

WHAT TO DO ABOUT CAREGIVERS?

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Many housing providers find it a challenge to work through the various issues that arise when a resident obtains a caregiver (personal care attendant), who may or may not live with the resident full time. Here are some fair housing tips to assist property management.

Do we have to allow a resident to have a caregiver live with them?

You can ask the applicant or resident to document that he or she needs a live-in caregiver. You cannot refuse to allow the resident to have a live-in caregiver if it is essential to accommodate the resident's disability and to assist the tenancy.

Do we have the right to choose who an applicant or resident's caregiver will be?

No.

Can management require disability caregivers to be screened like applicants? What if they refuse?

You can require live-in caregivers to undergo some screening. If you do screen live-in caregivers, only screen them for relevant tenancy behavior (for example, if the caregiver doesn't pay rent, don't screen for the ability to pay rent). If you screen live-in caregivers, you must screen all live-in providers for all residents, including child care people and housekeepers. You should permit a resident who has an immediate need for a caregiver to hire him, and then screen the caregiver following the hiring. You can deny residency to anyone who refuses to be screened.

Note that a night caregiver who does not live in the unit (keep belongings there) is not a live-in caregiver. You cannot screen non-live-in caregivers unless you conduct screening of everyone who works for residents or who works in the building. Even then, such a policy may likely affect people with disabilities more than others, which might constitute a discriminatory disparate impact on them.

Can we check the criminal record of a caregiver? If the screening shows that a live-in caregiver has a criminal background, can management deny them housing or make the caregiver (not the resident) move out?

State and federal discrimination laws don't address this (it varies state to state). It may depend on whether the caregiver is live-in or comes in periodically to provide services. If you check the criminal record of applicants, you likely can check for criminal records for live-in caregivers, and deny them permission to live-in with the disabled resident if the background check indicates a criminal history for which you would not accept a tenant.

Because you cannot single out only caregivers for criminal background checks, you should only screen a non-live-in caregiver for criminal records if you otherwise check the records of all individuals who are regularly employed by residents (such as cleaning services).

Is the resident responsible for the caregiver's behavior when the caregiver is in the complex?

Yes, disabled resident is responsible for the caregiver's behavior while on the premises. If the resident knows, or has reason to know, that the caregiver is engaging in wrongdoing, the resident has an obligation to do something about it. If the resident does nothing, you can take action against the resident, just as you would if they had a misbehaving guest.

Should live-in caregivers sign a Live-In Caregiver Agreement?

No. Remember that the resident is responsible for the behavior of the caregiver. If the resident is aware that the caregiver has broken rules, the resident must do something about it. If not, you can take appropriate action against the resident.

Should live-in caregivers be included on the lease? Should we list them as Occupants, but not as Lessees?

If you wish to include a live-in caregiver on the lease, it would be as an occupant and not a lessee, unless the caregiver actually has rent-paying responsibility.

Are live-in caregivers included in our occupancy maximums?

Yes. Occupancy is determined by the actual number of people living in the unit.

What happens if a disabled resident moves out and the caregiver refuses to move?

In some cases, a caregiver may wish to remain as a resident after the disabled resident vacates. If the caregiver is eligible for tenancy, you can request a rental application and screening, just as for any new applicant. If the caregiver refuses to move or to apply for tenancy, you can follow the state Residential Landlord-Tenant Act process for eviction if necessary. The state Attorney General has a helpful summary of the Act online at www.atg.wa.gov/consumer/lt.