



## AAHSA Fact Sheet

### Establishing a Smoke-Free Housing Environment

#### Background

In 2006, the U.S. Surgeon General issued a comprehensive scientific report which concludes 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 is of major public health concern due to the fact that nearly half of all nonsmoking Americans are still regularly exposed to secondhand smoke.<sup>1</sup>

In addition to 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. All senior housing and services providers can identify with these issues. This fact sheet provides a range of resources for all AAHSA members, including the latest on HUD guidance regarding owner ability to implement smoke-free policies in their communities.

#### HUD Guidance Acknowledges Owner Right to Establish Policies

Whereas the draft revision to HUD occupancy handbook 4350.3 included a statement prohibiting non-smoking rules, the final revision 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 (HUD Handbook 4350.3, Chapter 6, Paragraph 6-9, B.1.f) And the note that follows very strongly resembles AAHSA’s comments to HUD on the issue: “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.” Read on for more about a recent, supportive legal opinion issued by HUD.

#### HUD Legal Counsel Opinion: Landlords are free to make apartments totally smoke-free

Pursuant to a request from the Smoke-Free Environments Law Project (SFELP), the Chief Counsel of the Housing & Urban Development (HUD) field office in Detroit issued an opinion on July 18, 2003 in which she stated that: "Currently, there is no HUD policy, by statute, regulation, handbook or otherwise that restricts landlords from adopting a prohibition of smoking in common areas or in individual units." The opinion goes on to state that there is nothing in federal law, including the federal Fair Housing Act (see SFELP analysis of the FHA as noted below), or in Michigan law (see Michigan AG Opinion as noted below) which prevents a landlord from making some or all of his/her apartment units smoke-free.

The opinion states: "Similar to Michigan law, federal law does not prohibit the separation of smoking and non-smoking tenants in privately owned apartment complexes and in fact, does not prohibit a private owner of an apartment complex from refusing to rent to smokers." A July 6, 2004 letter from the HUD Grand Rapids, Michigan office to an owner of housing which included Section 8 HUD-assisted units states: "The Model Lease should not be changed unless it is necessary to comply with state law or to address an issue that is customary in the real estate industry. ... Therefore, the owners of privately owned developments may have a reasonable non-smoking policy as part of the house rules, but it cannot be made a part of the PRAC lease." To access this letter, go to <http://www.tcs.org/sfelp/GRMI2004.pdf>.

Before implementing at your site, 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 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 (Coughlin) Williams who has been working in the field of fair housing for more than 25 years.<sup>2</sup> Kathi recommends that a nonsmoking rule be implemented with a long notice period, preferably six months to a year. An owner should implement the policy by changing house rules, Coughlin advises, because any change in the lease requires HUD approval. 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.

Williams also recommends that education and stop-smoking sessions be provided by management prior to implementation. Instituting nonsmoking in the units will be controversial, she 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. For help from those who have blazed this trail already, the AAHSA housing operations listserv may be useful.<sup>3</sup> For help crafting the actual language of those policies, following are a few recommendations:

## **MODEL SMOKE-FREE POLICIES IN FACILITIES SERVING OLDER PERSONS**

The Center for Social Gerontology (TCSG), through a project funded by the Robert Wood Johnson Foundation, has developed model policies which 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. [Note: the headlines that follow are hyperlinks to the TCSG site and specific model policy.]

### **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. Click above to access the model policy or go to <http://www.tcsg.org/tobacco/smokefreeseniors.htm>.

### **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. Click above to access the model policy or go to <http://www.tcsg.org/tobacco/SmokefreeADC.htm>

### **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. Click above or go to <http://www.tcsg.org/tobacco/NHprohibiting.htm> to access the model policy.

### **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. Click above or go to <http://www.tcsg.org/tobacco/NHregulating.htm> to access the model policy.

### **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. Click above or go to <http://www.tcsg.org/tobacco/ALFnewsmokefree.htm> to access the model policy.

### **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. Click above or go to <http://www.tcsg.org/tobacco/ALFsmokefree.htm> to access the model policy.

### **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. Click above or go to <http://www.tcsg.org/tobacco/ALFregulating.htm> to access the model policy.

### **Public Opinion Surveys on Smoke-Free Apartments Now Online**

To find out more about the growing interest in smoke-free apartments, Jim Bergman, Co-Director of the Smoke-Free Environments Law Project (SFELP) has developed a special webpage entitled "Public Opinion on Smoke-Free Environments". This section includes links to a number of polls/surveys which have been done in the past few years to determine public support for various types of smoke-free apartment policies. The surveys all demonstrate strong public support for smoke-free apartment policies, including support for laws which would require that a certain percentage of new, publicly-funded housing units be smoke-free. To access the new section of the SFELP site, go to <http://www.tcsg.org/sfelp/public.htm> and scroll down to the new section.<sup>4</sup>

### **AAHSA Audio-Conference Offers Tips, Member Experiences**

AAHSA conducted an audio conference on January 31, 2007<sup>5</sup>, building on the very successful session at the 2006 Annual Meeting on creating smoke-free environments, to help members:

- Evaluate the legal implications of prohibiting smoking in senior living communities.
- Review sample language that may be incorporated into existing policies, and consider various methods of communicating such policy revisions to residents, staff and family members.
- Consider the experiences of providers who have successfully implemented a smoking ban—and hear about the challenges they confronted, as well as benefits derived, through a smoke-free environment.

Discussed were the legal and operational aspects of smoke-free policies, "grandfathering in" current smoking residents, the impact of a smoke-free workplace on staff, and the involvement of residents, staff and family members in establishing, implementing and enforcing smoke-free policies. Faculty included the experts in the field and members who have successfully implemented smoke-free programs in their organization.:

**Faculty included :**

- Cory Kallheim, Senior Attorney, AAHSA (Moderator)
- Alan R. Abraham, Vice President, Housing, Lutheran Homes of Oshkosh, Inc.
- Tom Akins, Vice President, Development, Brewster Place
- Candi Atkins, CPM, ARM, Candi Atkins & Associates<sup>6</sup>
- Kathelene Coughlin Williams, Attorney, The Law Firm of Williams & Edelstein, P.C.<sup>2</sup>

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**Resources:**

<sup>1</sup> Copies of *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* and related materials are available on the Surgeon General's Web site at [www.surgeongeneral.gov/library/secondhandsmoke](http://www.surgeongeneral.gov/library/secondhandsmoke).

<sup>2</sup> Kathelene Coughlin Williams is President of the Fair Housing Institute. She is also a partner in [The Law Firm of Williams & Edelstein, P.C.](http://www.williamsedelstein.com), providing consultation and defense representation of fair housing issues to housing providers throughout the country. For more information, contact Kathelene Coughlin Williams, The Law Firm of Williams & Edelstein, P.C. 7742 Spalding Drive, Suite 478 Norcross, Georgia 30092-4207 Office: 770.817.0405 [kathi@fairhouse.net](mailto:kathi@fairhouse.net)

<sup>3</sup> To sign up for AAHSA listservs, go to [http://www.aahsa.org/online\\_communities/default.asp](http://www.aahsa.org/online_communities/default.asp)

<sup>4</sup> To print a copy of the SFELP/HUD opinion go to <http://www.tcsg.org/sfelp/public.htm>, and to access a number of other smoke abatement resources online, check out the SFELP site titled "Environmental Tobacco Smoke & Apartments and Condominiums" at <http://www.tcsg.org/sfelp/apartment.htm>.

<sup>5</sup> AAHSA Audio –Conference tapes can be ordered at [http://www.aahsa.org/pubs\\_resources/books\\_publications/default.asp](http://www.aahsa.org/pubs_resources/books_publications/default.asp).

<sup>6</sup> Candi Atkins, also a frequent presenter at AAHSA conference and a specialist in HUD senior housing operations, can be reached at <http://www.candiatkinsconsulting.com/contact.html>

For additional information for owners and managers of smoke-free apartment buildings, check out <http://www.smokefreeworld.com/housing.shtml> or <http://www.mismokefreeapartment.org>.

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*For more information on these and other HUD management issues, contact Colleen Bloom, AAHSA's Associate Director for Housing Operations, at (202) 508-9483 or [cbloom@aahsa.org](mailto:cbloom@aahsa.org).*

American Association of Homes and Services for the Aging; 2519 Connecticut Avenue, N.W.; Washington, D.C.; 20008; (202) 783-2242; FAX (202) 783-2255; <a href="http://www.aahsa.org">www.aahsa.org</a>
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