

Strategies to Help People with Disabilities Be Successful in the Housing Choice Voucher Program



*Guidance for PUBLIC HOUSING
AGENCIES Administering
Housing Choice Vouchers
Targeted to People with
Disabilities through the
Mainstream, Certain
Developments, or Designated
Housing Programs*

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Guidance for Public Housing Agencies Administering Housing Choice Vouchers Targeted to People with Disabilities through the Mainstream, Certain Developments, or Designated Housing Programs

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—Chapter 1—

Strategies to Increase Utilization of Housing Choice Vouchers by People with Disabilities

Introduction

Since 1997, the U.S. Department of Housing and Urban Development (HUD) has made available Housing Choice Vouchers (HCV) targeted to people with disabilities through the *Mainstream Housing Opportunities for People with Disabilities Program*, the *Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Developments* program, and *Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans* (referred to as the “Mainstream,” “Certain Developments,” and “Designated Housing” programs, respectively). Through these programs over 50,000 vouchers have been awarded to approximately 440 PHAs to date. Vouchers made available through these “set-asides” are considered part of the HCV program and are governed by the same federal rules and regulations.

Even for the most seasoned HCV administrator, managing targeted programs can be challenging. Tight housing markets, inadequate payment standards, and other factors make it difficult to achieve high utilization rates – especially for vouchers targeted to people with disabilities.

The goal of this chapter is to provide Public Housing Agencies (PHAs) with new ideas to increase utilization rates in HCV programs targeted to people with disabilities. Many – but not all – of the ideas involve outreach and collaboration with local disability and human services organizations in the community. These agencies are a PHA’s natural allies in making these targeted programs work. Their staff works with people with disabilities, many of whom have housing needs. PHAs have the vouchers to address these needs. In partnership, these agencies can both streamline the lease-up process – by working together to identify eligible applicants and assisting them in locating suitable housing – and ensure that people with disabilities, once housed, get access to the supports needed to maintain residential stability.

Importance of Fair Housing Laws and Reasonable Accommodation

Since the 1970s, there have been many federal and state laws passed in an effort to ensure that people with disabilities can participate fully and equally in federal and state housing programs. It is important to understand that, as a result of these laws, PHAs are obligated to make reasonable changes – known as “reasonable accommodation” – in HCV program policies and procedures to ensure equal participation in the program by people with

disabilities. Examples of these types of changes in policies and procedures are highlighted throughout this chapter. For more information about reasonable accommodation and the federal fair housing laws, see chapter 3.

Outreach

When first awarded Mainstream, Certain Developments, or Designated Housing vouchers, the PHA must determine if the existing HCV waiting list includes a sufficient pool of eligible applicants with disabilities. A separate waiting list cannot be established for these programs.

In order to assess whether there are sufficient applicants, the PHA may have to address several issues. PHAs may find that their lists are “old” and the information outdated. Despite concerns that many of the applicants on the list may no longer need housing, the PHA must contact eligible applicants on the existing list prior to offering housing to new applicants. If a PHA uses a HCV application (or pre-application) that asks applicants to indicate their disability status, a PHA can limit its outreach to just those applicants identified on the application as disabled. However, if a PHA does not request information about disability status on its HCV application, it is not sufficient to simply contact those households on the HCV waiting list who indicated on their application that they receive disability benefits [such as Supplemental Security Income (SSI) or Social Security Disability Income (SSDI)]. This method would exclude those eligible disabled applicants on the list who are working or receiving income from other sources.

One method of identifying applicants with disabilities is to send a notice announcing the targeted vouchers to all households on the HCV waiting list. The notice would inform the applicants of the availability of the vouchers, outline the eligibility requirements, and ask any household that meets the qualifications to contact the PHA.

Some PHAs may have an insufficient number of eligible applicants with disabilities on their existing waiting lists. This may be because:

- People with disabilities and their advocates might not be aware of the HCV program.
- People with specific disabilities and their advocates might think they are not eligible for HCV assistance.
- People with certain types of disabilities – such as those who are visually or hearing impaired – may need special outreach activities.

If there are not enough applicants with disabilities on the PHA’s existing waiting list, the PHA should open its waiting list and conduct outreach targeted to eligible people with disabilities. Ideally, these outreach activities should reach not only people with disabilities, but may also target their families, advocates, and service providers.

PROMISING PRACTICE: Linking PHAs to Disability Service Providers

The Massachusetts Department of Housing and Community Development (DHCD), a statewide PHA, is working in partnership with six other state health and human service agencies to target HCVs to homeless people with disabilities through the Housing Options Program (HOP). Initially funded through a set-aside of 170 vouchers made available through a HUD Notice of Funding Availability, HOP brings together the housing resources needed by homeless people with disabilities and a range of support services. These services are funded by the Department of Mental Health, Department of Mental Retardation, Massachusetts Rehabilitation Commission, and two offices within the Department of Public Health (the bureaus of Substance Abuse Services and HIV/AIDS). This program has proven to be such a success that DHCD has recently set-aside an additional 170 vouchers from their HCV portfolio for HOP.

The 345 HOP vouchers are divided among the five human service agencies in relation to the amount of funding and staffing the agency contributes to HOP. The allocation of vouchers is not a fixed number. It varies depending on the number of eligible referrals from each agency. Each human service agency manages its own waiting list and refers eligible applicants to a lead agency – JRI Health. JRI Health screens applicants for initial program eligibility with regards to homeless status, income, and current household composition. All applicants sign a Program Participation Agreement that lays out the expectations of the program. Participating in ongoing supportive services is not mandatory and the rental assistance is not contingent upon the receipt of services. However, the expectations are stipulated to encourage the ongoing acceptance of services.

After the initial screening, JRI health forwards HOP applications to the Metropolitan Boston Housing Partnership (MBHP) – one of eight regional non-profit organizations that contracts with DHCD to administer the state's HCV program. From JRI Health MBHP receives all the information necessary to conduct a HCV screening, make an eligibility determination, and issue a voucher.

A service counselor accompanies each HOP applicant to the HCV briefing at MBHP. These counselors also assist with housing search and provide ongoing housing stabilization to the HOP household to ensure residential stability. Certain state service agencies also assist HOP households with security deposits, first and last month's rent, and other one-time moving costs.

According to DHCD and the other agencies involved, this program is successful because of the high level of collaboration from all of the agencies involved. The human service agencies participating in the program have high-level professionals involved in the program who are decision makers. Representatives from each human service agency staff a HOP Interagency Advisory Team. This team meets quarterly to review voucher utilization, provide programmatic guidance, and trouble-shoot issues related to specific HOP households.

Another strength of the program is the existence of a lead agency, JRI Health. Supported with funding from each participating state agency, JRI Health provides overall coordination of all HOP activities, minimizes the administrative burden, and ensures that HOP offers a seamless system of housing and supports for homeless people with disabilities.

As part of this outreach effort, it is helpful to compile a list of local organizations working with people with disabilities such as:

- © Local Independent Living Centers (ILCs) (available at www.ncil.org)
- © Local mental health organizations (available at www.nami.org)

- Local agencies serving people with mental retardation/developmental disabilities (available at www.thearc.org or www.ancor.org)
- Local veterans organizations (available at www.pva.org)
- Local HIV/AIDS organizations (available at www.aidshousing.org)
- Other agencies such as rehabilitation commissions, commissions for deaf or blind people, local hospitals discharge or social workers.

Each agency on this list could be sent outreach materials describing the program and how eligible applicants can apply. The more comprehensive the list, the more successful the outreach efforts will be at reaching people with disabilities in the community who may be eligible for these targeted vouchers.

Consider following up the mailing with a meeting with local disability and human services organizations. Face-to-face contact usually improves outreach results. If these organizations are not aware of or do not understand the HCV program, it will be difficult for them to assist their clients in utilizing it. This meeting can provide an opportunity for the PHA to explain the program, distribute copies of the application, answer questions, and enlist assistance that may be necessary in ensuring that these vouchers are effectively utilized – such as help in identifying potential applicants, collecting applications, and locating suitable housing that meets HCV guidelines.

In order to ensure that all people with disabilities are able to participate in the HCV program, HUD requires that outreach be made equally accessible to people with disabilities. For example, it may be difficult to reach persons with visual disabilities if outreach efforts are limited to written materials. A PHA may want to use radio advertisements instead. The PHA needs to ensure that outreach activities reach people with a broad range of disabilities.

Accepting Applications

As with outreach efforts, in opening the waiting list, PHAs must also ensure the application process is equally accessible to people with all types of disabilities. According to HUD, PHAs may use either of two methods for placing an application on the HCV program waiting list before applying any waiting list preferences (described on the next page): (1) by date and time of the application; or (2) by using a “drawing or other random-choice technique” (e.g. lottery).

While a date and time method is permitted, it may present hardships to people with mobility impairments or other disabilities unless they have adequate time to submit an application. With this in mind, a PHA should offer reasonable accommodations for people with disabilities in its policies and procedures for accepting applications. Examples of these types of accommodations include:

- ④ Providing alternatives to standing in line for either receiving or returning applications including: receiving applications by mail or fax, and/or allowing a proxy to stand in line for an applicant.
- ④ Mailing out application forms in advance in order to provide a person with a disability sufficient time to apply.
- ④ Accepting preliminary applications by telephone. Many PHAs have found that a telephone application process, if properly publicized, allows them to accept a large number of applications in a short period of time, while also accommodating the needs of applicants with disabilities.
- ④ Using a simplified initial application form; applicants can complete a more detailed application when they reach the top of the waiting list.
- ④ Allowing disability and human services agencies to copy the application and distribute them to the people they work with. This will help maximize the number of applications submitted.
- ④ Offering assistance in completing the applications; some applicants may have difficulty writing or understanding what information is needed.
- ④ Providing a place on the application for the applicant to voluntarily provide a secondary contact such as family member, friend, or advocate who the PHA can contact with questions and who can receive copies of correspondence sent to the applicant.
- ④ Making sure the application states that the PHA provides reasonable accommodations and the process to request a reasonable accommodation.

Waiting List Preferences

PHAs may want to consider using waiting list preferences or set-asides for their HCV program waiting list. For example, PHAs can establish a preference for people with disabilities who are homeless or people in transitional housing. It is important to note that PHAs cannot use preferences that target specific disability sub-groups such as people with mental retardation, HIV or AIDS, etc. A set-aside allows a PHA to apply a preference to limited number of people on the waiting list.

Preferences can be used to address local needs and public policies. For example, providing a preference for persons with disabilities in nursing facilities or institutions may help the state meet *Olmstead* obligations (see chapter 4 for a complete explanation of the U.S. Supreme Court *Olmstead* decision).

Preferences can also be used to target people with disabilities who may be better positioned to move into the community. For example, people who have Medicaid Home and Community Based Services Waivers (see chapter 3 for a discussion of the Medicaid program) may already have the services and supports they need to help them move into the community.

Other preferences might include:

- People using “bridge subsidies” or time-limited subsidies (e.g., HOME subsidies, temporary subsidies funded by state or local mental health authorities or developmental disability agencies, etc.) that can be linked to the HCV program.
- People who live in group homes or congregate housing. Some people with disabilities in these settings may be interested in moving into their own apartment while others may want to use the voucher to lease-in-place in their current housing.

Eligibility

Vouchers made available through the Mainstream, Certain Developments, or Designated Housing programs must be used by people with disabilities in households that qualify as “disabled households” according to HUD regulations. HUD has specific definitions for a person with a disability and for disabled households.

- A *person with a disability* is defined as an individual who:
 1. Has a disability as defined in Section 223 of the Social Security Act; OR
 2. Is determined to have a physical, mental, or emotional impairment which is
 - Expected to be of long-continued and indefinite duration; AND
 - Substantially impedes his or her ability to live independently; AND
 - Is of such a nature that such ability could be improved by more suitable housing conditions; OR
 3. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act.

This definition **includes** persons who have the disease of acquired immunodeficiency syndrome. Similarly, for the purposes of qualifying for HCV assistance this definition **excludes** a person whose disability is based solely on any drug or alcohol dependence

- A *disabled household* is defined as a family whose head, spouse, or sole member is an adult with a disability. Disabled households can be:
 - A single individual with a disability living alone;
 - A related family in which the head of household or spouse is a disabled person;
 - Two or more related adults with disabilities living together;
 - Two or more unrelated disabled adults living together; or
 - One or more unrelated disabled adults living with one or more live-in aides.

It is important to note that, according to 24 CFR Part 5.403, for the HCV program, a disabled household does **not** include those households in which a minor child is the **only** family member with a disability. To qualify as a disabled family, a person with a disability

must be an adult member of the household who is considered the head of household or spouse.

Verifying Disability Status

PHAs can verify an applicant's disability status in a number of ways. PHAs may use the receipt of SSI or SSDI as sufficient proof of disability. However, PHAs may not **limit** proof of disability to this type of verification. Other acceptable methods of verifying disability include (but are not limited to):

- A statement from a physician or other reliable source. Reliable sources might include the state Departments of Mental Health, Mental Retardation or Public Health or a local Association for Retarded Citizens (ARC), Mental Health Center or Independent Living Center.

PROMISING PRACTICE: Using Housing Choice Vouchers with Unrelated Disabled Households

There are many tools a PHA can use to increase its utilization of HCVs by people with disabilities. In 1997 the Housing Commission of Anne Arundel County (HCAAC) in Maryland saw an opportunity to use some of these tools when it applied for and received 200 HCVs targeted to people with disabilities. At that time they were actively working with two non-profit disability organizations in the community – the Arc of Anne Arundel County (serving people with mental retardation) and OMNI House (serving people with mental illness). These disability organizations wanted to expand the housing options available to people with disabilities in the community and were interested in partnering with HCAAC to access these new targeted vouchers. Through this partnership, the Arc, OMNI House, and HCAAC have worked together to effectively utilize these targeted vouchers (as well as vouchers in HCAAC regular HCV program) by emphasizing the flexible use of the definition of “disabled household” and leasing vouchers in housing owned by service providers. The success of this partnership has encouraged HCAAC to pursue partnerships with other disability service providers in the community.

One of the key ingredients in this initiative is HCAAC's ability to use its discretionary authority to establish HCV policies that facilitate use of vouchers by people with disabilities. For example, HCAAC amended its Section 8 Administrative Plan to permit two or more unrelated people with disabilities living together to be considered a household.¹ In this situation, the household shares one voucher (assigned to a designated Head of Household) and the number of people in the household determines the voucher unit size. Each adult has a separate bedroom and additional bedrooms can be requested for any overnight support staff that may be necessary. There is usually one lease with the owner with every adult tenant's name on it. In this situation, the subsidy and total tenant payment is calculated based on the total household income. Only one elderly/disability deduction is allowed per family; thus, even though there is more than one person with a disability living in the unit, the deduction only applies once.

The program has been very successful, according to HCAAC. There are currently 246 disabled households using HCVs administered by HCAAC (including both HCVs set-aside for people with disabilities and regular vouchers). These households include 620 adults with disabilities. This indicates how successful the model has been in providing housing for the greatest number of individuals with disabilities. Also, there have been no evictions to date as a part of this program.

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The partnering disability agencies also feel that this model is a good strategy for people with disabilities who prefer not to live alone. These agencies encourage people with disabilities to apply to HCAAC for HCV rental assistance. When a person with a disability is offered a voucher, they can invite another person with a disability – who may also be on the waiting list – to live with him/her using the same voucher. The disability agency helps select roommates who may be compatible and helps to mediate any conflicts that may arise. HCV households often lease housing units in properties owned by these disability agencies.

By facilitating the use of HCV's by unrelated disabled individuals in one household, HCAAC has been able to maximize its HCV budget authority. Two-bedroom units that can accommodate two people with disabilities cost far less than two one-bedroom units would. HCAAC is therefore able to serve a greater number of people at a lower cost. HCAAC attributes their success to their willingness to be creative in their program design and also their partnerships with local organizations that serve people with disabilities.

- Telephone contact with a physician or other reliable source, followed by PHA documentation of contact in the applicant file.
- In-person contact with a physician or other reliable source, followed by PHA documentation of contact in the applicant file.

PHAs may not ask whether an applicant with a disability can live independently. The PHA must ensure the application does not include any illegal questions regarding the nature or severity of the disability or ability to live independently.

Screening for Drug Abuse and Other Criminal Activities

The Screening and Eviction for Drug and Abuse and Other Criminal Activities Final Rule (published May 24, 2001) requires PHAs to establish stricter standards and procedures for screenings applicants for drug, alcohol, and criminal histories. PHAs must use the same screening criteria and procedures for both the regular HCV program and any vouchers targeted to specific groups –such as people with disabilities – made available through HCV set-asides.

HUD also requires that “in determining whether to deny admission,” PHAs consider “reasonable accommodation in accordance with Part 8” [24 CFR Part 8, section 504] “if the family includes a person with disabilities” (24 CFR 982.552(c)(2)(iii).

To understand the relationship between this Final Rule and reasonable accommodation requirements, consider an applicant with a psychiatric disability who also has a criminal record. If the criminal record is disability-related, the applicant could request that the PHA make a reasonable accommodation in its screening policies that would make the applicant eligible for the program. For example, if the applicant has a criminal record for repeated loitering, *and* can show that the loitering was due to a disability, *and* can show that the

loitering is unlikely to be repeated (e.g. applicant is now receiving support services), the PHA should provide an accommodation in the screening policy and admit this applicant.

If, on the other hand, the criminal record is for repeated assaults, *and* the applicant cannot show that the assaults are disability related *or* the PHA determines that the applicant may repeat the assaults, the PHA is not obligated to provide the accommodation.

It is important to carefully screen applicants for the program, however, HUD has also determined that it is important to take into consideration rehabilitation and mitigating circumstances.

Briefing and Voucher Issuance

The briefing is an important opportunity to ensure that new HCV households and their advocates fully understand the program and how to search for suitable housing. There are a few simple strategies PHAs can use to communicate more effectively and ensure that people with disabilities get the most helpful information possible during the briefing session.

People with disabilities should be sent a written notice about the briefing session. Both in order to comply with HUD's fair housing requirements (see chapter 2) and to ensure participants are able to fully participate in the briefing, this notice should state that the PHA provides reasonable accommodations upon request. Examples of reasonable accommodation requests might include a sign language interpreter or materials in Braille or on tape. PHAs should include a deadline for such accommodation requests. Some accommodations – such as securing interpreters – can take time and often cannot be arranged at the last minute. As a reasonable accommodation, PHAs could also allow the applicant to bring a friend, family member, advocate, or service provider to the briefing session with them.

Making Briefings More User-Friendly and Accessible to People with Disabilities

- ④ Hold the briefing in a location that is wheelchair accessible and includes an accessible bathroom.
- ④ Hold the briefing in a location that is accessible by bus or other public transportation.
- ④ Ensure the briefing is understandable.
- ④ Use clear, non-technical language in all written materials. Speak slowly and clearly in making any presentations.
- ④ Make sure the notice inviting the participant to the briefing states that they can bring a family member, friend or advocate to the briefing.
- ④ Make sure the briefing letter is sent to any secondary contacts listed on the application.
- ④ Make sure the letter inviting the participant to the briefing states that the PHA provides reasonable accommodations and how to request one.
- ④ Be prepared to provide requested accommodations. Know beforehand how to secure a sign language interpreter. Call the state agency that serves people who are deaf, look at the state government's main web site and/or contact the local Independent Living Center to find out how to secure an interpreter. Be prepared to provide materials on tape, computer disk or in Braille. Call the state agency that serves people who are blind or the local ILC to find out how to have materials translated into Braille.
- ④ Provide the name and phone number of a person who can be readily contacted by the participant with any questions or concerns after the briefing.

PHAs should make the information provided in the briefing as clear and understandable as possible. The PHA should ensure that when the household and/or the advocate assisting them know what to do when they leave the briefing session. Some PHAs find it useful to hold individual or small group briefing sessions (i.e., 10 people or fewer) for people with disabilities.

HUD regulations require that PHAs make briefing materials and the briefing presentation as accessible as possible to people with various disabilities. For example:

- A participant who is blind may request that copies of forms be provided in alternative formats such as in Braille, on tape or on computer disk. They may ask that materials be read to them if they are not readily available in alternative formats.
- A participant who is deaf may request a sign language interpreter to assist them in the briefing.
- A person with cognitive disabilities such as mental retardation may request simplified materials.
- A person with memory issues, such as someone with a head injury, may request to have written materials provided before the briefing.

PHAs should hold briefing sessions in wheelchair accessible locations and have paper and pencils available to offer participants for note taking even if this is not their usual practice.

Housing Search and Unit Identification

Housing search is the most important and perhaps the most difficult task in the HCV program. While housing search can be difficult for all participants, it can often be particularly challenging for people with disabilities. Some people with disabilities may not have previously conducted an independent housing search. This lack of skills and experience may mean that, without assistance, they may take longer to locate suitable housing in the community. Many people with disabilities also encounter unique barriers to housing search. These include discrimination as well as difficulty locating units with special features such as wheelchair accessible units.

Housing Search Policies and Reasonable Accommodation

The new HCV program regulations require that PHAs provide certain accommodations to persons with disabilities to assist them in addressing these barriers to housing search. These regulations apply to both the targeted vouchers awarded through the Mainstream, Certain Developments, and Designated Housing programs as well as those in the general HCV program.

PROMISING PRACTICE: Mass Access – An Accessible Housing Registry

In 1990, the Massachusetts legislature enacted the Housing Bill of Rights for Persons with Disabilities. This legislation is similar to the federal fair housing laws in that it established accessibility and adaptability requirements in residential new construction. Included in this legislation was the requirement a “central registry” of accessible and adaptable housing be established, now known as the Mass Access Housing Registry computer database. This database includes every accessible and adaptable residential unit in Massachusetts, including subsidized and market rate units of all sizes. Mass Access not only tracks units that are wheelchair accessible or adaptable, but also those units that are accessible to people with sensory disabilities and other disabilities. In 2000, the Mass Access database included 2,406 developments, 206,851 total units, and 11,362 accessible units. In 2000, 421 vacancies were reported to Mass Access; 63 percent of these had subsidized rents, 26 percent were market rate units.

The primary objective of Mass Access is to help with the housing search process and to “match” accessible units to people who need them. Mass Access provides a housing seeker with 1) a list of currently vacant accessible and adaptable units across the Commonwealth; and/or 2) a list of units in the particular cities or towns they prefer. The housing seeker can designate a number of variables for the housing search such as location, bedroom size, rent level, and accessibility features. The service is free to the consumer as well as the housing manager. There is no limit to the number of contacts an individual or agency can have with the system.

Housing managers participate in Mass Access for several reasons. First, the system has been successful in “matching” housing seekers with vacant units. In 2000, 97 percent of the vacancies reported were successfully leased. Second, the fair housing legislation described earlier, requires owners to list units with Mass Access and prohibits them from leasing the units to individuals who do not require the design features for 15 days.

The database is administered by Citizens Housing and Planning Association (CHAPA), a nonprofit statewide housing organization, under contract with the Commonwealth’s vocational rehabilitation agency, the Massachusetts Rehabilitation Commission. CHAPA was selected as the administrator through a public bidding process and has good relationships with both the real estate/housing and disability communities. CHAPA’s responsibilities include posting vacancy listings daily as well as conducting an annual update with housing managers. As part of the annual process, managers are asked to provide updated information about their development such as any units that have been rehabilitated, changes in rents or financing, etc.

Until recently, the Mass Access information was available to people with disabilities, their advocates and families primarily through a network of local Independent Living Centers (ILCs). Housing seekers would contact their local ILC and receive the requested information over the phone or through the mail. Recently, Mass Access also became available on-line at no cost. The web site (www.massaccesshousingregistry.org) includes several new features including housing fact sheets and information regarding the opening of Section 8 waiting lists across Massachusetts.

While the legislature mandated the establishment of the registry, they did not initially appropriate funds for the program. Start-up funds were obtained through a HUD Fair Housing Initiative Program grant. Start-up funds were used to design the database (which has since been updated and revised both by Massachusetts and other states including Connecticut), conduct focus groups, and design the housing questionnaire used to gather the housing information. In 1995, the legislature initiated a \$100,000 budget line item for operation of the database. These funds support CHAPA as well as their computer subcontractor.

- PHAs must provide an extension of the initial 60-day housing search term if requested as a reasonable accommodation (24 CFR 982.303(b)(2)).

As described above, housing search may take longer for people with disabilities and often requires housing search time extensions in order to locate suitable housing. PHAs may want to proactively establish a process for expediting these requests – making the process easier for the PHA as well as the participant.

- PHAs must provide a larger unit size if necessary to accommodate the individual's disability (24 CFR 982.402)(b)(7) and (8)). In a related provision, a live-in aide may reside in the unit as a reasonable accommodation if needed by the person with a disability (24 CFR 982.517).

PHAs may receive requests for increased unit size for a variety of reasons. For example, a person who uses a significant amount of medical equipment may request an additional bedroom to accommodate the equipment. In addition, people with disabilities may request larger unit sizes to house a needed live-in aide. A single individual that requires medical assistance at night, for example, may request a second bedroom for a live-in aide. Two unrelated individuals with cognitive disabilities who choose to live together may require 24-hour assistance and request a third bedroom to accommodate the live-in aide. With appropriate documentation, PHAs can approve any of these types of requests.

- PHAs must provide a list of available wheelchair accessible units to individuals who need such units (24 CFR 8.28(a)(3)).

While listings of rental units can be routinely found in newspapers or through realtors, wheelchair accessible units are rarely listed in this manner. For this reason, HUD requires PHAs to take the extra step of compiling a listing of accessible units (known to the PHA) for people with disabilities who need such units.

- PHAs and/or HUD may approve an exception payment standard if needed as a reasonable accommodation (24 CFR 982.503)(c)(2)(ii)).

PHAs may receive reasonable accommodation requests for payment standard increases for a variety of reasons. Examples include:

- An individual with a disability may make a request to reside in a certain neighborhood where the units exceed the payment standard because of its proximity to family supports, work, medical supports or other disability-related need.
- Wheelchair accessible units may be harder to come by and/or available primarily in newer buildings and therefore more expensive than the average units.
- If no accessible units can be identified, a participant may ask the owner to make modifications for them and request a higher payment standard to cover the cost as long as the unit meets the PHA's rent reasonableness standard.

If the PHA's current applicable payment standard is below 110 percent of the Fair Market Rent (FMR), the PHA may make its own determination about the request and increase the payment standard up to 110 percent of the FMR on a case-by-case basis. However, if the payment standard is already at or above 110 percent of the FMR, the PHA should pass exception payment standard requests on to HUD for review. It is important to note that recently HUD has approved exception payment standards over 120 percent of the FMR as a reasonable accommodation for a person with a disability. HUD Field Offices have the authority to grant requests for exception payment standards between 110 and 120 percent of the FMR as a reasonable accommodation. HUD Headquarters has the authority to grant those requests over 120 percent of the FMR.

Examples of How to Use Housing Choice Vouchers in Special Housing Types

PHAs may allow Housing Choice Vouchers to be used in certain "non-traditional" living situations that HUD regulations refer to as "special housing types." Many individuals with disabilities currently reside in these types of housing situations and/or may prefer to share housing rather than live alone. To meet the needs of people with disabilities, it is important that PHAs establish HCV policies that include these housing settings. In fact, according to HUD regulations, PHAs **must** permit the use of any special housing type if needed as a reasonable accommodation for a person with disabilities.

PHAs that might consider allowing vouchers to be used in these special housing types sometimes are not familiar with the intricacies of various shared housing models. For example in some group homes, the cost of food is included in the "rent" but could not be included for HCV purposes. It is important for PHAs and disability organizations to work together to determine the tenant's share of the rent and calculate the appropriate subsidy amount.

Single Room Occupancy Units

A Single Room Occupancy (SRO) is a unit within a building that may have a shared kitchen and bathroom facilities. For HCV purposes, SROs are occupied only by one individual and are usually found in rooming houses or renovated hotels. According to the HCV special housing type regulations, a PHA can allow a HCV household to use the voucher to rent a SRO unit if it is of good quality and meets HCV affordability standards. For SRO housing, PHAs are instructed to use a payment standard equal to 75 percent of the studio/efficiency payment standard.

In some cities across the nation, there are people with disabilities currently residing in SRO units who are eligible for the HCV program. Although not all SRO properties will be able to meet HCV guidelines, PHAs should permit HCVs to be used in approvable SRO housing as a reasonable accommodation for people with disabilities.

Group Homes

A HCV may also be used in a group home. According to HUD, for the purposes of the HCV program, a group home must be "licensed, certified, or otherwise approved by the State, [as a] facility for elderly persons or persons with disabilities." With the exception of live-in aides, all residents of the group home (whether receiving HCV assistance or not) must be elderly or people with disabilities and must not require continual medical or nursing care (this does not include supportive services and personal care services provided in the group home). Also, no more than 12 people total (including any live-in aides) may reside in a group home.

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PHAs are often unsure whether each person in the group home must have their own voucher or whether one voucher can be used for the entire group home. Both of these approaches are actually permissible according to HUD's rules. However, if all the residents of the group home will share one voucher, they will be considered a "disabled household" as discussed on page 5. If a voucher is given to an individual in a group home, the family unit size is zero or one-bedroom (unless the individual has a live-in aide) depending on the PHA's unit size policies. To determine the portion of the rent for the group home that is attributable to the voucher holder, first, the PHA must divide the rent for the group home (including an allowance for any tenant-paid utilities) by the number of residents in order to determine the prorated rental amount. Then the PHA can set the payment standard as the lesser of the (1) PHA's actual payment standard for a zero or one bedroom unit; or (2) the pro-rata portion of the rent.

Congregate Housing

Congregate housing is also considered a special housing type under the HCV rules. HUD defines "congregate housing" as shared housing arrangements for people with disabilities and/or elderly people (including any needed live-in aides). Unlike group homes, there is no requirement that congregate housing be licensed or certified in any way. Unlicensed group homes or board and care homes are typical examples of congregate housing.

Shared Housing

For a family residing in congregate housing, a PHA must use the zero bedroom payment standard unless there are two or more rooms in the unit (not including the kitchen or bathroom), in which case the one-bedroom payment standard is used.

In addition to the housing situations described above, PHAs may allow HCV program participants to have a roommate in their housing – referred to as "shared housing" – including a live-in aide, another person with a HCV, or a person without any rental assistance. For example, a person with a disability could receive a voucher and share a two-bedroom apartment with a roommate who does not have a voucher. Another example of shared housing could include two people with separate vouchers sharing a two bedroom unit;

In the shared housing situation, the PHA calculates a pro-rata portion of the housing costs to determine the actual rent for the voucher holder and uses this figure when determining the subsidy amount to be paid by the PHA.

- PHAs must approve a higher utility allowance if requested as a reasonable accommodation (24 CFR 982.517).

For example, a household in which a family member uses extensive medical equipment – such as lifts or monitors – may make a request for an increase in the electricity allowance. Such requests can and should be approved by the PHA.

- PHAs must approve the leasing of a unit from a relative if needed as a reasonable accommodation (24 CFR 982.306(d)).

There are numerous situations in which a person with a disability may need to lease a unit from a relative as an accommodation. A person with a disability may be receiving supports – such as assistance with shopping, meal preparation or other tasks – from a relative that can be best provided if the individual is living with or near the relative.

Alternatively, a person with a disability may have resided in a unit owned by a relative for an extensive period prior to receiving the voucher and may be able to document that a move to another unit would be very difficult for them. A person with a physical disability may be able to rent a unit from a relative if the unit has needed accessibility features.

- PHAs must permit vouchers to be used in special housing types such as Single Room Occupancy (SRO) units, shared housing, group homes, congregate housing and assisted living (24 CFR 982 Part M Special Housing Types and PIH Notice 2000-41).

While many people with disabilities prefer to live alone, some people with disabilities still live in shared housing settings such as group homes, SROs, shared housing, and congregate housing. These settings often involve roommates, or housing situations with shared kitchens, common areas, or bathrooms. Sometimes there may be live-in staff. HUD has determined that PHAs must allow vouchers to be used in these settings.

Some PHAs worry about the paperwork associated with special housing types. Using vouchers in these situations and determining the appropriate total tenant payment and subsidy amount can be confusing. However, permitting participants to lease in special housing types can often be beneficial to PHAs since:

- People with disabilities in these living situations may already have a voucher;
- People with disabilities in these living situations may be interested in leasing in place;
- The housing is often of good quality; and
- Supports are often already in place for people with disabilities who need and request them.

Conducting outreach to eligible people with disabilities currently living in these special housing types may help the PHA utilize more vouchers. One way to identify special housing types in the community is through the disability and human services agencies discussed earlier.

- PHAs must provide information on how to complete and file a housing discrimination complaint (24 CFR 982.304).

People with disabilities often face discrimination in the housing marketplace, yet they may be reluctant to file complaints. PHAs are required to inform all HCV households about their rights under the federal fair housing laws; teach them how to identify discrimination; and instruct them on how to file a discrimination complaint.

- HUD has determined (PIH Notice 2000-28) that PHAs are entitled to a one-time “Hard-to-House” fee for assisting people with disabilities to locate housing with a HCV program voucher.

Under this policy, PHAs earn a one-time fee of \$75 each time a disabled household is “housed in a unit other than the family’s preprogram unit.” While a one-time \$75 fee does not seem significant, these fees can add up. A PHA with 100 vouchers targeted to people with disabilities could earn up to \$7,500 in additional administrative fees. These fees could be used to offset administrative costs or to make the program more efficient, such as establishing a revolving loan fund for move-in expenses.

Additional Strategies for Enhancing the Housing Search Process for People with Disabilities

In addition to the accommodations HUD requires PHAs to provide, there are other *voluntary* activities some PHAs have found to be helpful in enhancing the housing search process for people with disabilities. These include:

Owner Listings

In tight rental markets, owner and/or apartment listings can be extremely helpful in locating vacant units. It is especially useful for PHAs to compile a list of owners who have been willing to accept HCVs.

Resource Rooms

Some PHAs have developed resource rooms for housing searchers. These rooms often include newspapers (including newspapers in different languages), owner and realtor lists, phone books, and general information about the community such as bus schedules, maps of the area, and other helpful information. Some PHAs even provide free local phone service for use by households.

Housing Search Assistance

For some people with severe disabilities one-on-one housing search assistance is vital. Sometimes, individuals can obtain such assistance through a case manager or other advocate. In some cases, however, PHAs have partnered with a disability or human services agency to provide formalized housing assistance to all households in a program. Such a partnership between a PHA and a community agency is an ideal way to streamline the housing search process.

Transportation

Low-income people with disabilities who rely on public transportation may have difficulty getting to appointments with realtors or owners in a timely manner. Arranging transportation assistance through local organizations, volunteers, taxi vouchers, or in other ways may speed up the housing search process.

Move-In Expenses

Many households may not have sufficient funds saved for necessary move-in expenses such as security deposits, utility deposits, and other expenses. Often people with disabilities are discouraged from saving in order not to risk losing eligibility for SSI or other income support programs. In some communities there are security deposit programs in place that HCV households can access. In some cases, the PHA has used its administrative fees or other resources to develop its own security deposit program.

In other situations, PHAs have worked with local human services agencies to create a pool of loan or grant funds to assist HCV households with security deposits and other one-time costs.

Disability organizations often have better access to funding that can be used for these types of expenses. Without this assistance, even when suitable housing is available, people with disabilities may not be able to move in.

Access Modifications

Many communities, especially those with older housing, do not have a sufficient supply of wheelchair accessible housing units. Some people with disabilities who require accessible features may be able to use a conventional unit with some modifications. HUD has encouraged PHAs to assist both participants and owners in identifying funds for such modifications. Possible sources include Community Development Block Grant funds, HOME funds, funds from Rural Housing Services, etc. In addition, as discussed earlier, as a reasonable accommodation, the PHA can also increase the payment standard for a unit that an owner is willing to modify for a HCV household.

Local Independent Living Centers (ILCs) often can assist PHAs and people with disabilities in obtaining funds for access modifications. The web site for the National Resource Center on Supportive Housing and Home Modification www.homemods.org includes a directory of home modification programs in each state.

Piggyback Subsidies

HUD recently approved a waiver to allow the “piggy-backing” of two subsidies to facilitate the rental of units in a very competitive rental market. The first subsidy was a HCV program subsidy. The second was a rent subsidy paid by a social services agency for the household. PHAs could discuss this strategy with local disability agencies if tight rental markets are making it extremely difficult to locate decent and affordable housing units that meet HCV guidelines (see Federal Register November 7, 2001).

PROMISING PRACTICE: Linking Bridge Subsidies to Housing Choice Vouchers

As a way to deal with the housing crisis facing people with disabilities, human service agencies at the state and local level are funding temporary “bridge subsidies,” which are designed to eventually link people to the HCV program. A bridge subsidy is temporary rental assistance funding that mirrors the local HCV program, and can also include other one-time moving expenses such as security deposits, first month’s rent, etc.

Bridge subsidies can help a person obtain affordable housing while they apply for and/or wait for a permanent housing subsidy. People who receive bridge subsidies are usually required to apply for a HCV as soon as applications are available. Recipients of bridge subsidies typically pay less than 50 percent of their income toward rent, higher than in the HCV program as an incentive to accept the permanent voucher. Units are usually inspected in accordance with HUD’s HQS and owners are asked to agree to accept a HCV when one becomes available. Bridge subsidy programs can also include a supportive services component which helps people with disabilities successfully obtain and maintain affordable rental housing in the community.

The two bridge subsidy programs described below have used partnerships between the local human service agencies, PHAs, and non-profit affordable housing agencies to link people receiving bridge subsidy assistance to permanent programs such as the HCV program.

State of Hawaii – The State of Hawaii’s Adult Mental Health Division’s (AMHD) bridge subsidy program began in 1998 and is administered in the same way as the HCV program. The assistance is available to AMHD clients for up to two years or until a HCV is available. When a HCV is issued to a person participating in the program, the AMHD bridge subsidy is re-issued to another participant.

AMHD has partnered with Steadfast Housing Development Corporation (SHDC), a private non-profit housing organization that administers the bridge subsidy on behalf of AMHD. SHDC also offers participants housing support service, and – with permission – contacts case managers if clinical assistance is needed by a consumer. However, participation in the bridge subsidy program is not contingent on the receipt of supportive services.

AMHD works closely with all program PHAs to encourage them to apply for new HCVs, including those set aside for people with disabilities. This advocacy ensures that people with mental illness consumers have better access to HCVs and helps more people move off the bridge subsidy program and onto permanent housing assistance.

Oakland County Community Mental Health Authority – Oakland County Community Mental Health Authority (OCCMHA) funded a 100 unit bridge subsidy program to assist people with disabilities waiting for Mainstream HCVs. The program required that people pay 40 percent of their income for rent and recipients must apply for HCVs as soon as possible. OCCMHA also created a Housing Contingency Fund and a security deposit program to pay for one-time housing related expenses.

While the bridge subsidy program was being developed, OCCMHA worked with the county’s six PHAs to inform them about the Mainstream program and encourage them to apply. Local PHAs received hundreds of new HCVs from HUD. To facilitate access to all these resources, OCMCHA – again in collaboration with several PHAs – developed a streamlined application process for people with disabilities. OCCMHA consumers received assistance with the housing application and housing search process, and had immediate access to housing stabilization services through.

Conclusion – Several state mental health and mental retardation agencies – including Oregon, Ohio, and Connecticut – have also implemented bridge subsidy programs to assist people during the long waiting period for a permanent subsidy from HUD. PHAs working with these programs have found that providing HCVs to applicants with bridge subsidies can help increase utilization rates and also bring new owners into the program.

—Chapter 2—

A Guide to Fair Housing And Reasonable Accommodation in the Housing Choice Voucher Program

Introduction

“Reasonable accommodation” is the key to providing fair housing opportunities for people with disabilities. It embodies the law’s requirement that housing providers must sometimes change a policy or procedure so that people with disabilities have equal access to housing opportunities. This chapter explains how Public Housing Agencies (PHAs) can meet their reasonable accommodation obligations and create Housing Choice Voucher (HCV) program policies that meet the needs of people with disabilities. Specifically, this chapter describes the federal fair housing laws that frame accommodation, provides examples of reasonable accommodations in HCV policies, and provides resources for obtaining additional information.

Federal Fair Housing Laws

Three federal laws protect the housing rights of people with disabilities. These laws rely on the concept of reasonable accommodation as a vehicle for providing nondiscriminatory services to people with disabilities, and they all share the same definition of “disability.”

1. Section 504 of the Rehabilitation Act²

Section 504 of the Rehabilitation Act of 1973 bars recipients of federal funds from discriminating on the basis of disability. PHAs are covered under this law because they receive funding from HUD. PHAs must follow Section 504 requirements in their HCV program and other housing programs. According to this law, private owners who participate in the HCV program are barred from discriminating on the basis of disability under the contracts they sign with PHAs.

2. Fair Housing Amendments Act of 1988³

The Fair Housing Amendments Act applies to public and private housing providers alike – including PHAs. Under the Fair Housing Amendments Act, a housing provider is

²Section 504 of the Rehabilitation Act is codified at 29 U.S.C. §794, and HUD’s implementing regulations can be found at 24 CFR Part 8.

³The Fair Housing Amendments Act modified Title VIII of the Civil Rights Act of 1968, which appears at 42 U.S.C. §3601. Implementing regulations can be found at 24 CFR Part 14.

required to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford such a person equal opportunity to use and enjoy a dwelling.

3. Americans with Disabilities Act of 1990⁴

Title II of the Americans with Disabilities Act (ADA) applies to all services provided by state and local governments. This law applies to PHAs that administer a HCV program.

Title III of the ADA covers public accommodations of all types, including facilities such as PHA rental offices, meeting rooms, childcare centers, and educational or vocational training programs. Private housing providers (including HCV owners) who provide such services and facilities, such as laundry rooms, are covered by this law and must make sure that common areas are accessible to tenants with disabilities.

Housing Choice Voucher Program Owner Obligations

It is important to note that all private owners of rental housing, including HCV owners, have specific obligations under the Fair Housing Act. In addition, HCV program regulations specifically require owners to comply with equal opportunity laws.⁵ In the Housing Assistance Payments contract executed between the owner and the PHA, the owner also agrees not to discriminate on the basis of disability.

HCV owners therefore have very specific obligation to provide reasonable accommodation to HCV participants who are disabled and need such accommodations to use and enjoy their housing. Examples of these types of accommodations might be waiving a “no pet” policy to allow a person with a disability to have an assistive animal or providing rent reminders if a disability causes a tenant to be forgetful.

People Protected by the Federal Fair Housing Laws

The federal fair housing laws protect people whose physical or mental disabilities cause a substantial limitation of one or more major life activities. The term “substantial limitation” means more than a temporary impairment, such as a broken leg. Major life activities include walking, breathing, working, concentrating, and learning.

It is important to note that this definition of disability as it applies to these laws is *broader* than the eligibility criteria for Supplemental Security Income (SSI). PHAs should not assume that only persons who receive SSI benefits are entitled to reasonable

⁴ The ADA can be found at 42 U.S.C. S12131; regulations that implement the Act’s prohibition of disability discrimination in state and local government services appear at 28 CFR Part 36.

⁵ 24 CFR 982.452(b)(3).

accommodations. For example, a PHA must extend federal fair housing law protections to people receiving other disability benefits such as Social Security Disability and to elderly people with disabilities who receive retirement benefits.

Reasonable Accommodation

A reasonable accommodation is an action taken by a PHA or other housing provider. It is a change in rules, policies, practices, or services that may be necessary to provide a person with a disability an equal opportunity to obtain housing and to use and enjoy her home. Reasonable accommodations range from providing information in large print to people with sight impairments to allowing a HCV to be used in congregate housing or Group Homes.

There is no list of required reasonable accommodations for PHAs. Each situation creates the opportunity for PHAs and HCV households to identify and eliminate disability-related barriers and to remove them. The provision of reasonable accommodation is a creative process that involves trial and error. Hence a PHA must be prepared to provide a new reasonable accommodation if the first one fails to serve its purpose.

Of course, PHAs are not required to provide “unreasonable” accommodations. An unreasonable accommodation is one that imposes an “undue financial and administrative burden” on the PHA or that would create a “fundamental alteration” in its programs or services. An “undue burden” is an excessive financial or administrative burden relative to the resources available to the housing provider.⁶ Within this framework, a large PHA would be expected to provide more extensive accommodations than a small PHA with only a handful of HCV program vouchers. For example, a large PHA might be expected to have HCV application materials in Braille while a small PHA might be required to assist a visually impaired person with the application process.

PHAs also don't have to provide accommodations that would significantly change the services they provide, thereby creating a “fundamental alteration” of their program. For example, a PHA must provide a larger voucher unit size for a person with a disability with a live-in aide. However, a PHA does not need to help hire the live-in aide for the household. Such a service would be a fundamental alteration to the PHA's program, which is to provide housing.

Finally, PHAs are not required to accommodate a person “whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.”⁷ If a PHA wants to deny rental assistance to an applicant or terminate a HCV household for these reasons, the PHA must be able to support the action with recent, credible, and objective evidence of the “direct threat.”⁸

⁶ United States v. California Mobile Home Park, 29 F.3d 1413, 1416-17 (9th Cir. 1993).

⁷ 42 U.S.C. §3602(h)(3), 3604(f)(9).

⁸ School Board of Nassau County v. Arline, 480 U.S. 273 (1987)

Without such evidence, the PHA must grant any accommodation request which is determined to be reasonable.

Reasonable Modification

Reasonable modification policies under the fair housing laws allow people with disabilities to alter their rental housing units to meet their unique needs. Under reasonable modification, an owner participating in the HCV program must allow a person with a disability – at their own expense – to make certain physical modifications to a unit if needed to fully use and enjoy the housing unit. Owners may require that the modifications be completed in a professional manner and be in compliance with all applicable building codes. In addition, owners may require the tenant to restore the unit to its original condition before vacating. Examples of modifications might be installing an entrance ramp or grab bars in the shower.

Owners do not have to allow the tenant to make modifications that the law deems “unreasonable.” An unreasonable modification would be one that is not related to the person’s disability — the installation of a dishwasher, for example.

Whether a modification is reasonable must be evaluated on a case-by-case basis guided by previous HUD decisions and decisions made in federal court. However, federal fair housing laws make it illegal for owners to refuse to permit tenants make reasonable modifications to their unit if the tenant is willing to pay for the changes.

In the HCV program, owners are generally not required to pay for modifications. However, a PHA may approve a higher rent for an owner who is making accessibility modifications to a unit to meet a HCV household’s needs. By providing a higher rent, the PHA is helping the owner pay for the cost of the modification. It is important to remember that this unit still must meet a PHA’s rent reasonableness standards.

Requesting a Reasonable Accommodation or Modification

Under Section 504, every HCV participant with a disability has the right to request a reasonable accommodation. In addition, PHAs are required to inform HCV households of this right. PHAs should have clear process for hearing for these requests and determining if the accommodation request is reasonable. This process should be documented in a PHA’s Administrative Plan.

To request a reasonable accommodation from the PHA, HCV households must disclose their disability status, unless the disability is obvious or the PHA has otherwise learned of the disability. For example, if PHA staff meets an applicant who is using a wheelchair, the PHA

is assumed to be on notice that the person has a mobility impairment and may need assistance identifying accessible units.

A PHA may respond to a reasonable accommodation request by asking for medical documentation of the disability. A letter from a physician or other health care provider that confirming the disability and describing the functional limitations it causes is adequate for this purpose. A PHA may not request access to any medical records or more detailed information about a disability. PHAs are only entitled to enough information to establish that the person has a disability that is covered under the law and that the requested accommodation is related to the disability.

PHAs are not required to grant the exact accommodation requested, so long as the accommodation provided enables the person to fully participate in the HCV program. For example, a PHA must grant an extension of the housing search time if it is needed by a person with a disability to locate suitable housing. However, a PHA is not required to extend the housing search time indefinitely. PHAs may not refuse to provide a reasonable accommodation based on their belief that the accommodation would not be best for the person. PHAs should recognize that in many cases the person with a disability is in the best position to know what he/she needs, and PHAs should strive to provide the accommodation requested if possible.

Sometimes, a person with a disability may not know exactly what accommodation is needed, or may request an accommodation that proves inadequate. The reasonable accommodation process is a mutual search for a solution, and evolves through trial and error. It may take several tries for the HCV household and the PHA to arrive at an accommodation that works. PHAs and HCV households must both engage in this process in good faith.

There is no point at which it is too late to request a reasonable accommodation from a PHA. For example, a person with a disability could request an exception payment standard on the last day of the housing search time. As with PHAs, it is also never too late for person with a disability to request a reasonable accommodation from an **owner** participating in the HCV program. For example, judges have ruled that an owner who had already begun eviction proceedings violated a tenant's rights by refusing to dismiss the action when he learned that the tenant was disabled and needed a reasonable accommodation to avoid the eviction.⁹

Of course, the best way to avoid last minute requests is to inform all HCV households of their right to request a reasonable accommodation when they first apply for housing assistance, and to train PHA staff to handle such requests. Designating a PHA staff person to handle all reasonable accommodation requests is also helpful. It ensures that HCV households know who to contact and allows this person to develop expertise in the wide variety of accommodations that are possible.

⁹ Radecki v. Joura, 114 F.3d 115 (8th Cir. 1997).

Reasonable Accommodation and the Housing Choice Voucher Program

The obligation to provide fair housing and reasonable accommodation to people with disabilities extends throughout the entire HCV program process, and applies not only to the PHA, but also to any PHA contractors or agents. PHAs must make sure that the services they provide are fully accessible, and that the owners who participate in the HCV program are informed about and follow their fair housing obligations in each phase of the housing process. Chapter 1 discusses HCV policies and provides examples of ways PHAs can modify these policies or procedures as a reasonable accommodation for a person with a disability.

Additional Resources

Information about the housing rights of people with disabilities is available on the Internet. The following websites are particularly useful.

www.bazon.org

The Bazelon Center for Mental Health Law is the nation's premiere resource on the civil rights of people with mental disabilities. The website includes fact sheets with useful information on reasonable accommodations, evictions, the right to assistive animals, and other topics as well as information on how to order fair housing publications such as *What Fair Housing Means to People with Disabilities* – an introductory guide to fair housing with an emphasis on information for tenants and housing applicants with mental disabilities.

www.tacinc.org

The Technical Assistance Collaborative publishes information on fair housing as well as on other useful housing topics that range from subsidized housing to supportive housing to federal housing policies. TAC also publishes *Opening Doors*, a quarterly series of monographs on housing for people with disabilities. All TAC publications can be downloaded free of charge from the website.

www.fairhousing.com

This searchable website contains information about fair housing cases affecting all protected classes under the Fair Housing Act, including people with disabilities. On-line searches are free.

www.hudclips.org

This HUD website contains information about HUD's housing programs and how to file a fair housing complaint including filing a complaint on-line. This site is a good way to keep up with HUD's programs.

www.nhlp.org

Although fairly technical and aimed at lawyers, the National Housing Law Project website contains a great deal of information about the HCV program, public housing, and other subsidized housing, as well as some information on fair housing.

—Chapter 3—
**The Medicaid Program:
What Every Public Housing Agency Needs to Know**

Introduction

The federal Medicaid program is a government-funded health insurance program administered by the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS) that assists certain low-income people with disabilities, elderly households, children, and families with children. Many public housing residents and households participating in the Housing Choice Voucher (HCV) program receive assistance through the Medicaid program.

When Medicaid was first created, most of the funding paid for the cost of acute hospital care, outpatient health care, or for long-term care in institutions or nursing homes. During the 1990s, the federal government created several innovative Medicaid approaches to fund long-term support services for people with disabilities. These changes to Medicaid policies are intended to help people with disabilities live as independently as possible in the community, rather than requiring them to live in “restrictive” settings such as nursing homes or other publicly-funded institutions.

Support services provided under these more recent Medicaid policies include case management, home-based nursing services, and other long-term care services. While the majority of Medicaid funding is still spent for hospital or institutional care, every year the percentage of funding spent on these types of community-based care increases as more people with disabilities seek to live in housing of their choice in the community.

However, it is important to note that Medicaid funding can not be used to pay for housing costs in the community. For this reason, many low-income people with disabilities receiving these Medicaid-funded services are in need of subsidized housing assistance. Public Housing Agencies (PHAs) are uniquely positioned to provide this assistance through the HCV program once they learn more about how these Medicaid policies actually work.

During the past two years, HUD provided incentives to PHAs applying for new HCV “fair share” vouchers to set-aside a small percentage of these vouchers for people with disabilities who were receiving Medicaid-funded Home and Community Based Services through the Medicaid 1915 (c) waiver program. In 2001, HUD’s Project Access program awarded 400 vouchers to 11 lead PHAs that will also be assisting people with disabilities who have certain types of Medicaid benefits.

At the state and local level, some PHAs are already working to assist people with disabilities who are receiving Medicaid benefits to help them live in community-based housing. This increased emphasis on the use of Medicaid programs to help people with disabilities in community-based programs has prompted some PHAs to ask for additional information on the Medicaid program.

As with most government programs, the Medicaid program is extremely complicated. PHAs should not be expected to become Medicaid “experts,” nor should they attempt to keep up with every change in Medicaid policy that might occur in the future. However, it is important for PHAs to acquire a basic understanding of how the Medicaid program works, and – in particular – to learn more about how certain Medicaid benefits and waiver programs are assisting people with disabilities who are also in need of housing assistance.

The Medicaid Program

Medicaid is a jointly funded federal-state health insurance program for certain low-income and needy people authorized under Title XIX of the Social Security Act. Medicaid covers approximately 36 million individuals including children, elderly people, people with disabilities (including blind people), and people who are eligible to receive federally assisted income maintenance payments such as Supplemental Security Income benefits (SSI) and Temporary Assistance to Needy Families (TANF). The Medicaid program is administered at the federal government level by HHS’s Center for Medicare and Medicaid Services – commonly referred to as CMS.

How States Administer Medicaid

The federal government establishes broad regulations and policies for Medicaid, including the requirement that states “match” federal Medicaid funds based on certain formulas. Using these federal requirements as a framework, each state then establishes its own Medicaid program and decides which Medicaid options it will offer. States have some flexibility to decide Medicaid state policies, including:

- Eligibility standards
- Type, amount, duration, and scope of Medicaid services to be provided
- Medicaid rates that will be paid for Medicaid services

Because of this flexibility, Medicaid programs may vary considerably from state to state. There are certain Medicaid services that states **must** provide, as well as Medicaid optional services that states may – or may not – choose to provide. Each state’s Medicaid program will also change over time as new services are added or deleted and state policies evolve to address emerging health care and long-term care needs.

In each state, there is a Medicaid director responsible for administering the state Medicaid program. Among other things, the Medicaid director is responsible for preparing the State's Medicaid Plan, which is submitted to HHS/CMS. In the Medicaid Plan, the state describes exactly how it will administer its Medicaid program, including (1) required basic Medicaid services; and (2) any optional Medicaid benefits and/or any Medicaid waiver programs. Some states have developed complicated Medicaid Plans that are designed to maximize federal Medicaid revenues and assist people with severe disabilities to live as independently as possible in the community.

Medicaid Basic Services

There is an array of basic services that *must* be offered under state Medicaid programs. Some of the most common services include:

- Inpatient hospital services (not including state mental health institutions)
- Outpatient services
- Physician services
- Medical procedures and surgical services
- Nursing facility services for individuals aged 21 or older (e.g., nursing homes)
- Home health care for persons eligible for nursing facility services
- Laboratory and x-ray services

In addition to the required Medicaid basic services, some state also offer Medicaid community-based services.

Medicaid Optional and Medicaid Waiver Services

Medicaid was always intended as a flexible program that states could use to assist poor people with their health care and long-term care needs. Since 1965, when Medicaid was first created, some states have used the flexibility in Medicaid policy to provide “optional services,” including funding certain services and supports for people with severe disabilities living in the community or who want to move from an institutional setting into the community.

Through Medicaid's optional and “waiver” programs, states are given incentives by the federal government to provide community-based support services to certain groups of people with disabilities. These services may include case management, personal care services, respite care, adult day health services, supported employment, homemaker/home health aide services, and others.

There are a variety of Medicaid optional or waiver services that HHS/CMS can approve to allow states more flexibility in administering the Medicaid program. Medicaid officials and

service providers sometimes refer to these initiatives with specific numbers, such as 1915(b), 1915(c), or 1115 waivers. The numbers themselves are not important because they only refer to the Medicaid law and regulations. What is important for housing officials to know is that a person has been “approved” to receive services under a Medicaid waiver, or Medicaid optional services program administered by the state on behalf of people with severe disabilities.

Generally, it is beneficial to both the state and the federal government to proceed with specialized Medicaid services programs because the services may:

- Help a person with a disability move from an institutional setting such as a nursing home into a community-based setting;
- Prevent a person with a disability from having to move to an institution to obtain the services they need; and
- Save money that can be spent to serve more people with disabilities.

How Medicaid Optional Services and Medicaid Waivers Actually Work

Many states are now implementing the Medicaid Rehabilitation Option for people with mental illness as a mechanism to expand community-based services and supports for people with severe mental illness and to prevent expensive hospitalizations. Under the Medicaid Rehabilitation Option, Medicaid may pay for comprehensive mental health services such as intensive case management, assertive community treatment, supported employment, crisis services, etc. These are the type of on-going community-based services that can help people with severe mental illnesses to live independently.

People with physical disabilities and people with mental retardation or other developmental disabilities are also among the groups that states have been targeting for Medicaid “waiver” services. In some states, people with these disabilities were required to move into nursing homes or Intermediate Care Facilities for the Mentally Retarded (ICF/MRs) in order to be able to receive any Medicaid-funded, long-term care services. As long as people with these disabilities live in these institutional settings, the Medicaid program pays for the “all-in” costs of long-term care, food, shelter, etc. Fortunately, the advocacy of the disability community, as well as the U.S. Supreme Court’s *Olmstead* decision (see chapter 4 for more information about the *Olmstead* decision), is slowly but surely changing state Medicaid policies so that people with severe disabilities can receive Medicaid-funded, long-term care supports and services through Medicaid, and not be forced to live in restrictive settings.

When HHS/CMS approves a state’s request to provide these Medicaid-funded services, the approval will be for a specific population (e.g., people leaving nursing homes who need long-term care services in the community). Sometimes, these approvals are described as approval for certain number of Medicaid waiver “slots.” The state, usually through one or more

service providers or disability organizations, then identifies people with disabilities who are eligible for these Medicaid services and “enrolls” them in the service program. Sometimes – such as when the state is targeting people in nursing homes – the state will arrange for “assessments” to be done in order to reach people who will qualify.

Once people are qualified, a plan is developed specifying what services they will need and how those services will be provided. Some people with disabilities who receive Medicaid waiver services can arrange to “purchase” the community-based services they need from one or more service providers. Others may need a case manager or support services agency to assist them with these tasks. Whatever method is used, the services must be provided by an agency or organization that is eligible to bill the state’s Medicaid program for the services rendered.

Why Link Medicaid Services and Subsidized Housing?

There is an important provision of Medicaid policy that explains the need to develop linkages between Medicaid recipients and housing programs administered by PHAs. When a person with a disability is receiving Medicaid benefits and living in an institutional setting – such as a nursing home or an ICF/MR – Medicaid pays the cost of “room and board” in that setting. However, when a person with a disability receives Medicaid-funded services in the community, Medicaid cannot pay for the cost of housing.

A recent study by the Technical Assistance Collaborative Inc. shows that in all 2,700 housing market area of the United States, people with disabilities receiving Supplemental Security Income (SSI) benefits cannot afford community-based housing without some sort of housing assistance. Most people with disabilities receiving Medicaid benefits have SSI as their only source of income. Thus, if housing assistance is not linked to people approved for specialized Medicaid service programs, the state’s effort to meet their obligations to help people with severe disabilities may ultimately fail.

For this reason, HUD has been providing incentives within recent HCV program Notices of Funding Availability (NOFAs) for PHAs to establish linkages between housing programs and state Medicaid policies. In both the 2000 and 2001 Housing Choice Voucher Program Fair Share NOFAs, PHAs were given extra points to set aside at least 3 percent of their new vouchers for people with disabilities with 1915(c) Medicaid Home and Community-Based services waivers. PHAs can also establish a preference in their HCV programs, or their public housing programs, for people with disabilities receiving other Medicaid optional services, such as the Rehabilitation Option. PHAs might want to explore creating a special admissions category within their Administrative Plan for people receiving Medicaid home and community-based waiver services or Rehabilitation Option services under a state Medicaid Plan.

Next Steps

PHAs interested in developing linkages between state Medicaid policies and subsidized housing programs may want to begin by contacting the state Medicaid program office to learn more about the Medicaid policies in your state. However, keep in mind that the state Medicaid office provides Medicaid-funded services through community-based organizations that work with or on behalf of people with disabilities. Given the typical communication issues within state bureaucracies, it is a good idea for PHAs to begin by talking with local service providers and/or advocacy organizations to learn as much as possible about the Medicaid service programs in the PHA's jurisdiction.

Each state has a Protection and Advocacy organization¹⁰ funded by the federal government. These agencies are often familiar with the types of Medicaid optional programs being administered in states, and could provide information to assist PHAs to learn more about state Medicaid policies and how to contact appropriate community-based organizations.

PHAs can also contact service providers within their jurisdiction to learn which organizations are assisting people with Medicaid-funded, community-based services. Keep in mind that most poor people receive some type of Medicaid-funded support to address their **healthcare** needs. However, people with disabilities also receive Medicaid-funded, long-term care services or rehabilitation services in order to assist them to live as independently as possible in the community.

These are the individuals who – without housing assistance – may be forced to live in truly substandard housing conditions, such as state mental institutions, nursing homes, emergency shelters, or literally on the streets. Because they are receiving Medicaid-funded, long-term support services to help them live as independently as possible, they may be good candidates for subsidized housing programs and can be easily linked with the support services they need and want to obtain and maintain affordable housing of their choice.

¹⁰ For more information about Protection and Advocacy organizations visit www.protectionandadvocacy.com.

—Chapter 4—

Overview of the Supreme Court *Olmstead* Decision

What is *Olmstead*?

On June 22, 1999, the Supreme Court of the United States issued its decision in *Olmstead v. L.C.* This important lawsuit against the State of Georgia questioned the state’s continued confinement of two individuals with disabilities after the state’s hospital physicians had determined that they were ready to return to the community. The *Olmstead* decision affirmed that under the Americans with Disabilities Act (ADA), states may no longer confine people with disabilities unnecessarily in “restrictive settings” such as institutions or segregated facilities. As a result of the *Olmstead* decision, states are now exploring ways to incorporate the ADA “integration mandate” into their delivery of Medicaid and other state-funded services for people with disabilities in the United States who are ready to move from hospitals into the community or who are at risk of institutionalization.

Although *Olmstead* is, in essence, a case about de-institutionalization, a key question central to *Olmstead*-planning efforts is “where will people with disabilities live?” As a result of the *Olmstead* decision, certain people currently living in “more restrictive settings” – such as public institutions and nursing homes – must now be offered housing and community-based supports that are consistent with the integration mandate of the ADA. The needs of people with disabilities who are at risk of institutionalization must also be addressed. It is clear that comprehensive *Olmstead* planning activities should consider the availability of permanent, affordable, accessible, and integrated housing in the community.

Who May Be Covered by the *Olmstead* Decision

The U.S. General Accounting Office recently estimated that as many as 4 million people with disabilities could be covered by the *Olmstead* decision, including the following groups:

- Adults with disabilities who are currently institutionalized, including people in state facilities, nursing homes, or other restrictive settings;
- Adults with disabilities at risk of institutionalization, including those in restrictive community settings, people living at home with aging parents or living elsewhere in the community, and people on residential services waiting lists;
- Adults with disabilities who are homeless as a result of being de-institutionalized; and
- Frail elders at risk of institutionalization, as well as institutionalized elders who could live in the community with appropriate housing and supports.

The Relationship Between *Olmstead* and Affordable Housing

Researchers and practitioners have demonstrated repeatedly that people with severe disabilities living in institutions can live successfully in the community. To succeed, they need decent, safe, and affordable housing, as well as access to the supports and services they want and need to live as independently as possible. Unfortunately, people with disabilities are disproportionately poor – particularly those individuals who must rely on Supplemental Security Income (SSI) benefits. On average, in 2000, people with disabilities receiving SSI had to spend over 98 percent of their monthly income to be able to afford a modest one-bedroom apartment at the Fair Market Rent.

For low-income people with disabilities, affordable housing means subsidized housing that is either developed or rented through government housing resources – such as Housing Choice Vouchers; McKinney/Vento Homeless Assistance programs; HOME and Community Development Block Grant (CDBG) programs; etc. – controlled by state and local housing officials. Partnerships between these housing officials and state officials involved in *Olmstead* planning are critical to ensure that people affected by the *Olmstead* decision have access to safe, decent, and affordable housing. Without this linkage, people with disabilities may continue to be inappropriately housed in “restrictive settings;” may be homeless due to inadequate discharge planning from these settings; may be living in substandard or unsafe housing; or may remain homeless or living at risk of homelessness in the community.

Find Out More About *Olmstead* Planning Activities in Each State

Since housing plays such a critical role in *Olmstead* planning, it is important that Public Housing Agencies (PHAs) and other housing officials be actively involved in *Olmstead* planning activities. Many states have received federal grants to help fund planning activities and help foster collaborations between the housing and service delivery systems. PHAs in 11 states have received special HCVs through Project Access that have to be used to meet the housing needs of people affected by the *Olmstead* decision. A list of the specific PHAs with these vouchers is provided.

Project Access		
State	Public Housing Agencies	# Vouchers
CO	Colorado Department of Human Services, Supportive Housing and Homeless Program	40
FL	Miami-Dade Housing Agency	10
MI	Michigan State Housing Development Authority	40
NH	New Hampshire Housing Finance Authority	50
NJ	New Jersey Department of Community Affairs, Division of Housing and Community Resources	40
NM	Albuquerque Housing Services	40
OK	Oklahoma City Housing Authority	25
OR	Portland Housing Authority	20
PA	Housing Authorities of Dauphin, Lehigh, Cumberland, and Schuylkill counties	50
TX	Texas Department of Housing and Community Affairs	35
WA	Housing Authorities of King County and Thurston County	50
Total		400

Examples of Ways to Link Affordable Housing Resources to People Affected by *Olmstead*

Solving the housing crisis facing those people with disabilities affected by *Olmstead* will require a combination of creativity, commitment, and collaboration on the part of both the human service delivery system – made up of those state and local agencies providing supports to people with disabilities – as well as the affordable housing delivery system – including PHAs, HUD, and state and local housing officials. Working together, these partners can develop strategies to link mainstream affordable housing resources to supportive services enabling people with disabilities to live independently in the community. Creative collaborations can lead to not only more cost effective delivery of services, but also a more efficient and timely utilization of housing resources – such as HCVs. Some examples of ways PHAs and other housing officials can link affordable housing resources to people affected by *Olmstead* include:

- PHAs may create a preference for people with disabilities affected by the *Olmstead* decision.
- PHAs may allow HCVs to be used by people with disabilities in special housing situations such as group homes, congregate settings, or in roommate situations. This may include using vouchers in rental housing owned by social service agencies.
- PHAs may use up to 20 percent of HCV funding to provide project-based assistance. Preference for project-based funding could be given to those agencies that propose to use the funding in housing units targeted to people with disabilities.
- PHAs can work with state and local HOME administrators to link HCV project-based assistance with housing developed with HOME funds. Housing developed with HOME funds can be targeted to people with disabilities and/or to people leaving “restrictive settings.” The HCV funding will provide the needed operating subsidy to make the housing affordable to people with incomes below 30 percent of median.
- HOME administrators can create a tenant-based rental assistance program targeted to people with disabilities affected by the *Olmstead* decision.
- PHAs and local and state government officials can work together with disability providers to submit an application to HUD for McKinney/Vento Shelter Plus Care funding. The proposed project could be targeted to people with disabilities who are homeless and at risk of institutionalization.

—Chapter 5— Frequently Asked Questions

Housing Choice Voucher Program Policies and Definitions

Question: What is a “disabled household”?

There are several different types of households that qualify as a disabled household. For example, a disabled household can be include:

- ⓐ A single individual with a disability living alone;
- ⓑ A related family in which the head of household or spouse is a disabled person;
- ⓒ One or more unrelated disabled adults living with one or more live-in-aides;
- ⓓ Two or more unrelated disabled adults living together; or
- ⓔ Two or more related adults with disabilities living together.

To qualify as a disabled family, a person with a disability must be an adult member of the household who is considered the head of household or spouse. It is important to note that, according to 24 CFR Part 5.403, for the HCV program, a disabled household does **not** include those households in which a minor child is the **only** family member with a disability.

Question: What are Special Housing Types?

PHAs may allow HCVs to be used in certain “non-traditional” living situations (known as “special housing types”). Some of these special housing types include:

- ⓐ Single Room Occupancy units;
- ⓑ Group homes;
- ⓒ Congregate housing; and
- ⓓ Shared Housing.

According to HUD rules, PHAs **must** permit a voucher to be used in a special housing type if needed as a reasonable accommodation so that the HCV program is readily accessible to and useable by people with disabilities.

Question: What are the rules around live-in-aides?

A HCV household may also include a live-in aide who actually resides in the unit. A live-in aide is defined by HUD as a person who resides with an elderly, disabled, or handicapped person or persons and who:

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

Each member of the household with a disability is allowed to have a live-in aide included as part of the household.

Question: What are things PHAs can do to help improve lease up rates for people with disabilities?

Chapter 1 describe many strategies PHAs can employ to assist people with disabilities to utilize HCVs such as:

- Establishing partnerships with human service and disability agencies to assist in outreach activities, the application process, locating suitable housing, etc.
- Providing reasonable accommodations in policies and procedures for accepting applications such as allowing applications to be mailed or faxed; offering assistance completing the application; providing the application form in alternative formats such as large print; etc.
- Using a preference in the HCV program waiting list that addresses the needs of people with disabilities.
- Consider mitigating circumstances with regards to drug, alcohol, or criminal histories when making eligibility determinations.
- Make briefing sessions more accessible to people with disabilities and provide clear written materials. Allow a friend, family member, or advocate to accompany the applicant to the briefing session.
- Develop a process to streamline requests for housing search extensions.
- Provide exception payment standards on a case-by-case basis as a reasonable accommodation for a person with a disability.
- Permit vouchers to be used in special housing types
- Provide funding (possibly from administrative fees) for security deposits and other one-time move-in expenses
- Conduct outreach to owners of housing units with accessible features and provide a list of these units to HCV households.

Some of these strategies may necessitate changes in policies or in the PHA's "normal" operations. However, with some slight – yet significant – modifications, a PHA can increase its voucher utilization rate by people with disabilities.

Fair Housing

Question: What are the federal fair housing laws?

Three federal laws protect the housing rights of people with disabilities:

1. Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 bars recipients of federal funds from discriminating on the basis of disability. PHAs are covered under this law because they receive funding from HUD. PHAs must follow Section 504 requirements in their HCV program and other housing programs. According to this law, private owners who participate in the HCV program are also barred from discriminating on the basis of disability under the contracts they sign with PHAs.

2. Fair Housing Amendments Act of 1988

The Fair Housing Amendments Act (FHAA) applies to public and private housing providers alike – including PHAs. Under the FHAA, a housing provider is required to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford such a person equal opportunity to use and enjoy a dwelling.

3. Americans with Disabilities Act of 1990

Title II of the Americans with Disabilities Act (ADA) applies to all services provided by state and local governments, including public housing authorities. Title III of the ADA covers public accommodations of all types, including facilities such as PHA rental offices, meeting rooms, childcare centers, and educational or vocational training programs. Private housing providers (including HCV owners) who provide such services and facilities, such as laundry rooms, are also covered by this law.

Question: Who is covered by the federal fair housing laws?

The federal fair housing laws protect people whose physical or mental disabilities cause a substantial limitation of one or more major life activities. The term “substantial limitation” means more than a temporary impairment, such as a broken leg. Major life activities include walking, breathing, working, concentrating, and learning. It is important to note that this definition of disability as it applies to these laws is broader than the eligibility criteria for Supplemental Security Income (SSI). PHAs should not assume that only persons who receive SSI benefits are entitled to reasonable accommodations.

Question: What is reasonable accommodation?

A reasonable accommodation is a change in rules, policies, practices, or services that may be necessary to provide a person with a disability an equal opportunity to participate in the housing program, obtain housing, and use and enjoy her home.

Question: What are examples of reasonable accommodations in the Housing Choice Voucher program?

There is no list of required reasonable accommodations for PHAs. Reasonable accommodations range from providing information in large print to people with sight impairments to allowing a voucher to be used in congregate housing or group homes.

Question: What is reasonable modification?

Reasonable modification policies under the fair housing laws allow a person with a disability to alter their rental housing unit to meet his/her unique needs. Under reasonable modification, an owner participating in the HCV program must allow a person with a disability to make certain physical modifications to a unit if needed to fully use and enjoy the housing unit. Examples of modifications might be installing an entrance ramp or grab bars in the shower.

Question: Who is responsible for paying for these types of modifications?

In the HCV program, owners are generally not required to pay for modifications. Households should make the modifications at their own expense. However, a PHA may approve a higher rent for an owner who is making accessibility modifications to a unit to meet a household's needs. By providing a higher rent, the PHA is helping the owner pay for the cost of the modification.

Medicaid

Question: What is Medicaid?

The Medicaid program is a government funded health insurance program administered by the U.S. Department of Health and Human Services (HHS) that assists certain low-income people with disabilities, elderly households, children, and families with children. Many public housing residents and HCV households receive assistance through the Medicaid program.

Question: Can Medicaid funding be used to pay for housing costs?

When a person with a disability is receiving Medicaid benefits and living in an institutional setting – such as a nursing home or an ICF/MR – Medicaid pays the cost of

“room and board” in that setting. However, when a person with a disability receives Medicaid-funded services in the community, Medicaid cannot pay for the cost of housing. This is an important provision of Medicaid policy that explains the need to develop linkages between Medicaid recipients and housing programs administered by PHAs.

Question: What is the Medicaid 1915(c) Home and Community-Based Waiver?

States are given incentives by the federal government to provide home and community-based care “waiver” services to people with disabilities who would otherwise be living in restrictive settings, such as institutions or nursing facilities. These services are offered through the Medicaid 1915(c) waiver.

Question: Why should PHAs care about the Medicaid 1915(c) Home and Community-Based Waiver?

There are many reasons why PHAs should learn more about the Medicaid 1915(c) waivers. Some people disabilities receiving services through these waivers may already be receiving the services necessary to help them to use vouchers successfully, such as housing search assistance or case management. There may also be people with disabilities that already live in housing that meets HCV guidelines. These people could lease-in-place and continue to receive Medicaid-funded waiver services.

Finally, during the past two years, HUD provided incentives to PHAs applying for new HCV “fair share” vouchers to set-aside a small percentage of the new vouchers for people with disabilities who were receiving Medicaid-funded Home and Community Based Services through the 1915 (c) waiver program. In 2001, HUD’s Project Access program awarded 400 vouchers to 12 PHAs that will also be assisting people with disabilities who have certain types of Medicaid waiver benefits.

***Olmstead* Decision**

Question: What is the *Olmstead* decision?

On June 22, 1999, the Supreme Court of the United States issued its decision in *Olmstead v. L.C.* This important lawsuit against the State of Georgia questioned the state’s continued confinement of two individuals with disabilities after the state’s hospital physicians had determined that they were ready to return to the community. The *Olmstead* decision affirmed that under the ADA, states may no longer confine people with disabilities unnecessarily in “restrictive settings” such as institutions or segregated facilities. As a result of the *Olmstead* decision, states are now exploring ways to incorporate the ADA “integration mandate” into their delivery of medical and other support services for people with disabilities who are ready to move from hospitals into the community or who are at-risk of institutionalization.

Question: What does *Olmstead* have to do with housing?

Although *Olmstead* is, in essence, a case about de-institutionalization, a key question central to *Olmstead*-planning efforts is “where will people with disabilities live?” As a result of the *Olmstead* decision, certain people currently living in “more restrictive settings” – such as public institutions and nursing homes – must now be offered housing and community based supports that are consistent with the integration mandate of the ADA. The needs of people with disabilities who are at-risk of institutionalization must also be addressed. It is clear that comprehensive *Olmstead* planning activities should consider the availability of permanent, affordable, accessible, and integrated housing in the community.

Partnerships between local and state PHAs and housing officials and state officials involved in *Olmstead* planning are critical to ensure that people affected by the *Olmstead* decision have access to safe, decent, and affordable housing. Without this linkage, people with disabilities may continue to be inappropriately housed in “restrictive settings” (e.g., nursing homes, institutions); may be homeless due to inadequate discharge planning from these settings; may be living in substandard or unsafe housing; or may remain homeless or living at risk of homelessness in the community.

Question: What can a PHA do to assist those disabled households affected by the *Olmstead* decision?

Working together, the human service delivery system – made up of those state and local agencies providing supports to people with disabilities – as well as the affordable housing delivery system – including PHAs, HUD, and state and local housing officials – can develop strategies to link mainstream affordable housing resources to supportive services enabling people with disabilities to live independently in the community.

Some examples of ways PHAs and other housing officials can link affordable housing resources to people affected by *Olmstead* include:

- ④ PHAs may create a preference for people with disabilities affected by the *Olmstead* decision.
- ④ PHAs may allow vouchers to be used by people with disabilities in special housing situations such as group homes, congregate settings, or in roommate situations. This may include using vouchers in rental housing owned by social service agencies.
- ④ PHAs and local and state government officials can work together with disability providers to submit an application to HUD for McKinney/Vento Shelter Plus Care funding. The proposed project could be targeted to people with disabilities who are homeless and at risk of institutionalization.

- PHAs can work with state and local HOME administrators to link HCV project based assistance with housing developed with HOME funds. Housing developed with HOME funds can be targeted to people with disabilities, and/or to people leaving “restrictive settings.” The HCV funding will provide the needed operating subsidy to make the housing affordable to people with incomes below 30 percent of median.
- HOME administrators can create a tenant-based rental assistance program targeted to people with disabilities affected by the *Olmstead* decision.

