and safety of others or cause substantial physical damage to property
Defining Disability

An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activity; or
- Has a “record of” such disability; or
- Is “regarded as” having an disability
Tenancy Requirements

- Ability to meet tenancy requirements
  - This is not a question about “living independently”
  - Can the prospective tenant meet the requirements of tenancy with or without assistance?

- Reasonable Accommodation
  - Able to meet tenancy with assistance of others
  - How much assistance?
  - Private duty aides
Reasonable Accommodations

- Receiving an Accommodation Request
- When and How to Verify Disability
- Confirming the Nexus
Accommodate or Discriminate

- Do you have a written Reasonable Accommodations Policy? (If not, you really do need one.)
- Policy should cover: Submission, Review and Appeal
- Does resident/applicant need to submit request in writing?
- Do I always have to give what is asked for?
What to Do After Getting a Request

- Is there an obvious or previously known disability?
- Is the need for accommodation obvious or known?
- If not, seek more information and verify the connection.
Examples of Reasonable Accommodation

• Allowing a live-in aide
• Making exception to pet policy size restriction
• Transfer to larger or other placement of unit
• Interpreters
• Explore alternatives
• Your experiences?
The Question of Animals?

• Pets or Assistance Animals
  – Pet rules, responsibility for care/maintenance
  – Deduction of Expenses
  – Common Household Pets

• HUD/DOJ Memorandum of Understanding

• Notice FHEO 2013-01
Marijuana?
Motorized Vehicles

• Use of scooters/wheelchairs has increased dramatically among seniors

• Concerns about danger to others, incidents of injury or threatened injury, and liability

• BUT.....
Motorized Vehicles – DO NOT

• Do not require residency on first floor
• Do not charge rental premium for use of scooter/wheelchair
• Do not require additional liability insurance
• Do not conduct medical screening or request medical records
• Do not restrict access to common areas
Motorized Vehicles – Allowed

• May require tenant to demonstrate he/she can safely operate the vehicle
• Reasonable “rules of the road”
• Speed limit & right-of-way
• Who may use scooter
• Storage, parking, and recharging
• Sample Policy
  – www.fairhouse.net
Preservation and Refinancing

• RAD and other refinancing transactions typically require that owners address any accessibility enhancement needs identified but not yet completed from their Section 504 accessibility plans.

• With significant capital improvement, minimum requirements are to make at least 5% of total units wheelchair-accessible, plus an additional 2 percent accessible to persons with hearing or vision impairments.
Resources

• HUD/DOJ Reasonable Accommodation Statement

• HUD Resources
  – https://www.hud.gov/program_offices/fair_housing_equal_opp/library
  – https://www.hudexchange.info/programs/policy-areas/#fair-housing

• HUD Guidance on Service Animals (2013)
Maryland Fair Housing Resources

Maryland Commission on Civil Rights
6 Saint Paul St., Ste. 900
Baltimore, MD 21202-1631
1-800-637-6247
https://mccr.maryland.gov/
Questions?

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