



Housing Capacity Building Initiative for Community Living: Reasonable Modifications under the Federal Fair Housing Laws and Potential Funding Resources

*Prepared under contract by
New Editions Consulting, Inc. and the Technical Assistance Collaborative, Inc.¹*

EXECUTIVE SUMMARY

Persons with disabilities who are transitioning to the community and/or at risk of institutionalization may require modifications to their current or chosen housing units in order to make them appropriate for the individual's use. Responsibilities and funding relating to housing accessibility modifications are governed by various statutory and programmatic provisions at the federal, state and local levels. The purpose of this paper is to provide an overview of federal laws related to accessibility modifications in public and private housing as well as provide information on various federal, state, and local funding sources for accessibility modifications.

Housing Rights of People with Disabilities

There are three primary federal laws that protect the housing rights of people with disabilities and relate to accessibility and housing modifications:

1. **Section 504 of the Rehabilitation Act of 1973:** bars recipients of federal funds from discriminating on the basis of disability.
2. **Fair Housing Amendments Act of 1988:** applies to public and private housing providers, including state and local housing programs, as well as private developers and landlords.
3. **Americans with Disabilities Act (ADA) of 1990:** Title II of the ADA applies to the accessibility of the services provided by state and local governments. Title III covers public accommodations of all types, including common areas in housing, such as rental offices, meeting rooms, and laundry facilities.

A housing owner must allow a person with a disability to make reasonable physical modifications to a unit if needed in order for that individual to fully use and enjoy the housing unit. Examples of modifications might be the installation of grab bars in the bath by someone with a physical disability or visual (flashing light) fire safety devices for an individual with a hearing loss.

- **Private rental housing**
Owners may require that the modifications be completed in a professional manner and be in compliance with all applicable building codes. In addition, owners may require that the tenant restore the unit to its original condition before vacating.
- **Publicly-assisted rental housing**
In publicly-assisted housing which is covered by Section 504 – including public housing owned and operated by Public Housing Authorities and other HUD assisted housing– the landlord is often required to make, and pay for the modifications if the cost is not prohibitive.

¹ January 31, 2012. HHS Housing Collaboration under the Money Follows the Person (MFP) Rebalancing Demonstration, CMS Contract Number GS-00F-0083N. For details on the project, visit: <http://www.neweditions.net/housing/about.asp>

- **Housing Choice Voucher rental assistance**

A private landlord participating in the Housing Choice Voucher program is generally not required to pay for modifications but must permit them. However, the tenant can request that the PHA administering the Housing Choice Voucher program provide a “reasonable accommodation,” and pay a higher rent for the unit, in order to allow the landlord to pay for some modifications to the unit if the landlord agrees to do so.

Owners are not required to allow the tenant to make modifications to a unit that the law deems “unreasonable.” An unreasonable modification would be one that is not related to the person’s disability — the installation of a dishwasher, for example. Whether a modification is reasonable must be evaluated on a case-by-case basis guided by previous HUD decisions and decisions made in federal court. However, federal fair housing laws make it illegal for owners to refuse to permit tenants to make reasonable modifications to their unit if the tenant is willing to pay for the changes. The reasonable modification process is a mutual search for a solution.

Using Medicaid to Help Finance Accessibility Modifications

In most states, Medicaid funding can be used to help cover the cost of accessibility modifications in housing under certain circumstances. Those States that allow Medicaid dollars to be used for accessibility modifications can put limits on the type and cost of modifications that are allowed. In all cases, Medicaid may only be used if there are no other sources of funding for these modifications, and as long as such modifications are not already the responsibility of the housing agency. In addition, the modifications are required to be for the sole benefit of the individual in which the claim for home modifications would be made.

- **1915(c) Home and Community-Based Services Waiver.** If the State has included home or environmental modifications as a waiver service this service is available to persons enrolled in the waiver and who need modifications to their living environment to move to or remain in the community. Exactly what modifications will be reimbursed depends on how the State has crafted the service definition.
- **1915(i) Home and Community-Based Service State Plan Option.** The recent changes made to 1915(i) as part of the Affordable Care Act permit States to include, at their option, the same types of services that were previously only available through a waiver. This would include home or environmental modifications if the State has designed their 1915(i) benefit to include such services.
- **Money Follows the Person (MFP) Demonstration.** The Money Follows the Person (MFP) demonstration also includes options for paying for accessibility modifications. These options are more flexible than under 1915(c) or 1915(i) and are offered specifically through a State’s MFP program.

Other Programs to Help Finance Accessibility Modifications

In addition to Medicaid, there are a few additional programs defined below that provide financial assistance to people with disabilities to make their homes accessible. Of these, only a few are targeted exclusively to people with disabilities. Typically, this assistance is made available on a first come, first served basis and therefore the funding may be distributed very quickly.



- **Consolidated Plan Funds.** Funds controlled by a state/local housing agency's Consolidated Plan, specifically Community Development Block Grants (CDBG) and HOME Investment Partnership program funds are potentially valuable resources for covering the cost of making accessibility modifications.
- **State Housing Finance Agency (HFA) Programs.** State HFAs are another potential source of financial assistance for covering the costs of accessibility modifications. In some states, HFAs may provide low interest rate loans to make accessibility modifications.
- **Veterans Administration Programs.** The federal Department of Veterans Affairs (VA) has many programs that provide grants to veterans with disabilities who need to make modifications to their homes.
- **Vocational Rehabilitation Programs.** Some state vocational rehabilitation departments provide accessibility modification assistance. These funds usually pay for the actual modifications rather than reimbursing the tenant.
- **State Assistive Technology Programs.** The Assistive Technology Act supports programs in every state to provide resources for assistive technology to individuals with disabilities of all ages. These programs may provide device demonstrations, loans, reutilization, and financing.

The local **Center for Independent Living (CIL)** is a good source of information regarding accessibility modifications, as is the National Resource Center on Supportive Housing and Home Modifications.



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Persons with disabilities who are transitioning to the community and/or at risk of institutionalization may require modifications to their housing units in order to make them accessible for their use. Responsibilities and funding relating to housing accessibility modifications are governed by various statutory and program provisions at the federal, state and local levels. The purpose of this paper is to provide an overview of federal laws related to accessibility modifications in public and private housing and various federal, state, and local funding sources for accessibility modifications.

Housing Rights of People with Disabilities

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

1. **Section 504 of the Rehabilitation Act:**³ Section 504 of the Rehabilitation Act of 1973 bars recipients of federal funds from discriminating on the basis of disability. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other equally effective methods.
2. **Fair Housing Amendments Act of 1988:**⁴ The Fair Housing Amendments Act prohibits discrimination because of *inter alia*, disability, and applies to public and private housing providers alike.⁵ Under the Fair Housing Amendments Act, a housing provider is required to permit, at the expense of the person with a disability, reasonable modifications when such modifications may be necessary to afford such a person full enjoyment of the premises.

² January 31, 2012. HHS Housing Collaboration under the Money Follows the Person (MFP) Rebalancing Demonstration, CMS Contract Number GS-00F-0083N. For details on the project, visit: <http://www.neweditions.net/housing/about.asp>

³ Section 504 of the Rehabilitation Act is codified at 29 U.S.C. § 794, and HUD's implementing regulations can be found at 24 CFR Part 8.

⁴ The Fair Housing Amendments Act modified Title VIII of the Civil Rights Act of 1968, which appears at 42 U.S.C. § 3601. Implementing regulations can be found at 24 CFR Part 100. Housing providers should consult the joint guidance on reasonable modifications under the Fair Housing Act issued by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Justice (DOJ). This guidance is available at http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

⁵ Some single-family houses sold or rented by an owner, and rooms or units in dwellings containing living quarters occupied by no more than four families living independently of each other where the owner lives in one such room or unit, are exempt from the reasonable modification provisions set forth at 42 U.S.C. § 3604(f)(3)(A). The requirements to satisfy these exemptions are provided at 42 U.S.C. § 3603(b).

3. **Americans with Disabilities Act of 1990:**⁶ Title II of the Americans with Disabilities Act (ADA) applies to all services provided by state and local governments, including state and local public housing, housing assistance, and housing referrals. Title II regulations require public entities to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible and usable by persons with disabilities. Title III of the ADA covers public accommodations of all types, including facilities such as rental offices, meeting rooms, childcare centers, and educational or vocational training programs. Private housing providers (including landlords and owners) who provide such services and facilities, such as laundry rooms, are covered by this law and must make sure that common areas are accessible to tenants and applicants with disabilities.

Combined, these federal housing laws are critical tools to expanding housing opportunities for persons with disabilities. A key element under the fair housing laws is the availability of **reasonable modifications** to housing if requested by a person with a disability. A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. Reasonable modifications allow physical alterations to housing units and common areas to meet the needs of persons with disabilities. Examples of modifications might be the installation of grab bars in the bath for someone with a physical disability or a visual (flashing light) fire safety device for someone with a hearing loss.

- **Private housing**

The Fair Housing Amendments Act requires an owner to allow a person with a disability – at their own expense – to make certain physical modifications to a unit if needed to fully use and enjoy the housing unit. Owners may require that the modifications be completed in a professional manner and be in compliance with all applicable building codes. In addition, owners may, where it is reasonable to do so, require that the tenant restore the interior of the unit to its original condition before vacating (modifications made to the exterior of the unit or a common area do not need to be restored to their original condition). Some states have enacted laws that expand upon the federal fair housing laws. For example, in Massachusetts, any private landlord with 10 or more units in 1 building (or contiguous buildings) must pay for the cost of reasonable modifications made to a unit to accommodate the needs of a person with disabilities.

- **Federally-assisted housing**

Federally-assisted housing is covered by Section 504 – including public housing owned and operated by Public Housing Authorities and other HUD assisted housing such as Section 811 and Section 202 developments owned by private non-profit organizations. Generally, recipients of federal funds are required to make and pay for the modifications when needed as a reasonable accommodation based on a request by a tenant or applicant with a disability. Structural changes are paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other equally effective methods. A Public Housing Authority (PHA), for

⁶ The ADA can be found at 42 U.S.C. § 12131; regulations that implement the Act's prohibition of disability discrimination in state and local government services appear at 28 CFR Part 35.

example, may be required to put grab bars into a bathroom and/or build a ramp to the front door of a **public housing** unit. The determination of undue financial and administrative burden must be evaluated on a case-by-case basis. Factors for consideration include the size of the recipient's budget, the benefits the accommodation would provide to the requester, whether the housing owner has accessible units available, the cost of the modification, and other factors.

- **Housing Choice Voucher rental assistance**

A **private landlord** participating in the Housing Choice Voucher program is generally not required to pay for modifications. However, the tenant can request that the PHA administering the Housing Choice Voucher program provide a "reasonable accommodation,"⁷ and pay a higher rent for the unit, in order to allow the landlord to pay for some modifications to the unit.

Owners in **private housing** are not required to allow the tenant to make modifications to a unit that the law deems "unreasonable." An unreasonable modification would be one that is not related to the person's disability. Whether a modification is reasonable must be evaluated on a case-by-case basis guided by previous HUD decisions and decisions made in federal court. However, federal fair housing laws make it illegal in private housing for owners to refuse to permit tenants to make reasonable modifications to their unit if the tenant is willing to pay for the changes.

Federally-assisted housing providers are not required to make structural changes to existing housing facilities if there are other effective methods of compliance or if it would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. For example, a federally-assisted housing provider may be permitted to reject a request for a person with a disability to stay in their current housing unit and make accessibility modifications to it. The federally-assisted housing provider may instead offer to transfer the person to another unit in the building that already has the accessibility features the person needs. However, a **private housing provider** cannot insist that a tenant transfer to a different unit in lieu of allowing the tenant to make a modification that complies with requirements for reasonable modifications.

Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability. If a requested modification is not reasonable, the housing provider should work with the tenant to determine if there is an acceptable alternative that would effectively address his or her disability-related needs. Housing providers may not refuse to provide a reasonable modification based on their belief that the accommodation would not be best for the person.

Using Medicaid to Help Finance Accessibility Modifications

In most states, Medicaid funding can be used to help cover the cost of accessibility modifications of housing under certain circumstances. Those States that allow Medicaid dollars to be used for accessibility modifications can put limits on the type and cost of modifications that are allowed. In all

⁷ A reasonable accommodation is a change to a policy or practice that allows a person with a disability to participate fully and equally in a housing program. An example of a reasonable accommodation is to allow a tenant to have an assistance animal in a "no-pets" building.

cases, Medicaid may only be used if there are no other sources of public funding for these modifications, and as long as such modifications are not already the responsibility of the housing agency. In addition, the modifications are required to be for the sole benefit of the individual in which the claim for home modifications would be made. Below is a description of the ways that home accessibility adaptations can be paid for using Medicaid dollars.

- **Section 1915(c)⁸ Home and Community-Based Services Waiver**

Prior to 1981, Medicaid beneficiaries often had to enter a nursing home to receive certain health and supportive services. The Omnibus Budget and Reconciliation Act of 1981 allowed states, with approval from the Centers for Medicare and Medicaid Services, to provide a range of supportive services to beneficiaries in the community rather than an institution. Home and community-based waiver services help beneficiaries who otherwise qualify to be admitted to an institution to live independently in the community.

The services that may be covered under a §1915 (c) waiver include: case management services, homemaker/home health aide services, personal care services, adult day health services, habilitation services, psychosocial rehabilitation services, clinic services for individuals with chronic mental illness and such other services as the Secretary of HHS may approve. Home or environmental modifications may be covered as “other services”.

If the State has included home or environmental modifications as a waiver service, this service is available to waiver participants who need modifications to their living environment to move to or remain in the community. States may place a cost cap on the modifications. These cost caps may be an annual or a lifetime cap. Exactly what modifications will be reimbursed depends on how the State has crafted the service definition and the needs of the individual. The State may authorize these modifications up to 180 days prior to an individual’s transition from an institution, but billing may not occur until such time that the individual leaves the institution and enrolls in the waiver.

- **Section 1915(i) Home and Community-Based Service State Plan Option**

States also have the option to cover Home and Community Based Services without a waiver. The recent changes made to §1915(i) as part of the Affordable Care Act permit States to pay for, at their option, the same types of services that were previously only available through a Home and Community Based Services waiver. This can also include home or environmental modifications if the State has designed their §1915(i) benefit to include such services. States are able to apply the same service limits as in §1915(c) waivers.

- **Money Follows the Person (MFP) Demonstration**

This Demonstration, created by the Deficit Reduction Act of 2005 and extended by the Patient Protection and Affordable Care Act, supports State efforts to “rebalance” their long-term support systems so that individuals have a choice of where they will live and receive the services and supports necessary to move from an institution and live in the community. It allows Medicaid funding (services) to follow a person from a nursing home or other institution to housing in the community. The Money Follows the Person (MFP) demonstration also includes

⁸ Section 1915 of the Social Security Act.

options for paying for accessibility modifications. A State may opt to include “demonstration services” as part of their MFP program which are services that they could have included, but did not include, in a §1915(c) waiver or the Medicaid State Plan. These options are more flexible than under 1915(c) or 1915(i) and are offered specifically through a State’s MFP program.

Other Programs to Help Finance Accessibility Modifications

In addition to Medicaid, there are a few additional programs that provide financial assistance to people with disabilities to make their homes accessible. Of these, only a few are targeted exclusively to people with disabilities. Typically, this assistance is made available on a first come, first served basis and therefore the funding may be distributed very quickly. Each program is administered differently with different rules and guidelines. For example, some programs may give grants before the modifications are made. Other programs provide reimbursements only after the modifications have been completed and the bills have been paid. Some resources for funding accessibility modifications include:

- **Consolidated Plan Funds.**
Funds controlled by the housing agency’s Consolidated Plan, specifically Community Development Block Grants (CDBG) and HOME Investment Partnership program funds, are potentially valuable resources for covering the cost of making accessibility modifications. Each state or locality determines how to use these funds and in what manner they will be distributed. For example, one state may choose to provide direct grants to low-income renters for accessibility modifications while a locality within the same state may choose to allocate funding to non-profit organizations to provide loans to homeowners wishing to make similar modifications. It is important to learn what opportunities are available in your community.
- **State Housing Finance Agency Programs.**
State Housing Finance Agencies (HFAs) are another potential source of financial assistance for covering the costs of accessibility modifications. HFAs are authorized by the federal government to sell tax-exempt bonds for a variety of different public purposes. In some states, HFAs use these bond funds to provide low interest rate loans to make accessibility modifications.
- **Veterans Administration Programs.**
The federal Department of Veterans Affairs (VA) has many programs that provide grants to veterans with disabilities who need to make modifications to their homes.
- **Vocational Rehabilitation Programs.**
Some state vocational rehabilitation departments provide accessibility modification assistance. These funds usually pay for the actual modifications rather than reimbursing the tenant.
- **Assistive Technology Programs.**
The Assistive Technology Act of 1998, as amended, provides funding to every state. State AT programs work to improve the provision of assistive technology to individuals with disabilities of all ages. The programs support activities designed to maximize the ability of individuals with disabilities and their family members, guardians, and advocates to access and obtain assistive technology devices and services. These programs may provide device demonstrations, loans,



reutilization, and financing. A state-by-state listing of AT programs is available at:
<http://resnaprojects.org/nattap/scripts/nattapcontacts.pl>

The local Center for Independent Living (CIL) is a good source of information regarding accessibility modifications, as is the National Resource Center on Supportive Housing and Home Modifications website: www.usc.edu/dept/gero/nrcshhm/directory/. To locate a CIL in your area, visit: <http://www.ilru.org/html/publications/directory/index.html>.

To find the various statutory and regulatory citations for the U.S. Code (U.S.C.; laws) and Code of Federal Regulations (CFR; program rules) noted throughout this paper, visit the U.S. Government Printing Office's Federal Digital System (FDSys) website at: <http://www.gpo.gov/fdsys/search/home.action>,