



Adult care facilities (“ACFs”), as housing providers, are subject to the Americans with Disabilities Act, Fair Housing Act, and New York’s Human Rights Law. Assisted Living Programs (“ALPs”) and ACFs that accept federal funds are also subject to Section 504 of the Rehabilitation Act and the Affordable Care Act. As such, ACFs should provide notice to all residents and prospective residents of their rights to equal access to housing opportunities and housing-related services and to request reasonable modifications and accommodations as such rights are provided for in New York’s Human Rights Law. N.Y. Exec Law §§ 296.2-a(d) and 296.18.

Fair Housing Laws

Federal and State fair housing laws are intended to ensure housing opportunities are available to all regardless of race, color, national origin, disability, sex (including gender identity and sexual orientation), by prohibiting housing discrimination. ACFs are housing accommodations under the federal Fair Housing Act and the New York State Human Rights Law.

The New York State Human Rights Law defines disability and makes it an unlawful discriminatory practice for any person to refuse to sell, rent or lease, or otherwise to deny or withhold from any person or group of persons housing accommodations because of, amongst other things, their disability.

Reasonable Accommodations and Modifications

A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Some examples of reasonable accommodations could include, but are not limited to:

- Modifying evacuation protocols for an individual who needs additional assistance with evacuation;
- Allowing an assistance animal in a facility with a “no pets” policy; and
- Providing admission materials in large print or audio format for an applicant who is vision-impaired.

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability to afford such person full enjoyment of the premises. Some examples of reasonable modifications could include, but are not limited to:

- Widening a resident’s room door to make room for a wheelchair.
- Installing grab bars in a shower to enable a resident who uses a walker to safely and independently shower.
- Installing a ramp at a building entrance.
- Lowering the height of cabinets.

Under the State Human Rights Law, housing providers bear the cost of reasonable modifications in common areas. Several localities and the Rehabilitation Act of 1973 might have additional requirements for covered entities, including some ACFs.

It is unlawful to refuse to make reasonable accommodations or modifications in rules, policies, practices, services, or to the physical structure of a building when necessary to afford persons with disabilities equal opportunity to use and enjoy the ACF. As housing providers, ACFs are prohibited from refusing residency to persons with disabilities, or placing conditions on their residency, simply because they may require reasonable accommodations or modifications.

Requests for reasonable accommodations or modifications may come in various forms and might not use the words “reasonable accommodation” or “reasonable modification.” The resident, prospective resident, or representative acting on behalf of such individual who makes the request for reasonable accommodation or modifications does not need to use these specific terms.

A request for an accommodation or modification is reasonable if it does not cause an undue financial or administrative burden and does not fundamentally alter the nature of the program.

Reasonable accommodations and modifications may cause at least some financial burden, and an ACF may be able to deny such accommodations or modifications if that burden becomes undue. If it becomes necessary to consider whether a requested accommodation imposes a financial burden that is undue, ACFs should consider, among other things: (i) the benefit to the resident, (ii) the cost of the accommodation or modification, (iii) the financial resources available to the facility, and (iv) the availability of a less expensive accommodation or modification. You may want to consult an attorney as part of this assessment.

An accommodation may be a fundamental alteration if, among other things, it would require the provider to change the nature of the services provided.

The Interactive Process

Accommodation of individuals with disabilities is an interactive process requiring cooperation between the facility and resident/prospective resident. Upon receiving a reasonable accommodation or modification request, irrespective of whether the applicant specifically qualifies the request as such, the ACF should grant the accommodation or engage in an “interactive process” to discuss and explore the requested accommodation or modification with the resident or prospective resident. The facility and resident/prospective resident should discuss the disability-related need for the requested accommodation or modification and explore possible accommodations or modifications.

- If the facility determines that the requested accommodation or modification *is not reasonable or cannot be made*, the interactive process allows for consideration of whether alternative accommodations or modifications can be made.
- Keep in mind facilities may possess greater knowledge about their ability to provide the requested accommodation or modification and should endeavor to suggest feasible reasonable accommodations and modifications where needed.
- The facility may request information to evaluate whether a requested accommodation or modification may be necessary because of a disability. However, the facility should not request additional information where the disability and need for accommodation/modification are obvious or otherwise known to the facility.

It is unlawful to retaliate against any individual for having exercised their right to request a reasonable accommodation or modification. Examples of unlawful retaliation include a reduction or change in services the facility is otherwise obligated to provide, charging additional fees, or threats of eviction.

According to the U.S. Department of Justice and the U.S. Department of Housing and Urban Development, any housing provider covered by the Fair Housing Act “has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.”¹

Documentation

An ACF should document all reasonable accommodation and modification requests, and their outcomes. The facility should promptly provide a written determination to the resident, prospective resident, or representative acting on behalf of such individual following the interactive process. If a resident or prospective resident or their representative requests a reasonable accommodation or reasonable modification, the facility should provide the attached form to the individual. If the request is made orally, the facility should fill out the form, review it with the requestor, and have them sign it.

Written notification of whether a reasonable accommodation/modification has been granted should be provided to the requestor promptly.

Using a reasonable accommodation request form like the sample provided on the next page is an easy way to facilitate the interactive process and maintain a record of the facility’s efforts to respond to requests.

¹ Reasonable Accommodations Under the Fair Housing Act (May 17, 2004), available at: https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf.

Reasonable Accommodation Request Form

Name: _____

Address: _____

Phone: _____

I am requesting a reasonable accommodation on behalf of: _____

(Name of Person with Disability or "Self")

Please describe the reasonable accommodation you are requesting and the disability-related reason for your request:

Date: _____ Signature: _____

This form, along with any additional information, should be submitted to:

If you have any questions, please contact _____ at _____

For Office Use Only

[] Approved Reason: _____

[] Denied _____
