



Fact Sheet: Establishing a Smoke-Free Housing Environment

Beyond the widely reported health impacts of second-hand smoke, senior housing operators have experienced a number of significant events in their facilities stemming from seniors smoking in their beds who fell asleep, and major unit maintenance issues caused by long-term smoke exposure. Regulatory agencies have never been more strongly supportive of efforts to restrict smoking in non-owned residential living environments as now.

This fact sheet provides a range of resources for all members, including the latest HUD guidance allowing owners of privately-owned multifamily housing to implement smoke-free policies in their communities, and the newest mandate for Public Housing Authorities (PHAs) to ban the use of prohibited tobacco products in all public housing units, interior common areas, and outdoor areas within 25 feet of public housing and administrative office buildings.

Background

Smoke-free housing is not a new concept for HUD or other affordable housing providers. But it has been an interesting journey. Back in the 1990s and early 2000s, LeadingAge (then AAHSA, or even earlier AAHA) members were among the first to begin to restrict smoking in their senior housing properties because of the negative impacts on other residents, particularly in public areas, to say nothing of the additional costs of remediation upon preparing units for new occupants. Yet HUD, initially, took issue with the effort, denying many owners the ability to do so, saying it was “discriminatory” – regardless of the fact that smoking was not then (and never has been) a protected class under the Fair Housing Act, nor is it guaranteed under Civil Rights laws.

Various lawsuits occurred in those years, as detailed in an April, 2010 [Law Synopsis](#) issued by the Tobacco Control Legal Consortium and written by Smoke Free Environments Law Project (SFELP) staff which discusses smoke-free policies in public and other affordable housing, and analyses the legal issues, HUD policies, and how to adopt smoke-free policies.

In 2006, the U.S. Surgeon General first issued a comprehensive scientific report which concluded that there is no risk-free level of exposure to secondhand smoke. Nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent. The finding was a harbinger of a rising tide of major public health concerns due to the fact that nearly half of all nonsmoking Americans were still regularly exposed to secondhand smoke.

Over the past decade, however, HUD moved forward dramatically. First refraining from disallowing, then supporting, and later encouraging both public housing authorities and multifamily housing owners to establish smoke-free communities. HUD even issued a 63-page [toolkit](#) to aid in the process. Most recently however, in February 2017, HUD published a [notice](#) that would, for the first time, mandate that public housing authorities go smoke-free to "improve indoor air quality, benefit the health of public housing residents and PHA staff, reduce the risk of fires, and lower overall maintenance costs."

Prohibitions Mandatory for Public Housing; Still Optional for Multifamily Housing

Effective Aug. 3, 2018, all public housing communities are required to have implemented a policy that bans the use of prohibited tobacco products in all public housing units, interior common areas, and outdoor areas within 25 feet of public housing and administrative office buildings. According to [Notice PIH 2017-03](#), prohibited tobacco products are defined as items that involve the ignition and burning of tobacco leaves, such as cigarettes, cigars, pipes, and water pipes (also known as hookahs).

Additionally, though HUD declined in a [Dec 2016 final rule](#) to include Electronic Nicotine Delivery Systems (ENDS) on the list of prohibited items for public housing, stating that "there is little evidence that ENDS significantly increase fire risks, and there is no conclusive evidence that the vapors emitted by ENDS cause damage to the units themselves," HUD has given PHAs the flexibility to include ENDS such as e-cigarettes, personal vaporizers, vape pens, e-cigars, e-hookah, or vaping devices that produce an aerosolized mixture containing flavored liquids and nicotine on the list of prohibited tobacco products.

However, the new prohibition on smoking in Public Housing is restricted specifically to that, Public Housing (with capital letters) - it does NOT apply to Section 202 Housing or any other privately-owned/operated federally subsidized housing. HUD-subsidized multifamily housing owners currently still have full discretion to establish non-smoking policies or not. As do other non-subsidized senior housing and residential or assisted living environments, as detailed further on in this document.

Whichever the setting, it is important to understand that multifamily owners and public housing authorities are not prohibiting residents from smoking, and admission cannot be denied to applicants solely because they smoke, but any resident, guest, employee, or vendor will no longer be allowed to smoke in or within 25 feet of public housing buildings, or whatever limits a multifamily housing owner may have elected to adopt.

According to this latest notice, PHAs, owners and agents are encouraged to partner with outside organizations to help with cessation supports for residents. More information can be found in "Additional Resources" below.

HUD Encourages Multifamily Housing Owners to Establish Policies

Whereas the draft of revisions to HUD occupancy handbook 4350.3 included a statement prohibiting non-smoking rules, the final version of Change 2 issued June 12, 2003 actually uses the example that “Not allowing smoking in the common areas of the building” is a reasonable house rule policy, and adopted language that very strongly resembled LeadingAge (then-AAHSA)’s comments to HUD on the issue: “There are no statutory or regulatory provisions governing smoking in assisted housing.”

In 2010, the HUD issued [Notice H 2010-21: Optional Smoke-Free Housing Policy Implementation](#) encouraging owners and management agents of HUD Multi-Family Housing rental assistance programs to adopt and implement smoke-free policies for some or all their properties. The notice provides guidance to owners and managers on how to implement such policies and instructs owners and managers to implement smoke-free policies by updating their House Rules.

In 2012, Notice [H 2012-22: Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies](#) further encouraged the adoption of smoke-free housing policies by O/As who had not yet chosen to do so. The guidance found in this notice did not change anything from Housing Notice 2010-21, but added some clarifications on what owners can and cannot do regarding admissions applications, waiting lists, and grandfathering. These notices still remain in effect.

The latest and still current version of HUD Handbook 4350.3 ([Revision 1, Change 4 – issued November 2013](#)) reiterates that “There are no statutory or regulatory provisions governing smoking in assisted housing. HUD assisted properties are required to comply with applicable state and local laws, which would include any laws governing smoking in residential units. Owners are free to adopt reasonable rules that must be related to the safety and habitability of the building and comfort of the tenants. Owners should make their own informed judgment as to the enforceability of house rules.” (Paragraph 6-9 B.1)

Before implementing such policies at your site, we suggest that you review the recommendations below, and be sure to consult with a lawyer about applicable state laws and check to see whether there may already be a court decision(s) or an Attorney General opinion which states that landlords have the right (or in increasing cases, an obligation) to make some or all apartment units smoke-free.

How to Implement Smoke-free Policies in Your Community

Implementing a smoke-free policy in any type of senior housing community should be handled with care and pursued in a slow, supportive manner. According to Kathelene Williams, who participated with LeadingAge in developing training on the subject some time back, and who has been working in the field of fair housing for more than 25 years, a nonsmoking rule should be

implemented in existing housing by changing house rules with a long notice period, preferably six months to a year. Here are some additional tips:

- Any changes in house rules must be provided to residents with a 30-day notice period, and then each resident must sign and date the new house rules. The house rules become an addendum to the lease and enforceable through the lease,
- The notice to all residents should be made with follow-up group and individual meetings.
- While you could grandfather in all current tenants who are smokers, you don't have to.

Education and stop-smoking sessions are also generally encouraged to be provided by management prior to implementation. Instituting nonsmoking in the units will be controversial, Williams advises, and you don't want to have any more problems than necessary. Whatever you do, Williams says, don't try "sneaking" the new rule by your residents without an open forum and plenty of time for management to address the residents' concerns.

A careful part of establishing a smoke-free environment or beginning the transition towards one requires enforceable policies and procedures and a careful plan of implementation. In 2014, HUD published "[Change is in the Air: An Action Guide for Establishing Smoke-Free Public Housing and Multifamily Properties](#)" which contains useful information on policy implementation and experiences from other HUD-subsidized housing owners or agents. Additional help from those who have blazed this trail already may be obtained by posting questions and sharing concerns with other members on the LeadingAge Housing Operations and Policy listserv.

Following are recommendations of actual language for crafting those policies in other non-HUD related communities:

MODEL SMOKE-FREE POLICIES IN FACILITIES SERVING OLDER PERSONS

The Center for Social Gerontology ([TCSG](#)) has developed model policies that can be utilized by others for state legislation, state regulations, or facility-specific policies; which is most appropriate will depend on the state and the user of the model. Further, because non-residential facilities -- Senior Centers and Adult Day Care Facilities -- are used during just a portion of the day, TCSG's model policies call for totally smoke-free facilities. TCSG's recommendations for residential facilities -- Nursing Homes and Assisted Living Facilities -- recognize that secondhand smoke is an extremely dangerous substance which results in serious health problems, including chronic diseases and death; therefore, a primary focus is the protection of the health of all older persons, and employees in these facilities, and their protection from secondhand smoke, as well as from residential fires caused by cigarettes.

TCSG has developed model policies which call for totally smoke-free residential facilities. However, TCSG also recognizes that about 10% of older persons are smokers and that some

currently, or will in the future, reside in Nursing Homes or Assisted Living Facilities; therefore, they have also developed model policies which would accommodate these persons, while attempting to protect nonsmokers from the secondhand smoke. In each of the policies, they have attempted to draft a model which they think will maximize the health and safety of older persons and employees in the facility, as well as protecting all person's rights. It is up to those considering implementation of non-smoking policies to decide which of the model policies might be most useful.

MODEL POLICY FOR SMOKE-FREE SENIOR CENTERS

This [policy](#) is intended to be a model for state legislation to create smoke-free Senior Centers. To that end, this policy provides for smoke-free environments both indoors and outdoors at Senior Centers. This policy can also be easily adapted for use as a state regulation or as a policy for an individual Senior Center facility.

MODEL POLICY FOR SMOKE-FREE ADULT DAY CARE CENTERS

This [policy](#) is intended to be a model for a state regulation to create smoke-free Adult Day Care Centers. This model regulation would provide for smoke-free environments indoors and sets forth language which would enable those using this model to choose to either prohibit or regulate smoking on the outdoor grounds of Adult Day Care Centers. This model can also be easily adapted for use as state legislation or as a policy for an individual Adult Day Care Center facility.

MODEL POLICY FOR SMOKE-FREE NURSING HOMES

This [policy](#) is intended to be a model for a state regulation to create smoke-free Nursing Homes. This model regulation would provide for smoke-free environments indoors, but would provide for indoor designated smoking areas only for current residents of nursing homes who are smokers. This policy allows for "grandfathering" of existing residents who are smokers, with the ultimate goal of having a smoke-free facility indoors. The policy allows for designated smoking areas outdoors. This model regulation can also be easily adapted for use as state legislation or as a policy for an individual Nursing Home facility.

MODEL POLICY REGULATING SMOKING IN NURSING HOMES

This [policy](#) is intended to be a model for a state regulation to regulate smoking in Nursing Homes. This model regulation would require smoke-free environments inside nursing homes, but would allow for indoor designated smoking areas for use by current and future residents of nursing homes who are smokers. This policy also allows for designated smoking areas outdoors. This model regulation can also be easily adapted for use as state legislation or as a policy for an individual Nursing Home facility.

MODEL SMOKE-FREE POLICY FOR NEW ASSISTED LIVING FACILITIES

This [policy](#) is intended to be a model for new Assisted Living Facilities which would like to adopt a smoke-free facility and campus policy prior to accepting residents. This policy provides for a smoke-free Assisted Living Facility both indoors and outdoors. This policy does not contain provisions for grandfathering of existing smoking residents because, presumably, there are no existing residents to grandfather. This model policy can also be adapted for use as state legislation or as a state regulation for Assisted Living Facilities.

MODEL POLICY FOR SMOKE-FREE ASSISTED LIVING FACILITIES

This [policy](#) is intended to be a model for a state regulation to create smoke-free Assisted Living Facilities. This model regulation would provide for smoke-free environments indoors, but would provide for indoor designated smoking areas only for current residents of Assisted Living Facilities who are smokers. This policy allows for "grandfathering" of existing residents who are smokers, with the ultimate goal of having a smoke-free facility indoors. The policy allows for designated smoking areas outdoors. This model regulation can also be easily adapted for use as state legislation or as a policy for an individual Assisted Living Facility.

MODEL POLICY REGULATING SMOKING IN ASSISTED LIVING FACILITIES

This [policy](#) is intended to be a model for a state regulation to regulate smoking in Assisted Living Facilities. This model regulation would require smoke-free environments inside Assisted Living Facilities, but would allow for indoor designated smoking areas for use by current and future residents of Assisted Living Facilities who are smokers. This policy also allows for designated smoking areas outdoors. This model regulation can also be easily adapted for use as state legislation or as a policy for an individual Assisted Living Facility.

Additional Resources

- “Change is in the Air” can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf>
- HUD Toolkits for Owners/Management Agents and Residents can be found at <https://www.hud.gov/smokefreetoolkits>
- Smoking Cessation resources are currently available at https://www.cdc.gov/tobacco/quit_smoking/index.htm.
- Residents and PHAs may also contact national quit lines (1-800-QUIT-NOW) and community health centers to ask what services are available through them.
- “Secondhand Smoke Seepage into Multi-Unit Affordable Housing: A Law Synopsis by the Tobacco Control Legal Consortium April 2010” can be found at http://www.tcsg.org/sfelp/tclc-syn-secondhand-2010_0.pdf
- “Notice PIH 2017-03: HUD Guidance on Instituting and Enforcing Smoke-Free Public Housing Policies” can be found at <https://www.hud.gov/sites/documents/PIH2017-03.pdf>

- HUD’s Final Rule: Instituting Smoke-Free Public Housing can be found at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-05/pdf/2016-28986.pdf>
- HUD’s Smoke Free Toolkit for Owners and Agents of Federally Assisted and Public Housing can be found at <https://www.hud.gov/sites/documents/PDFOWNERS.PDF>
- HUD Smoke Free Toolkit for Residents <https://www.hud.gov/sites/documents/PDFRESIDENTS.PDF>
- HUD Office of Healthy Homes Clearinghouse with a range of smoke free templates, resident communication aides and other program implementation documents can be found at https://www.hud.gov/program_offices/healthy_homes/smokefree2
- Reasons to Explore Smoke Free Housing Factsheet (an Enterprise Fact Sheet) can be found at <https://www.enterprisecommunity.org/resources/reasons-explore-smoke-free-housing-factsheet-14014>
- Smoke-Free Environments Law Project detail of timelines and efforts in states across the nation to implement such policies can be found at <http://www.tcsg.org/sfelp/apartment.htm>
- “The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General” and related materials can be found at <https://www.surgeongeneral.gov/library/reports/secondhandsmoke/executivesummary.pdf> and <https://www.surgeongeneral.gov/library/reports/secondhandsmoke/secondhandsmoke.pdf>

Owners and managers of smoke-free apartment buildings or other senior living environments can also network with larger social movements on this issue at <https://ash.org/> or <http://www.mismokefreeapartment.org>.

“Smoke-free policies are about the smoke, not the smoker. Smoke-free policies do not preclude someone who smokes from living in the building; rather, they simply require that all tenants abide by the policy while on the property.” – Enterprise Community Partners

For more information on these and other HUD management issues, contact Colleen Bloom, LeadingAge’s Director for Housing Operations, at (202) 508-9483 or cbloom@leadingage.org.