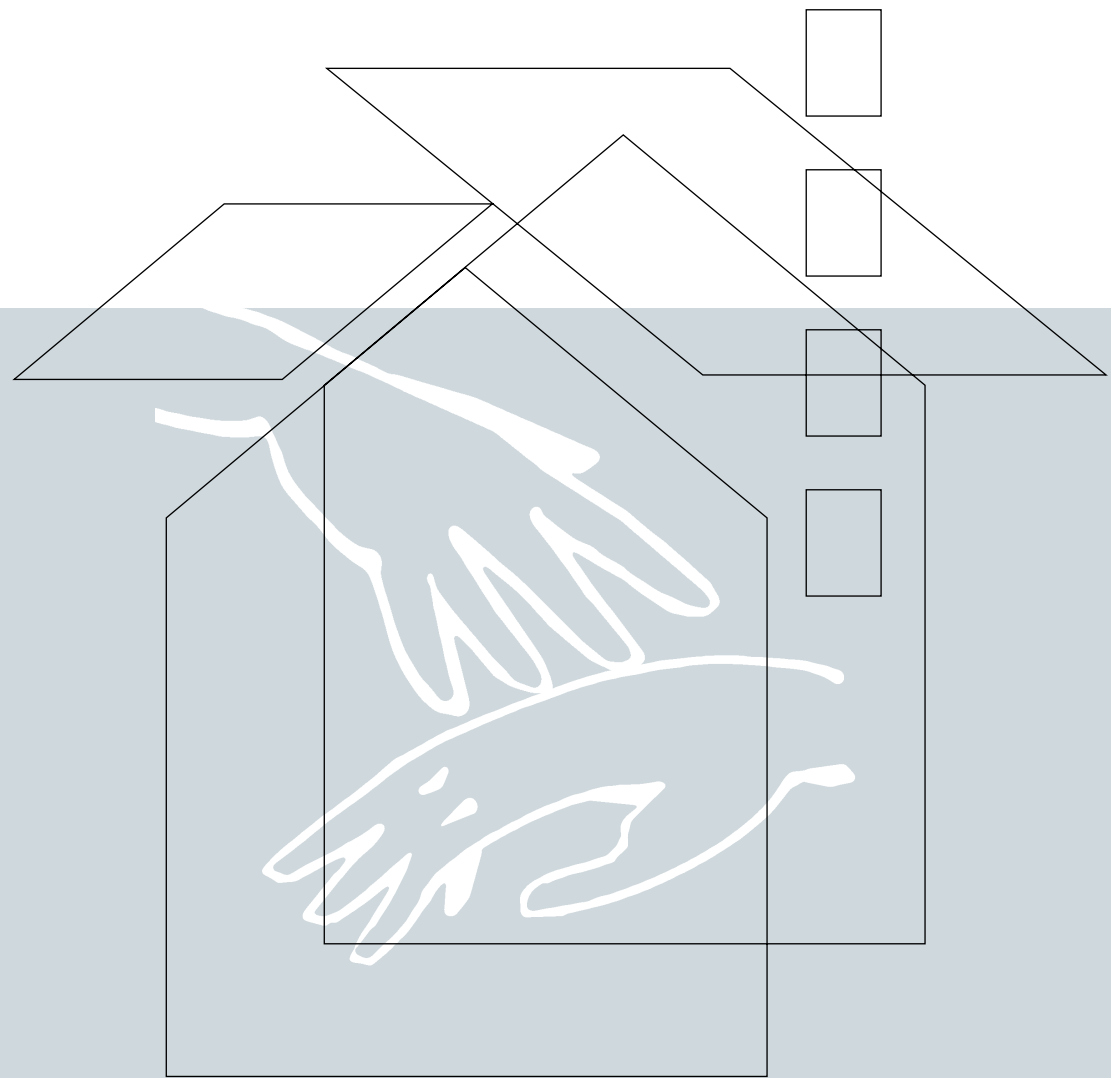


Live-In Aides
and the
Housing Choice
Voucher Program

Live-In Aides and the Housing Choice Voucher Program

F A C T S H E E T



AUGUST 2003

Written by:

Lisa Sloane
Sloane Associates
160 Orchard St.
Lee, MA 01238

Emily Cooper and Ann O'Hara
The Technical Assistance Collaborative, Inc.
535 Boylston St, Ste. 1301
Boston, MA 02116
www.tacinc.org

Under subcontract to:

Abt Associates Inc.
Hampden Square, Ste. 600
4800 Montgomery Lane
Bethesda, MD 20814-5341
www.abtassoc.com

Prepared under contract to:

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Real Estate and Housing Performance Division
Washington, DC
www.hud.gov

Contract #C-OPC-21702, Task Order DEN-T0004

Live-In Aides and the Housing Choice Voucher Program



F A C T S H E E T

Increasingly, people with disabilities are applying for and becoming participants in housing programs administered by Public Housing Agencies (PHAs), including the Housing Choice Voucher Program (HCVP). This trend is a result of many factors including: growing preferences among people with disabilities for community-based housing; changes in state and federal civil rights laws; and increased funding for programs targeted to people with disabilities, such as the HCVP Mainstream Housing Opportunities for Persons with Disabilities program as well as other federal programs that assist people with disabilities, such as Medicaid.

One of the issues that PHAs often face when assisting people with disabilities through the HCVP is that of live-in aides. This Fact Sheet provides information on live-in aides including U.S. Department of Housing and Urban Development (HUD) regulatory requirements and key definitions as well as ideas for PHAs to consider in setting local standards for review and approval of live-in aides.

What is a Live-In Aide?

Personal care attendant,” “aide,” “supportive helper,” “attendant services” and many other phrases are used across the country to describe the new model of personal care assistance preferred by many people with disabilities. These helpers assist people with disabilities to accomplish activities of daily living, including personal care, which the individual is not able to perform because of his/her disability. They can assist in meal preparation, shopping, toileting, dressing, bathing, and many other tasks. For example, a person in a wheelchair might need hands-on assistance in moving from the chair to the bed. For someone with a cognitive disability, the assistance may be more supervisory. From the perspective of a person with a disability, “the attendant is like their arms and legs, or memory.”¹

Personal care attendants... assist people with disabilities to accomplish activities of daily living, including personal care, which the individual is not able to perform because of his/her disability... From the perspective of a person with a disability, “the attendant is like their arms and legs, or memory.”

¹ Stephanie Thomas, “A Disability Perspective on Home Health Care” available online at www.adapt.org/homehealth.htm.

As a result of this decision, more people with disabilities – many of whom are low-income – will be seeking community-based housing opportunities. They will need housing assistance – such as a voucher – as well as support from a live-in aide in order to maintain residential stability.

Some people with disabilities may require assistance during the night as well as during the day. For example, some people with physical disabilities may need assistance being re-positioned throughout the evening to prevent bedsores. Sometimes, a **person with a disability will have a “live-in” aide who lives with the individual and provides services as needed.** An individual who has a live-in aide may also have other aides who provide assistance during the day.

In recent years, more and more people with disabilities are living in housing in the community rather than in institutional settings. This trend is due to many factors including:

- The Independent Living Movement that emphasizes the rights of people with disabilities to control their own lives and be active members of the community;
- Federal and state civil rights laws that dictate that people with disabilities have access to a wide range of public programs, including housing programs;
- Efforts to “deinstitutionalize” people with disabilities by providing them with community-based housing alternatives; and
- New advances in medical and supportive services that allow people with disabilities to get their health needs met in a variety of settings.

Most recently, in 1999, as part of the *Olmstead vs. L.C.* decision, the U.S. Supreme Court affirmed that under the Americans with Disabilities Act (ADA) states may no longer confine people with disabilities unnecessarily in “restrictive settings” such as institutions or segregated facilities. Although *Olmstead* is, in essence, essentially a case about de-institutionalization, a key question central to *Olmstead*-planning efforts is “where will people with disabilities live?” As a result of this decision, more people with disabilities – many of whom are low-income – will be seeking community-based housing opportunities. They will need housing assistance – such as a voucher – as well as support from a live-in aide in order to maintain residential stability.

Unlike the more traditional model of home health aides or homemakers, in which the aide is an employee of an

agency such as a Visiting Nurses Association that provides occasional visits, live-in aides are directed, hired, and often employed by a person with a disability. However, their salary may be paid for in various ways and from different sources. For example, a live-in aide may be paid by an agency or directly by the individual with the disability. The cost of a live-in aide may be paid for by private or public sources such as Medicaid, the Veteran’s Administration, or vocational rehabilitation programs. **PHAs do not have to pay for live-in aides.**

HUD Regulatory Requirements and Standards for Live-In Aides

HUD regulations include specific requirements and standards related to live-in aides in the HCVP. However, according to HUD, PHAs are also permitted to establish additional standards. Specifically, according to 24 CFR 982.551 (h)(4), a “PHA has the discretion to adopt reasonable policies concerning residence by...a live-in aide, and defining when PHA consent may be given and denied.” A PHA’s policies regarding live-in aides must be documented in its Section 8 Administrative Plan.

The key issue from HUD’s perspective is whether a helper is a **live-in** aide – that is, whether the housing is the aide’s **primary residence**. Helpers who come and go during the day are considered guests or employees of the participant. Unless their behavior violates the lease, the presence of a **non** live-in aide is not of interest to the PHA. However, if the aide lives with the HCVP participant, then a number of HUD regulations, including those regarding income exclusions and household size, become relevant. These regulations are described below.

1. Requirement to Allow Live-in Aide if Needed as a Reasonable Accommodation

A reasonable accommodation is an action taken by a PHA to change the rules, policies, practices, or services so that a person with a disability can have equal opportunity to obtain housing and to use and enjoy his/her home.

The key issue from HUD’s perspective is whether a helper is a live-in aide – that is, whether the housing is the aide’s *primary residence*. Helpers who come and go during the day are considered guests or employees of the participant. Unless their behavior violates the lease, the presence of a *non* live-in aide is not of interest to the PHA.

According to HUD regulations, PHAs are required to approve a live-in aide if needed as a reasonable accommodation for a disabled household.

Approving a live-in aide, if needed by a disabled household, is an example of a reasonable accommodation.

According to HUD regulations (24 CFR 982.316), PHAs are required to approve a live-in aide if needed as a reasonable accommodation for a disabled household:

...a family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary support services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by a family member with a disability.

Although PHAs must inform all HCVP households of their right to request a reasonable accommodation, ultimately it is the disabled household that is responsible for making the request.

2. HCVP Definition of Live-in Aide

H CVP regulations (24 CFR 5.403) define a live-in aide as:

A person who resides with one or more elderly persons or near-elderly persons or persons with disabilities and who:

- 1 Is determined to be essential to the care and well-being of the persons;
- 2 Is not obligated for the support of the persons; and
- 3 Would not be living in the unit except to provide the necessary supportive services.

Why does the regulation set out such a specific definition? Since housing funds are limited and there are many eligible families on PHA waiting lists, PHAs must ensure that a live-in aide is necessary for the support of a person with a disability. As described later, there are financial implications to determining a live-in aide as a household member, including the exclusion of the aide's income from determination of household income.

There are two key components to the HCVP live-in aide definition:

- What is “essential” care and how does a person with a disability prove that this type of care is needed; and
- How does a PHA determine that the housing is the live-in aide’s primary residence and that the live-in aide would not normally be living in the unit except to provide supportive services.

Essential Care

The HCVP regulations do not specifically define “essential” care. The HUD HCVP Guidebook recommends “written certification from doctor or rehabilitation agency that care is necessary to employment of household member.”² For household members who require an attendant not for employment but simply to assist in activities of daily living, written certification from a doctor or other professional would be appropriate. This is an area where PHAs may choose to expand upon HUD’s standards. For example, a PHA might accept documentation of need for a live-in aide from a non-medical agency that provides services to people with disabilities, such as a Center for Independent Living.

Determining the Residence of the Live-in Aide

HUD regulations seek to distinguish between a household member who would normally be expected to live in the unit and provide supports to a person with a disability – such as a spouse or parent – and an individual who has joined the household solely for purposes of caretaking. Here again, PHAs may want to consider establishing their own standards or policies. A PHA, for example, may want to ask a participant and aide to demonstrate that the provision of care is at an “arms length transaction” or demonstrate that an aide was not a household member prior to becoming the helper. PHA policies might also include a discussion of when a family member would be considered a live-in aide.

Relatives as Live-In Aides

The issue of relatives or family members as live-in aides is one of the most complicated for PHAs to address. Although relatives are not automatically excluded as eligible live-in aides, they must meet the definition stated earlier. It is fairly

² HUD HCVP Guidebook Exhibit 5-5, available online at www.hudclips.org.

clear that a pre-existing household member does not qualify as a live-in aide. It is more complicated when a child moves into a unit to assist an ailing parent or vice versa or when a live-in aide becomes a boyfriend or girlfriend after moving into the unit. Some examples include:

- *Example:* A husband and wife are current participants in the tenant-based HCVP. The husband has a stroke and as a result of the stroke, can no longer walk independently without assistance. The wife **does not qualify** as a live-in aide because she was a member of the household prior to the stroke.
- *Example:* An elderly gentleman has a HCV and resides in a housing unit in the community. He has a stroke and as a result of the stroke, can no longer walk independently without assistance. He hires and pays a woman to live with him to help him with household chores and personal care. She **qualifies** as a live-in aide.
- *Example:* An elderly gentleman has a HCV and resides in a housing unit in the community. He has a stroke and as a result of the stroke, can no longer walk independently without assistance. His nephew comes to live with him to assist him with household chores and personal care. The nephew **may or may not** be a live in aide depending on the PHAs policies (see below).

Some PHAs have developed policies to address these issues and/or create disincentives for relatives to act as live-in aides. For example, as mentioned above, a PHA can establish a policy that requires a HCVP participant to show that the care provided by the relative is at an “arms length transaction.” To show this, the PHA can require the household to certify that:

- The live-in aide is qualified to provide the needed care.
- The live-in aide was not part of the household prior to receiving program assistance.
- There is no other reason for the aide to reside in the unit (i.e. the individual can demonstrate they have a previous residence they left in good standing).
- The aide and the participant will maintain separate finances.

3. Definition of Disabled Household

According to 24 CFR 5.403, for the HCVP, a disabled household is defined as a family whose head, spouse, or sole member is an adult with a disability. It may include two or more adults with disabilities (either related or unrelated) living together, or one or more adults with disabilities living with one or more live-in aides.

This definition clarifies that disabled households with more than one live-in aide are eligible households in the HCVP. In addition, this definition states that disabled households can include unrelated adults with disabilities living together with one or more live-in aides. Some examples of disabled households include:

- *Example:* Two unrelated people with severe physical disabilities apply as a single household for a HCV and are accepted in the program as a household. Each individual has documented the need for a live-in aide. The household will include the two family members and two live-in aides.
- *Example:* The PHA allows one voucher to be used by four unrelated adults with mental illness in a congregate setting. The PHA allows the onsite residential support staff that provides live-in 24-hour care to the tenants to be considered a live-in aide for this disabled household.

According to 24 CFR 5.403, for the HCVP, a disabled household is defined as a family whose head, spouse, or sole member is an adult with a disability. It may include two or more adults with disabilities (either related or unrelated) living together, or one or more adults with disabilities living with one or more live-in aides.

4. Eligibility and Screening of Live-in Aide

APHA may refuse to approve a particular individual as the live-in aide if:

- 1 The person commits fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- 2 The person commits drug-related criminal activity or violent criminal activity; or
- 3 The person currently owes rent or other amounts to the PHA or to another PHA in connection with HCVP or public housing assistance under the 1937 Act.³

The PHA may also withdraw prior approval of a particular live-in aide if the aide engages in any of activities

³ 24 CFR 982.316.

It is important to note that, according to HUD regulations, the income of an approved live-in aide must be excluded when calculating a household's income and determining the total tenant payment and subsidy amount.

described above. The PHA may also establish other reasonable standards for screening live-in aides such as conducting criminal records checks. Other standards the PHA might want to consider include:

- Requiring approval of the live-in aide by the owner of the unit
- Ensuring that the need for and eligibility of a live-in aide is verified annually at recertification

5. Income Exclusions

It is important to note that, according to HUD regulations, the income of an approved live-in aide must be excluded when calculating a household's income and determining the total tenant payment and subsidy amount.⁴ In addition, if the HCVP household is paying the live-in aide directly and receives funds specifically to cover the cost of these services, then this income must be excluded as well.⁵

6. Allowances for Participant's Expenses

As described above, many people who have live-in aides have the services paid for by Medicaid, insurance, or other funding sources. In some instances, however, the HCVP household uses its own funds to pay the salary of the live-in aide. HCVP regulations provide for allowances for expenses related to disability assistance and medical needs. The disability assistance allowance provides for unreimbursed expenses to cover care attendants, including live-in aides, when the aide is necessary to enable a family member (including the household member with a disability) to be employed. The medical expense deduction is permitted only for households in which the head or spouse is elderly or has a disability. Medical expenses are expenses anticipated over the coming year that are not covered by an outside source such as insurance.

Some HCVP disabled households with live-in aides will qualify for one or both of these allowances. The HUD HCVP Guidebook provides clear guidance on calculating these deductions including guidance on the appropriate types of documentation to verify these expenses.

⁴ 24 CFR 5.609 (c)(5); HUD HCVP Guidebook Exhibit 5-2.

⁵ 24 CFR 5.609 (c)(4); HUD HCVP Guidebook Exhibit 5-2.

7. Bedroom Size

HCVP regulations require that a PHA must include any approved live-in aide when determining the family unit size. Some examples include:

- *Example:* A single person with a disability is eligible for a zero- or a one-bedroom unit.
- *Example:* A single person with a disability living with an approved aide who is a single person is eligible for a two-bedroom unit.

PHAs may also want to establish policies regarding the addition of a live-in aide. For example, in order to prevent overcrowding, a PHA could require that a HCVP household move to a larger unit (if needed) when adding a live-in aide to the household.

Other Policies to Consider

Temporary aides

In some instances a HCVP participant may require the services of a live-in aide more quickly than the aide can be approved by the PHA. This might include situations in which a participant has a rapid change in health status or when an existing live-in aide leaves without notice. To accommodate emergency needs, the PHA could consider the emergency aide to be a “visitor” as a reasonable accommodation. Eventually, this individual or another would have to be approved as a live-in aide in accordance with PHA procedures.

Many people who have live-in aides have the services paid for by Medicaid, insurance, or other funding sources. In some instances, however, the HCVP household uses its own funds to pay the salary of the live-in aide. HCVP regulations provide for allowances for expenses related to disability assistance and medical needs.

Summary

- PHAs **must** allow live-in aide as reasonable accommodation if needed.
- PHAs **may** screen live-in aides as they screen other household members.
- PHAs **may** reject a particular individual as a live-in aide based on criminal acts and drug-related activity as well as owing rent any PHA.
- PHAs **must** exclude a live-in aide income when calculating the household's share of the rent.
- PHAs **must** provide a larger bedroom size unit to accommodate a live-in aide, if needed as a reasonable accommodation.
- PHAs **may** establish reasonable policies regarding live-in aides, such as what documentation is needed to approve a relative as a live-in aide.



535 Boylston Street, Suite 1301

Boston MA 02116