



**Maintenance Providers and Safety Personnel's Rights and
Responsibilities Under Federal and Massachusetts State
Fair Housing Law**

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C O M M U N I T Y S E R V I C E S

ACKNOWLEDGMENT AND DISCLAIMER

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New England Affordable Housing Management Association (NEAHMA)

About NEAHMA:

The New England Affordable Housing Management Association was formed in 1989 to facilitate communication between management agents and local HUD and state housing finance agencies. Monthly membership meetings include a period devoted to training and education on current regulatory topics as well as current housing updates provided by agency representatives. Members have an on-going opportunity to attend NEAHMA sponsored educational sessions relevant to affordable housing.

NEAHMA is a member of the National Affordable Housing Management Association. Founded in 1990, NAHMA is the nation's largest association for managers and owners of privately owned, government-assisted housing. NAHMA advocates for an adequate

supply of multifamily, residential affordable housing by bringing nationwide attention to the necessity of preserving decent, safe and sanitary housing and building a solid partnership with HUD, Congress and other concerned participants. NAHMA offers a series of designations for housing professionals to show that they have met the highest standards in the industry. These include the National Affordable Housing Professional (NAHP) designation, as well as the National Affordable Housing Maintenance Supervisor (NAHMS) and the National Affordable Housing Maintenance Technician (NAHMT) designations.

NEAHMA's membership consists of owners and management agents who represent over 50,000 units of affordable housing throughout New England complimented by a strong contingent of associate vendor members. As an organization representing affordable housing professionals, NEAHMA addresses housing issues at the national, state and local level. HUD and housing finance agencies actively support NEAHMA as a means to ensure Communities of Quality throughout New England.

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To obtain a large print, tape, or diskette version of this Handbook, contact MassHousing at 617.854.1077, Vp: 866.758.1435, FAX: 617. 854.1028.

INTRODUCTION

This handbook provides an overview of fair housing law for maintenance supervisors, staff, and security personnel. It will help you understand the legal requirement that you can't discriminate against someone because of their race, the color of their skin, what country they're originally from, their religion, if they have children under the age of 18 or are pregnant, if they have a disability, and any other reason prohibited by state or local law. Treating people fairly is a simple concept. However, it can be difficult to understand how this concept affects how you can and can't do your job.

Each of us may have preconceived ideas about people from various protected groups of people. It is important that you perform your job in a way that isn't based on your assumptions about people but rather that you perform your job in a nondiscriminatory way. You must make sure that you treat applicants and tenants as individuals and that you make no assumptions based on protected status.

To the degree possible, these materials have avoided legal jargon. The Handbook focuses on real-life, job-related situations that maintenance staff and safety personnel face. These materials are presented in a question and answer format and are divided into topics related to your job. You will see that some questions have very clear answers. For other questions, there are several opinions about what is the correct answer. That is because sometimes the law is so new or general that lawyers have different opinions about what it really means. The final answers will be determined over time as various regulatory agencies and courts make decisions on situations where the parties disagree. Most management companies in Massachusetts have rules, policies and procedures that address Fair Housing related issues, as well as maintenance and safety. You need to be familiar with how your company wants you to handle a particular situation.

The appendix to these materials provides a chart that summarizes the various federal and state anti-discrimination laws. This chart details what type of housing these laws apply to, what these laws require housing providers and site staff to do and what these laws require housing providers and site staff not to do.

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COMMONLY ASKED QUESTIONS

A. General Questions

1. What Is Discrimination?

If you look up the word "discriminate" in a dictionary it generally states that it means to distinguish or make a distinction between two like things. Each of us "discriminate" numerous times everyday. For example, we discriminate when we make choices between what to eat for a meal, what sneakers to buy, and what television show to watch. Obviously, many types of "discrimination" aren't illegal. Property managers and site staff "discriminate" all the time when performing their jobs. For example, every site has a tenant selection plan that sets criteria that requires managers to make distinctions between applicants based on legitimate, objective factors relating to eligibility and suitability for tenancy. However, the criteria contained in the tenant selection plan can't be based on "illegal criteria." Likewise, most companies have a set procedure in place for responding to maintenance requests in accordance with date and time of the request, unless it is an "emergency." This requires maintenance providers to distinguish or discriminate between situations.

2. What Makes Discrimination Illegal?

Not all types of discrimination violate Federal, State or local civil rights laws. Discrimination is illegal when you differentiate based on certain characteristics that the federal, state and or local government has determined you can't base your actions on, including but not limited to:

- Race
- Color
- Religion

- Sex
- National Origin
- Familial Status
- Disability
- Age
- Marital Status
- Sexual Orientation

Groups of people who are covered by civil rights laws, such as these, are called "protected classes." What this means is that you can't treat people unfairly because of their protected status: because of their race, color, religion, sex, national origin, familial status, disability, age, marital status, sexual orientation. Some laws also require owners/managers of affordable housing to take affirmative steps to make sure people in various protected classes have an equal opportunity to apply to and live in their housing.

For example, going back to the example in question 1 above regarding responding to emergencies, it isn't illegal for a maintenance provider to respond to an emergency situation ahead of regular maintenance requests assuming, the site's definition of an emergency isn't based on illegal factors such as the race of the person saying it's an emergency.

3. What Makes Up The Law?

The "law" is made up of several kinds of rules:

a) **Statutes**

A written collection of rules passed by Congress or a State Legislature. There are a lot of statutes discussed in this handbook such as the Federal Fair Housing Act.

b) **Regulations**

Rules government agencies produce and implement to administer laws passed as statutes. Usually regulations include a "preamble" or introduction. It explains the thinking behind the regulations. For example, the Department of Housing and

Urban Development (HUD) passed a set of regulations implementing the Federal Fair Housing Act, and it has a "preamble" that discusses each section of the regulations and what HUD thinks the regulations say.

c) **Constitution**

The U.S. Constitution is the highest form of law. It sets standards for the equal protection of citizens and due process (fair procedure). It's not usually used in housing discrimination cases. States, such as Massachusetts, also have constitutions.

d) **Executive Orders**

Issued by the President or the Governor of a state to set requirements for behavior, operations or policy for agencies of government. There are a number of Executive orders that involve discrimination in housing.

e) **Case Law**

Written decisions by courts and administrative agencies.

f) **Administrative Directive System**

Government agencies usually have a system in place to communicate with its staff and program participants regarding what they should do, must do and can do.

- If the site where you work receives money from the Department of Housing and Urban Development (HUD) it is considered "assisted housing" and your site needs to follow HUD's directive system. HUD's directive system for assisted housing providers consists of notices and handbooks. For example, handbook 4350.3 REV-1 is a "rule book" on the occupancy, policies, and procedures governing many HUD subsidized, multifamily programs. Fair Housing requirements are summarized in Chapter 2 of this Handbook and discussed throughout the 4350.3 REV-1 as they apply throughout the occupancy cycle: admissions, occupancy and eviction.

Likewise, HUD issues guidance specifically on maintenance related topics and requirements and conducts REAC inspections based on these requirements.

4. Who Must Comply With Fair Housing Laws?

Federal and state fair housing laws apply to everyone associated with housing, including everyone who works for a management company or a public housing authority. This includes maintenance supervisors, custodians and safety personnel. Therefore, if any employee acts in a discriminatory manner the individual as well as the private management company or public housing authority may be held accountable.

Also, management companies are required by some laws to include in any contract they sign with entities for maintenance services, safety services, landscaping and other services a clause that prohibits contractors from discriminating. If you witness a contractor engaging in unprofessional or discriminatory behavior you need to report it to management. Likewise, sometimes contractors will make comments directly to site staff about residents that are inappropriate, such as "she's a hot one." A contractor's behavior is a reflection on site staff. You're not "finking" on anyone or "ratting anyone out". If you do not do anything to prevent the discriminatory behavior that you witness or are made aware of by a resident, then you are allowing it to continue and that can be considered discriminatory as well.

5. What Laws Say I Can't Discriminate?

There are a number of federal, state and local statutes that may apply to the site that you work at and to you. There are two non-discrimination statutes (rules passed by the federal or state legislator) that apply to almost every type of housing, regardless of whether your site was funded with federal and/or state dollars. One is a federal statute and one is a Massachusetts statute. The federal law is called the Federal Fair Housing Act or the Fair Housing Act. The state law is usually called Chapter 151B. Also, if you work at a site that was financed with federal dollars other laws will apply, including the Rehabilitation Act, Title VI of the Civil Rights Act, the Age Discrimination Act, and Title IX of the Education Amendments Act. The Americans with Disabilities Act (ADA), which protects people with disabilities, may apply to your site as well. This law is divided into

sections called Titles. If your site is operated by or significantly financed by a state or local government entity (such as a PHA or Mass Housing, or a city such as Boston) it would be covered by Title II of the ADA. If your site doesn't receive any state or municipal funding, Title III of the ADA would apply to all of the parts of your development that are considered "public accommodations" such as the management office, and the community room if you rent it out to the general public.

Don't forget that agencies that enforce statutes provide regulations and/or guidance that explain what the statutes require and allow sites to do. Also, if your site is funded by the Department of Housing and Urban Development it must follow the rules contained in HUD Handbook 4350.3 REV-1. Chapter II of this Handbook summarizes Federal non-discrimination requirements and lays out for housing providers that receive federal funding from HUD what they must do, should do, and can do when it comes to Fair Housing. Fair housing requirements are also incorporated throughout the rest of the Handbook which discusses all aspects of housing management.

6. Who Does the Federal and State Fair Housing Laws Protect From Discrimination?

The Federal Fair Housing Act says that you can't discriminate someone on the basis of race, color, religion, sex, national origin, familial status and disability. Massachusetts law is broader. It prohibits discrimination on the basis of these categories as well as others including sexual orientation, marital status, age, ancestry, veteran status and because someone receives public assistance. Also, local laws may protect different or additional groups of people. It is often unclear what the law means by some of these categories, so we have provided you a little guidance:

- a) **Age:** The word "age" isn't meant to prohibit owners from refusing to rent to minors or to prohibit Elderly housing.
- b) **Color:** Literally the color of someone's skin; including how light and dark a person's skin is. The reason for this is that sometimes people experience discrimination based on whether they are a light complexioned or dark complexioned person of color.

- c) **Disability:** The definition used in most Fair Housing laws is usually the same and is very broad. This definition is not the same as any eligibility definition of a person with a handicap/disability to get into public or assisted housing or to be eligible for certain allowances against income. It is much easier for a person's disability to satisfy the civil rights definition than the eligibility definition. It recognizes that people are discriminated against because 1) they have a disability; 2) they use to have a disability (a record of such an impairment); and 3) someone thinks they have a disability (is regarded as having such an impairment). The third prong of this definition is sometimes the most confusing to people so an example may help illustrate this concept. Assume that someone has lesions on their face, arms and legs. You might think that the person has AIDS and refuse to fix something in their unit because you're afraid of getting AIDS. The law says that even if the person doesn't have AIDS, your actions would be illegal because you refused to do work in the unit because you assumed the person had AIDS.

A disability is defined as any physical or mental impairment (including practically any condition, disease, illness, disfigurement or disorder e.g. alcoholism, AIDS, emotional disorder, cerebral palsy, cancer, deafness, HIV infection) so long as the impairment "substantially limits a lot a major life activity". It is important to understand what the term "substantially limits" and "major life activity" mean. "Substantially limits" means limits a lot. "Major life activity" is a very broad term and includes, but isn't limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, learning and working).

- d) **Familial Status:** The law protects households with children and people who are pregnant. The law recognizes that sometimes children live with people other than their parents. For example, the law says you can't discriminate against any household consisting of a child (someone 17 or under) living with his/her parent, legal guardian or designee of either, and anyone who is in the process of securing legal custody of an individual who is under the age of 18.
- e) **Public Assistance:** This is included only in state law, but some Federal housing programs also prohibit discrimination on the basis of public assistance. The definition includes applicants and tenants who have mobile vouchers from a Housing Authority or agency to help pay the rent on a unit. It would also cover households that receive public assistance income such as welfare.

- f) **Race:** These categories are sociopolitical constructs and people can consider themselves as part of more than one race. HUD's form that is used to collect data on the racial composition of applicants and residents utilizes the following race categories:
- i. **American Indian or Alaska Native.** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
 - ii. **Asian.** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
 - iii. **Black or African American.** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American".
 - iv. **Native Hawaiian or Other Pacific Islander.** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
 - v. **White.** A person having origins in any of the original peoples of Europe, the Middle East or North Africa.
- g) **Religion:** This includes, but isn't limited to the following world religions: Atheism, Baha'i , Buddhism, Candomblé, Christianity, Hinduism, Islam, Jainism, Jehovah's Witnesses, Judaism, Mormon, Paganism, Rastafari, Santeria, Shinto, Sikhism , Taoism, Unitarianism, and Zoroastrianism. This can also include discrimination by people who practice the same religion, but different sects within a religion.
- h) **Sex:** This includes being treated differently based on the person being male or female and includes sexual harassment. The latter is **unwelcome** verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects a resident's housing conditions or creates a hostile living environment.

Some courts have also found that sex discrimination includes negative actions against a victim of domestic violence when the actions are based on gender stereotypes, such as giving someone a hard time because the abuser broke a window thereby assuming that the victim either somehow caused the behavior or allowed it to happen. Advocates also argue that management policies regarding zero tolerance of criminal behavior or destructive behavior occurring in a home can constitute sex discrimination due to their disparate impact on women, unless management had a really good reason to justify the policy. Also please note that some state laws (such as Rhode Island) specifically prohibit discrimination against applicants and tenants because they have experienced domestic violence

Also please note that there is a Federal law (not discrimination statute), the Violence Against Women Act (VAWA), that specifically states that a Public Housing Authority (PHA), can't deny someone housing or a voucher because she has been a victim of domestic violence, dating violence or stalking. It also prohibits private landlords who accept vouchers and those providers whose sites have a project based section 8 subsidy from refusing to rent to someone because she is a victim of domestic violence, dating violence or stalking. It also prohibits Public Housing Authorities and private housing providers from evicting someone from public housing and Public Housing Authorities from terminating her voucher just because she is a victim of domestic violence. Public and assisted housing providers and private landlords who accept vouchers may only evict a victim of domestic violence, dating violence or stalking if there is an "actual and imminent threat" to other tenants or staff if the victim isn't evicted. Likewise, a PHA may only terminate a voucher using the same standard. The law also allows a housing provider to "bifurcate" the lease in cases involving domestic violence, and evict an abuser while allowing the rest of the family to stay in the unit.

- i) **Sexual Orientation:** This is included only in state law. This requires you not to discriminate against someone because they are attracted to and/or sexually involved with someone of the same or opposite gender, or is trans-gendered. The law makes it very clear that this isn't the same as adults who use children as sex objects. Homophobia is the term used to describe harassing treatment, fear, hatred, or extreme negative attitudes, feelings and beliefs about lesbian, gay, and/or trans-gendered persons.

7. Do I Have To Comply With All Laws That Prohibit Discrimination That Apply To Me?

Yes. If more than one law applies to you, you can't pick and choose which law to follow. You have to follow the strictest requirement. It's just like when you have to follow both the local and state building code; It's not a defense if you say to a REAC inspector, "oh sorry, I thought I didn't need to do that because I was following the city's health and safety requirements and not the state's health and safety requirements."

8. What Does The Law Mean When It Says You Can't Discriminate?

Federal and state laws include two different types of discrimination: disparate treatment discrimination and disparate impact discrimination.

- a) Disparate treatment generally refers to discrimination that occurs when a person in a protected class is treated differently from a similarly situated person who is not in the protected class. For example, it is discriminatory to help only white elderly women with their groceries and not help other people with their groceries. Evidence of disparate treatment often times includes the use of words that suggest that a person views people in a protected group different than people who aren't in the protected class.
- b) Disparate impact discrimination generally refers to practices that appear neutral but have a greater negative effect on people in a protected class and can't be justified by a legitimate business reason or even if it can be justified, there is a less discriminatory way to satisfy the business need. For example, requiring everyone to read and sign a maintenance request in English. This rule is neutral in the sense that it is applied the same to all residents. However, it is likely to have a greater impact on individuals whose primary language is not English, and individuals with visual impairments, cognitive impairments and mobility impairments. The purpose of such a rule is presumably legitimate: to make it clear what the person's request is and to have a written record of all requests. However, there are other ways to achieve this business goal in a less discriminatory manner. For example, the form could state that if someone has difficulty reading, writing or understanding

English because it's not their primary language that management will assist them by getting an interpreter if no one on staff speaks their language and can orally translate the document and serve as an interpreter. Management can also make it clear that they will help someone fill out the request form if they need assistance the person's disability affects their ability to comply with this requirement.

9. What Do Fair Housing Laws Say Someone Who Works At A Housing Site Can't Do?

Federal and state fair housing laws (statutes, regulations, Handbooks) list specific examples of practices that are illegal. Many of the prohibited practices relate specifically to functions that a manager is involved with. The following is a shortened version of what the laws say you can't do and is tailored specifically to maintenance and safety personnel. Please see the actual regulations and the HUD Handbook 4350.3 REV-1 for more detailed information.

In Massachusetts, maintenance and safety staff can't do any of the following because of race, color, religion, sex, disability, familial status, national origin, ancestry, marital status, sexual orientation, veteran history and receipt of public assistance:

- a) Discriminate in the terms, conditions, and privileges of rental, or deny or limit the services and facilities available in connection with the rental of a dwelling.

For Example:

- Posting signs that prohibit only children from playing in the parking lot. No one should be playing in the parking lot;
- Assisting elderly people and not younger people with disabilities with trash removal;
- Storing boxes of supplies in the accessible communal bathroom thereby making it inaccessible to someone who uses a wheelchair or walker;
- Parking a maintenance van in an accessible parking spot or blocking a curb-cut with the van;
- Asking only men who are black to show identification when entering the building, or identifying who they are visiting before buzzing them in.

- b) Provide inaccurate or false information about the availability of apartments or steering them away from renting.

For Example:

- Telling someone who comes by your HUD subsidized Elderly site who inquires about whether families are allowed to live there that: 1) this is an "elderly-only" site; 2) children aren't allowed to live on site; or 3) telling them they'd be happier living where there are more children.
- A person stops you while you're landscaping and asks you if there are any 3-bedroom units available. You look up and see that the person is in a wheelchair. You know that even though the development has 3-bedroom units, that none of them are accessible; therefore, you say no.
- The neighborhood you work in is almost all black and a family who is of Spanish ancestry comes by and asks you if there are any vacancies. You're concerned that the family won't fit into the neighborhood well so you tell the family no (JM - or refer them to a nearby site where you believe they would fit in better?), even though you know that the site is accepting applications and there isn't a waiting list.

- c) Fail or delay maintenance or repairs of sale or rental dwellings;

For Example:

Your site has a standard procedure that maintenance repairs are done in the order requested, unless it is a real emergency. However, your site manager tells you verbally to ignore the work order numbers and help the old-time residents who happen to be white rather than the new residents, who happen mainly to be from Bosnia.

- i. You refuse to do any work in a unit because you believe the resident who lives in the unit has AIDS and you're afraid you're going to get the disease.
- ii. Your site can't respond in a timely fashion to an emergency call because the person making the request only speaks Spanish and the

person answering the phone can't understand him/her and doesn't know how to reach someone who can.

- d) Limit the use of privileges, services, or facilities associated with a dwelling unit;

For Example:

- i. Your site has a policy that no one under the age of 18 can use the community room.
- ii. The intercom system used by security to let residents know they have a visitor isn't accessible to people who are deaf or hard of hearing, or someone who is blind.
- iii. A maintenance provider agrees to drive only English speaking, white elderly women to their doctors' appointments because they remind him of his mother.

- e) Deny or limit services or facilities in connection with the sale or rental because a person failed or refused to provide sexual favors;

For Example:

- i. A maintenance provider makes it clear to a resident that he/she won't fix a problem in the unit unless the resident dates him/her.
- ii. A security guard tells a resident that if she doesn't have sex with him he will ignore the drug dealing taking place on the resident's floor.

- f) Discriminate against someone because of that person's relationship to or association with another individual;

For Example:

- i. A maintenance provider refuses to enter a unit because the resident is involved in a sexual relationship with someone of the same gender and same sex relationships disgust him.
- ii. A security guard ignores the complaint of a white woman who states that she is being harassed by her neighbors because her boyfriend is

black. The security guard doesn't agree with mixed relationships and thinks the residents are right to harass the woman.

- g) Retaliate against, threaten, or act in any manner to intimidate someone because he/she exercised rights under the Federal or State Fair housing law (or a local law);

For Example:

- i. A resident files a race discrimination complaint against the site, the owner, and the manager. The manager instructs the maintenance supervisor to ignore all of the resident's work order requests and the maintenance supervisor acts accordingly.
- ii. A resident with a disability complains to Management that a maintenance provider asked him a lot of questions about his disability and expressed concern that it wasn't safe for the resident to live alone in his unit. Management tells all maintenance staff to stop talking with the resident at all. The staff follows orders and avoids all conversations with this resident but continues to be friendly and engaging with all other residents.

10. Is The Site Required To Let Applicants Know We Don't Discriminate?

Yes.

a) **Fair Housing Posters**

Housing providers are required by the Federal Fair Housing Act to post and maintain a fair housing poster at all sites and places of business. Sites can get the poster off the HUD website in English, Arabic, Cambodian, Chinese, Creole, Hmong, Korean, Spanish and Vietnamese.

- ensure equal access to this information for people with disabilities, one poster should be hung at a level that someone who uses a wheelchair can read, and one should be displayed in large print.

b) **Nondiscrimination Clause/Logo:**

The Fair Housing Act doesn't require that a nondiscrimination clause/logo be used. It says this should be used, but if you are a program covered by HUD Handbook 4350.3 REV-1 it is a **must** to use the Fair Housing Logo, statement, or slogan. Also, if your site wants to be viewed as affirmatively furthering Fair Housing it needs to use this logo.

Also, if your site receives federal dollars it is required to use a statement of non-discrimination on the basis of disability in any recruitment or informational material. Recipients with 15 or more employees have an ongoing obligation to notify applicants, tenants and employees that they don't discriminate on the basis of disability. The notice must also include the name of the person responsible for coordinating its compliance efforts under Section 504 of the Rehabilitation Act. Remember, the site must make sure that such notices are accessible to people with disabilities and people who have limited English proficiency.

c) **Accessible Services, Activities and Facilities:**

A recipient of federal dollars must have procedures to ensure interested persons (including people with vision and hearing impairments) can obtain information about the existence and location of accessible services, activities, and facilities. You must use the universal symbol of accessibility or statement when a property is fully accessible and list the TDD number (or 711) everywhere the site's phone number is listed. This includes when you send out notices regarding maintenance.

B. Questions Regarding Talking With Applicants and Residents

1. What is My Site Required by Law to do so Staff can Communicate with People Who Don't Speak English or Don't Speak it Well?

If your site gets federal dollars it is required by federal law to take steps to be able to communicate with people who have a limited ability to read, write, speak or understand English because it isn't their main language. This obligation requires the site to come up with a language assistance plan (LAP) that details how site staff will be able to communicate with people with limited English proficiency both orally and in writing. Once the plan is created, all site personnel need to be told what to do if they need to talk or otherwise communicate with someone who has Limited English Proficiency (LEP). This includes meeting people's needs in a timely manner, including when there is a maintenance emergency and when notices are sent to residents about snow removal, extermination, and alarm testing.

HUD has provided specific guidance regarding a site's obligations in terms of communicating with people orally and in writing. The extent of your sites obligation depends on whether the communication involves oral communication or written communication, but generally involves four factors:

- a) The number/proportion of persons with LEP who could apply to or live in your housing development;
- b) How often persons with LEP have contact with your housing program (application through termination of tenancy). The more contact the greater the obligation;
- c) The nature and importance of the program, activity, or service provided by the program to people's lives. The more important the activity the greater your obligation; and
- d) The resources and costs available. A site doesn't have to do something it can't afford to do.

HUD's guidance says that no matter how few persons with LEP apply to or live at a site, the site is obligated to provide oral interpretation services in some form. The extent of your site's obligation to provide both oral and written translation is dependent on the four-factor analysis conducted at your site. The guidance provides a Safe Harbor rule to assist sites in figuring out when to provide translation of "vital documents." It is the site that determines which documents are "vital." The Safe Harbor rule for written translation of vital documents is based on the number and percentages of the market area-eligible

population or current beneficiaries and applicants who have LEP. According to the Safe Harbor Rule, HUD would expect translation of vital documents to be provided when:

- a) The eligible LEP population in the market area or current beneficiaries is greater than 1,000 persons; or
- b) If a single LEP population is greater than 5% of the eligible population or beneficiaries and the 5% is more than 50 people.

In cases where more than 5% of the eligible population or current beneficiaries speaks a specific language, but fewer than 50 persons are affected, there should be a translated written notice of the person's right to oral interpretation.

IMPORTANT NOTE: Regardless of whether a site receives federal dollars and has a legal obligation to come up with a LAP, it is a good business practice to be able to communicate effectively with all applicants and residents. For example, when a pipe bursts in a unit and water is gushing everywhere it is extremely bad for the site if the resident can't communicate to the answering service quickly and easily what's happening. In cases like this, response time is very important. It can make the difference between minimal damage and a unit that is uninhabitable.

2. What Do I Do If I Can't Understand What A Tenant Asks Me To Do Because I Don't Speak His/Her Language?

If you can't understand a tenant because of a language barrier you need to talk to your supervisor and find out what has been put into place to help make sure that staff can communicate orally and in writing with people with limited English proficiency. There are a number of sources that a site can use to communicate with people with Limited English Proficiency (LEP). These include:

- Using bilingual staff to interpret and provide translation services;
- Providing a list of professional interpreters and translators for various language groups;
- Providing a list of **outside resources** that include community volunteers who are willing to provide oral and written language assistance; and

- Using a Telephone Interpreter Service Line which can provide immediate interpreter services in over 140 different languages

Note: you need to know your site's policy regarding using informal interpreters, such as other residents and family members. HUD guidance makes it clear that informal interpreters may not be appropriate, depending on the circumstances and subject matter. Simply put, not all informal interpreters are competent to provide quality and accurate interpretations. As a result, such language assistance may not result in a person with LEP obtaining meaningful access to our housing. However, in emergency situations that are not reasonably foreseeable, your site may need to temporarily rely on informal interpreters.

3. What Should Our Site Do To Make Sure We Can Respond In An Emergency If The Resident Doesn't Speak English?

Every site needs to make sure it can respond to emergency situations, including those where the caller doesn't speak English or speaks limited English. This can be achieved by identifying the languages spoken by those at the site who have limited English proficiency and contracting with a Telephone Interpreter Service Line which can provide immediate interpreter services in over 140 different languages.

It is also important that answering services be told about the Interpreter Service Line and how to utilize it.

You might think that if a person has LEP they will find someone in the family or a friend to help them communicate in an emergency situation. Although this may be your experience and may be effective in some situations, it is not a good solution to assume this will work in all cases. Many emergency situations require a quick response and if a person needs to go find a family member or other resident to be able to communicate something is wrong; precious time has gone by. Also, if your site receives federal dollars, you are required to provide a method of effective communication and aren't supposed to rely on family members to interpret for you. There are also times when it is also potentially dangerous to rely on a family member to interpret, such as when domestic violence is suspected.

4. Is My Site Required to Hire an Interpreter So Staff Can Communicate Effectively With Someone Who Is Deaf And Uses An Interpreter To Communicate Effectively?

If a resident needs a sign language interpreter to be able to communicate effectively with you, the site will need to provide one, provided the site can afford to do this. For many people who are deaf, sign language (a language that uses a system of manual, facial and other body movements as the means of communication) is their first language (with English being their second) and is therefore the preferred method of communication in such instances.

Your site needs to know how to obtain a hearing interpreter. One way to do this is by contacting the Massachusetts Commission for the Deaf and Hard of Hearing by calling 617-740-1600 or Toll Free: 800-882-1155 Voice. This agency also has a system in place for off-hour emergency situations, such as medical, mental Health, and legal. To request an emergency interpreter you can call 1-800-249-9949 TTY/Voice.

5. How Do I Communicate Effectively With Someone Who Is Deaf If They Don't Use An Interpreter Or If Someone Is Hard Of Hearing?

Don't assume that if someone is deaf or hard of hearing that the only way to communicate with him/her is to sign, or that what works for one person will work for another person. Not everyone who is deaf or hard of hearing uses sign language to communicate. Some people communicate through a combination of hearing aids, finger spelling, reading lips and speaking and/or writing notes back and forth. For many people with hearing loss, they will need you to repeat what you say more than once. Demonstrate that you will do this without showing any sign of impatience or annoyance with the repetition. Having the discussion in a well lit, glare room with no to minimal background noise will make it easier for the person to clearly see your face, read your lips and increase the clarity of the spoken words. At all times you must face the person directly when you are speaking. Also make sure that there is nothing blocking your face such as your hand, a coffee cup, etc. Before deciding how to communicate with a person

who is deaf or hard of hearing you are required to give primary consideration to what that person states will be the most productive.

6. How Do I Communicate With Someone Who Is Deaf or Hard of Hearing When Using The Telephone?

Some people who are deaf or hard of hearing can use a traditional phone with an amplifier. If you need to call someone who is deaf or hard of hearing and they don't use a standard phone, ask if they use a telecommunications device for people who are deaf. The short name for this is a TDD. Other names for TDD include TTY (telephone typewriter or teletypewriter). A TDD is a device that is connected to a phone that allows people to communicate through the type-written word. It works like texting on a cell phone and Instant Messaging on the computer. If your site doesn't have a TDD/TTY, the telephone company has a relay operator that uses a TDD/TTY (and other technologies including video relay) who you can call to assist you with communication. All relay calls are confidential. In MA, a person who is deaf or hard of hearing can reach a relay operator by dialing "711" or 1-800-439-2370. The Relay Operator will then call you and instruct you how to use the relay operator to communicate with the person who is deaf or hard of hearing. Likewise, if you want to call a resident who is deaf or hard of hearing you would call a Relay Operator by dialing "711" or "0" and asking to be connected to a Relay Operator. The Relay Operator will ask you your name, who you are calling and his/her telephone number. Again, the Operator will ask you if you know how to use a Relay Operator. If you don't, he/she will explain how the process works. The mistake many people make when using a relay operator is talking to the operator as someone who is going to deliver a message to a third party rather than talking to him/her as if he/she were the person they are calling. For example, you should speak directly to the resident and say "Mrs. Jones, I will be at your unit at 3:00 p.m. to fix your stove" instead of relaying a "message" to the operator by saying "please tell Mrs. Jones I will be at her unit to fix her stove at 3:00 p.m." This is an easy mistake to make and the Relay operator will correct you if you make it.

In addition to the traditional TTY relay, people who are deaf or hard of hearing may also have access to Internet Protocol (IP) relay, or Video Relay Services (VRS). Video Relay Services allows a deaf or hard of hearing person to make a telephone call via an Internet

video connection between the user and the relay center which is staffed with sign language interpreters. Some people prefer these types of relay because it allows people to communicate using sign language and happens at a more normal speed. Also, newer text-based communication methods, such as short message service (SMS), Internet relay chat (IRC), and instant messaging have also been adopted by people who are deaf or hard of hearing as an alternative or in addition to TDD. If a resident has requested you use a particular method of communication you must respect his/her requested method.

There are some common abbreviated words that people who use a TTY/TDD to communicate. First and foremost is using "GA", which stands for "Go Ahead" to signal that you've completed your thought and that the other person should begin. Also, you need to make sure when ending a conversation that you write you are ending it and why. The signoff signal (SK) is usually repeated, and you shouldn't end the conversation without making sure the other person or people are really ready to end it ("GA or SK"-- "go ahead or sign off").

The following are some commonly used abbreviations:

ABT	About
ANS	Answer
ASAP	As soon as possible
BRB	Be Right Back
CA	Communications assistant (another term for a relay operator)
CC	Close-captioned
CD	Could
CN	Can
CUL	See You Later
CUL	See you later
GA	Go Ahead
GA TO SK	Go ahead if you have more to say but I'm finished
HAND	Have a nice day
HD	Hold
HOH or HH	hard-of-hearing

INFO	Information
IMPT	important
LK FRWD	Look forward
LTR	Letter
SK	Stop Keying
SKSK	Now hanging up
Q, QQ, QM	Question Mark (?)
PLS	Please
RO	Relay Operator
OIC	Oh, I See
OPR	Operator
NBR	Number
TMW	Tomorrow
THX	Thanks
WRU	Who are You? (or Where are You?)

7. Are There Certain Things I Should/Shouldn't Do When Using An Interpreter?

- a) Make sure everyone is aware that the interpreter is required to maintain strict confidentiality.
- b) Make sure the "environment" is comfortable and works for everyone. For example, good lighting, unobstructed vision and a non-glare/distracting background are really important when working with a sign language interpreter. Likewise, loud noise can interfere with oral interpretation.
- c) Situate your body so you are facing the resident and can look at him/her directly. A hearing interpreter will usually sit across from the resident and next to you so he/she can follow what the interpreter is signing and watch you at the same time. The resident should direct where he/she wants the interpreter to sit.
- d) Make direct eye contact with the resident;

- e) Always speak directly to the resident, never to the interpreter unless you've been asked by the resident to do otherwise. For example, you would say, "Mrs. Jones, what's wrong with your sink," rather than, "Please ask Mrs. Jones what's wrong with her sink";
- f) Don't talk slowly (unless someone is lip reading and has asked you to do so), loudly or over enunciate. Speak as if you normally would. Using voice and mouth movement helps a person who has some lip reading skills and/or residual hearing. However, a loud voice and exaggerated mouth movement interferes with understanding the voiced message. The interpreter will tell you if something needs to be repeated or if you need to slow down;
- g) When you are talking, don't cover your mouth or face. Natural facial expressions and gestures will provide important information to your conversation. Facial expressions are a critical part of communication because they convey the emotions and tone of the conversation. Signing without facial expression is similar to monotone speech. If you don't think the person understands what you're saying or you don't understand what he/she is saying, don't pretend you do. Try to ask questions to figure out where is the breakdown in communication. Try rephrasing something.
- h) Use transitional phrases to let the interpreter and the person know you're changing topics or are finished speaking. If someone is deaf or speaks a different language they won't necessarily know when you've finished your thought. They may also not be aware when your voice drops off indicating you're finished or may perceive it differently because the same signal isn't used in their language. If you don't make it clear, then the resident may jump in when you aren't finished and you may perceive their behavior as rude, which isn't the case.
- i) Interpreting is a difficult job. Make sure you check in with the interpreter to see if he/she needs breaks. Most interpreters take a break every 30 minutes if the session will be long. Also, if it's an all day event, two interpreters may be necessary to give each a break and to keep the conversation/meeting going.

- j) Provide any material you think that will give the interpreter a background before he/she begins to interpret.
- k) Don't ask the interpreter his/her opinion about the resident. The interpreter is solely there for the purpose of interpreting.
- l) Don't say things to the interpreter you don't want repeated to the resident.
- m) Don't stop speaking because you're waiting for the interpreter to begin/stop interpreting. The interpreter will tell you if you need to slow down.

8. How Should I Get The Attention Of Someone Who Is Deaf or Hard of Hearing Without Being Rude?

What is considered "rude" behavior in the hearing world may not be considered so by deaf culture and vice versa.

If you need to enter the unit of someone who is deaf or hard of hearing you need to have a system of notification in place that will work because the standard "knocking before entering" won't. One way is to have a strobe light that flashes when a door buzzer is rung. Another approach is to "call" ahead using the TDD or Relay Operator or texting the person if you have their cell number.

If you are trying to get the attention of a person who is deaf or hard of hearing (who isn't responding to your voice) you could wave your hands, flash lights, stomp feet on the floor or tap the person on the shoulder. Also know that people who are deaf may use these methods to get the attention of others.

If two people are signing and you need to get one or both people's attention it may not be effective to simply stand there, watch and wait to be acknowledged. Your intent may not be understood. It isn't considered rude in deaf culture to interrupt a signed conversation by making eye contact and/or gesturing and waiting until the person or persons you want turns to talk with you.

Also, contrary to the hearing world which considers it rude to not apologize when interrupting a conversation in order to pass by, deaf culture considers it impolite for

someone to do so. The ideal when any two people are having a conversation and you needed to pass by them would be to seek a path that doesn't require you to interrupt them. When this isn't possible, and two people are signing simply walk quickly between them and if you know how to sign, you could sign excuse me, assuming you know how to do this.

9. I'm Friendly With Residents. Is It Ok For Me To Talk With Them About Personal Stuff?

It is sometimes tricky being on the front line and working with residents. On the one hand, if you're not friendly and/or don't take the time to chat you may be thought of as a jerk. If you're too friendly and talk with residents about personal stuff you can get accused of "favoritism" or prying into their personal lives. Also sometimes what happens is that you end up talking about things that can get you into trouble. For example, it is generally against the law to make any inquiries about whether or not someone has a disability. This means that you should avoid any discussions with residents about the nature or severity of their disability. Many residents share information without being asked and tell you far more than you'd ever want to know about their medical situation. Without being rude, do not engage in discussions about a person's disability. The golden rule is that no one on the site can ask information relating to someone's disability unless he/she needs to know it; not just because they want to know it.

Example 1:

You have been asked to install a grab bar. It is acceptable for you to talk to the resident about placement of the grab bar and essential that you follow the requirements contained in the applicable building code unless told to do otherwise to meet the resident's specific needs. It's not okay for you to ask the resident why he/she needs the grab bar or how he/she managed without the grab bar.

Example 2:

You enter a unit to fix a clogged toilet and you see that the unit is a mess. There are dishes stacked up, old food everywhere, the bathroom has fungus growing in it, and the carpet in the living room looks like it hadn't been vacuumed in months.

Mrs. Jones, an 86 year old resident, starts talking to you explaining that she just can't keep up with things anymore. She's tired. It's okay to acknowledge her comments with "I'm sure it must be difficult" or "I'm concerned because you're violating your lease." You can't say things like, "Do you think you should be living independently now" or "I think you need someone to help you." You may think the latter too, but you can't say them.

Example 3:

You run into a resident in the lobby of your site. You've known her since you were a little boy and haven't seen her for a while. She fills you in on the news of her family and you listen because it would be disrespectful to cut her off. She then starts talking to you about her health and that she's been diagnosed with Multiple Sclerosis. Your wife also has the disease, and you start comparing notes about doctors, treatment plans, medications...Although this conversation was purely "innocent" the law would consider the questions you asked the resident to be illegal. You might think that the likelihood of your friend suing you for "asking" these questions is small or none. However, you may think differently if the resident violates her lease and management seeks to evict. Suddenly, your innocent conversation potentially takes on a whole new meaning.

Likewise, you should never ask people directly about their sexuality or gender, or assume that they are heterosexual when chit chatting with them. If a person should choose to speak to you about their sexuality or gender, there is no reason for you to repeat this information to anyone else. It doesn't affect anyone's health or safety and therefore repeating it falls into the "gossip" category. Simply, it is inappropriate to disclose and discuss information about others that doesn't need to be disclosed. If someone does disclose to you they are gay or lesbian, avoid asking questions that you don't need to know the answer to in order to do your job. For example, avoid asking the following:

- a. In your relationship, which are you, the male or female?
- b. I know you say you're gay, so does that mean you really want to be a woman?
- c. I know you say you're a lesbian, have you tried being with a guy?

10. I'm Friendly With Residents And Have Worked At My Site For A Long Time. Is It Okay For Me To Talk With Them Like I Would With My Friends?

The short answer is no. You are a professional and work at the site. You have to remember that things you might joke with your friends about or say to your friends you can't say to residents (or your co-workers). Likewise, you can't behave around residents like you would around your friends.

Comments that you intend as complimentary can be construed by residents as inappropriate and offensive. They can also be considered sexual harassment if they're unwelcome and offensive, and are severe or pervasive. For example, it is clear to most people that it is sexual harassment if a resident is required to provide sex in order to continue to live in the unit. However, there are a lot of different types of behavior (verbal, physical and non-verbal) that can reasonably be construed as sexual harassment by a resident if it is "unwelcome." These include comments about clothing, personal behavior, or a person's body; sexual or sex-based jokes; repeatedly asking a person out; sexual innuendoes; and telling stories or making comments about a person's personal or sexual life. It also includes inappropriate physical conduct like touching a person or a person's clothing, putting an arm around another person, kissing, hugging, patting, stroking (hair, arm...) and non verbal things like looking up and down a person's body; derogatory gestures or facial expressions of a sexual nature; and following a person around.

Likewise, jokes, the use of certain terms and off-handed comments can be interpreted as you being prejudiced against a group of people protected by the law. For example, comments like HIV/AIDS is a "gay" disease or is "God's wrath" against people who are gay may express the speaker's view, or the speaker may be "joking." However, many people wouldn't perceive this as funny, or appropriate. Rather, it conveys definitive views about people who are gay. It implies that people who are gay "deserve" to be punished because they are gay. Likewise, comments that refer to things or behavior that is negative as "gay" is also problematic.

Other behavior that is inappropriate includes:

- Using derogatory or slang names related to religion, race, gender, ethnicity, disability, or sexual orientation, even if you "don't mean anything by it". These terms include, but are not limited to: Bitch, Chink, Coloured, Cracker, Fag, Fairy, Gook, Grease ball, Guinea, Hymie, Jungle Bunny, Kike, Nigger, Queen, Sambo, Spic, Tar baby, Thicklips, Whitey, Wop, Cripple, Mental, Nutcase and Retard.
- Imitating a resident (or fellow employee) in a manner that makes fun of a speech impediment, a person's accent, and specific mannerisms that may be associated with sexual orientation.
- Comments that may show insensitivity to cultural differences, such as making negative remarks about the unusual food odors that come from an apartment, and referring to residents as "those people".
- Discussing the culture, race, gender, religion, or sexual orientation of a co-worker or other resident in a disparaging way.
- Making comments connecting a religious group, ethnic group, or people based on sexual orientation with atrocities in life, such as linking homosexuality with pedophilia or child abuse and "all" people of Middle Eastern descent with 9/11.

Also, sometimes people are having a conversation and a comment is made that "crosses the line" in the other person's opinion. If you've made a comment or joke about a person's race, color, religion, sex, national origin, disability, marital status, sexual orientation, or age and they object don't dig yourself deeper into the hole by continuing making comments once a person has objected to the behavior. Rather, apologize if you offended someone and explain it wasn't your intent to say or do anything offensive. It is also recommended that you document the incident in writing when you return to the office. If the person was offended and "perceived" you discriminated against him/her, he/she may choose to speak with your supervisor or file a complaint. The easiest way for you to defend yourself is if you document the facts as quickly as possible, making your supervisor immediately aware of the "who", "what", "where" and "when" of the situation that transpired.

11. Are There Certain Terms/Descriptions That Are Better Not To Use When I Am Talking About Someone In A Protected Class?

- a) Unless a person's protected status is relevant, don't refer to it at all. In other words, comments like "I fixed the stove in unit 223 where the deaf woman lives" or "I helped the black guy in unit 225" are problematic. The fact that the resident is deaf or black is irrelevant to you being in the unit and fixing the stove or helping a person.
- b) Don't use derogatory terms or slang.
- c) Be aware of terms that may be "outdated" or considered insensitive. For example, using terms such as "handicapped", "physically challenged", "crippled", or "deformed" when describing someone with a disability, and "able-bodied" and "normal" when describing someone without a disability.
- d) Try not to categorize people. Words that refer to people's protected status should only be used as an adjective to describe someone when it is relevant as opposed to a noun. In other words, people are people first and they have a disability, are a particular race or races, practice a religion, have a sexual orientation, etc.... This means that rather than referring to someone as "the epileptic" you would say "the person with epilepsy." Rather than saying "the Jew" you would say "the person who is Jewish."
- e) Try to use expressions that aren't emotional when describing someone with a disability or express your feelings about their disability. For example, avoid saying "victim of," "afflicted with" and referring to people with disabilities as "invalids." Likewise, rather than using the expression "confined to a wheelchair" say "uses a wheelchair".
- f) When referring to an accessible entrance or transportation services at your site, avoid using the word "special." Many people consider this word as a way of segregating people with disabilities, where as the term "accessible" focuses on integration.

- g) Make sure you address all people at your site in the same manner. In other words, if it is your site's policy to address people by their surname, including Mr., Mrs., Miss, or Ms., then make sure you consistently do this. People in protected classes are often called by their first name rather than their last name, or not referred to by name at all.

12. What Should/Shouldn't I Do If Someone Complains To Me That Another Resident Said Something or Did Something That Could Be Considered Offensive or Harassment?

Don't ignore or fail to take seriously a person who reports or complains of harassment (physical or verbal) or expresses they are upset about a remark that could be construed as racist, homophobic, anti-Semitic, anti-Muslim etc. Do not blame the person who reports or complains of harassment, or suggest they are "thin skinned," "too sensitive," or that they "don't have a sense of humor". Also, don't assume because someone has a disability or is a "difficult" resident that he/she isn't telling the truth. For example, don't assume because someone has paranoid schizophrenia that she's not telling the truth when she tells you her neighbor is harassing her.

The resident telling you about the incident is considered management being put on notice. Immediately report the incident to the manager and encourage the resident to do the same. If your company has a specific notification process or policy make sure you follow it. For example, a company may require that incidents be reported using Form #5 and submitted to the property manager and regional manager within 24 hours. Check with your supervisor regarding who you should report harassment/discrimination complaints to if you don't know.

C. Questions Relating To Trash Removal, Clean Up, Maintenance Requests and Snow Removal

In accordance with Massachusetts law your site is responsible for proper disposal and collection of trash. Localities have rules that specify trash days, when the trash needs to be out by, and sometimes specific requirements for disposal (such as weight and size limits of barrels).

Trash policies need to include proper disposal of bio-hazardous waste by residents. Likewise, maintenance and safety personnel need to be clear on proper procedures, including OSHA requirements, when dealing with bio-hazardous materials. Each policy should include the use of universal health precautions. Taking universal precautions means that situations where you could come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections.

A site's policy regarding trash removal and disposal of hazardous materials must be fairly and effectively implemented to avoid charges of discrimination. For example, if you are a maintenance provider at a site that serves elders and younger people with disabilities and you choose to help all of the elderly women in your development with their trash removal because you feel sorry for them or because you are friendly with them, you run the risk of residents charging discrimination based on gender, age and disability. Likewise, if you "ignore" Mrs. Jones' dumping her trash in an unsafe manner, but complain when others do, you are treating residents differently and make it easy for charges of discrimination.

Any policy regarding trash removal and disposal of hazardous materials must be communicated to all employees and residents. This includes people with limited English proficiency and people with disabilities who need auxiliary aids (Braille, large print...) in order to effectively communicate the policy. Failure to do so will lead to charges of discrimination on the basis of national origin and disability.

Likewise, all companies need to have and effectively communicate policies and procedures on maintenance requests. This includes how a resident makes a request and the order in which maintenance providers respond to those requests.

1. Can I Pick And Choose Who I Assist With Trash Removal?

No. Fair housing laws require that all policies and procedures be implemented consistently. This means that you must approach requests for assistance with trash removal the same for all residents unless your manager has communicated to you an exception based on a reasonable accommodation for a person with a disability. In other words, you can't agree to help one resident remove his/her trash and not another resident. Sometimes this is not easy to follow, especially when you've worked at the same site for a long time and have a relationship with residents who have lived there for a number of years. Staff members who have worked at a site for a long time often become surrogate family members for residents and residents rely on them to "help" them with things that aren't within a staff person's job description. It is difficult at best under these circumstances to say "no" to someone. The problem is that if you don't say no you are treating residents differently and it is easy for someone to accuse you of "discrimination" or unfair treatment. Discrimination can be "perceived" even if not intended especially when newer residents are of a different Race or Ethnic background than long time residents as a result of demographic changes in a neighborhood, or when a building that was historically comprised solely of elderly households more recently has younger people with disabilities. Always keep in mind "Do not do for one what you are not willing and able to do for all."

2. What Should Management Do If The Way People Are Required To Remove Their Trash Has A Greater Impact On People With Disabilities?

The trash removal policy you have in place can't have a disparate impact on people with disabilities unless it is necessary and there isn't a less discriminatory policy/method of trash removal. Review your policy to figure this out. For example, is your trash receptor at a height that makes it impossible or difficult for someone who has a mobility impairment to reach and dispose of the trash? If the resident needs to open a door to dispose of her trash, is the door heavy to open? Does it have hardware on it that is accessible? When you are handling trash, make sure you are using universal health precautions. Notify the manager if there's an issue that you recognize or if a resident raises a concern to you.

3. Can I Choose To Not Answer Maintenance Requests Of Residents Because I Think He/She Has A Communicable Disease?

No. You can't choose to ignore the maintenance requests of residents because they have a disability or the nature or severity of their disability. Nor can you discriminate against them by refusing to do work in their unit because you think they have a disability. Your site must have procedures in place to protect workers from blood borne contagious diseases, such as Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human Immunodeficiency Virus (HIV) and air borne contagious diseases, such as meningococcal disease and tuberculosis. It is your responsibility to follow these procedures.

4. Can/Should I Take Different Precautions Based On If I Know The Resident, Or What I Know About Them?

No. You must take the same precautions regardless of which resident requests assistance and what you know about a resident. Use the same "universal" health precautions in all residents' units. Taking universal precautions means that situations where you could come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections. Don't pick and choose what precautions you use based on who the resident is, or what you think you know about him/her. To do otherwise is discriminatory if the level of precautions is based on protected status. Focus instead on the task you are being asked to do and whether that task has potential risks.

Every company needs to have policies and procedures in place regarding how maintenance providers should handle situations that may involve bio-hazardous materials, including blood, and/or medical equipment such as syringes suspected of having been in contact with the same. The safest approach is to treat unknown circumstances with a potential for exposure as though exposure to harm were likely. This includes vomit, urine and feces, which could have blood in it. As such, when you come into contact with one of these substances, it is wise to consider the substance as hazardous, or as if there is likelihood it could be so. For example, if you come across a syringe on the grounds of the development when you are cleaning the outside, you

should assume for safety purposes that the syringe has a person's blood on it, that it's hazardous, and that you need to dispose of it in a manner accordingly.

Staff handling such waste needs to be trained and qualified to do so. In an ideal situation, an outside company with a solid reputation, appropriate insurance and trained professional employees would be called in to handle all bio-waste removal. This may not be possible or practical in all cases. Anyone responsible for bio-waste removal is required to follow OSHA regulations regarding exposure to bio-hazardous waste.

Certain situations provide an increased risk of exposure to biohazards. These include, but are not limited to the following:

1. Cleaning in residential units or common restrooms;
2. Handling of trash and debris;
3. Repair and maintenance of sewage lines or waste water systems; and
4. Accidents including cuts, abrasions, human waste or vomit.

Standard Safety Precautions

The following is a summary of pre-cautionary reminders relating to the above that should be utilized consistently:

- a) **Cleaning in Residential Units or Common Restrooms**
 - i. Use heavy-duty rubber or latex gloves (or equivalent) for cleaning areas where biohazards could be present, and dispose of such gloves properly.
 - ii. Consolidate trash resulting from cleaning including paper towels, sponges, scouring pads and residential trash. Bundle resulting trash to ensure waste remains confined.
 - iii. Sanitize all cleaning equipment after use.
 - iv. Use separate equipment for residential unit and restroom cleaning as opposed to common area cleaning.

- b) **Handling of Trash and Debris**
 - i. Use heavy-duty leather or canvas gloves (or equivalent) for handling trash and debris to ensure protection from sharp objects and because

staff frequently find condoms, needles, Band Aids® or other potentially hazardous materials around the property.

- ii. Always handle trash and debris with caution. Do not clutch trash bags to your body because you may puncture the trash bag thereby exposing yourself to hazardous material or sharp objects.
- iii. Obtain help for heavy trash.
- iv. Never throw trash bags because the bag may tear or burst thereby exposing you to hazardous material as well as contaminating the site.
- v. Keep dumpsters closed tightly.
- vi. Keep trash storage containers, dumpsters, pens and chutes clean.
- vii. Use heavy-duty rubber or latex gloves (or equivalent) for cleaning areas where biohazards could be present. Avoid touching personal items, such as combs, when wearing gloves. Wash hands as soon as possible after removing gloves.

c) Repair and Maintenance of Sewage Lines or Waste Water Systems

- i. Use heavy-duty rubber or latex gloves (or equivalent) for working in areas where biohazards could be present. (Leather or canvas gloves will absorb sewage.)
- ii. Thoroughly clean and sanitize all work areas.
- iii. Sanitize all repair equipment after use.
- iv. Contract with a testing laboratory in the event sewage or waste-water has come in contact with residential or common areas to ensure no biohazards are present.
- v. Use licensed professionals trained in waste removal and cleaning as appropriate.

d) Accidents Including Cuts, Abrasions, Human Waste or Vomit

- i. Treat all such incidents as though the presence of biohazards were likely.
- ii. Seek medical assistance for all parties as appropriate and report any concern of exposure to your manager.
- iii. Use Personal Protection Equipment as appropriate while assisting all such individuals.
- iv. Contact appropriate industry professionals for clean-up and handling of potentially hazardous materials.

- v. Ensure all employees are trained in policies and procedures relating to emergencies and potential exposure to bio-hazardous waste.

5. How do I tell if someone has a clutter problem?

There are many different ways to determine if someone has a clutter problem but your primary focus should be on the health/safety of the unit occupant and building residents. Is there a clear path to doors and windows? Are there items on or near the stove or in the oven that could cause a fire? Are things stacked so high that they could fall and injure someone in the unit? These are the kinds of things that may alert you to a problem. You can think of clutter as being on a scale of 1-10 where 1 is no clutter and 10 is so cluttered that you cannot move about the unit. If you think it is a health or safety violation –possibly a rating above a 5–you need to speak with the property manager regarding the situation.

6. What should I do if I believe someone has a compulsive hoarding or clutter problem?

You need to be clear about expectations and limitations related to meeting safety standards in the home. It is crucial to stay focused on any health and safety issues found and on the need to be able to complete repairs in a manner that is non-judgmental. Staff should share their concerns with a resident service coordinator and/or property manager and play an active role in helping to address the issue with the tenant. The initial interaction between resident and maintenance staff can have a significant influence over the outcome of the compulsive hoarding situation. Using language that clearly focuses on health/safety issues rather than housekeeping choices or laziness and use of non-judgmental language will help to prevent creating an atmosphere where the resident becomes defensive.

7. When working in a unit where the resident has a clutter or compulsive hoarding problem, what should I do?

Always be aware of using non-judgmental verbal and non-verbal (body language) cues when talking about health/safety violations in a unit.

If an item or items need to be moved to complete a repair, ask the tenant to move the item or ask for permission to move the item. If moving items, ask where the tenant would like them to be relocated.

Do not advise tenants to clean the items out or "get rid of it all", stay focused on the health/safety codes or need for repairs. Ask if they need assistance with the plan they develop to address the issue.

If you are going to talk with the property manager or resident service coordinator, tell the tenant that you are obligated to do so first.

If you believe it is a health or safety issue you need to talk to follow your company's procedures for reporting such violations.

8. Are There Rules That I Have To Follow Regarding How I Do Snow Removal?

Snow removal in New England can be a very stressful time for maintenance providers and management. Massachusetts law requires housing providers to make sure that all areas of egress are clear of snow and ice, so tenants can come and go safely. This includes all access ramps. Local ordinances such as Boston's will specify the time frame in which the paths must be cleared or made safe. Also, remember that it won't be sufficient to clear a small pathway on the sidewalks. You will need to either clear the entire sidewalk for safety reasons or at least make sure the pathway is wide enough (36") to give people who use wheelchairs enough clearance to navigate the sidewalk. Some ordinances such as Boston's will specify the minimum width that must be cleared (42").

Also, you may be required to do snow removal within a certain time frame after the snow has stopped, or clear additional areas because of local ordinances and/or lease provisions. For example, housing sites that are funded by HUD use a lease that requires management to remove snow from all common areas, including parking lots. Also, even if a housing provider isn't required to remove snow from such areas, some do so because they are afraid if they don't and someone falls and slips that they will be sued. Some management companies also choose to subcontract this task for reasons that include being sued for damages if they shovel a driveway or walkway and a tenant then slips and falls.

All sites need to have a written policy that lays out for residents who is responsible for what aspects of snow removal and the time frame in which snow must be removed. It is highly recommended that management provide a reminder notice of the snow removal policy to all residents on an annual basis before the first snowfall is anticipated. One of the issues that management needs to grapple with before it comes up is whether maintenance staff will or won't move residents' cars in order to facilitate the clearing of the parking lot. There is no right or wrong approach. There are advantages and disadvantages to each approach, as well as liability concerns regardless of which approach management takes. If the policy states that maintenance staff or a third party contractor will assist residents with removal of their cars, there is potential liability if the car gets damaged. However, there is also liability if a resident slips and falls while shoveling out their car because management hadn't cleared the parking lot.

If the policy provides that residents are required to move their own cars so staff can clear the parking lot, management may end up needing to consider a reasonable accommodation request from a person with a disability who requests management to do this. Assuming the person's disability is obvious (and if not, verified) and the need for the accommodation is obvious (or verified) management will need to determine if the request is reasonable: If it doesn't pose an undue financial and administrative burden (which it won't) or if it is a fundamental change in the program (which it might be). HUD hasn't provided guidance on this matter.

Regardless of who is responsible for snow removal in the parking lot, it is the site's responsibility to make sure that it is done in a manner that doesn't push the snow into the Handicapped Parking spots and/or block the curb cuts.

D. Questions Regarding Families with Children

1. Can My Site Exclude Families With Children?

A property can exclude families with children without illegally discriminating if it is designated for older people and falls under one of three narrow exemptions contained in the Federal Fair Housing Act.

The three exemptions within the FHA's "Housing for Older Persons" exemption are:

- a) **State and Federal Elderly Housing Program** - If the Secretary of HUD makes a determination that a federal or state housing program is designed and operated for occupancy by the elderly;
- b) **55 or Over Housing** - Housing intended and operated for households comprised of at least one person 55 years of age or older. For a property to qualify at least 80% of the units must be comprised of such households;
- c) **62 or Over Housing** - Housing intended for, and occupied solely by people 62 and over.

Even though HUD could grant a site permission to exclude children under exemption (a), it has stated that a HUD financed Elderly site can't exclude an otherwise eligible household just because the family has a child. To be eligible for housing at an elderly HUD site only the head, co-head or spouse must be 62 years of age or older. No other household member has to be elderly. Therefore, if a 62 year old applied to a HUD subsidized site with his/her 12-year-old grandchild the site couldn't refuse to rent to the household because of the child.

If you want to fully understand exceptions (b) and (c) above, see 24 CFR 100.303 and 100.304; and the Housing for Older Persons Act of 1995 (42 USC Section 3607), which contains requirements for this type of housing that were originally contained in the FHA, but later removed.

2. Can My Site Exclude A Family Based On The Number Of People In The Family Without Violating Fair Housing Law?

Every site is supposed to determine the minimum and maximum number of people who can live in the units they rent. These are called occupancy standards and they are specific to each site. The purpose of occupancy standards is to make sure a site is making the best use of the space in a unit and not have it be over-crowded. If a site is subsidized with HUD dollars, occupancy standards are required to be part of the site's Tenant Selection Plan. This is a document that summarizes the criteria an applicant must meet to be eligible and suitable for the housing. These criteria can't be discriminatory. Eligibility criteria must focus on things like not being above (and sometimes below) certain income guidelines. Suitability standards focus on criteria related to the ability to comply with the terms of the lease: paying rent on time, not engaging in criminal activity, not interfering with other people's quiet enjoyment, maintaining a decent, safe and sanitary unit, and following reasonable rules set by management.

Nothing in the Federal Fair Housing Law or MA law prohibits owners and managers from adopting reasonable occupancy standards. Neither law limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of people allowed to occupy a dwelling. Occupancy standards must be applied uniformly to all households and can't be based on numbers of adults and children, but rather on number of occupants. Remember, age and familial status are protected classes. The focus must be on factors that are relevant to who is eligible and suitable to live in a unit, rather than the housing provider's social values. A 1991 memo written by HUD's then General Counsel, commonly referred to as the Keating Memo, and contains widely accepted guidance on acceptable occupancy standards. In 1998, HUD adopted this memo as its official policy on determining whether occupancy standards are reasonable or discriminatory. This memo discusses the use of a two person per bedroom occupancy standard and factors that affect when this standard, and more or less restrictive standards might be considered reasonable. This policy is explicitly reflected in the 4350.3 REV-1, the Handbook that HUD subsidized sites must follow. Some people believe that an occupancy standard based on the number of people per bedroom rather than square

footage may be discriminatory if it has a greater impact on families with children, and families from specific national origin, and can't be justified by business necessity (i.e. impact on the building systems).

For example, based on the census, certain ethnic groups have larger households. Assuming families from Ethnic group A have more than four people relative to the larger population and the affordable housing stock in the geographic area is comprised almost solely of units with a maximum of two bedrooms. A two person per bedroom occupancy standard would therefore have a greater impact on families from Ethnic group A. The questions that would then need to be asked is why an owner chose a two person per-bedroom occupancy standard. Assuming the owner had a legitimate reason for the occupancy standard the question that would then need to be answered is if a different occupancy standard, such as one based on square footage of habitable space, would have a less discriminatory impact and satisfied this business need.

Occupancy Standards and Housing Discrimination

In Massachusetts, the State Sanitary Code places the following restrictions on the number of people who can occupy housing:

- Every dwelling unit must contain at least 150 square feet of floor space for the first person, and at least 100 square feet of floor space for each additional person. The floor space must be calculated on the basis of total habitable rooms. Habitable rooms include bedrooms, dining rooms, living rooms, dens, or bonus rooms. *Non-habitable* rooms include rooms with toilets, bathtubs, showers, laundries, pantries, hallways, closets, or storage space.
- Every room occupied for sleeping purposes for one occupant shall contain at least 70 square feet of floor space. Every room occupied for sleeping purposes for more than one occupant shall contain at least 50 square feet of floor space for each occupant.
- In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

3. If I Work At A Site That In My Opinion Isn't The Best For Kids To Live In And Someone Asks My Opinion Should I Tell Them What I Think?

Decisions about whether to live in a development that has virtually no children, or a high rise building, or not near any playing facilities, or if it has lead based paint in the units or common areas, is for the family to make, not the housing provider, or staff. A housing provider or staff person may not mislead or discourage a family from living in the development because he/she doesn't think it would be in the family's best interest to live in the development. This is called steering. You need to talk to the site manager about exactly how he/she would like you to respond to this question. There are a number of legal but friendly ways to answer questions about whether there are children at a site, if children are welcome at the site, if it's a good place for families.... These include:

- "Everyone is welcome at the site."
- "This is a great place for anyone to live. If you have specific questions you should talk to the manager. Let me show you where his/her office is."
- "I'd love to help you, but I'm probably not the best person to answer your question. I'd be happy to get that person for you."

4. Can My Site Exclude Families Because It Has Lead Paint?

No. A site can't refuse to rent to a family because it doesn't want to deal with lead paint abatement or because management is afraid the lead paint poses a danger to children. State and Federal law requires management to provide specific notification to residents regarding lead paint at the site, and stipulates when lead paint abatement is required. Parents also can't waive the rights of their children to live in lead-safe housing or agree to assume the risks of lead exposure.

Owners and site staff of developments built prior to 1978 where children under the age of six live really need to be aware of their notification and abatement obligations. They also need to be aware of recent changes in the law.

In March of 2008, the Environmental Protection Agency issued a rule suggesting practices contractors should follow that focus on containing the work area, minimizing dust, and cleaning up thoroughly. The rule also contains other parts aimed at preventing lead poisoning. Beginning December 22, 2008 contractors must provide a pamphlet, Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools, to owners, and parents and guardians of children under age six that live in housing built before 1978 that is undergoing renovation, repair and painting that will disturb the lead paint. This pamphlet will replace the pamphlet Lead: Protect Your Family.

Also, beginning in April 2010 anyone working on a renovation, repair, or painting project that disturbs lead-based paint in homes built before 1978 must be certified by the EPA and must follow specific work practices to prevent lead contamination that are currently recommended.

5. Can My Site Limit Where Children Play, How Loud They Are, And Whether They Have Access To The Community Room?

Usually rules relating to children come in three forms: 1) rules that say children or children under a certain age aren't allowed; 2) rules that allow children only with adult supervision; and 3) rules that allow children to use facilities only during certain hours. For example, it may be reasonable to prohibit children under the age of 16 from using a pool without adult supervision. Regardless of what type of restriction it is site staff may only impose restrictions on the use of facilities by children at a property if the limitation is really necessary (i.e. relates directly to the health and safety of children) and the rule achieves the purpose in the least restrictive (most reasonable) manner possible. For example, it is not reasonable to prohibit all children from using a pool, or from restricting children from using the pool at certain hours. It may be more reasonable to require adult (not parent) supervision, but it may be more reasonable to tie the use of the pool to the

ability to swim or proficiency rather than adult supervision. Likewise, before a site imposes an age restriction, you need to make sure that you can't address the concern by focusing on behavior rather than age. For example, if you are concerned about rough housing in the parking lot you cannot post signs that say "no children may play in the parking lot." You can say, "No playing in the parking lot." Also, remember that you can't put "hour restrictions" on community space because adults or elders don't want to be around children. By doing this, you are arguably allowing and helping one group to discriminate against another. Likewise, there are often signs that say, "no children are allowed in this area." Such signs are illegal. You can redress concerns about loitering by posting a sign that addresses the behavior generically: "No loitering allowed."

a) Reasonable Rules Include:

- i. Prohibiting games in the parking lot;
- ii. Prohibiting games in an area of the development where it is likely to cause property damage (baseball, football, soccer...).
- iii. Noise restrictions that relate to the interference of other residents' quiet enjoyment but hold everyone to the same standard.
- iv. Community spaces which are closed to everyone at certain hours, not just closed to a certain age group.

b) Rules That Are Suspect:

- i. Any rule that limits a child's activities or access to recreational facilities.
- ii. Any rule which restricts on the basis of age.
- iii. Prohibiting all games (including hopscotch, jump rope, jacks...)
- iv. Rules that require "parent" supervision vs. adult supervision.
- v. Curfews for children.

c) Easy Ways To Get Into Trouble

- i. Enforcing "unwritten rules."
- ii. Enforcing rules inconsistently.
- iii. Being responsible for unenforceable or unreasonable rules.
- iv. Talking to children and/or parents/guardians in a manner that contains illegal or discriminatory language. For example, it's never a good idea to start a conversation with "You people...." Rather, focus on the behavior and whether it violates the lease.

6. What Should I Do If I See A Child Who Lives At The Site Cause Damage To The Site, Or A Resident Tells Me A Child Who Lives At The Site Has Caused The Damage?

If you see anyone-adult or child-cause damage you need to follow your company's reporting procedure. Likewise, if another resident tells you he/she saw something you need to tell your supervisor.

7. What Should I Do If I Think A Child Is Being Neglected Or Abused?

This isn't a "fair housing" question, but is something that gets asked a lot by Maintenance Technicians and Supervisors. In Massachusetts housing providers, security personnel and maintenance personnel aren't what's called mandatory reporters, which means you're not required by law to report neglect and abuse. However, that doesn't mean you shouldn't take action. You should consult your supervisor and know what your company's policy is regarding what to do if you suspect child neglect and/or abuse. Anyone can report suspicions to the Massachusetts Department of Social Service's Child-at-Risk Hotline: 1-800-792-5200.

E. Questions Regarding Residents With Disabilities

1. If My Site Is Elderly, How Come There Are So Many Younger People With Disabilities Living Here?

Sites funded with Federal or State money have specific eligibility criteria, including who the site is designed to serve. If your site is "Elderly" the program that funded it stipulated that the site is required to serve the "Elderly". The confusing part is that different programs use different definitions of elderly, and sometimes one program can use more than one definition. Often time, the definition of Elderly includes "younger people with

disabilities." There are both Federal and State laws that stipulate when and if a housing provider can limit the percentage of younger people with disabilities in Elderly housing. If you want to understand more about the varying definitions of disability you should read Chapter 3 in HUD Handbook 4350.3 REV-1.

Although it isn't necessary that you fully understand who is eligible to live at your site because you aren't involved in the application process, it is most important that you know what to say if someone asks you who is eligible to live at your site. It is crucial that you consult with your manager to determine what your canned response will be to people who stop you at the site and ask you questions about eligibility, the application process, and vacancies. You need to have a standard response, which could be to simply direct the person asking the question to the management office. Having a canned response to questions regarding eligibility that directs people to the management office will protect you against charges of steering and other forms of discrimination. For example, you could say "I want to make sure you're provided accurate information about the application process. You should speak with _____ at the management office. Let me show you where the office is located."

2. What Is The Definition Of A Person With A Disability?

There are a lot of different definitions of the term "disability." For example, there is a definition of disability for the purpose of getting into public and assisted housing and a different one for the purpose of discrimination. The definition of disability for the purpose of being eligible to get into public or assisted housing is very different than the definition used in discrimination law. It is much harder for a person to qualify as a person with a disability for the purpose of getting public or assisted housing than it is to meet the definition of disability used for discrimination purposes. People who meet the definition of a person with a disability for eligibility purposes will satisfy the civil rights definition of a person with a disability. However, a person who meets the civil rights definition of a person with a disability won't necessarily meet the definition of a person with a disability for the purpose of eligibility.

All of the federal and state laws discussed in this handbook that prohibit discrimination against people with disabilities all define a "handicapped person" or a "person with a disability" essentially the same way. A person who:

Has a physical or mental impairment that substantially limits one or more major life activities;

Has a record of such an impairment; or

Is regarded as having such an impairment

- The physical or mental impairment can include practically any condition, disease, illness, disfigurement, and syndrome or disorder (e.g. alcoholism, AIDS, emotional disorder, cerebral palsy, cancer, deafness, HIV infection).
- Major life activity includes, but isn't limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, learning and working.

3. Does The Civil Rights Definition Of Disability Include People With Alcoholism And People Who Do Illegal Drugs?

Fair housing laws treat people with alcoholism, people who currently use illegal drugs and people who have a history of illegal drugs differently.

People With Alcoholism

People who have alcoholism are considered to have a disability for the purpose of protection against discrimination. This means you can't discriminate against someone because he/she has alcoholism; it **doesn't** mean management can't treat a resident's bad behavior as a lease violation even if it's directly related to his/her alcoholism. The key is to focus on the resident's behavior, rather than the person's disability. If you witness a person being disruptive, violent, or engaging in dangerous behavior you must treat it as a lease violation and tell management. When informing management, relay the facts (what you see, hear, and smell), rather than your assumptions, opinions or conclusions. For example, assume you enter unit 207 when conducting a standard maintenance check and there are numerous beer cans strewn all over the living room and cigarette burns and ashes all over the carpet. You can't ignore what you see; you need to report the condition of the unit to the manager. However, it would be inappropriate for you to say the following: "The resident in unit 207 has a drinking problem. There were bottles everywhere and when he drinks he smokes. That guy is going to burn the unit down one

of these days." These statements are based on opinion and draw conclusions. It is much safer from a legal standpoint only to relay the facts. It is up to management to then take action.

Illegal Drug Users and People Who Have A History of Illegal Drug Use

The law treats people who currently illegally use a controlled substance differently than people who have a history of illegal drug use. Federal Fair Housing laws explicitly exclude individuals who currently illegally use controlled substances from the definition of a person with a disability. In addition, the state Fair Housing Act does not explicitly exclude from protection individuals who currently use illegal drugs. However, the Massachusetts Commission Against Discrimination (MCAD) decided, in a case involving employment discrimination, that current illegal drug use is not a disability under state law. The issue has not come up in a housing case. However, it is reasonable to assume that the MCAD would reach the same conclusion if it did.

A person with a history of illegal drug use is protected provided she is not currently illegally using a controlled substance and successfully completed rehab, or is participating in a rehab or self-help program. The standard for current illegal drug use is not clear. The standard suggested in the Americans with Disabilities Act is whether a reasonable person would believe a person is still using. The legislative history of this law suggests that if a person were illegally using as recently as "last week or last month" she would not be protected. Case law indicates that if someone was clean from illegal drug use for at least one year that she is not a "current" user and is protected.

4. Are People With Disabilities Required To Disclose They Have A Disability To A Housing Provider?

No, unless it is included in the criteria for eligibility or the person is trying to qualify for a specific deduction against income, or has requested a reasonable accommodation or modification. Remember, how you treat someone shouldn't be based on disability status. Therefore, you have no need to know unless it is for one of the reasons mentioned.

5. Do I Have The Right To Know Someone Has A Communicable Disease, And If Not, Why Isn't Someone Protecting My Rights?

People who have communicable diseases are under no obligation to disclose them to you or anyone who works at the site.

No one at the site has the right to know the nature or severity of a resident's disability, unless it is an eligibility requirement for a specific housing program. If a housing manager does know a resident has a communicable disease there is no basis in the law for him/her to disclose it to staff. Fair Housing laws take seriously the importance of maintaining confidential information related to people's disability. There are narrow exceptions to the disclosure of confidential information regarding a person's disability, but they are unrelated to how you perform your job.

Although it may be hard not to feel that the resident's confidentiality is being given greater attention than your "safety" there is a practical solution that meets both needs: use universal health precautions. Taking universal precautions means that situations where you could come into contact with blood and certain body fluids should be treated as if they are known to contain HIV, Hepatitis B, Hepatitis C or other blood borne infections. Doing this is essential because even if you were told the names of everyone who has a communicable disease, there are many people who have them and don't know they do.

6. Do Non-Discrimination Laws Protect People With Disabilities Even If They Are Bad Tenants?

The answer is both yes and no. The Federal Laws discussed in this Handbook utilize exclusions that do not specifically apply to individuals with any one disability, but rather clarify that a person with a disability must meet a housing provider's eligibility and suitability standards for admission to housing, and continue to comply with the terms of the lease. In other words, the law requires owners to focus on the person's behavior, rather than their protected class.

A housing provider may exclude a person with a disability when:

- a) The person's tenancy poses a direct threat to others;
- b) The individual's tenancy would result in "substantial physical damage to the property of others"; or
- c) If the individual is not otherwise qualified for housing.

A determination of whether someone's tenancy poses a "direct threat," or would result in substantial damage to the property of others or if she is "otherwise qualified" must be based on objective factors and made in the context of whether a reasonable accommodation will permit the individual to realize the benefits of the housing program, including meeting the terms of the lease. The Massachusetts law does not include any language that exempts people whose tenancy would constitute a direct threat to other individuals or to property. However, it is unlikely that a court would interpret the state law as not allowing the exclusion of those who pose a threat.

What this means is that you shouldn't ignore bad tenancy related behavior just because someone has a disability, or hold someone to a lesser standard of lease compliance because he/she has a disability. However, if the negative behavior is a direct result of the person's disability (not simply because the person is a jerk) and a change in a rule, policy or procedure or physical change will solve the problem and the solution is reasonable, you provide the change.

For example, a site cannot refuse occupancy to a person because his wheelchair may damage the baseboards. However, a site can refuse this person occupancy if references and verifications establish that the person caused significant damage (well beyond normal wear and tear) to his previous unit and common areas through the use of his wheelchair. If this person establishes that the damage to the unit is a result of his disability and a reasonable accommodation or physical modification would solve the problem (such as reinforced baseboards) the housing provider would be required to make the accommodation/modification. However, if no nexus exists between the disability and the bad behavior (i.e. the person is intentionally destroying the walls) the site isn't obligated to and shouldn't ignore the negative tenancy related behavior.

7. What Is Reasonable Accommodation And Reasonable Modification?

The concept of reasonable accommodation/modification is central to every federal and state law that prohibits discrimination against people with disabilities. The term reasonable accommodation generally refers to making a change in a rule, policy or procedure. The term reasonable modification generally indicates a structural/physical change. Sometimes these terms are used interchangeably. The concept of making changes to provide access for people with disabilities applies throughout the occupancy cycle (admission, occupancy and eviction). The purpose of this requirement is to provide people with disabilities an equal opportunity to use and enjoy their housing.

a) An Overview Of The Requirements

Each federal and state law discussed in this Handbook requires housing providers and HUD to make reasonable changes in rules, policies, practices, and procedures so people with disabilities will have an equal opportunity to apply to and/or use and enjoy the housing program. A housing provider and HUD do not have to take any action that fundamentally alters the nature of their program or would pose an undue financial and administrative burden. In most instances, a change in a rule, policy, practice or procedure will not involve financial costs, but may pose a fundamental change to the housing program. Whether the housing provider or the resident pays for a physical modification depends on what laws apply.

If a site in MA has less than 10 contiguous units or a building has less than 10 units and does not receive federal or state financial assistance, the housing provider must permit a resident with a disability to make physical modifications if they are necessary to enable the person to have an equal opportunity to enjoy her housing. A provider is not responsible for paying for the modifications and in accordance with the Federal Fair Housing Act may do the following:

- i. Condition permission for a modification on the renter providing a reasonable description of the proposed modification;

- ii. Require reasonable assurances that the work will be done in a professional workmanlike manner and any required building permit be obtained;
- iii. Require the tenant to restore the unit (not common areas-areas external to the unit) to the condition that existed before if the modifications would interfere with marketability, and if the tenant has a bad credit history to have the tenant pay into an interest-bearing escrow account (the interest belongs to the tenant) enough money to pay for the restoration. A provider may not increase a security deposit to ensure that a unit will be restored.

A housing program is responsible for paying for a physical modification to enable a person with a disability to have an equal opportunity to enjoy his/her housing and the common areas if the housing development is covered by Section 504 of the Rehabilitation Act, Title II of the ADA, or Massachusetts state law (151B) and has at least 10 units in a building or 10 contiguous units or is publicly assisted, unless it would pose a burden on the owner. Section 504, the federal law that requires an owner that receives federal financial assistance to pay for physical modifications, uses the standard of undue financial and administrative burden or fundamental change in the program. The MA law uses the term undue hardship, and provides factors to consider in making this determination. These factors are similar to those considered under Section 504. Likewise, if the provider is operating a public accommodation, he/she is responsible for paying for barrier removal that is readily achievable under Title III of the ADA.

- i. It is unlikely that a physical modification would pose a fundamental change in the program, but it may pose an undue financial and administrative burden.
- ii. If the modification poses an undue financial and administrative burden under Section 504, the provider must take any action up to the point of undue financial and administrative burden. At minimum, the provider must adhere to the requirements of the Federal Fair Housing Act.

b) **The Definition Of Fundamental Alteration; And Undue Financial And Administrative Burden**

The law does not provide a clear or concrete definition of either fundamental alteration or undue financial and administrative burden.

i. **Fundamental Alteration**

A fundamental alteration is a basic change in the nature of the housing program. To determine if an accommodation would result in a fundamental alteration requires a determination of the primary purpose of the program and the practical components necessary to achieve the purpose. This is not a cost based analysis. Examples of a fundamental change would be providing medical services, counseling, or social services that fall outside the scope of the services the owner offers to tenants.

ii. **Undue Financial and Administrative Burden**

Accommodations or modifications that pose undue financial and administrative burden are those that would cause a property not to be able to operate in a way that meets its legal and contractual obligations.

Determining if a change poses an undue financial and administrative burden in accordance with 504 and Title II of the ADA and an undue burden under Mass state law requires a cost based analysis of the particular circumstances. Factors to be considered in determining this include, but aren't limited to: the nature of the accommodation; the cost of the making the change; and the property's assets and its budget.

8. How Does An Applicant Or Resident Get A Reasonable Accommodation?

The law doesn't require a formal reasonable accommodation procedure or policy. The guidance provided by the agencies responsible for enforcing this law states that the person with the disability needs to explain what type of accommodation she is requesting and if the need for the accommodation isn't obvious, the relationship between the requested accommodation and the person's disability.

To decide whether to provide the reasonable accommodation, the manager must:

- a) Verify that the person has a disability (not the nature or the severity of the disability) that meets the civil rights definition if the person's disability isn't obvious;
- b) Verify that there is a nexus or relationship between the requested reasonable accommodation and the person's disability unless the need for the accommodation is obvious. In other words the accommodation must be necessary for the applicant/tenant to have an equal opportunity to apply for housing, or live in the housing.
- c) Decide whether the requested accommodation:
 - i. Poses an undue financial and administrative burden; or
 - ii. Fundamentally alters the nature of the program.

9. Doesn't Providing An Accommodation/ Modification Set A Bad Precedent And Result In Other Residents Wanting The Same Request?

A housing provider can't refuse to provide an accommodation because she fears that other residents will make the same request. Each request for an accommodation/modification must be evaluated individually in light of the circumstances that exist when the request is made. In other words, reasonable accommodations shouldn't be viewed as precedent setting activities because they are based on individualized circumstances. The accommodation you provide one resident can only be

granted to another residents if the second resident establishes he/she needs the same accommodation as a result of his/her disability.

10. Won't Providing An Accommodation For One Resident And Not For Another Resident Who Wants And Needs It Be Discriminatory?

It isn't discriminatory to provide an accommodation for one resident and not provide the same accommodation for another resident if providing it to the second resident poses an undue financial and administrative burden.

11. Is There A Limit On The Number Of Accommodations A Resident Can Request?

There is no limit on the number of times an applicant or resident can request a different accommodation. Each accommodation/modification must be evaluated individually in light of the circumstances that exist when the request is made.

12. Does A Person With A Disability Have To Request The Accommodation They Need When They First Move In?

No. An applicant or tenant can request an accommodation/modification any time throughout the occupancy cycle. A person doesn't waive her right to request an accommodation/modification if she didn't request one when she applied for housing. A resident can let any staff know she needs an accommodation. If a resident lets you know she needs an exception to a rule made or a physical change to her unit made because of her disability please tell the manager. Don't just have the resident call the manager. If you don't document what the resident requested and let management know this can be construed as management ignoring the resident's request for a reasonable accommodation.

13. Does The Site Have To Follow Specific Access Requirements When It Renovates Units Or The

Common Areas Or Makes Physical Changes For A Resident?

Yes. The site must follow both Federal and State access requirements when renovations occur and when providing physical modifications for people with disabilities. If your site receives Federal dollars and you are making alterations to the site make sure you understand the requirements contained in Section 504 of the Rehabilitation Act and comply with the Uniform Federal Accessibility Standards (UFAS), which contain both scoping and technical requirements designed to provide full and free use of buildings and facilities for persons with disabilities. If your site receives state or local funding, then you must follow the requirements of Title II of the ADA. The technical requirements for physical access under this law can be found in UFAS or the ASA Accessibility Guidelines. You must also follow state law as well. Massachusetts' access requirements are incorporated into the Massachusetts Building Code and enforceable by all local and state building inspectors, as well as by the Massachusetts Architectural Access Board itself.

14. If The Site Has A "No Pets" Policy, Why Are Some People With Disabilities Allowed To Have Pets?

Pets/ Service Animals/ Companion Animals/Comfort Animals: Service animals and companion animals are not pets. They are "Assistance Animals" – animals that work.

If a provider has a "no pet" policy and someone requests a service animal or companion animal a provider must permit the person to have the animal if she can provide documentation from her healthcare provider (i.e. social worker, counselor, psychologists, doctor...) of the following unless it's "obvious":

- a) She has a disability that meets the civil rights definition; and
- b) She needs the animal as a direct result of her disability in order to have an equal opportunity to enjoy her housing.

Likewise if a provider has a policy that sets restrictions on the type of animal allowed, or weight and size restrictions, and a tenant with a disability requests a service/companion

animal that diverges from the standards, a provider can require the following documentation unless it's obvious:

- a) She has a disability that meets the civil rights definition; and
- b) She needs an animal that diverges from the policy as a direct result of her disability.

Unless:

- i. The animal poses a direct threat to the health or safety of others that can't be reduced or eliminated by a reasonable accommodation;
- ii. The animal would cause substantial physical damage to the property;
- iii. The presence of the animal would pose an undue financial and administrative burden or fundamentally alter the nature of the program. This is highly unlikely. However, there has been some case law where a housing provider has been permitted to exclude a dangerous breed when an insurance carrier had a clause in the policy prohibiting the breed.

A provider can do any of the following provided such policies are made clear and enforced consistently:

- Require a tenant to demonstrate that the assistance animal has had the appropriate vaccinations;
- Require the tenant to make sure the animal doesn't interfere with other tenants' quiet enjoyment and to pay for damages caused by the animal assuming the provider regularly charges tenants for any damage they cause to the premises;
- Require the tenant to care for the animal and pick up after it unless doing so conflicts with a state or local ordinance; and
- Require the tenant to keep the animal on a leash if it is required by state or local law.

A provider can't:

- Require the animal to have formal training. The key is whether the animal "performs the disability-related functions....";
- Require a security deposit for the animal ("pet deposit"); or
- Disclose to other residents why a tenant has an assistance animal. If you find yourself in a situation where a resident asks about another resident and why

that person has an animal all you can say is, "Mr. Jones, you wouldn't want me discussing your business with another resident. I can't talk with you about other residents." Mr. Jones isn't going to be happy with you. If he persists, tell him to talk with the manager. Also tell the manager or your supervisor about the conversation.

NOTE: It is a fundamental alteration in your program for you to take care of the animal.

15. Does The Site Have To Give Everyone With A Disability A Handicapped Parking Spot?

All sites need to have a standard policy explaining how parking spaces are allocated (including handicapped spaces). Just because a resident has a disability doesn't mean he/she is entitled to an accessible parking spot or an assigned spot. If someone has a disability and needs an accessible parking spot or assigned spot as a direct result of his/her disability, the site must provide it unless doing so would pose an undue financial and administrative burden or a fundamental change in the program. If the person's need for the accommodation isn't obvious, he/she would need to provide documentation of the nexus between his/her disability and the need for the accommodation. This documentation would come from their healthcare provider. You can't demand that the documentation be provided on a prescription form or healthcare letterhead.

16. What Should I Do If I See A Resident With A Disability Who Lives At The Site Being Abused By His/Her Personal Care Attendant Or I Think They Are Being Abused?

If you believe anyone is being abused or neglected tell your supervisor. Your site can contact the Disabled Persons Protection Commission (DPPC), an independent state agency whose purpose is to investigate and remediate cases of abuse and neglect of adults with disabilities. DPPC's 24-Hour Hotline is 1-800-426-9009.



APPENDIX

Important Federal and State Statutes That Prohibit Discrimination in Rental Housing, Types of Housing Covered & Who Is Protected

Applicable Federal Housing Discrimination Laws & How They Are Implemented	<u>Types of Rental Housing Covered</u>	<u>Who is Protected</u>
<p><i>Fair Housing Act</i> - (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act in 1988) (FHA)</p> <ul style="list-style-type: none"> • It is implemented through the Department of Housing and Urban Development's regulations. These can be found in 24 CFR, Subchapter A, Subparts A through F, part 100. • The HUD Occupancy Handbook for Multi-family Programs, 4350.3 REV-1, covers Fair Housing Requirements in Chapter 2 and elsewhere in the Handbook. • HUD and the DOJ published a joint statement titled, Reasonable Accommodations Under The Fair Housing Act, May 17, 2004. • HUD and the DOJ published a joint statement titled, Physical Modifications Under the Fair Housing Act, March 5, 2008. 	<ol style="list-style-type: none"> 1) Rental housing unless it is owner occupied with no more than 4 units; 2) If the rental housing is owner occupied and four units or less the owner must still adhere to prohibitions against discriminatory advertising; 3) Anyone (including an owner who resides in a building of four or less units) engaged in three or more rental transactions in the last twelve months must abide by fair housing laws; 4) The rental of single-family homes is exempt unless #3 exists or a broker or agent is in any way 	<p>The Federal Fair Housing Act states housing providers can't discriminate in housing against applicants or residents on the basis of any of the following:</p> <ul style="list-style-type: none"> • RACE • COLOR • RELIGION • SEX • NATIONAL ORIGIN • HANDICAP • FAMILIAL STATUS <p>Housing providers also can't discriminate against applicants and residents because of their guest's or associate's protected status.</p>

<p><u>Applicable Federal Housing Discrimination Laws & How They Are Implemented</u></p> <p><i>Title VI of the Civil Rights Act of 1964-Title VI</i></p> <ul style="list-style-type: none"> • HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 1 et. • The Department of Justice issued a policy guidance document designed to clarify recipients existing Title VI obligations and provide general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency. The document is titled "Enforcement of Title VI of the Civil Rights Act of 1964- National Origin Discrimination Against Persons With Limited English Proficiency." See Fed. Reg. Vol. 65, No.159, Wed., August 16, 2000. • HUD followed up by issuing final guidance. See Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, See Fed. Reg. Vol. 72, No.13, Monday, January 22, 2007. 	<p>involved in the transaction.</p> <p><u>Types of Rental Housing Covered</u></p> <p>If the property receives federal financial assistance. Owners that accept mobile vouchers and whose sites are financed with tax credits are not considered recipients of federal financial assistance.</p>	<p><u>Who is Protected</u></p> <p>Title VI says housing providers that receive federal dollars can't discriminate in housing against applicants or residents on the basis of any of the following:</p> <ul style="list-style-type: none"> • RACE • COLOR • NATIONAL ORIGIN
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<u>Applicable Federal Housing Discrimination Laws & How They Are Implemented</u>	<u>Types of Rental Housing Covered</u>	<u>Who is Protected</u>
<p><i>Age Discrimination Act</i></p> <ul style="list-style-type: none"> • HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 146. <p><i>Title IX of the Education Amendments Act</i></p> <ul style="list-style-type: none"> • HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 C.F.R. § 3.100 <u>et seq.</u> 	<p>If the property receives federal financial assistance</p> <p>If the property receives federal financial assistance</p>	<p>The Age Discrimination Act says housing providers that receive federal dollars can't discriminate in housing against applicants or residents on the basis of Age.</p> <p>Title IX prohibits discrimination on the basis of sex in education programs or activities that receive federal financial assistance.</p>

<u>Applicable Federal Housing Discrimination Laws & How They Are Implemented</u>	<u>Types of Rental Housing Covered</u>	<u>Who is Protected</u>
<p data-bbox="256 373 690 443"><i>Section 504 of the Rehabilitation Act of 1973 (504)</i></p> <ul data-bbox="256 489 690 1308" style="list-style-type: none"> <li data-bbox="256 489 690 915">• Each federal agency that provides funding for a program or activity was supposed to develop regulations. Those regulations apply to programs and organizations receiving financial assistance from that particular agency. If an entity receives federal financial assistance from more than one federal agency it must follow each agency's regulations. <li data-bbox="256 957 690 1125">• HUD has developed regulations that apply to housing programs that it finances. These regulations are at 24 CFR Part 8 et.al. <li data-bbox="256 1167 690 1308">• HUD has issued a number of notices to remind recipients of their obligations under federal law. 	<p data-bbox="727 516 976 621">If the property receives federal financial assistance.</p> <ul data-bbox="727 625 976 1587" style="list-style-type: none"> <li data-bbox="727 625 976 940">• A list of HUD-funded programs subject to the §504 requirements can be found in Appendix A to HUD's §504 regulations. <li data-bbox="727 951 976 1266">• Being financed with tax-credits doesn't make a site a recipient of federal financial assistance for the purpose of this law. <li data-bbox="727 1276 976 1587">• An owner's acceptance of a voucher doesn't make him a recipient of federal financial assistance for the purpose of this law. 	<p data-bbox="1015 520 1383 730">Section 504 says housing providers that receive federal dollars can't discriminate in housing against applicants or residents on the basis of HANDICAP</p>

<u>Applicable Federal Housing Discrimination Laws Et How They Are Implemented</u>	<u>Types of Rental Housing Covered</u>	<u>Who is Protected</u>
<p data-bbox="256 373 634 443"><i>Title II of the Americans with Disabilities Act- 1990 (ADA)</i></p> <p data-bbox="256 478 699 548">Title II's regulations can be found at 28 CFR Part 35 et. al.</p>	<p data-bbox="727 428 984 856">Housing that is owned or operated by a state or local government entity or, in accordance with case law, substantially financed by a state or local government entity. See, <i>Independent Housing Source v. Filmore Center</i>. 2AD Cases 1674(N.Dis.Cal.1994).</p>	<p data-bbox="1013 562 1154 594">DISABILITY</p>
<p data-bbox="256 1024 639 1094"><i>Title III of the Americans with Disabilities Act- 1990 (ADA)</i></p> <p data-bbox="256 1129 672 1199">Title III's regulations can be found at 28 CFR Part 36 et. al</p>	<p data-bbox="727 1037 980 1388">This law doesn't cover "housing," but rather privately owned public accommodations (such as the rental office) and commercial facilities in a housing development.</p>	<p data-bbox="1013 1297 1154 1329">DISABILITY</p>

<u>Applicable State Housing Discrimination Laws & How They Are Implemented</u>	<u>Types of Rental Housing Covered</u>	<u>Who is Protected</u>
<p><i>M.G.L. c. 151B</i></p> <ul style="list-style-type: none"> The MA Commission Against Discrimination published regulations contained at 804 CMR 02.00 	<p>All housing except owner-occupied two-family housing</p>	<p>M.G.L. c. 151B says covered housing providers can't discriminate in housing against applicants or residents on the basis of any of the following: race, religious creed, color, national origin, sex, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object) age, genetic information, ancestry, or marital status of such person or persons or because such person is a veteran or member of the armed forces, or because such person is blind, or hearing impaired or has any other handicap or because they receive public assistance.</p>

**Additional Major Requirements Contained In Section 504
Which Applies To Sites That Receive Federal Dollars
(Note: There are other requirements under the ADA as well)**

Requirements	Section 504
Program Access/ Existing Property	<p>The Program as a whole, when viewed in its entirety, must be readily accessible to and usable by people with disabilities. 24 CFR 8.21-8.22 and 4350.3 REV-1, beginning p. 2-18, par. 2-25..</p> <ul style="list-style-type: none"> • A recipient isn't required to make structural changes in an existing property if other methods are effective in achieving compliance.
Self Evaluation	<p>All recipients are required to complete an evaluation of their rules, policies and procedures to determine if they discriminate against people with disabilities and to remedy those that do. This obligation should have been met. 24 CFR 8.51, 4350.3 REV-1, p. 2-30-2-31, par. 2-34.</p>
Transition Plan	<p>All recipients are required to determine if physical barriers exist, and if structural modifications are required to achieve program accessibility recipients must complete a transition plan. Structural changes necessary to provide access should have been completed. 24 CFR 8.24(d) and 4350.3 REV-1, p. 2-30-2-</p>
Coordinator	<p>Recipients with 15 or more employees must appoint someone to coordinate their efforts to comply with 504. 24 CFR 8.53, and 4350.3 REV-1, p. 2-22, par. 2-28.</p>
<p>New Construction</p> <p>Note: The FHA does have minimum access requirements for new construction. See 24 CFR 200.205 and the Fair Housing Act Accessibility</p>	<p>All Newly structured buildings must be accessible. A minimum of 5% of the total dwelling units or at least 1, whichever is greater, must be accessible for people with mobility impairments and 2% must be accessible for people with vision or hearing impairments. 24 CFR 8.22 and 4350.3 REV-1, beginning p. 2-32, par. 2-35.</p> <ul style="list-style-type: none"> • The Uniform Federal Accessibility Standards (UFAS) or a standard that provides equal or greater access must be
Making Alterations to a Property	<p>Section 504 has two categories of alterations:</p> <ul style="list-style-type: none"> • Substantial Alterations- (property must have 15 or more units, and the cost of the alteration must be at least 75% of the replacement cost of the completed property. The new construction standards apply • Other Alterations-To the maximum extent possible must be accessible until at least 5% of the units are accessible for persons with mobility and 2% are accessible for persons with visual impairments unless HUD has prescribed a higher number. When the owner

	<p>isn't altering the entire unit, 100% of single elements being altered must be made accessible until 5% of the units are accessible.</p> <p>·See 24 CFR 8.23 and 4350.3 REV-1, beginning p. 2-33, par. 2-35.</p> <p>See above for design standard.</p>
<p>Auxiliary Aids/Methods of Communication</p>	<p>A recipient is required to furnish auxiliary aids (such as visual alarms, tactile signs, visual doorbell reader, interpreter, communications in large print or Braille or tape, and a television in a public area that provides closed-caption service) if necessary to afford a person with a disability an equal opportunity unless it would result in an undue financial and administrative burden or fundamental alteration..</p> <ul style="list-style-type: none"> • A recipient doesn't have to furnish personal devices. • In determining what auxiliary aid to use, primary consideration must be given to the request of the person with the disability. <p>See 24 CFR 8.6 and 4350.3 REV-1, par. 2-29.</p> <p>NOTE: "HUD encourages owners to provide auxiliary aids as necessary, as a routine property expense. HUD assumes that requests for auxiliary aides will not normally result in undue financial and administrative burden." See 4350.3 REV-1, page 2-18, Par. 2-25 A.2.</p>
<p>Grievance procedure</p>	<p>A recipient with 15 or more employees must establish a grievance procedure that can be used by tenants and employees. 24 CFR 8.53</p>



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