



Live-In Aides in Federally-funded Housing Programs: Information for MFP Participants and Program Staff

May 2013

This brief was prepared by the Technical Assistance Collaborative as part of the Housing Capacity Building Initiative for Community Living Project, a collaboration of the Departments of Housing and Urban Development (HUD) and Health and Human Services (HHS), under the Centers for Medicare & Medicaid Services (CMS) Money Follows the Person (MFP) Rebalancing Demonstration, CMS Contract Number GS-00F-0083N.

To learn more about the initiative visit: <http://www.neweditions.net/housing/index.asp>

Introduction

Due to the nature and extent of their disability, many Money Follows the Person (MFP) participants require assistance with activities such as bathing, toileting, dressing, meal preparation, managing household finances, personal hygiene, or completing other household chores such as laundry or taking out the trash. Indeed, nearly 60% of MFP participants utilized some form of home-based care service in 2011.¹

Individuals delivering home-based care services who come and go during the day are considered guests or employees of the tenant. Unless the helper's behavior – as a “guest” of the tenant – violates the tenant's lease, the presence of these helpers should not be of interest to the landlord. However, in some cases a MFP participant will require the support of a “live-in” aide who resides with the individual and assists him/her with

personal care and related activities.² Some MFP participants who need the support of a live-in aide may live in HUD-Assisted or Public Housing or have a HUD-funded rental assistance voucher to help pay for the rent.³ In these HUD programs, having a live-in aide may trigger subtle, yet significant, changes in eligibility regarding the size of the unit and the amount of housing assistance an MFP participant would receive. This brief provides MFP programs with an overview of the rules and requirements in federally assisted and public housing programs regarding live-in aides.

² A discussion of the Medicaid rules and regulations governing personal care services, live-in caregiver, homemaker, adult companion, chore services and other home-based supportive services are beyond the scope of this brief. The intent of this brief is to provide guidance to MFP Program Directors, Housing Specialists, and others with information about HUD's rules and regulations related to live-in aides.

³ These different housing programs are administered by different types of housing agencies including Public Housing Authorities and private developers. This brief will refer to all of these agencies generically as “housing agencies”.

¹ Irvin, C.V., Lipson, D., Simon, S. Hodges, M. Bohl, A., Peebles, V. et. al. (2012). *Money Follows the Person 2011 Annual Evaluation Report*. Cambridge, MA: Mathematica Policy Research.

What is a Live-In Aide?

Live-in aides, sometimes referred to as personal care attendants, live-in companions, or supportive helpers, assist people with disabilities to accomplish a variety of activities including assistance with personal care, household chores, and instrumental activities of daily living such as meal planning and preparation, managing household finances, or grocery shopping. For example, a person who uses a wheelchair might need hands-on assistance moving from the chair to the bed. For someone with a cognitive disability, the assistance may take the form of reminding the person to take prescribed medication or supervising them as they prepare a meal. From the perspective of a person with a disability, “the aide is like their arms and legs, or

Definition of Disabled Household

The regulations covering all of these housing programs use a similar definition of disability. Disabled family means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides. This definition clarifies that households with more than one aide are eligible for housing programs. For example, two unrelated MFP participants could live together as a household. If each individual has documented the need for a live-in aide, the household would include the two MFP participants and the two live-in aides.

memory.” Some people with disabilities may require assistance during the night as well as during the day. For example, some people with physical disabilities may need assistance being re-positioned throughout the night to prevent bedsores.

An individual who has a live-in aide may also have other helpers who provide assistance during the day such as home health aides, occupational therapists, or nurses. The difference between a live-in aide and a daytime helper is that the live-in aide is required to be there overnight to assist the individual.

HUD’s Definition of Live-In Aide

HUD regulations define a live-in aide as, “A person who resides with one or more elderly persons or near-elderly persons or persons with disabilities and who:

1. Is determined to be essential to the care and well-being of the persons;
2. Is not obligated for the support of the persons; and
3. Would not be living in the unit except to provide the necessary supportive services.”⁴

Why does the regulation set out such a specific definition? As this brief will describe, tenants with live-in aides are subject to special rules including the exclusion of the aide’s income from determination of household income. Since housing resources are limited, housing agencies must ensure that a live-in aide is necessary for the support of a

⁴ 24 CFR part 5.403

Live-In Aides in Federally-funded Housing Programs: Information for MFP Participants and Program Staff

person with a disability before excluding his or her income. Staff and others assisting MFP participants in applying for housing will want to be familiar with this definition because the housing agency generally requires the applicant or tenant to document the necessity for a live-in aide.

There are two key components to the live-in aide definition:

- » What is “essential” care and how does a person with a disability prove that this type of care is needed; and
- » How does the applicant or tenant demonstrate that the live-in aide would not normally be living in the unit except to provide supportive services?

Essential Care

HUD’s regulations do not specifically define “essential” care. All housing agencies are required to verify that the applicant needs the assistance of the live-in aide, but how they do this varies. Some HUD programs require that “verification that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person must be obtained from the person’s physician, psychiatrist or other medical practitioner or health care provider.”⁵ Other housing agencies develop other standards. For example, a Public Housing Authority (PHA) could choose to accept documentation of need for a live-in aide from a non-medical agency that provides services to

⁵ PIH Notice 2010-26: Non-Discrimination and Accessibility for Persons with Disabilities

people with disabilities, such as a Center for Independent Living.

Even when the regulations require documentation from a medical professional, HUD limits the type of information that can be requested. For example, “a PHA may not seek the individual’s specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual’s disability.”⁶

Determining the Residence of the Live-in Aide

HUD regulations seek to distinguish between a household member who would normally be expected to live in the unit and provide supports to a person with a disability – such as a spouse or parent – and an individual who has joined the household solely for purposes of caretaking. Housing agencies may have established their own standards or policies. The housing agency, for example, may want to ask a participant and aide to demonstrate that the provision of care is an “arms length transaction” or that an aide was not a household member prior to becoming the helper.

Relatives as Live-In Aides

The issue of relatives or family members as live-in aides is one of the most complicated for housing agencies to address. Although relatives are not automatically excluded as eligible live-in aides, they must meet the definition stated above. Generally, pre-existing household members will not be able to qualify as a live-in aide. It is more

⁶ PIH Notice 2010-26

Live-In Aides in Federally-funded Housing Programs: Information for MFP Participants and Program Staff

complicated when a child moves into a unit to assist an ailing parent or vice versa or when a live-in aide becomes a boyfriend or girlfriend after moving into the unit. Some examples include:

- » A husband and wife are current tenants. The husband has a stroke and as a result of the stroke, can no longer walk independently without assistance. Although the wife would continue to live in the unit as a member of the household, she would not qualify as a live-in aide because she was a member of the household prior to the stroke. Her income would not be excluded from the rent calculation as described below.
- » An elderly gentleman has a Housing Choice Voucher and resides in the community. He has a stroke and as a result, can no longer walk independently without assistance. He hires and pays a woman to live with him to help him with household chores and personal care. She qualifies as a live-in aide.
- » A 30-year old woman has a Housing Choice Voucher and resides in the community. She is in a car accident and as a result, can no longer walk independently without assistance. Her nephew comes to live with her to assist her with household chores and personal care. The nephew may or may not be a live-in aide depending on the situation and the housing policies. For example, if the nephew rents his own apartment in the community and gives up his apartment in order to live with his aunt to assist her with household chores and personal care, he may qualify as a live-in aide.”

Some housing agencies have developed policies to address these issues and/or create disincentives for relatives to act as live-in aides. For example, as mentioned above, an agency could establish a policy that requires an applicant or tenant to show that the care provided by the relative is at an “arms length transaction.” To demonstrate this, the housing agency can require the household to certify that:

- » The live-in aide is qualified to provide the needed care
- » The live-in aide was not part of the household prior to receiving program assistance
- » There is no other reason for the aide to reside in the unit (e.g. the individual can demonstrate they have a previous residence they left in good standing)
- » The aide and the participant will maintain separate finances

Written Housing Policies and Procedures

HUD-funded housing programs must comply with a variety of regulations and guidance. Because these documents vary in the amount of guidance provided, many housing agencies have separate written guidance regarding live-in aides. Always ask for a copy of any guidance they may have relative to live-in aides. Policy decisions by publicly funded housing agencies should be backed up with a written source (i.e., guidance from either the government or the housing agency itself).

Eligibility and Screening

Once the housing provider has determined that the MFP participant is eligible for a live-in-aide and that the aide would not otherwise be living with the participant, the housing agency will want to determine whether the *specific* individual selected by the MFP participant is eligible to live in the unit. All applicants for housing – including MFP participants – are generally required to undergo a comprehensive screening to determine whether they are income eligible, able to pay the rent on time and in full, and will be suitable tenants.⁷ Live-in-aides are not subject to income or credit checks. However, since the aide will be living on the

Reasonable Accommodation

A reasonable accommodation is a change to a policy or procedure to allow a person with a disability to participate fully in a program, service or activity. Approval of a live-aide for a person with a disability is an example of a reasonable accommodation. Based on HUD regulations implementing Section 504 of the Rehab Act of 1973, regardless of a housing agency’s policies regarding live-in aides, MFP participants – all of whom have disabilities – have the right to request a live-in aide as a reasonable accommodation if such an accommodation is needed. The aide will still have to meet the other requirements outlined in this brief.

⁷ It is important to note that aides who do not live on the premises are not subject to any type of review by any housing agency.

premises the housing agency is permitted to conduct background checks to determine suitability. As with the MFP participant, this may include a review of past tenancy and criminal behavior. Housing agencies can refuse to accept individuals as live-in-aides based on the results of this screening.

MFP participants are required to submit names of any proposed live-in aides during the application process. If the live-in aide changes at any time while the MFP participant is a tenant, the participant must submit the names of any new proposed aides for review and approval by the housing agency prior to their moving in.

Income Exclusions

In all HUD-funded housing programs, the income of an approved live-in aide is excluded when calculating a household’s income and the amount the household⁸ must pay toward rent. Since the live-in aide is an occupant and not a tenant in the unit (see Occupancy section below), it is not appropriate to include their income in these calculations. In addition, if the MFP participant is paying the live-in aide directly and receives funds specifically to cover the cost of these services (e.g., from health or long term care insurance coverage including Medicaid or Medicare funds), this income must be excluded as well when calculating the household’s share of the rent.

⁸ In HUD housing programs, the term “household” is used generically and can refer to an individual, a couple, a family, or a unrelated disabled household made up of one or more unrelated disabled adults living with or without one or more live-in aides.

Allowances for MFP Participant Expenses

HUD regulations provide for allowances for expenses a tenant has related to disability assistance and medical needs, e.g. when someone pays out of pocket for a live-in aide.

- » The *disability assistance allowance* provides for unreimbursed expenses to cover care attendants, including live-in aides, when the aide is necessary to enable a family member (including the household member with a disability) to be employed.

The *medical expense deduction* is permitted only for households in which the head or spouse is elderly or has a disability. Medical expenses are expenses anticipated over the coming year that are not covered by an outside source such as insurance or Medicaid or Medicare.

Some MFP participants using live-in aides will qualify for one or both of these allowances. The HUD Handbooks listed in the box on page 8 in this brief provide clear guidance on calculating these deductions including guidance on the appropriate types of documentation to verify these expenses.

Rotating Caregivers

Some MFP participants utilize multiple caregivers, instead of one live-in aide. These multiple caregivers might alternate spending days and nights with the participant and are referred to as “rotating caregivers.”

In 2009, HUD re-issued a Notice⁹ clarifying its position on rotating caregivers. “Occasional, intermittent, multiple or rotating care givers typically do not reside in the unit and would not qualify as live-in aides. Therefore, an additional bedroom should not be approved for a live-in aide under these circumstances. A family may always request a reasonable accommodation to permit program participation by individuals with disabilities. A family’s composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR Section 982.402(b)(8). The PHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation.”¹⁰

Thus, although rotating caregivers are not technically considered live-in aides, in this situation, housing agencies may allow an extra bedroom to accommodate the rotating caregivers as a reasonable accommodation.

⁹ Notice PIH 2009-22 (HA) Over Subsidization in the Housing Choice Voucher Program. Notice PIH 2010-51 extended and revised the 2009 notice, although wording on rotating caregivers remained the same. Notice PIH 2012-33 reinstated the 2010 notice, which had expired, until amended, superseded or rescinded. (pas comment)

¹⁰ Ibid.

Bedroom Size

HUD regulations require that a housing agency must include any approved live-in aide when determining the family unit size. For example, a single person who has a disability is generally eligible for a studio or a one-bedroom unit. If that same individual is determined eligible for a live-in aide, they are eligible for a two-bedroom unit. Note in this second scenario, the individual is eligible for either a two-bedroom unit or a one-bedroom unit. If the individual is homeless, for example, or in a precarious housing situation and the wait for a two-bedroom unit is longer than a one-bedroom unit, the individual may choose to live in a one-bedroom unit with the live-in aide using a pull-out sofa in the living area in order to secure housing more quickly. Unless this request violates the housing agency's occupancy standards, this should be allowed by the housing agency. In addition, the request cannot violate HUD's Housing Quality Standards (HQS) which states that the dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Note also that a live-in aide has to be identified by the family and approved by the PHA prior to the PHA's issuance of a two-bedroom voucher.

Occupancy

A live-in aide is considered an occupant of the unit but is not a tenant and does not have the rights of tenancy. The name of the approved live-in aide may be listed as an occupant of the unit on the lease but should not be a signatory on the lease. **This is very important; if the MFP participant determines they want to change aides, and if the aide is a tenant of the unit, the MFP participant might be required to evict the aide, a lengthy and problematic process, potentially placing the participant's housing at risk while the aide stays in place.**

Housing providers generally retain the right to evict or remove the live-in aide from the program. For example, the Housing Choice Voucher program regulation provides that "at any time" the PHA may withdraw approval of a live-in aide for a variety of behaviors including drug-related or violent criminal activity. Other HUD guidance encourages owners to use a lease addendum providing the right to evict a live-in aide who violates any of the house rules. This same lease addendum also clarifies that the aide does not qualify for continued occupancy when the MFP participant is no longer a tenant – regardless of the reason why.

Live-In Aides in Federally-funded Housing Programs: Information for MFP Participants and Program Staff

Summary

Some MFP participants will need and desire the support of a “live-in” aide to help them accomplish a range of activities integral to their health, safety, and well-being in the community. As a result, MFP Programs will want to understand the live-in aide policies in federally funded housing programs such as the Section 202 and other HUD Assisted Multifamily Housing programs, Public Housing and Housing Choice Voucher Programs. Some of the most relevant of these policies for the MFP Program include:

- » Housing agencies must allow a live-in aide as a reasonable accommodation if needed.
- » In general, pre-existing household members (including relatives) are not able to qualify as a live-in aide.
- » Housing agencies may screen live-in aides in the same way they screen other household members, except for income or credit checks.
- » Housing agencies may reject a particular individual as a live-in aide based on criminal acts and drug-related activity.
- » Housing agencies must exclude the income of a live-in aide when calculating the household’s

For More Information

The information provided in this brief is applicable to a variety of HUD-funded housing programs including the federal Public Housing Program, the Housing Choice Voucher Program and HUD-Assisted Multifamily Rental Housing. Each of these programs is covered by a separate set of federal regulations, handbook, notices and other guidance.

The chart below lists some of the most useful guidance for each type of program. Requirements related to live-in aides are generally the same across these programs; however, in some situations, the reader may find it necessary to consult the program specific regulation or guidance.

Housing Program	Useful Websites and Guidance
HUD-Assisted Multifamily Housing (including Low Income Housing Tax Credit Program, Section 202 and Section 811)	<ul style="list-style-type: none">• HUD multifamily website• Occupancy Requirements of Subsidized Multifamily Housing Programs
Federal Public Housing	<ul style="list-style-type: none">• HUD public housing website• HUD Public Housing Occupancy Handbook
Housing Choice Voucher Program	<ul style="list-style-type: none">• HUD Housing Choice Voucher website• Housing Choice Voucher Program Guidebook
Project-Based Vouchers	<ul style="list-style-type: none">• HUD project based vouchers website

Live-In Aides in Federally-funded Housing Programs: Information for MFP Participants and Program Staff

share of the rent. Housing agencies must also exclude any funds received by the tenant to cover the cost of the live-in aide. In addition, housing agencies must provide allowances for disability and medical related expenses when calculating the household's share of the rent.

- » Housing agencies must provide a greater number of bedrooms to accommodate a live-in aide, if needed, as a reasonable accommodation.
- » Live-in aides are occupants of the unit but should not be on the lease as a co-tenant.

- » Although rotating caregivers are not technically considered live-in aides, housing agencies may allow an extra bedroom to accommodate the rotating caregivers as a reasonable accommodation, if such an accommodation is requested and determined to be necessary by the PHA.
- » Housing agencies may establish reasonable policies regarding live-in aides, such as what documentation is needed to approve a relative as a live-in aide. These policies should be in writing and available upon request.

This brief was prepared by Lisa Sloan of the Technical Assistance Collaborative. Editorial assistance was provided by Emily Cooper and Jenny Chan.

For additional information and related resources, visit www.tacinc.org.