



Fair Housing Laws: What You Need to Know A PATH National Teleconference

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Presenters

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Welcome and Introductions

Lynn Aronson

Welcome to today's PATH Teleconference. Our topic is *Fair Housing Laws, What You Need to Know*—a topic that I think is of very great interest and importance to all of our PATH folks, as we try and serve our clients. My name is Lynn Aronson; I'm from Advocates for Human Potential or AHP, as it is sometimes known. Along with folks at Policy Research Associates, we provide technical assistance for the PATH Program. I'll be your moderator for today's presentation.

We are delighted to have with us today, Bonnie Milstein. Bonnie is an attorney and founding partner of Magar & Milstein, a civil rights advocacy law and consulting firm in San Francisco. The firm specializes in affordable housing and disability rights issues. I'm sure that this will be a most informative and helpful call to those of you who want to know more about fair housing laws for your PATH clients.

Just for you to know how we're going to set today up, the presentation will be divided into sections, with a question and answer session after each one. And Bonnie will be touching on the Fair Housing Act, Section 504 and finally the Americans with Disabilities Act or the ADA and how it applies to the PATH clients.

Now I'd like to do a quick introduction of our speaker. Bonnie began her career as a legal service lawyer in 1969, where she practiced both civil and criminal defense law. She joined the ACLU's National Prison Project in 1972, as one of its first lawyers. Four years later she became a supervising attorney in the general counsel's office of the U.S. Department of Health, Education & Welfare.

Bonnie's civil rights work included school desegregation litigation, sex discrimination policy and adoption of the age of discrimination regulations, and enforcement of the first Section 504 regulations. Since 1982 Bonnie has worked on fair housing and disability issues. First at the Center for Law and Social Policy and then at the Mental Health Law

Project, which is now known as the Bazelon Center for Mental Health Law in Washington DC. Bonnie represented more than 75 disability organizations through the Consortium of Citizens with Disabilities and in briefs to the U.S. Supreme Court, with the Departments of Justice, HUD, Labor and Education, and in the drafting and passage of the Fair Housing Amendments Act of 1988, the ADA, and the Civil Rights Restoration Act.

From 1993 to 1994 Bonnie chaired the congressionally created Occupancy Task Force, which recommended effective ways to enforce civil rights laws in public and private housing. From 1994 to 2000 Bonnie directed HUD's enforcement of Section 504, Title 6, and other civil right laws nationwide and later as a community builder for the U.S. Department of Housing & Urban Development in Washington and in San Francisco.

Bonnie has worked recently with the Port of San Francisco on its ADA transition plan, housing opportunities for individuals with disabilities with the San Francisco Redevelopment Agency, the Eden House Corporation, and the Corporation for Supportive Housing. She has authored numerous articles and reports on housing and disability rights law. Ms. Milstein also provides training and materials for consumers, providers, and government agencies throughout the country. Wow! I'd now like to turn the call over to Bonnie.

Bonnie Milstein

Thank you, Lynn. And I'd like to start by saying that I have the utmost respect for anybody who understands Medicaid. I am assuming that all of you have the PowerPoint presentation, and so I am not going to reread everything that's on the PowerPoint. Given our strategy of having me talk for 20 minutes and then breaking for questions, I'm going to try to get through the first 4 pages—well there are a total of 14 pages, so I'm going to try to get through a third of the pages in each segment.

Why Should PATH Providers Know About Fair Housing Laws?

Bonnie Milstein

So the first slide is why should PATH providers know Fair Housing laws? In general PATH recipients, as you know better than I, do not provide housing. But PATH does provide limited housing funds, and so some of you may actually be managing housing. If you are a housing provider, it's critical that you know Fair Housing laws. If you are not a housing provider, you know, because the PATH program relies on a housing first model, that housing is critical to your clients' recovery and well-being. But you also know that your clients have difficulty locating, actually obtaining a lease or a spot in a supportive housing environment. And even after they succeed in getting housing, it's often very difficult for them to keep housing. For all of those issues, from searching to getting, to living in, through eviction, the disability rights laws, and in particular the Fair Housing Act and Section 504 and the American's with Disabilities Act, contain provisions that can help your clients get housing and keep housing.

One of the problems that face people who have serious mental illness and mental illness with co-occurring drug or alcohol or physical or developmental disabilities is that there continues to be serious stigma that results in discrimination against people with mental and physical disabilities. I want to say at the outset that all of the civil rights laws that affect people with disabilities cover both people with mental disabilities as well as physical disabilities. So if someone tells you that the disability discrimination laws cover only physical disabilities, please correct them. That is not correct.

Going to slide 2, I have put together four scenarios that Lynn tells me are, in fact, typical housing scenarios that you either have already faced with your clients or your clients have faced and told you about or that you will shortly face, in the context of trying to find housing or trying to help your clients keep housing. The first is that the PATH provider sends

her client to the public housing agency, to apply for housing. The public housing agency asks the client if she has a disability. The client doesn't know how or whether to answer and leaves. So the question for you then, when your client comes back to you, is what are you supposed to tell your client, what guidance can you give her?

We'll get into this in more detail, later, but I will very quickly mention a couple of facts, important to know, about what housing authorities can ask and why they can ask them. Typically housing authorities and private housing providers and subsidized housing providers may not ask questions about a person's disability. And that's because the civil rights laws prohibit discrimination, on the basis of race, color, national origin, gender, and now disability and familial status.

However, because people with disabilities have been subjected to discrimination, because of the lack of accommodations to them, there are now, as I'm sure you know, several programs that specifically are directed to people with disabilities. Therefore if a housing authority says to an applicant, "We have fully accessible units for people with mobility impairments. Do you need one?" That is an appropriate question.

If a client with mental illness applies to a Housing Authority and the client either says she has a mental disability or she says, "I've been directed to apply for a unit here, because my counselor at the county mental health agency sent me here" or behaves in a way that suggests to the housing authority intake person that the client or applicant may actually have a mental or developmental disability, it is appropriate for the housing authority to say to the client, "We have vouchers in our Section 8 rental program set aside for people with disabilities. Or we have scattered site housing that is specifically set aside for people with disabilities. But we have to be sure that only those who actually have disabilities apply for those vouchers or apply that housing. And so I ask all applicants for public housing if they have disabilities, because those who do may be eligible for the set-aside vouchers or housing."

On a second bullet of this page, the example reads, “the PATH provider sends his client to a privately owned and privately managed apartment building, to answer an ad for a one bedroom apartment. The client is deaf, but has a 10-year-old son who interprets for her. The client and her son try to apply for housing, but the provider says that his insurance will increase if he rents to deaf people, and so of course says, “I cannot rent to you.”

Inherent in this question, of course, is whether it’s appropriate for the housing provider to allow the child to interpret for the client, and we’ll get back to that. But it is illegal, it violates the Federal Fair Housing Act, and it violates every single State fair housing act, for a housing provider who gets no Federal funds or State funds or local funds, as well as housing providers who are subsidized by any political entity, to deny housing to anyone on the basis of their disability. In this case, it’s deafness.

The third scenario on page 4 of the PowerPoint, says the PATH client uses a wheelchair and has a mental illness that he controls successfully with medication, after you have worked hard with him, for the past five years. The only housing that is wheelchair accessible and that is also affordable for this client, that you are able to find, requires the client to participate in services that are not suitable for him.

That situation raises the question of whether housing that is bundled with services, as in supportive housing, for example, can require that tenants participate in the support service program, or whether supportive service programs have to be voluntary, and also have to be open to people who will only take advantage of the housing and not the supportive service program. And the answer to that, like most legal questions, is it depends. But for the most part, services must be voluntary and may not be mandated.

The basic rule that applies in housing, as well as in Fair Housing issues, is that a housing provider must give a housing applicant a lease. And the housing applicant, once she is accepted as a tenant, must comply with the terms of the lease. Leases typically do not include service provisions. They do not give a landlord, who may also be a service provider, the right

to evict or to lockout a client, because of the client refuses to participate in services. As I’m sure you know, there are exceptions to this, but that is the rule.

The fourth bullet says you try to find housing for your client who has both developmental disabilities and a mental illness. The county department of mental health rejects your client’s housing application, because their program serves clients with only mental illness and no additional diagnosis. Again this depends on the particular fact situation that you are confronted with, but generally speaking, this is an illegal practice on the part of the department of mental health.

There are, of course, lots of good arguments, most of them based in financial resources that housing providers, including county providers, rely on to limit the eligibility of applicants in their housing programs. We will talk about the difference between eligibility and selection preferences. But on the whole, and in general, a housing provider may not discriminate on the basis of disability or a combination of disabilities when advertising and accepting applicants into their housing programs.

Section 504

Okay, starting on the next page, what laws apply to these situations? We’re going to talk about three Federal laws. And the first one is Section 504 of the Rehabilitation Act of 1973. I know I’m not going to be able to get through all three of them, because I’m running out of my first 20 minute segment, but let’s at least start with 504.

As some of you may remember, the civil rights demonstrations of the 60s resulted in the 1966 Civil Rights Act that prohibits discrimination on the basis of race, color, national origin, religion, and later gender by any entity that receives Federal financial assistance. The laws in the civil rights act of 1966 did not include housing, because members of Congress, all of whom were men and predominately white men, believed that their constituents wanted them to promote the concept that a man’s home was his castle and that it was inappropriate for the Federal government to

interfere in private property rights. Martin Luther King's advocacy and his assassination in 1968 resulted in Congress moving away from that principle and enacting the Fair Housing Act.

Many of the people who were involved in the 1960's demonstrations, worked in State and Federal legislatures, and their work resulted in the 1973 version of the Rehab Act, which is a law that was originally enacted in 1919, to provide benefits and services to returning World War I veterans, and it gets reenacted every two to four years. In '73 that law was amended and included, for the very first time, civil rights protections for people with disabilities. The language that is used in Section 504 is exactly the same language that was used in the 1966 civil rights laws. And it was intentionally done that way, to demonstrate that the protections of the civil rights laws applied to people with disabilities, as well. So what 504 says is that no entity that receives Federal financial assistance may discriminate against an individual on the basis of his or her handicap.

The law is enforced by all Federal agencies. So on the PowerPoint it says HUD and DOJ enforcement; that's only for housing. Every Federal agency, transportation, education, HHS, the Justice Department, all have their own set of Section 504 regulations that prohibit discrimination on the basis of disability. It is applicable to PATH providers, because PATH is a Federal financial assistance program. So everyone on this call, who works in a program that receives PATH funds, is covered by the rules of Section 504. It also covers subsidized private housing providers, public housing agencies, city, county, State governments and their agencies.

One of the requirements of Section 504 is that every housing program that receives Federal financial assistance must create at least five percent of the total number of their housing units so that they are structurally accessible and fully accessible to people who have mobility impairments. An additional two percent of the units must be outfitted so that they are usable by people who have vision impairments and hearing impairments.

Section 504 Q&A

Bonnie Milstein

All right, the first question that I got on January 9th was "so who does pay for the interpreter, for someone in our housing programs?" The answer to that is, as always, that it depends on the specific fact situation. But if the housing provider receives Federal financial assistance, the housing provider must provide a sign language interpreter or whatever other appropriate method for communicating with a hearing-impaired or deaf applicant for housing or a hearing-impaired or deaf tenant.

Even with housing that does not receive any Federal financial assistance, the Fair Housing Act, which we'll get into as soon as this question period is over, must provide an interpreter for critical interactions with the applicant or tenant. Now there is some dispute over whether or not the private provider, the private unsubsidized provider has to pay for an interpreter, as opposed to just using pen or pencil. There is no dispute that a recipient of Federal funds has to provide one. But on the private unsubsidized provider question, what the Fair Housing Act requires is that housing providers make their programs accessible and usable to people with disabilities. And I interpret that to mean that if the private provider has a rental office and receives notice that someone is going to apply for housing, in order to make that rental office usable by somebody who is deaf or has a hearing impairment, the provider has to provide an interpreter. Of course, it will depend on whether the provider is a large developer, like the Pulte Brothers, or is a small provider with only one four-unit building. So in general, that is the answer to that question.

Caller

I have one quick question, well I don't know if it's going to be quick or not. It's about the difference between support animal services. I work at a human relations commission and we often get a question from housing providers, when we do trainings, about a person who wants to have a support animal, but they don't really have a "disability" that's covered under the law. How should I answer that question?

Bonnie Milstein

Well there are several questions I have about your question. When the provider says the applicant does not have a disability covered under the law, do you have any idea what that means?

Caller

Well let's say—case in point, I have one development; it's not in our jurisdiction, thank goodness. But one person got a support animal, and they had a no pet policy. She got a note from the physician and the physician said she had a disability and so it was okay. So now the housing provider has five or six additional families wanting a support animal. They have gone to the same physician and gotten a letter, when their kids had no record of having a disability beforehand.

Bonnie Milstein

Okay, thank you for elaborating. First of all, as many of you have read in popular magazines, animals do have the capacity to lower people's blood pressure and to help people with depression. All of the disability laws require that people have what I will call long-standing disabilities. That is not a broken leg from a skiing accident. But depression, diabetes, and high blood pressure all qualify as disabilities.

So whereas traditionally people who use service animals—and they are called by a variety of names such as seeing-eye dog, support animals, assistive animals—were people who were blind. And it is pretty well accepted that animals that help people who have vision impairments or who are blind go through a pretty rigorous training system, as do their owners. But because medical research has expanded the role of service animals, there are many more people with many disabilities that are not related to vision who are successfully using service animals and who rely on their service animals.

What the Fair Housing Act requires, and I will go into this more thoroughly when we get to reasonable accommodations, is that the person who is asking for an accommodation, that is a change in the lease. As Shelby said, there's a no pet policy in the housing, and

what the tenant is saying is, "I want a waiver of the no pet policy, so that I can have a service animal. I have a disability, as defined under the disability rights laws," and that the accommodation that is requested is related to the disability, that having the accommodation is necessary, and that it will not cause the housing provider an undo financial or administrative burden, or that it would impose any extraordinary cost. The acronym for that is DANCE.

It is also typical, in a no-pet building, that once somebody obtains a waiver, and obtains this accommodation, that other people on the property will also want to have service animals. The tenant that has an animal, be it a service animal or a non-service animal, is required to comply with the terms of the lease. That is, the animal may not interfere with anyone else's peaceful enjoyment of their property and that includes the owner's responsibility to clean up after the animal and not let it frighten or bark in the middle of the night. I'm going on at some length about service animals because this is a very frequent question.

Lynn Aronson

Okay. We do have one more Internet question, so let me read that to you, Bonnie. "Regarding your example, suppose that the program targets people with HIV/AIDS, using HOPWA or maybe even Shelter Plus Care, an applicant is HIV positive, but also has a major mental illness. The program denies, based on concerns regarding ability to meet the mental health needs of the individual. In general, is this also illegal? How dependent are these cases on the facts of the situation? How much can such concerns factor into suitability screening, above and beyond eligibility?"

Bonnie Milstein

Excellent question. The general rule is that the HOPWA Program may not deny housing to the client you've described. Having said that, if the client requires mental health services, in addition to HOPWA housing, and can obtain those services outside of the housing and, most important, can comply with the terms of the lease in the HOPWA housing, then the HOPWA provider must admit that client.

How dependent are these questions on the unique facts of individual's cases? Very! It is absolutely critical to know the specific facts of the case before giving an answer that applies to that particular case. So my answer is in general, the HOPWA provider must provide housing and the tenant must comply with the terms of the lease. I hope that at least gives you a start.

Fair Housing

Bonnie Milstein

Okay. We are on page 6 of the laws. The Fair Housing Act of 1968, as I said, was enacted to prohibit segregation in housing. And the types of segregation it prohibited were segregation based on race, color, national origin, religion, and gender. The reason that the Fair Housing law was amended in 1988 was because 504 was enacted after the first Fair Housing Act and had been prohibiting discrimination against persons with disabilities in all aspects of American life that received Federal financial assistance. The Fair Housing Act, unlike the '66 Civil Rights Act, is not tied to Federal funding. The Fair Housing Act affects all housing, with minor exception, whether or not the housing receives any Federal funding or any other kind of subsidy.

So the Fair Housing Amendments Act of 1988 continues that coverage and includes people with disabilities, mental and physical disabilities, families with children, and almost every State in the country has enacted equivalent State fair housing laws. There are also many cities and counties that have enacted laws that cover fair housing, which is important for you to know, because it's not always the most efficient route to take, to contact the Department of Justice or the Department of Housing and Urban Development. But it may be very effective to contact your local human rights commission or your local fair housing enforcement agency, if you have questions or if you think you have found a case of discrimination and you want an agency to pursue it.

The next slide, slide number 7, shows what the Fair Housing Act Prohibits. These are types of discrimination that have occurred and that,

unfortunately, are still occurring: refusal to sell, rent, negotiate, or otherwise make unavailable or deny housing to anyone based on their disability or imposing different terms and conditions or different facilities. So, for example, if the housing authority says, "Oh yes, we can house you; we know you have a serious mental illness; we don't have any problem with that; we just send all of those kinds of people to this particular development, because there are services over there," that is illegal.

The third bullet point says "discriminatory advertising notices and statements." Typically that's advertising that shows only white adults, for example. That has historically been identified as discriminatory advertising. But a discriminatory notice that would apply to PATH clients, would be advertising that says, as I said in the example before, "We have housing available to everybody, and wonderful housing for people with physical disabilities at this particular site, or people with mental illness, this particular floor of this particular building." That is discriminatory advertising and discriminatory housing.

Denial of availability. We all know this one where Fair Housing groups do testing, they send out matched pairs of people who have Latino backgrounds and people with white backgrounds and people who use wheelchairs. They send them out with all the same financial qualifications and family histories and the provider will say to the white applicant, "Oh yes, we have two units available." They'll say to the Latino applicant, "We don't have anything available right now, why don't you call back?" And they'll say to the wheelchair user, "Oh honey, why don't you go to that nursing home around the corner." That's a denial of availability in violation of the Fair Housing Act.

It is illegal to coerce, intimidate, threaten, or interfere with a tenant's or an applicants housing rights. I'm sure many of you who have had clients, who have been housed, who will come back to you and say, "The property manager is mean to me." That may or may not be true, but it is definitely worth investigating. It is also important to investigate the claims of clients who say, "The property manager insists that I keep the front door to my apartment open. He says that he knows that I have a mental illness or that this housing

is available only to people with mental illness and he tells everybody that we have to keep our front doors open, so that he can keep an eye on us, both for our safety and the safety of other tenants.” That’s intimidation, and it is also an interference with your client’s rights, that is a violation of Federal, State and local law.

If you look at the next PowerPoint slide, number 8, the Fair Housing Act when it was originally enacted in ’68, of course, did not include people with disabilities. When Congress enacted the Fair Housing Act Amendments in 1988, everyone understood that it would not suffice to simply add people with disabilities or the basis of handicap, to the list of protected groups, because for people with disabilities, more is necessary. It is not sufficient to post a sign at the bottom of a flight of stairs saying, “Our housing accepts everybody, regardless of their disability,” because of course wheelchair users will not be able to climb steps and get into the housing unit.

So the 1988 Fair Housing law has specific additional requirements to protect the rights of people with mental and physical disabilities. The law includes the requirement that housing providers, both private and public, that is subsidized housing providers, must allow modifications to be made to their property, for people with physical and mental disabilities. They must provide reasonable accommodations, as we discussed in the contest of support animals. They must, if they are building their multi-family housing for first occupancy after 1991, ensure that all units in an elevator building be accessible to people with disabilities. That’s 100 percent of the units must be accessible to wheelchairs.

If the building was built before 1991 and a tenant asks for permission to add grab bars to the bathroom or to insert visual smoke alarms instead of oral or audible smoke alarms, the housing provider must allow that. If you have a chance to look at the Fair Housing Act regulations that HUD published, one of the examples they use is the family that wants to widen the door to the bathroom, because one of the children in the family uses a wheelchair. Not only must the housing provider permit the tenant to make that change, and if it is not a subsidized provider, it is at the tenant’s

expense, but it cannot require the tenant to restore the property to its previous condition, that is back to a narrow door.

Typically, it is illegal to inquire whether an applicant has a disability or not. On the other hand, if there are units or services that are specifically available to people with disabilities, the housing provider must tell all applicants, whether or not they have disabilities, that these units are available. And for eligibility purposes, they may ask tenants who have disabilities and who want to take advantage of these units, questions about their disabilities. That’s really too broad a way of saying it. What they may ask, is that the applicant provide a letter from the applicant’s health provider that they need the particular accessibility or programmatic housing that is available to people with disabilities.

When the 1988 amendments were being debated on Capitol Hill, there were, of course, staff members and members of Congress who unfortunately associate mental illness with violence, not knowing the statistics that people with mental illness are more often the victims of crime than the perpetrators of crime. But of course members of Congress and their staff watch movies, and so they believe that it is people with mental illness who cause crimes. And so there is a provision in the Fair Housing Act that says that a housing provider is not required to accept a tenant whose tenancy will pose a direct threat to the property or lives of anybody else associated with the housing. Direct threat is a very specific term that is legally defined in a very particular way. So simply having a mental illness or any other kind of disability does not mean that the tenant is going to pose a direct threat or that his tenancy, more specifically, will pose a direct threat. We don’t have time to get into that, but it is an issue that does arise.

I added zoning issues, because many PATH providers are successful in finding houses for their clients in group homes or scattered site homes or homes that come with both service providers and housing. For many people with disabilities, being located in a safe neighborhood is very important. There is a specific program called Oxford House, which focuses on clients with alcohol and drug addiction histories,

and their program results in rental of multi-bedroom units in very safe units. Multi-bedroom housing in safe neighborhoods are typically in very wealthy neighborhoods. They are the neighborhoods where the mayor and the city council members are going to live, and they sometimes find it offensive to have housing for drug and alcohol abusers, former abusers, or people with a history of alcohol and drug abuse, living on their block. And they will try to strongly recommend to planning agencies and zoning agencies that these types of housing not be given a permit to open in their neighborhood. That is illegal and is prohibited by the Fair Housing Act. There is case law going back to 1989, and it is an issue that the U.S. Justice Department, even the current Justice Department, will take very seriously and will enforce.

The ADA

I have just a couple more minutes before we start questions again. So turn to the next PowerPoint. And this is the Americans with Disabilities Act of 1990. I included the date, because the ADA, unlike any other civil rights law that we have ever enacted for this country, has received much more publicity. It received much more publicity and continues to receive much more publicity, because the civil rights advocates who worked on the ADA also, for the most part, worked on other civil rights laws, and it became very clear that without funding from Congress to advertise the existence of the Americans with Disabilities Act, and to continue to provide money to produce publications and to fund technical assistance providers across the country, the ADA was not going to be enforced to the extent that it needed to be.

And so while lots of people may have heard of the Fair Housing Act and fewer people have heard of Section 504, the civil rights law that they know best is the ADA. It has also been in the news a lot. Lots of people with disabilities have brought ADA lawsuits and lots of business people have complained that it's an unfair law, it imposes financial burdens that should be somebody else's responsibility, but not theirs.

What the ADA does is it expands the 1966 Civil Rights Act that prohibited discrimination by public accommodations. Public accommodations is the term used for the restaurants, for example, in the South where there were sit-ins because the restaurants refused to serve African American customers. Public accommodations are public and private agencies: beauty salons, doctor's offices, PATH offices, rental offices, sports stadiums, movie theaters, everything, every kind of entity that exists in both the services and the commercial enterprises that we know of as mainstream America. So what the ADA does is to add discrimination on the basis of disability to the prohibited discrimination on the basis of race, color, national origin, gender, and religion that is in the 1966 law.

Why is the ADA important to PATH providers? Because PATH offices have to be structurally accessible to people with disabilities, because PATH providers have responsibility for communicating with hearing- and vision-impaired applicants and clients, and because clients of PATH providers are denied access to movie theaters or dental offices or bookstores or housing properties, and the PATH provider should be aware of their client's rights. It is different from Section 504 in that it is much broader than Section 504 and it supplements 504. Well, let me say it another way: 504 relies on receipt of Federal financial assistance to be applicable; the ADA covers government entities and recipients of State and local and county funds, as well as private providers.

ADA differs from the Fair Housing Act, by not specifically covering housing. There is a statement in the ADA legislation that says, "We just enacted the Fair Housing Act of 1988, so we're not going to replicate what we did for the Fair Housing Act." However, if the housing provider has a commercial service, for example if there is a rental office, then the rental office is covered by both the ADA and the Fair Housing Act. If the housing provider runs a computer program or an after-school homework program for the neighborhood, the ADA requires, where the Fair Housing Act may not, that the services be available to people with disabilities.

Fair Housing and ADA Q&A

Bonnie Milstein

Does the ADA apply to PATH providers? It does, as I just said. Does the ADA apply to private housing providers? It does through their rental offices, as I just said. To public housing authorities? Yes. To subsidized, privately owned providers? Yes.

Public accommodations, such as privately owned housing, must meet a standard of readily achievable accessibility. This typically applies to physical accessibility, rather than to the reasonable accommodation or programmatic accessibility that we talked about before in the context of service animals. A readily achievable standard is not a particularly high standard to meet. It was selected, rather than a more stringent accessibility standard, because it was important to get the ADA out of Congress. New construction, however, is required to meet a stricter accessibility requirement.

Finally, the last bullet on this page, the 504/ADA standard for government agencies, is one of program accessibility. And what that means is that in buildings built before 1991, in addition to the five percent/two percent accessibility, there must be accessibility that makes the program, as a whole, accessible to people with disabilities. So that means that if you have a client who uses a wheelchair, for example, and has a mental illness, and the client applies to public housing and the public housing authority says, “I’m sorry, all of our 5-percent units or our 504 units or our ADA units, whatever they call them, are filled, we cannot house you,” you and your client should know that the housing authority is required to place people who need the features of an accessible unit into that unit first. And that means that when one of the units becomes available, and your client has signed up on the housing authority on the waiting list, and your client is number 2073 on the waiting list, the housing authority is required to go through its waiting list and reach the first family that needs those features of accessibility, even if it is the 2073rd person on that waiting list, and offer that unit to your client. I think my time is up again.

Lynn Aronson

It is, perfect timing, Bonnie. We are going to open for questions again. While we’re waiting for phone questions, I have several that have come in on the Internet, so let me give you some of those while we’re waiting, Bonnie. The first one says, “We have a 12-unit housing complex opening soon in our rural farming college community that is quite controversial. It is Section 8 housing, only for persons with developmental disabilities. Many persons in the DD community are upset, because they believe this is a move to segregate them to a specific area. However, others in the community are, of course, all for it. This seems close to some of your scenarios. It seems that it would generally not be legal. Your thoughts?”

Bonnie Milstein

Great question. It can be legal; it is segregated housing. I need to know many more facts, but let me just tell you my thoughts. First of all, while all of the disability rights and civil rights laws prohibit segregation, the disability rights laws, and in fact Title 6 in the Civil Rights Law, generally do permit housing for a particular population if it is necessary to provide housing to a group that has previously been denied housing. You say this is in a rural community. I’m guessing therefore that there is not a lot of multi-family housing and that this 12 unit building may be the first or among few multi-family units. And that suggests that people with disabilities in the rural community have not been particularly successful at getting housing.

You also say it’s Section 8 housing, and I’m assuming by that, that the rents are subsidized by Section 8. That makes the fact that it is limited to people with developmental disabilities questionable. If it is funded with Section 8 funds, so that the rents are subsidized, the general rule and I emphasize, general, again, is that the housing must be open to everybody who is low income and needs subsidized housing. It is possible, if the housing receives HOME funds, in addition to the Section 8 funding, that there is an argument to be made that the housing may be limited to people with disabilities. But again, it must be

open to people with physical and mental disabilities. You also say it is open to people with developmental disabilities. I would have to know a lot more before telling you what I thought about its limitations to one diagnosis.

In addition, many people mean or intend mental retardation when they say developmental disability, and they really don't mean to include people with cerebral palsy, for example, or people who have developmental illness before they've reached the age of 22, which is the definition of developmental disability. So that too raises more questions. I appreciate your question. It's a very important one, and I can recommend lots of people to whom you might want to turn for help in figuring out whether this is good for the community or not so good for the community.

Lynn Aronson

Thank you. I have another e-mail question. It says, "How can we reconcile the Shelter Plus Care Program's requirement, that services must be provided with our philosophy that services should be voluntary?" Many providers insist that this means the tenants are required to participate in services as a condition of their tenancy." And then she's got another question attached to it, that goes right along with it and it says, "What do you think of the practice of adding a lease addendum that requires participation in services?"

Bonnie Milstein

Section 504 prohibits discrimination on the basis of disability, and it prohibits diagnosis-specific housing and a requirement that tenants participate in services programs, unless Congress enacts a law that permits these practices. And Shelter Plus Care is exactly that kind of law. So I very much appreciate you raising this issue, Sue. The Shelter Plus Care legislation says that if you want Shelter Plus Care money, you must provide services with your housing and you may require your tenants to participate in your services. Having said that, it is also true that the services must meet the needs of the tenants; so that says something about the application procedure, as well as the management

procedure, in Shelter Plus Care housing. Both issues that we don't have nearly enough time to go into.

On your attached question, about appending a lease requirement that the tenant participate in the program if the tenant wants to be housed, lots of providers do that. It's not necessarily legal, and lots of tenants and their support service providers, like PATH providers, do not want them to have to participate in the services provided onsite, believing that services provided offsite will serve the client better. But the truth is that we have not had a real affordable housing program since Jimmy Carter was president. And all of you, and all of your clients, are and have been facing, a monumental dearth of affordable housing and a bigger lack of affordable, accessible housing. So I have worked with legal services lawyers who have said to me, "My client is going to be evicted. Shall I recommend that the client sign a services addendum to his lease, because the landlord won't let my client stay in her housing unless she agrees to participate in a mental health program or in a particular mental health program?" And the answer to that is that it's really up to the client, although a choice between homelessness and housing with required services is really not much of a choice. So you do what you have to do. Your clients do what they have to do. And the civil rights laws try to provide some ethics and some boundaries to what service providers and housing providers can require and courts can require. But the bottom line is that if your client chooses, or chooses is the wrong word, prefers to be housed rather than be homeless, she may have to sign an addendum saying that she will participate in services, if that's the only way that she can keep the only available housing in the community.

Housing Programs and Resources

Bonnie Milstein

Then the next PowerPoint, number 11, talks about the types of housing programs that there are. And I am assuming that the majority of people on this line are not housing providers.

Lynn Aronson

That would be true.

Bonnie Milstein

Okay. So, in the same way that Medicaid laws and Social Security laws have been developed over the last several decades, incrementally, the same is true for housing programs and housing laws. What I've listed on this particular PowerPoint that I've titled Funding Requirements, which really should say Housing Programs, are some different types of housing programs that provide housing for people with disabilities.

The McKinney Act Programs are those that are directed in particular to homeless populations and to people with mental and physical disabilities. They all have to meet 504 requirements, Fair Housing requirements, ADA requirements, but they do permit housing providers to serve people with a particular diagnosis.

The Section 811 program was created in the early 90s, specifically as a result of the lack of affordable housing funding that was coming to us from Congress. Ever since the 50s, elders and people with disabilities have shared the same housing programs. The most widely known of those is the Section 202 program. But as the demographics of our country's population have shifted, with the baby boomers becoming older, older populations started complaining about people with mental illness and physical disabilities living in their housing. That is Section 202 has generally been known as housing for seniors, even though that's not accurate.

And so in the early 90s, Congress ended the ability of non-elderly people from living in 202 housing, unless they were already living there, and created a separate Section 811 program. Several housing and disability advocates thought this would be a terrible idea, because being attached to a seniors program, meant that the program would continue to be funded, because people who are older tend to vote. And sure enough, as soon as people with disabilities were cut out of the 202 program, the funding for the 811

program, which originally was promised not to be equivalent to the 202 program, but at least to satisfy the need, dropped precipitously. So there is Section 811 money that does produce housing for people with disabilities. Some of it is connected with services. The Section 811 rule is that the services must be voluntary and that the housing must be open to people with all disabilities and may not be limited to people with a particular diagnosis.

HOPWA stands for Housing Opportunities for People with AIDS and is the first of the congressional enactments that limit housing to a particular diagnosis. This, of course, is housing for people with HIV/AIDS.

Section 8 property-based rental subsidies are typically managed by the local housing authority, as are the tenant-based rental subsidies. The differences between these two programs are that the property-based subsidies mean that the subsidy, like the one available to the 12-unit property opening soon in a rural community, has the subsidy attached to it. So the 12 lucky families, who get to move into that building, will have their rent subsidized. If they want to move to another building, another property, they have to find another one that has its own subsidy if they need affordable housing or they have to apply to their local housing agency to have their own Section 8 subsidy, which they carry with them from property to property. I'm sure you won't be surprised, but HUD has, in this administration, reduced the recommendation to Congress, and Congress has reduced the amount of funding for tenant-based rental subsidies.

Finally, one of the most successful affordable housing programs that Congress has enacted, that is a broad-based affordable housing program, is the Low-Income Housing Tax Credit Program (LIHTC). This is a program that takes advantage of capitalism at its best. Successful companies, both public and private, have to pay taxes and have, sometimes, considerable tax burdens. They can ease their own tax burdens by buying low-income housing tax credits. So for example, Google, which has been phenomenally successful, has to pay taxes. If it has to pay, let's say, \$100 million in taxes this year and it buys \$10 million of low-income housing tax credits, it has automatically reduced its tax burden down to \$90 million. Those

\$10 million in tax credits can then be used by housing providers, affordable housing developers rather, to develop housing for PATH clients, who are typically very low-income people.

It is not on the slide, but the HOME program, which is a program managed by HUD, is a program that subsidizes many properties in which your clients live or would like to live and the HOME program does come with a legislative provision that allows HOME-subsidized properties to be disability specific and sometimes diagnosis specific.

If you turn to the next page, which I have titled, “Knotty Questions,” there are several questions here that we don’t have time to answer. But they raise the issues of the difference between eligibility and selection preferences. So for example, the first bullet says, “May a housing provider limit eligibility to people with disabilities?” Well now you know that some housing providers may, if they get HOME funds or have Section 811 properties, limit their eligibility requirements to people with disabilities. But the next question is, “May they limit them to a particular diagnosis?” And if it’s an 811 program, typically they cannot. But they may establish a selection preference, which the 12-unit rural property may have done. And then it becomes a marketing question, as to whether or not the building can fill itself with the kinds of tenants it thinks either need housing the most or that the provider is most comfortable in serving.

So for example, out here in California, in the city of Fremont, the city and a number of providers got together to create what I am told is only the second assistive—I’m not sure it’s assistive living, but it is a senior housing program for seniors who are deaf or hard of hearing. They hired architects to make the housing more visually accessible than senior housing sometimes is. But HUD would not allow the housing provider to limit access or eligibility for the housing, to deaf seniors only. And so the current tenant mix in the building (and of course it was immediately overwhelmed with applications), is two-thirds people who are deaf or hard of hearing, and one third seniors who are able to hear. When I visited the housing, it did indeed have great visual lines of site, the elevator has a wall that is all windows, so that no one who was stuck

in the elevator is in a closed room and can bang on the window wall and sign to people outside to get help. And the property is very popular, with all elders, as well as elders with hearing difficulties.

This is the fourth bullet on this slide: “May a housing provider restrict physically-accessible units to tenants who need the accessibility features?” Not only may a housing provider do that, but a housing provider must do that, if the housing provider is subsidized with any political funding.

I’m skipping past the next slide, which is about Olmstead, to the slide that says, Resources. Because when this call ends at 12:30, I want you not only to be able to pepper Lynn with questions, but you should also know about the Technical Assistance Collaborative (TAC), which I’ve spelled wrong, but the URL is correct for their Web site, the Corporation for Supportive Housing, your local Independent Living Centers, and State Protection and Advocacy Offices.

I will just take one minute to describe each of these. TAC, the Technical Assistance Collaborative, specializes in providing both Medicaid assistance and housing assistance, to people around the country. Their publication, *Opening Doors*, is bimonthly. If you want to know which housing authorities or whether the housing authority in your community has vouchers that are designed specifically for people with physical and mental disabilities, you can find them on the HUD Web site if you have enough hours, or you can go directly to the TAC Web site, click on housing and find the *Opening Doors* publication that lists the housing authorities that have those vouchers. Unfortunately many housing authorities did not restrict their use to people with disabilities, that’s illegal. So with the right list, you can at least talk to your housing authorities about getting vouchers for your clients.

The Corporation for Supportive Housing has been in business for 15 years, I think. On their Web site, under publications, you will find a publication called *Between the Lines*. It’s a Q&A format approved by HUD, and it will answer many of the questions that I have tried to answer today, and that you have raised.

If you do not yet have a relationship with your local Independent Living Center or know where your Independent Living Center is, go to the NCIL Web site, find it, call them up, go over, introduce yourselves, and you will find a resource of people who have disabilities, mental as well as physical, who can be of enormous assistance to you and your work with your clients.

And finally, the State Protection and Advocacy offices are essentially legal services offices that focus solely on people with disabilities, mental and physical. Some States have P&A offices that do not do very much in housing. But the ones that do, generally, do terrific jobs. So I recommend all of these to you.

Final Q&A

Lynn Aronson

Okay. We have at least one more question on the Web and then I know, Bonnie, you also had a couple of questions. In the meantime I'll ask the question I have here, "Realizing that private landlords with no Federal funding, have the right to not accept Section 8 vouchers, could a person with a voucher, who has a disability, request that a private landlord, who has a no voucher policy, accept their voucher as a reasonable accommodation?"

Bonnie Milstein

I would certainly try. And in California, the State Fair Housing Law has been amended to prohibit discrimination on the basis of source of income. So people are trying to use that provision to get private providers to take Section 8 vouchers, but generally it's a losing proposition. Because in order to accept a Section 8 voucher, the landlord also has to agree to work with the local housing authority. And even when the housing authority is extraordinarily well managed and efficient, lots of housing providers just don't want to get embroiled in bureaucracies. And housing, in many communities is so tight, that housing providers don't have to. But I would try.

Caller

Okay, the question is, if I have a private residence and it could be possibly turned into a multi-unit facility, it's an old Victorian home, would I be required to install an elevator or some type of lift if somebody came to me and chose to rent my property?

Bonnie Milstein

No, you would not, unless the Victorian was built, well even if the Victorian was built after '91, but most Victorians that I know were built much earlier than '91. So your property is an existing property, and it would be unreasonable, it would pose an enormous cost on you to have to install an elevator.

If you have an applicant that has mobility impairments and wants to install a lift, a chairlift, well most Victorians that I know have stairs up to the front stairs, does yours?

Caller

Yes, a wraparound porch and two levels.

Bonnie Milstein

Right. The closer question is if an applicant wants you to install a chairlift going up to the front door, I suspect that you would not have to. The next question from the tenant might be, well if I can find somebody to pay for it, will you let me install a chairlift? So assuming that the stairs are wide enough, so that people climbing up and down the stairs won't have their ability to climb interfered with by the chairlift and lots of other considerations are resolved, it's questionable as to whether or not you would have to allow an applicant to install, at her own expense, a chairlift. If she wants to make a change to the interior of her apartment, if for example, she can get up and down the stairs, but once in her apartment, she is more comfortable using a wheelchair and wants to lower the kitchen cabinets or install a stove that has the knobs at the front of the stove instead of at the back of the stove and she wants to do that at her expense, you're probably likely to have to give her permission to do that as a reasonable accommodation.

Caller

And then she is not responsible to return that to its original condition, after she leaves, is that correct?

Bonnie Milstein

Well it depends, again, if you want the chairlift removed and whatever nails and hinges are attached to your stairs and if your stairs have been damaged because of the addition of the chairlift, you can, in fact, ask that she restore the stairs to their original condition. And you can ask that she create an escrow account with the amount of money that it would cost to your stairs to their original condition, before she has the work done. And you can ask for the right of approval for the contractors who are going to do the work.

Bonnie Milstein

Okay, let's see if I can do one question that we haven't covered: "I use a wheelchair, and the contractors in the house that I was going to move into were installing new shelves but I couldn't reach any of them. Despite asking them to lower them, they refused." Obviously that's illegal, it's new construction. If you manage to get involved in the building of a house before it's built, and you're going to live there as a tenant, then you need to talk to the owner, and the owner must allow you to install shelves that can be put on tracks that can be lowered to a height you need.

One more, "My handicap parking space was flooded and covered with ice in the winter, but management refuses to correct the problem." That's obviously illegal for the management to refuse to correct the problem. We'd have to know more about the specific facts of the situation, but the Fair Housing Act for housing and the ADA for public accommodations require that the facilities and the programs have to be accessible to people with disabilities. So completely apart from property management rules, which would impose liability on property owners for allowing dangerous conditions to persist, the civil rights laws require that they be corrected, lest the ice create an impassible barrier thereby preventing people with

disabilities from participating in the program or the benefits or the services.

Conclusion

Lynn Aronson

Okay, well I'm sorry to say that we are just about out of time. So we will need to conclude today's program. I really want to remind everyone to please complete and return the evaluation form and to visit the PATH Web site for other resources, www.pathprogam.samhsa.gov. And of course I really want to thank Bonnie for her excellent presentation. We always come away with so much knowledge when Bonnie talks with us.

I want to remind everyone to watch for announcements of future teleconferences, which also will be sent out on the PATH Listserv. And with that, our call is concluded. Thank you all for participating and have a great day. Goodbye, everybody.

Bonnie Milstein

Goodbye. ■