

**GOING SMOKEFREE
IN
MULTI-UNIT HOUSING**



GASP

**Supportive Housing Association of NJ
Presentation
March 5, 2014**

GASP Contact Information:

Presenter:

Cara Ann Murphy, Esq. (Program and Policy Attorney)

(908) 273-9368 office

7 Cedar Street, Suite A, Summit, NJ 07901, www.njgasp.org

Co-Authors:

Karen Blumenfeld, Esq. (Executive Director)

Cara Ann Murphy, Esq. (Program and Policy Attorney)

Alan Kantz (Program Manager)

Important: Please read Disclosures and Disclaimers that apply to this presentation (see end slides). The information in this Powerpoint is not intended as nor to be construed, or used, as legal advice, and should not be used to replace the advice of your legal counsel.

Why Smokefree Multi-unit Housing?

- Protect health of residents, workers, visitors
- Reduce fire risk/damages
- Limit liability – disabilities, fair housing, fires
- High market demand
- Support from associations and media
- Global trend

Learn more at <http://njgasp.org/housing.htm>

Why Choose Smokefree Multi-unit Housing?

- **Economic benefits from smokefree MUH:**
 - *American Journal of Preventive Medicine* concludes:
 - "Prohibiting smoking in all U.S. subsidized housing would **yield cost-savings of approximately \$521 million per year**, including \$341 million in SHS-related healthcare expenditures, **\$108 million in renovation expenses**, and **\$72 million in smoking-attributable fire losses.** "

Dangers of Secondhand Smoke

Secondhand Smoke (SHS) is a Class 'A' Carcinogen, as per (EPA) Environmental Protection Agency (EPA):

- U.S. Surgeon General's Reports
- U.S. Centers for Disease Control
- U.S. Health and Human Services
- U.S. Housing and Urban Development
- World Health Organization

How Does Secondhand Smoke Migrate?

- From one unit to another (floorboards, electrical outlets, shared ventilation/heating units).
- Migrates between rooms within a unit or home.
- Drifts from indoor common area (hallway) into a private unit; visa versa.
- Drifts up from private patio/balcony/window, into the private unit above.
- Drifts from outdoor common area into private unit.

Thirdhand Smoke Exposure in MUH

New and growing concerns with thirdhand smoke (THS), which is second hand smoke that lingers after extinguishing a cigarette, cigar.

- Embeds as residue on any surface: walls, in carpeting, furniture, on clothing, in hair, toys, etc.
- Carcinogens and toxins in THS may affect brain development in babies and young children.
- Young children crawl on carpeting and suck on clothing, upholstery, skin, etc. that has THS residue.

Translates into expensive rehab costs!

NJ Smokefree Air Act requires 100% smokefree residential home settings

Examples of 100% Smokefree under the 2006 NJ Smoke-free Air Act (N.J.S. 26:3D-55 et.seq.), 2007 NJ Dept. of Health and Senior Services Regulations (N.J.A.C 8:6-1.1 et.seq.):

- Common areas of MUH(common rooms, foyers, hallways, stairwells, laundry rooms, elevators, etc.)
- Nursing homes, residential healthcare facilities.
- All college residential housing, faculty housing, rectories, convents when open to public, students, or a workplace.
- Drug treatment facilities
- Correctional facilities
- **OUTSIDE RESTRICTIONS:** No SHS wafting from outside into the interior of structure covered by the NJ Smokefree Air Act NJSA 8:6-2.3(a).

NJ State Laws on Resource Homes

- **Resource family homes/cars** N.J.A.C. 10:122C-7.2(a)(3):
 - Defines resource family homes as foster homes, adoptive homes, family friend homes and relative care homes. NJ law requires to be smokefree:
 - Resource family homes
 - Vehicles transporting the resource family child
 - Outdoors when resource family child is present

<http://www.state.nj.us/dcf/divisions/licensing/RFmanual.pdf>

NJ Smokefree Air Act bans smoking in Common/Shared Areas of Residential Settings

NJSA 26:3D-57 includes lobbies, public areas in private buildings:

“Indoor public place” means a structurally enclosed place of business, commerce or **other service-related activity**, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public, including, **but not limited to:** hotel, motel or other lodging establishment; **apartment building lobby or other public area in an otherwise private building; or a passenger elevator in a building other than a single- family dwelling.”**

<http://njgasp.org/sfaa.htm>

2007 NJ Dept of Health Regulations ban smoking in Common/Shared Areas of Residential Buildings

2007 NJ Dept of Health Regulations, Response to Comment #29 in Section on Multi-Unit Housing:

Based on this express statutory language, the Department construes the definition to **include common or shared areas of otherwise private buildings as places at which smoking the Act prohibits smoking.**

http://njgasp.org/h1_SFAA_regs_Westlaw_Document_13_12_44%5B1%5D.pdf

Smokefree Air Act Protects Workers

- **NJ Smoke-Free Air Act requires workplaces be smokefree:**

The Legislature finds and declares that ... tobacco smoke constitutes a substantial health hazard to the nonsmoking majority ... and it is clearly in the public interest to prohibit smoking in all enclosed indoor places of public access and **workplaces.**“ (NJSA 26:3D-56)
- This includes but not limited to:
 - offices, commercial buildings, government facilities, restaurants, care facilities and offices, nursing homes, addiction treatment facilities, etc. (NJSA 26:3D-56)

http://njgasp.org/sfaa_2010_w-ecigs.pdf

Protect at-home Worker Health

- Protect residential & visiting social service workers and building maintenance workers from SHS:
 - **chronic exposure to secondhand smoke is almost as deleterious to one's health (80%), as being a pack-a-day smoker.**
 - 2005 UCSF study published in the journal *Circulation*
- Supportive housing facilities may have workers present under the NJSFAA it's a workplace and needs to be smokefree.

Smokefree Policies May Limit Liability

In smoking-permitted MUH, nonsmoking tenants' exposed to SHS may lead to legal issues:

- Breach of warranty of habitability / quiet enjoyment.
 - See: Interstate Lease Section 23(D)
- Nuisance / trespass.
- Complaints under the Fair Housing Act.
- Workers entering units where smoking takes place:
 - Violations of state laws against discrimination.
 - Violations 2009 Americans with Disabilities Act Amendment Act.

July 2009 HUD Notice PIH-2009- 21 (HA)

- **Ground-breaking HUD policy:**

“This notice strongly encourages PHAs to implement non-smoking policies in some or all of their public housing units.”

- Dangers of secondhand smoke exposure.
- Fire-related risks associated with smoking.
- Improving indoor air quality inside public housing, with minimal costs.
- Decreasing maintenance and turnover costs associated with smoking-permitted units.

July 2009 HUD Notice PIH-2009- 21 (HA)

- **U.S. Green Building Council and Indoor Air Quality (IAQ) requirements:**
 - “[Environmental Tobacco Smoke] ETS is known to be an indoor air pollutant; as a result it would be difficult for a PHA to achieve good IAQ in its buildings if residents are allowed to smoke, especially indoors. “
 - “If a PHA does conduct renovations to improve IAQ without also implementing a non-smoking policy, the IAQ benefits of the renovation will not be fully realized.”

July 2009 HUD Notice PIH-2009- 21 (HA)

- **U.S. Green Building Council and Indoor Air Quality (IAQ) requirements:**
 - **A non-smoking policy is an excellent approach for those PHAs that are trying to achieve improved IAQ without the retrofit costs.**

www.hud.gov/offices/pih/publications/notices/09/pih2009-21.pdf

July 2009 HUD Notice PIH-2009- 21 (HA)

- PHAs can create a 100% smokefree “**house rule**” or **model lease policy**.
- “PHAs should consult with their resident boards...” (HUD Notice, para. 4)
- **Grandfathering** only required for as long as the state law requires.
- **See GASP brochure** for step-by-step implementation process in English and Spanish <http://njgasp.org/housing.htm>

Sept. 2010 HUD Notice H 2010-21

- **Follow-up to July 2009 HUD Notice.**
- Entitled, Optional Smoke-Free Housing Policy Implementation.
- **Clarifies July 2009 HUD Notice, new requirements:**
 - If PHA “implement[s] a smoke-free housing policy, must update their House Rules and Policies and Procedures, as applicable, to incorporate the smoke-free housing requirements.”

Sept. 2010 HUD Notice H 2010-21

- **Clarifies July 2009 HUD Notice, new requirements:**
 - “Encouraged to establish smoke-free policies that pertain specifically to their building and grounds including any common areas, entry ways, openings to the building (e.g. windows), and/or playground areas.”
 - Grandfathering current tenants is optional.
 - See more requirements @ <http://njgasp.org/10-21hsgn.pdf>

2012 HUD Notices

- **On May 29, 2012** HUD reissued **Notice PIH-2010-21** as **PIH-2012-25** with reorganized but similar content and no expiration date, encouraging Public Housing Authorities to adopt smoke-free housing policies.
- **On October 26, 2012** HUD issued **Notice H 2012-22** to further encourage owners and management agents to take steps to implement smoke-free housing policies not only for the buildings, but for the grounds which include entry ways, openings to the buildings (windows) and playground areas.
- See more @ <http://njgasp.org/muh-public.htm>.

2012 HUD Publications

- HUD's **June 19, 2012** press release describes their new toolkits for residents and owners/management agents.
 - The toolkits are designed to support federally-assisted housing properties in their effort to implement smoke-free policies.
- GASP is listed as a Housing and Legal Resource for technical assistance.

HUD Smokefree Housing Toolkits

- ***HUD developed new toolkits to help implement smokefree housing:***
 - For Owners
 - For Residents
- Listing of technical resource centers, e.g. Global Advisors on Smokefree Policy
- HUD Toolkit at:
www.njgasp.org/muh-public.htm

Tobacco cessation resources for NJ residents

- **Provide when transitioning to smokefree MUH.**
 - *Quitline* sponsored by NJ Dept of Health and Senior Services' Office of Tobacco Control, federally funded.
 - *Free and discounted smoking cessation programs* and/or meds via quitline phone counseling.
 - Link to GASP:



Federal Quitline Material

- While many states have their own quitline materials, the federal government has a host of materials available for those who are interested in quitting tobacco products.
 - Materials are often targeted to a group such as women, armed forces, or young adults

Federal CDC quit tobacco resources: websites, mobile text messaging, apps

www.smokefree.gov

www.smokefree.gov/apps



CDC quit smoking programs for women

Help mom's quit smoking:

http://www.cdc.gov/tobacco/calendar/may/mothers_day/index.htm?s_cid=tobacco_021



U.S. Military www.ucanquit2.org

U.S. Depts of Defense and Veterans Affairs collaborate to provide veterans with comprehensive cessation support.

Thinking about quitting, ready to quit, *help someone quit.*

Air Force

Army

Marines

Navy

Coast Guard



Disclosures and Disclaimers

- Copyright 2014 New Jersey GASP. All rights reserved. This research report and presentation is prepared for the use of Global Advisors on Smokefree Policy (GASP), and may not be redistributed, retransmitted or disclosed, in whole or in part, without the express written consent of GASP. Any unauthorized use or disclosure of this research report and presentation is prohibited.
- This research report and presentation has been prepared for a general audience, and provides general information only. The information contained herein was obtained from various sources and GASP does not guarantee its accuracy. GASP makes no representation and assumes no responsibility or liability for, the accuracy or completeness of, or any errors or omissions in, contained in this research report and presentation.
- The information presented in this research report and presentation is not intended as, nor to be construed or used as legal advice. Such information is not a full and exhaustive explanation of the law in any area, and should not be used to replace the advice of your legal counsel for the specific circumstances of your matter.