

NATIONAL
HEALTH CARE
for the
HOMELESS
COUNCIL

To: HCH Community

Date: December 5, 2016

Subject: [Final HUD Rule: Instituting Smoke-Free Public Housing](#)
24 CFR Parts 965 and 966

Major Change: Starting on February 3, 2017, all Public Housing Authorities (PHAs) will have 18 months to “design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas...in which public housing is located.” **All PHAs must be in full compliance by July 30, 2018.** Over 700,000 units would be affected by this rule.

Rule Provisions: The final rule applies to all public housing units, to include hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures. It also includes outdoor areas within 25 feet from public housing and administrative office buildings where public housing is located. **The policy applies to all tobacco products**, which includes water pipes (also known as “hookahs”) *but does not include* electronic nicotine delivery systems (also known as “e-cigarettes”).

PHAs *may* limit smoking to designated smoking areas on public housing grounds to accommodate smokers and *may* include partially enclosed structures, but these must be outside the 25-foot perimeter. PHAs *may* also create additional smoke-free areas outside these areas, or make the entire grounds smoke-free. PHAs are required to amend all PHA plans and tenant leases in accordance with this policy.

Rationale: HUD cites both public and individual health as well as cost containment and safety as the rationale for moving to a smoke-free environment in its public housing units. To date, over 600 PHAs have implemented smoke-free policies in at least one of their buildings as part of a voluntary effort.

Council Position: As health care providers, the National HCH Council supports smoke-free environments and the reduction of first- and second-hand smoke, especially for vulnerable populations with chronic health care conditions. As advocates for vulnerable people, we would be concerned over any evictions that could occur as a result of an addiction to nicotine. In response to this final rule, *we support rigorous efforts at the local level to connect people who smoke to no-cost smoking cessation services available in the community (and at health centers), and to take all possible precautions to avoid eviction as a sanction for smoking violations to avoid entry into homelessness. Because many of the implementation details will be determined by PHAs (to include connecting to health services), we encourage strong consumer/resident participation in providing input and shaping local policy.*

Rule Notes: HUD makes the following comments within its rule, although these provisions are not part of the regulatory language:

- **Resident burden:** HUD’s rule does not prohibit individual residents from smoking, or from leasing to persons who smoke; however, HUD notes there is not “right” to smoke in a rental home and smokers are not a protected sub-class under anti-discrimination laws. It also notes that the rule does not ban any smoking by public housing residents, but that they must be 25 feet away from buildings to do so.
- **Smoking cessation:** HUD is not directly providing cessation assistance, but is making resources available for those interested in stopping smoking (such as a quitline and educational materials for housing managers and residents to link them to smoking cessation services, such as those at community health centers). HUD is emphasizing the partnerships available in local communities to link people who want to quit smoking to health care resources.
- **Enforcement:** Responding to concerns about the use of eviction as an enforcement mechanism, HUD notes that *resident engagement is required to develop the plan for implementation and PHAs are required to conduct public meetings* in accordance with standard PHA amendment procedures. PHAs are also encouraged to obtain Board approval when creating their individual smoke-free policies. PHAs must ensure due process when enforcing a lease, and residents retain their right to an informal or formal hearing before tenancy is terminated. HUD specifically indicates “termination of assistance for a single incident of smoking, in violation of a smoke-free policy, is not grounds for eviction.” While not outlining the specific approach, HUD is encouraging graduated enforcement that includes “escalating warnings with documentation to the tenant file” and cites best practices regarding smoke-free implementation and enforcement based on the experience of other PHAs who have already gone smoke-free.
- **Expansion of Applicability:** Because this rule only applies to public housing and not to other types of HUD-financed housing (e.g., mixed income, Section 8, etc.), *HUD intends to issue comments in the future related to requiring smoke-free policies in other types of programs/properties*. Private owners and PHAs continue to have the option to implement smoke-free policies absent federal rules on this issue.
- **Implementation:** In response to concerns about how residents would be included in the process, HUD believes the 18-month timeframe allows space to include resident councils, start cessation programs, post notices, and disseminate information. Because this is a significant amendment or modification to the PHA Plan, it *requires* PHAs to conduct public meetings and “consult with resident advisory boards to assist with and make recommendations for the PHA plan.” HUD is strongly encouraging PHAs to post signs related to the new smoke-free policy, and to post these in multiple languages if appropriate. PHAs are not required to construct smoking shelters or designated smoking areas.
- **Other objections:** PHAs “may not treat tenants who smoke punitively in their implementation of this regulation by, for example, requiring a higher security deposit from tenants who smoke;” however, residents can be charged for property damage that is beyond normal wear and tear.

The final HUD rule can be located at: <https://www.federalregister.gov/documents/2016/12/05/2016-28986/instituting-smoke-free-public-housing>.

HUD Resources for Best Practices on moving to a smoke-free environment are found at: <http://portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1>