

Aging in Place



| Aging in Place | Housing | Services | Laws | Advocacy Opportunities |
|---|--------------|--------------|--------------|---------------------------|
| <u>\$100</u> | <u>\$100</u> | <u>\$100</u> | <u>\$100</u> | <u>\$100</u> |
| <u>\$200</u> | <u>\$200</u> | <u>\$200</u> | <u>\$200</u> | <u>\$200</u> |
| <u>\$300</u> | <u>\$300</u> | <u>\$300</u> | <u>\$300</u> | <u>\$300</u> |
| <u>\$400</u> | <u>\$400</u> | <u>\$400</u> | <u>\$400</u> | <u>\$400</u> |
| <i><u>Final</u></i> <i><u>Jeopardy</u></i> | <u>\$500</u> | <u>\$500</u> | <u>\$500</u> | <u>\$500</u> |

**These community features
are key to enable and
support aging in place.**

What are housing, transportation, and services, which preserve high mental functioning and active engagement?



State Scorecard Summary of LTSS System Performance Across Dimensions

Exhibit 1

State Rank
 □ Top Quartile
 □ Second Quartile
 □ Third Quartile
 ■ Bottom Quartile

Affordability and Access
Choice of Setting and Provider
Quality of Life and Quality of Care
Support for Family Caregivers

Affordability and Access
Choice of Setting and Provider
Quality of Life and Quality of Care
Support for Family Caregivers

| RANK | STATE | DIMENSION RANKING | | | |
|------|----------------------|-------------------|-----|-----|-----|
| 1 | Minnesota | Top | Top | Top | Top |
| 2 | Washington | Top | Top | Top | Top |
| 3 | Oregon | Top | Top | Top | Top |
| 4 | Hawaii | Top | Top | Top | Top |
| 5 | Wisconsin | Top | Top | Top | Top |
| 6 | Iowa | Top | Top | Top | Top |
| 7 | Colorado | Top | Top | Top | Top |
| 8 | Maine | Top | Top | Top | Top |
| 9 | Kansas | Top | Top | Top | Top |
| 10 | District of Columbia | Top | Top | Top | Top |
| 11 | Connecticut | Top | Top | Top | Top |
| 12 | Virginia | Top | Top | Top | Top |
| 13 | Missouri | Top | Top | Top | Top |
| 14 | Nebraska | Top | Top | Top | Top |
| 15 | Arizona | Top | Top | Top | Top |
| 15 | California | Top | Top | Top | Top |
| 17 | Alaska | Top | Top | Top | Top |
| 18 | North Dakota | Top | Top | Top | Top |
| 19 | Idaho | Top | Top | Top | Top |
| 20 | Vermont | Top | Top | Top | Top |
| 20 | Wyoming | Top | Top | Top | Top |
| 22 | New Jersey | Top | Top | Top | Top |
| 23 | Illinois | Top | Top | Top | Top |
| 24 | Maryland | Top | Top | Top | Top |
| 24 | North Carolina | Top | Top | Top | Top |
| 26 | New Mexico | Top | Top | Top | Top |

| RANK | STATE | DIMENSION RANKING | | | |
|------|----------------|-------------------|-----|-----|-----|
| 27 | New Hampshire | Top | Top | Top | Top |
| 28 | Texas | Top | Top | Top | Top |
| 29 | South Dakota | Top | Top | Top | Top |
| 30 | Massachusetts | Top | Top | Top | Top |
| 31 | Michigan | Top | Top | Top | Top |
| 32 | Delaware | Top | Top | Top | Top |
| 33 | Montana | Top | Top | Top | Top |
| 34 | Rhode Island | Top | Top | Top | Top |
| 35 | Ohio | Top | Top | Top | Top |
| 36 | Utah | Top | Top | Top | Top |
| 37 | Arkansas | Top | Top | Top | Top |
| 38 | South Carolina | Top | Top | Top | Top |
| 39 | Pennsylvania | Top | Top | Top | Top |
| 40 | Nevada | Top | Top | Top | Top |
| 41 | New York | Top | Top | Top | Top |
| 42 | Georgia | Top | Top | Top | Top |
| 43 | Louisiana | Top | Top | Top | Top |
| 44 | Florida | Top | Top | Top | Top |
| 45 | Tennessee | Top | Top | Top | Top |
| 46 | Kentucky | Top | Top | Top | Top |
| 47 | Indiana | Top | Top | Top | Top |
| 48 | Oklahoma | Top | Top | Top | Top |
| 49 | West Virginia | Top | Top | Top | Top |
| 50 | Alabama | Top | Top | Top | Top |
| 51 | Mississippi | Top | Top | Top | Top |

Source: State Long-Term Services and Supports Scorecard, 2011.

Top Planning Challenges

1. Housing

- Availability
- Affordability
- Accessibility

2. Financial

3. Access to Affordable Health Care

4. Transportation, providing services to scattered rural population, engaging healthy people.

(Source: The Maturing of America—Getting Communities on Track for an Aging Population)



An increase in this makes it harder for some people to age in place.

What is disability?



Aging Population

- By 2030, 1 in 5 (20%) in U.S. will be over age 65.
- 85+ population will triple by 2040 to 14.1 M
- 100+ increased 66% since 1980 to 53,000

Age not protected class: Disability Is

- Section 504 of the Rehabilitation Act of 1973
 - 29 USC § 794
 - 24 CFR Part 8
- Fair Housing Act Amendments of 1988
 - 42 USC § 3604 et seq.
 - 24 CFR Part 100
- Americans with Disabilities Act (1990)
 - 42 USC § 12101 et seq.
 - 28 CFR Parts 35 and 36.

Disability Defined

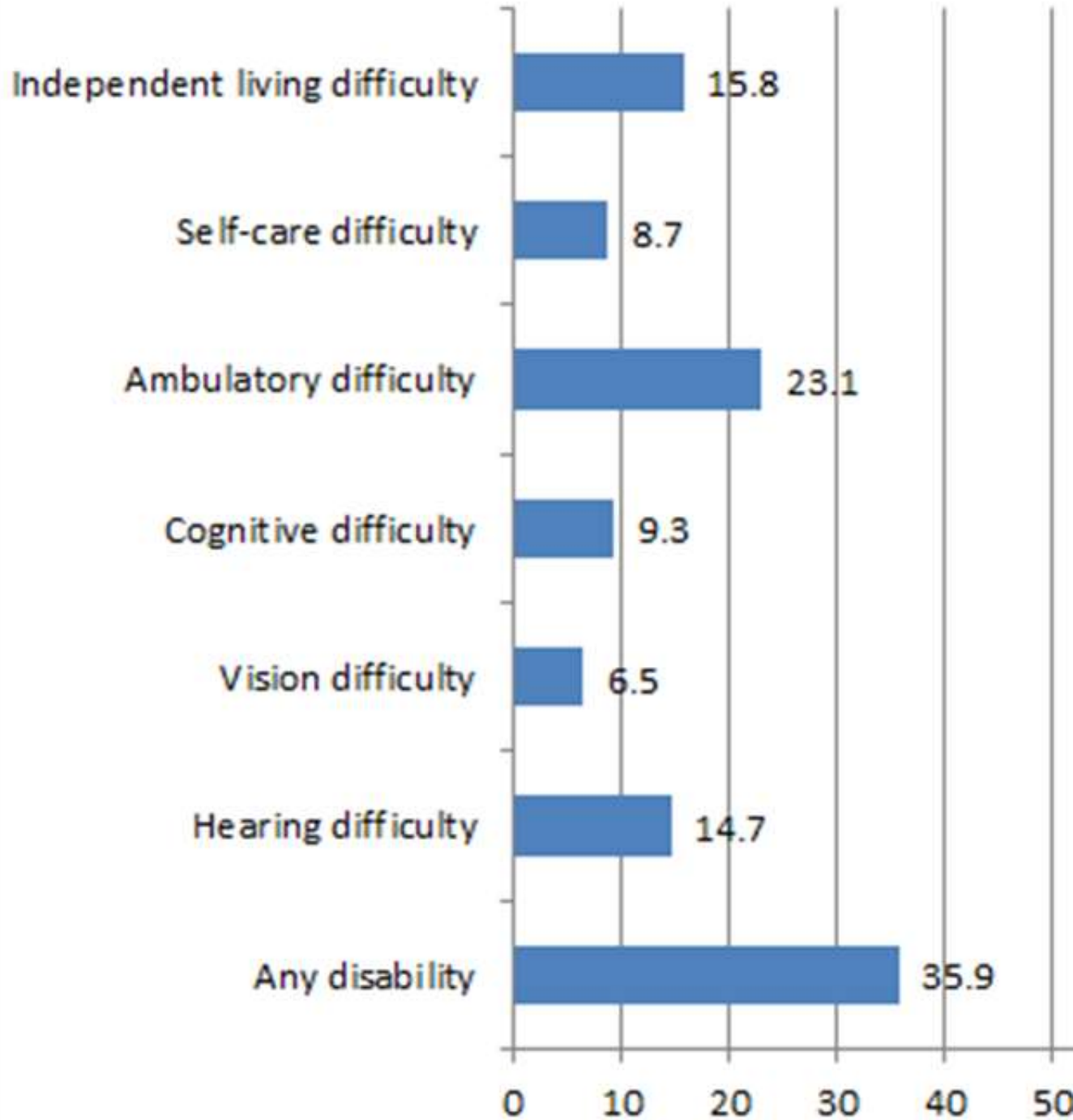
- Any person who:
 - has a physical or mental impairment that substantially limits one or more major life activities;
 - has a record of such impairment; or
 - is regarded as having such an impairment

Aging ≠ Disability

- Risk of having a disability increases with successively older age groups
- Older people often regarded as having disability
- People in the oldest age group 8 times as likely to have a disability as youngest
 - Age <15 8.4%
 - Age 80+ 70.5%
- Severe Disability
 - Age 15 to 24 (1-in-20)
 - Age 65 to 69 (1-in-4)
 - Age 80+ (1 in 2, 55.8 %)

Longevity: Chronic Disease, Maybe Limitations

- Nearly 1/2 have at least one chronic condition. Less than 1/3 with chronic conditions have functional limitation.
<http://aspe.hhs.gov/daltcp/reports/2010/closerlook.pdf>
- Incidence of chronic and degenerative diseases increase with age (48 % for 65+ vs 9% for under 65).
<http://aspe.hhs.gov/daltcp/reports/2010/closerlook.pdf>
 - heart disease, cancer, stroke, diabetes, chronic lower respiratory diseases, and Alzheimer's disease
- Leading cause of disability in the U.S. is arthritis (will affect 67 million by 2030).



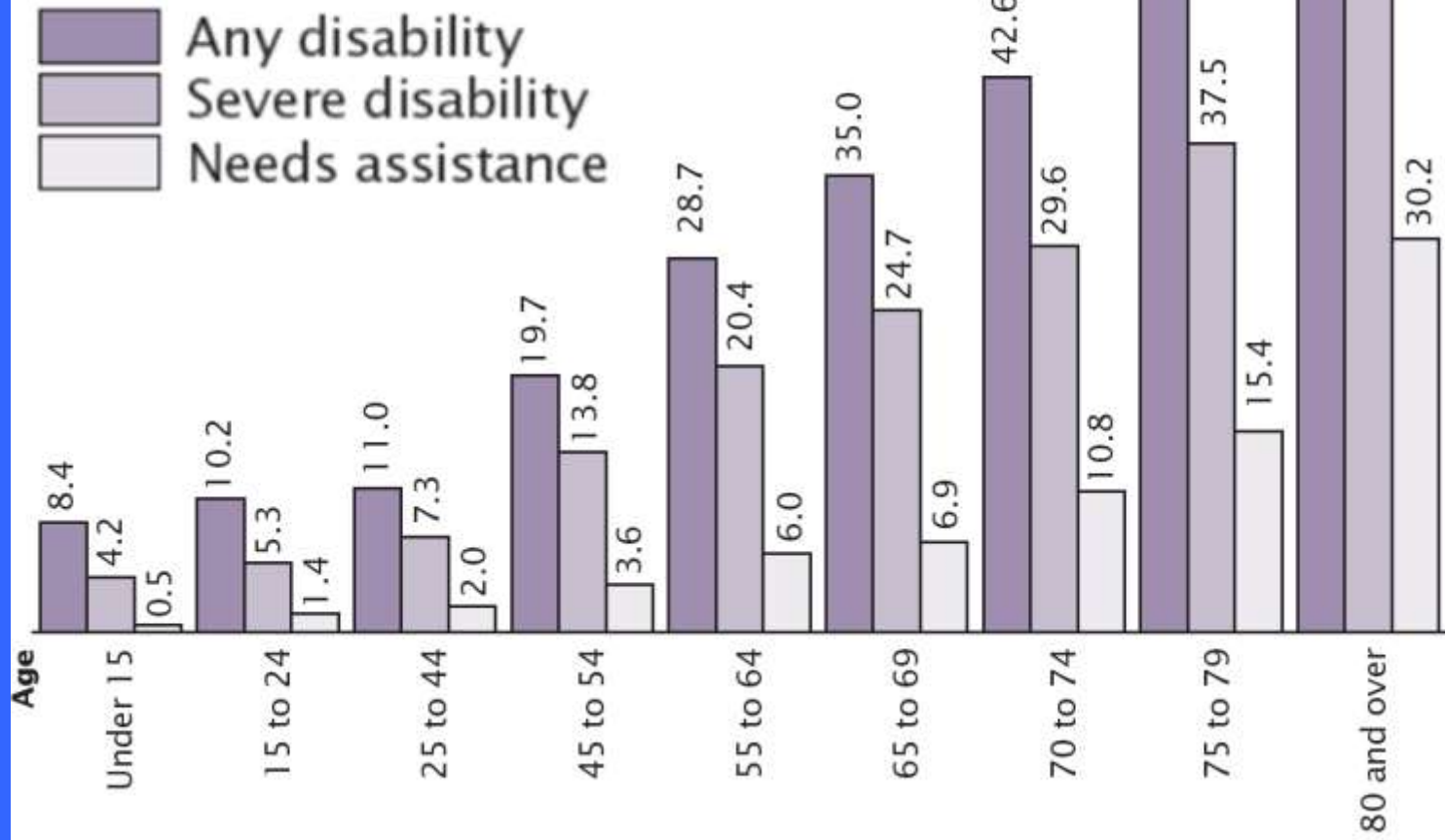
Percent
of people
aged 65+
with
disability,
2012

Types of Limitations

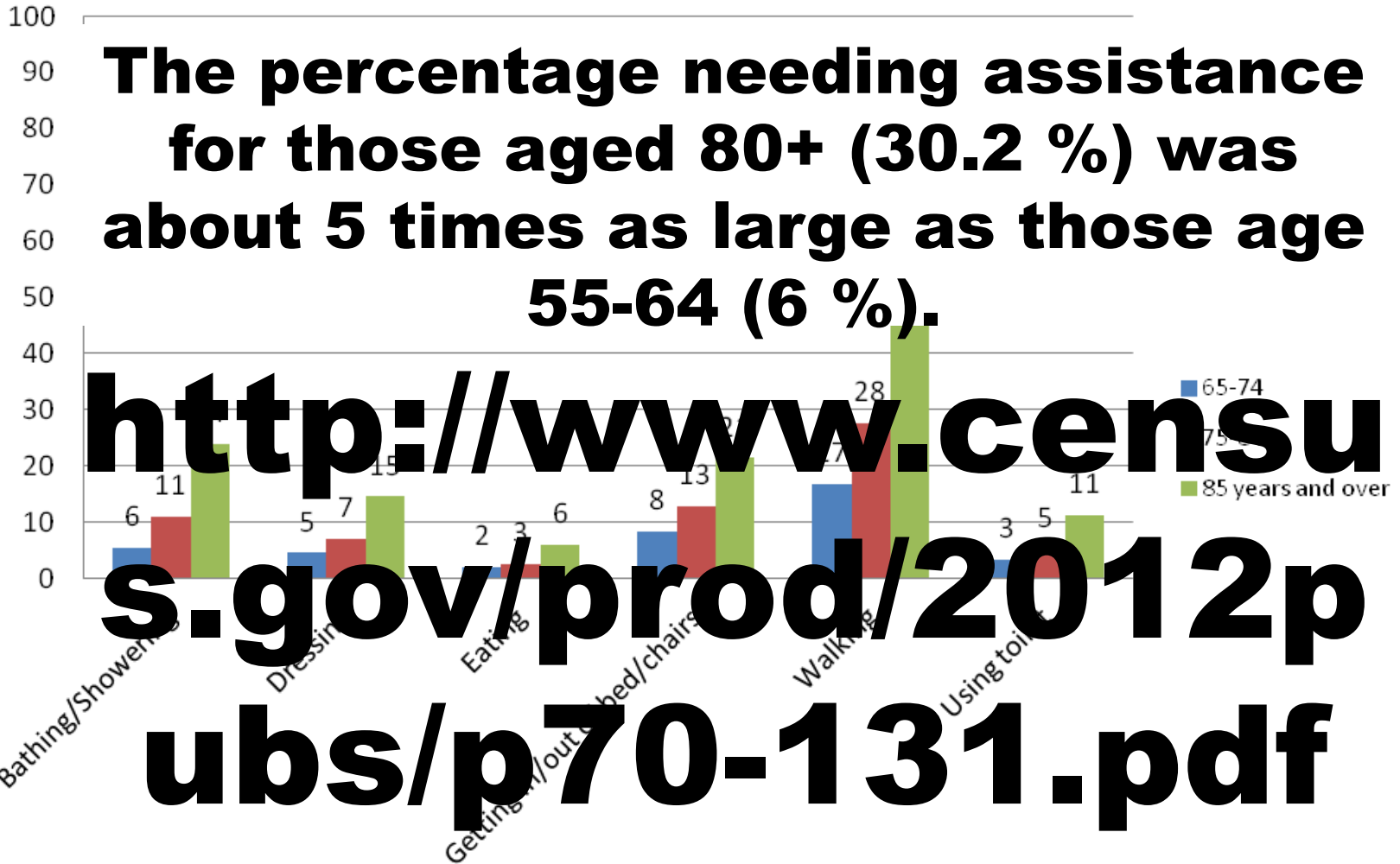
- Instrumental activities of daily living (IADLs)
 - managing money, shopping, preparing meals, and taking medications as prescribed
- Functional Activities of daily living (ADLs)
 - bathing, eating, getting dressed, transferring in and out of bed, walking, and toileting.

<http://www.cdc.gov/aging/pdf/state-aging-health-in-america-2013.pdf>

Disability prevalence and need for assistance 2010



Percent of Persons with Limitations in Activities of Daily Living by Age Group: 2010



Cognitive/Mental Health

- It is estimated that 20% of people 55+ have some type of mental health concern.
 - anxiety, severe cognitive impairment, and mood disorders (such as depression or bipolar disorder)
<http://www.cdc.gov/aging/help/dph-aging/mental-health.html>
- An estimated 4.5 million have Alzheimer's disease, and may be as high as 16 million by 2050.
- Mild cognitive impairment or cognitive impairment with no dementia may be a problem for 16-25% of 65+ <http://www.cdc.gov/aging/pdf/thehealthybraininitiative.pdf>.

Cognitive Functioning Includes

- language
- thought
- memory
- executive function (the ability to plan and carry out tasks)
- judgment
- attention
- perception
- remembered skills (such as driving)
- ability to live a purposeful life

Illegal Drug Use

- A current user of an illegal controlled substance is not protected as a person with a disability under federal law.
- An individual who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use may be a qualified person with a disability.

Direct Threat

- An accommodation may be denied if person poses a direct threat to the health and safety of others, based on objective evidence.
 - Threat to self is not within the “direct threat exception.”
- Must consider nature, duration, severity of risk of injury, probability injury will occur, any accommodations that could eliminate the direct threat.



Daily assistance with these can make it possible for people to live in the community as they age.

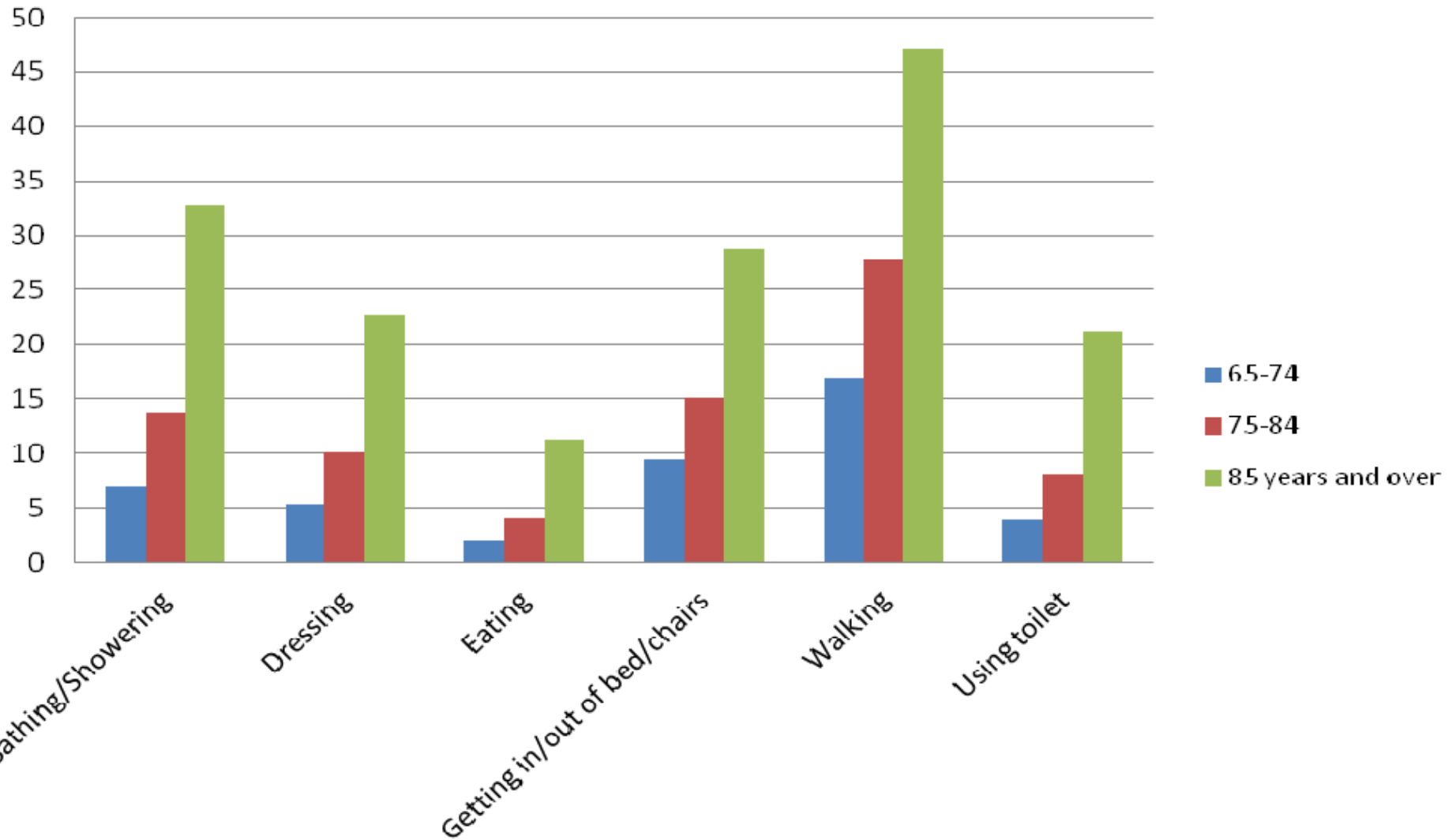
What are activities of daily living, such as eating, walking, bathing, toileting, dressing, getting in or out of chairs?

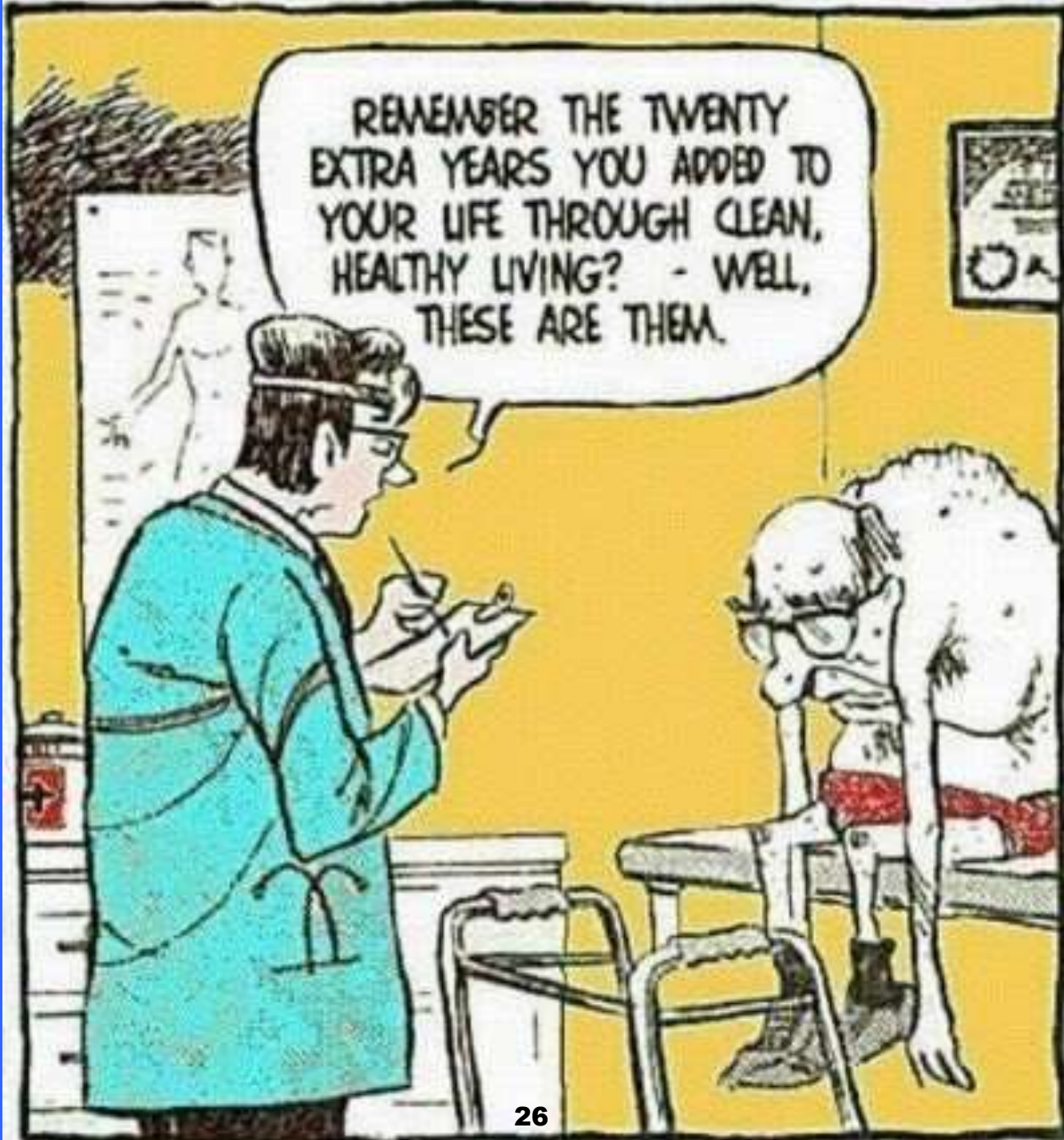


Why Housing with Services?

- People aged 80 and older are 5 times more likely to need assistance with one or more activities of daily living than younger age groups.
 - 80 and older (30.2%) : 55-64 (6.0 %)
- Greater disability is often associated with relocation into nursing homes or other assisted living facilities (1.3 million of the 40.4 million people aged 65 and older were living in nursing facilities in 2010).

Percent of Persons with Limitations in Activities of Daily Living by Age Group: 2009





**These beliefs make it
harder for people
to age in place.**

What are stereotypes?
(that older people are difficult, are not capable of living independently, have disabilities, need accommodations, and increase liability)



Stereotypes

- Independent living requirements and advertising limit choice.
- Landlords or housing providers may attempt to exclude older people due to:
 - Perceived Liability;
 - requirement that people be healthy, able to get around or able to live “independently”;
 - fear they will be difficult tenants or request modifications or reasonable accommodations.

Individuality

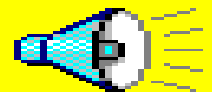
- “Public entities are required to ensure that their actions are based on facts applicable to individuals and not on presumptions as to what a class of individuals with disabilities can or cannot do.” 56 Fed. Reg. 35693, 35703 (July 26, 1991) (final ADA Title II rules).
- Reasonable Accommodation



The final Jeopardy answer is:

These practices have improved aging in place in your community.

Timer



**What are examples in
your community?**



These goals of the Fair Housing Amendments Act and the Americans With Disabilities Act help promote aging in place.

**What are Equality,
Integration, Choice,
and Individuality?**



Preventing Increase of Segregation

- Action must be taken to fulfill, as much as possible, the goal of open integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat.”
 - *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).

Refraining From Discrimination is Not Enough

- “...every court that has considered the question has held or stated that Title VIII imposes upon HUD an obligation to do more than simply refrain from discriminating (and from purposely aiding discrimination by others)...This broader goal [of truly open housing] ... reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”
 - *NAACP v. Sec’y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987).



These questions are
invasive and illegal under
the Fair Housing
Amendments Act.

**What are
questions about
disabilities
and
ability to live
independently?**



Disability Inquiries Impermissible

- Housing providers are not allowed to make inquiries in order “to determine whether an applicant . . . has a handicap or to make inquiry as to the nature or severity of a handicap of such a person.”
- 24 CFR Section 100.202(c)

Disability Irrelevant

- Landlord can ask a person with a disability same questions asked of all applicants that relate directly to tenancy:
 - Can you pay the rent?
 - Can you get along with your neighbors?
 - Can you fulfill housekeeping obligations?
 - Can you obey the lease and the law?



Must be “Capable of Living Independently”

- People with and without disabilities must be treated the same in screening and selection.
- How applicant goes about activities of daily life is absolutely irrelevant to housing provider.
- Example: if place is kept up, doesn't matter if tenant does it on own, has house elves, uses cleaning service, or uses Medicaid funded personal care attendant.

Independence = Choice

- Educate providers and consumers that “independent living” does not mean being able to live without any help.
- “Independent living is not doing things by yourself, it is being in control of how things are done.” Judith Heumann

Niederhauser v. Independence Square Housing

- Upon his return from a hospital stay, landlord made inquiries about ability of resident and his wife to meet their medical, hygiene, and other personal needs
- 4 FH-FL Rptr.
¶ 16,305 (N.D. Cal. 1998)

Niederhauser

- Landlord “may not inquire into the nature and extent of an applicant’s or tenant’s disabilities beyond that necessary to determine eligibility.”
 - whether that person meets the minimum age requirement
 - whether that person is otherwise qualified for tenancy; e.g., ability to pay rent.
 - NOT whether “capable of living independently” because it is not a criteria for residency.

Symons v. City of Sanibel

- (M.D. Fla. 2003), settlement reported at 1 FH-FL Rptr., Report Bulletin ¶¶ 1.8 (Jan. 1, 2004)
- Attempt to evict tap-dancing 82-year-old resident from City funded housing for not being “capable of living independently”
- Landlord alleged Symons was just one incident away from a nursing home.
- Settlement provided for resident to remain and for defendants to “eliminate any [impermissible inquiry or] reference to the ability to live independently from their tenancy criteria”

Hoffman v. Church of the Valley Retirement Homes

- N.D. Ca. C-03-03590-RMW/RS
- At required in-person interview, housing manager performed mini-mental exam and mobility test, restrictions on use of wheelchairs, walkers and other aids.
- Marketed as independent living, “primary care” residence.

Hoffman

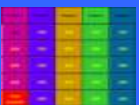
- Testing conducted by local fair housing agency ensured that practice and policy was before court, not just individual facts.
- Settlement included changes in policies and practices, judicial supervision, monetary damages and attorneys' fees.

U.S. v. Pacific Life Insurance Co.

- (W.D. Texas, consent order filed 2006)
- Landlord administered an illegal “health and wellness examination” designed to aid defendants in their eviction of residents whom they deemed physically or mentally disabled.
- Inquired into the amount and nature of health care received by residents
- Asked questions that ostensibly sought to probe the mental acuity of residents, such as asking residents to count backward from 100, identify the U.S. President who used a wheelchair, and state the meaning of the phrase “a stitch in time saves nine.”

U.S. v. Resurrection Retirement Community, Inc.

- No. 02-CV-7453 (N.D. Ill. Oct. 17, 2002), consent decree reported at 1 Fair Hous.–Fair Lending (Aspen L. & Bus.), Report Bulletin ¶ 12.12 (Dec. 1, 2002), *available at <http://www.usdoj.gov/crt/housing/documents/resurrectsettle.htm>*
- Consent decree under which the defendant, in addition to paying \$220,000 in monetary damages and penalties, agreed to rescind its “independent living” and medical-exam policies



These are 3 affirmative obligations of housing providers pursuant to the FHA [42 U.S.C. § 3604(f)(3)] that assist people to age in place.

What are reasonable modifications, reasonable accommodations, and design and construction requirements for new multifamily dwellings?



Six required FHA design features

1. Public and common use areas must be “readily accessible to and usable by handicapped persons.”
2. Doors wide enough for wheelchairs.
3. Accessible route into and through dwelling.
4. Light switches, outlets, thermostats, etc. placed in accessible locations.
5. Bathroom walls reinforced to allow grab bars.
6. Kitchen and bathrooms have space to allow wheelchairs to maneuver.

Physical Modifications

- Reasonable Modifications (42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203)
 - Must be permitted
 - At resident's expense unless federally funded
 - Reasonable deposit can be required for restoration to marketable condition
- HUD/DOJ Joint Statement on Reasonable Modifications Under the Fair Housing Act.
http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

Reasonable Accommodations

- Reasonable Accommodations: (42 U.S.C. § 3604(f)(3)(b) and 24 C.F.R. § 204)
- An exception from a rule, policy, or practice that interferes with the person's right to use and enjoy the dwelling to overcome the manifestation of the disability. Not intended to change the person.
- Not reasonable if fundamental alteration or undue financial and administrative burden.
- Interactive Process required.

Must be Necessary

- Enhances the person's quality of life by ameliorating the effects of the disability.
- Enables the tenant to satisfy the essential requirements of tenancy/residence.
- HUD-DOJ Joint Statement on Reasonable Accommodations Under the FHA,
- http://www.usdoj.gov/crt/joint_statement_ra.pdf

Must Be Reasonable

- Does not impose an undue financial or administrative burden.
- Considerations: benefit to tenant, costs, financial resources, and availability of less expensive accommodation. Highly fact intensive.
- Will often cause at least *some* financial expense, which provider must cover.
- Does not fundamentally alter (i.e., significantly change) the nature of the program.

RA Examples

- Permit pet or comfort animal (service animals not RA)
- Grant assigned parking near housing
- Allow time for treatment plan or services
- Increase amount of services provided
- Change hours of availability
- Use calming techniques/train staff
- Permit live-in caregivers
- Allow move to another unit
- Make safety rules the least restrictive (i.e. use scooters carefully, don't ban them)

Process

- An accommodation must be requested orally or in writing. (Written preferred)
- Person tells a provider they have “a disability” and need a change in a policy, procedure, or rule in order to accommodate that disability, and establishing a nexus between the disability and RA.
- Need not disclose disability or medical records.
- Provider must enter into interactive process.
- Can be made at ANY TIME.

Interactive Process

- If disability not obvious, provider may seek verification of disability and need for RA from doctor or *social worker* but not medical records.
- If provider finds RA request is not reasonable, should engage in interactive process to determine if another RA is feasible.
- If no alternative agreed upon or no interactive process, treated as a denial of original RA request.
- For federally assisted housing, can request a Section 504 hearing, which often serves as interactive process.



Citywide Associates v. Penfield

- 409 Mass. Sup. Ct. 140 (Mass. 1991)
- 504 case, but would be same under FHA
- LL sought to evict T for hitting walls with sticks and throwing water on them to drive away the voices TT believed were emanating from them.
- RA was having T use Nerf bat
- LL required to absorb about \$200 in damage costs

Roe v. Sugar Mill Associates

- 820 F. Supp. 636 (D.N.H 1993)
- Federally subsidized housing sought to evict tenant with a mental illness for threatening another tenant
- T sued in fed. court before state case filed
- Requested RA under FHA
- LL argued no disability, or direct threat
- Court: Can only evict T AFTER LL demonstrates no RA possible to reduce or eliminate risk.

Douglas v. Kriegsfield

- (2005 WL 2600210, D.C. Ct. Appeals *en banc*)
- Detailed analysis of FHAA and application of requirement to provide reasonable accomm.
- Proof of disability could be established by social workers without the ability to make medically accurate diagnosis.
- Request by tenant with mental disability for stay of eviction to permit Soc. Workers to clean up health and safety violations in apartment was both reasonable and timely.

Assisted Living and CCRCs

- *Bell v. Bishop Gadsden*
 - South Carolina, Federal Court, settled
 - CCRC unilaterally requires move to ALF and prohibits use of full time, resident paid attendants or will evict and keep entrance fee.

Herriot v. Channing House

- 89-year-old widow has resided in independent living apartment for 16 years.
- CCRC proposes to move her involuntarily to a shared skilled nursing unit.
 - California, Federal Court, trial in June 2008
 - CCRC unilaterally requires move to ALF and prohibits use of full time, resident paid attendants or will evict and keep entrance fee.
 - Justification for forced move is she now uses a walker and attendants.

Health Issues: “Level of Care”

- Niederhauser: Resident had not requested any services from landlord; preferred to get them from his own providers

U.S. v. Savannah Pines, LLC

- No. 401CV3303 (D. Neb. April 30, 2003), *available at <http://www.usdoj.gov/crt/housing/documents/savannahsettle.htm>*
- senior housing development agrees to abandon rental agreement that Justice Department alleged violated the FHA by requiring residents to move out if they “can no longer care for [their] personal needs”

We Don't Offer the Services You Need

- HUD v. Strawberry Point Lutheran Home for the Aging, 2003 WL 1311336 (HUD ALJ March 5, 2003):
- Settlement of HUD's FHA charge based on retirement complex's attempt to require long-term resident to move to nursing home because of her need for assistance in transferring from bed to wheelchair. Center agreed to cease all eviction efforts and to consult with complainant-resident and her physician before proposing any future move.

Cason v. Rochester Hous. Auth.

- 748 F.Supp 1002 (W.D. N.Y. 1990)
- As was common and permitted by then HUD handbook, RHA required applicants and tenants of public housing for seniors and disabilities to be “capable of living independently” and invasive inquiries made.
- Applicants had to have demonstrated independent living for at least 18 months; living with relatives or in a group home, transitional housing or institution did not count.

Cason

- Court used disparate impact and disparate treatment analyses.
- The court found that RHA's use of different screening procedures for applicants with disabilities, as well as the impermissible inquiries, violated FHA.
- Fn1: "A tenant who is able to meet the objective requirements of tenancy should not be denied housing simply because she receives medical assistance or other aid."

Robards v. Cotton Mill Associates

- 713 A.2d 952 (Me. 1998)
- § 202 landlord
- STATEMENT OF HEALTH INCLUDING ANY DISABILITIES (statement of your doctor should be used here). Physician should state here a brief description of your medical condition, disability and/or handicap and whether you are able to care for yourself if living alone and/or able to care for [an] apartment.

Robards

- Permissible inquiry limited to discerning whether an applicant has a handicap.
- Landlord allowed to request that a physician verify the existence of applicant's handicap.
- A landlord is not, however, permitted to require the applicant to provide the landlord with a description of his handicap.

Clearlake Housing Now v. The CBM Group, Inc.

- (N.D. Cal. No. C03 3000 WHA)
- Lease for 3,500 units of USDA Rural Development Housing included lease clause stating that tenants had to be “capable of self care.” CBM argued that it never made inquiries or discriminated.
- Plaintiffs survived motion to dismiss arguing it was violation under 42. USC 3604 (c) (Ads, notices and statements).



These are some reasons
that people may chose to
move as they age.

What are health problems, housing cost burdens, isolation, lack of accessibility features, lack of transportation?



Aging in Place

- Increased disability does not dictate a particular housing choice: needs can generally be met in the individual's own home, assisted-living, or nursing facility.
- May need to modify home environment and add supportive services.
- Relocating may entail loss of social networks and result in significant loss in quality of life, personal control and dignity, and an increased risk of decline in cognitive ability.



Obstacles to Obtaining Housing

- Poor credit history related to disability.
- Lack of accessible housing.
- Housing provider has a no-pets policy.
- Limited mobility prevents applicant from attending necessary application interview.
- Inability to find an accessible unit within a voucher payment standard, or otherwise affordable.
- Inability to find a unit within the time frame allotted by the housing authority.

Obstacles to Retaining Housing

- Miss making rent/utility payments
- Hoarding/Clutter
- Behavior toward others is threatening
- Request a live-in aide
- Need transfer to a different unit
- Miss recertification appointments
- Miss/not ready for housing inspections



**These housing design
features support
aging in place.**

What are
universal design
and
visitability?



Universal Design

- Lever door and faucet handles
- Bathroom aids (grab bars)
- Entrance without steps
- Wide doorways
- Bedroom on main level
- Full bath on main level
- Non-slip flooring
- Public sidewalk outside home
- Attached garage or covered parking immediately outside home

Visitability

- Some state and municipal laws require visitability: an accessible entrance and a usable bathroom on the first floor.



These entities are required to make their programs, services, and activities accessible to people with disabilities.

What are state and local governments under Title II of the Americans With Disabilities Act?



Government obligations

- Title II of the ADA, 42 U.S.C. § 12132: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
- Planning Requirements
 - Self-evaluation: 28 C.F.R. s. 35.105(a)
 - Transition plans to implement Title II requirements, 28 C.F.R. s. 35.150(d).

Buildings, facilities, sidewalks

- **Preexisting facilities:** must be made “readily accessible to and useable by individuals with disabilities.” 28 C.F.R. § 35.150.
- **New or altered facilities:** Must built to be accessible (according to ADA Access Guidelines) and facilities that are altered in a way that could affect the “usability of the facility” should have the altered portion made accessible. 28 C.F.R. § 35.151.

Not just facilities

- People with disabilities must have an equal opportunity to benefit from all programs, services, and activities (e.g., transportation, recreation, health care, social services, courts, voting, and town meetings).
- Must relocate programs or otherwise provide access in inaccessible older buildings.
- Must communicate effectively with people who have hearing, vision, speech, or mental health disabilities: police, websites, health care, etc.



**These housing providers
must make reasonable
accommodations in their
policies and practices.**

What are housing providers covered by the Fair Housing Act?



Fair Housing Covers Dwellings

- Dwelling is “any building or portion thereof which is occupied as, or designed or intended for occupancy as, a residence for one or more families”.
- Includes nursing facilities, not transient housing such as motels (covered by ADA Title III).
- Covers all types of providers, real estate agents, lenders, insurers, advertisers, Condo and HOA.
- Exceptions: owner occupied, 4 or fewer units; single family if own 3 or less, other: 42 U.S.C. 3602(b).



These are the housing types at which people who want to age in place can obtain services.

What are all housing types: single family, multifamily, assisted living, Continuing Care, and nursing facilities?



Housing Options

- The vast majority of older people want to age in their homes and communities for as long as possible.
 - 80% of the 50+ population are homeowners.
 - 20% of people 50+ are renters.
- Health reasons become increasingly more important as a reason to move as people age.

At Home



In a Nursing Facility



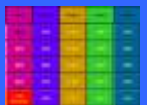
Robert Herriot

“Successful Aging”= Quality of Life

Successful aging is more than simply a matter of health or disability.

Includes the ability to maintain three key behaviors or characteristics:

- Low risk of disease and disease-related disability
- High mental and physical functioning
- Active engagement in life



Challenges: Housing With Services

- Inquiries into health status and activities of daily living
- Require the “ability to live independently”
- Competency testing or Medical screening
- Rental premiums and Damage deposits
- Insurance requirements and Indemnity provisions
- Prohibit mobility aids in common areas
- Use of non-provider services (Private Duty Aides)
- Non-use of provider services
- Decision making - Transfers Between Levels of Care
- Service / Companion Animals

Policies Re: Mobility Aids

- May not prohibit or unreasonably restrict use (i.e., prohibit walker use in cafeteria or electric scooters on grounds);
- Some time, place and manner exceptions are permitted;
- OK to set reasonable rules of the road;
- OK to limit use to persons with disabilities;
- Requesting resident to pay for damage is allowed.

Mobility Aids Litigation

- U.S. v. Covenant Retirement Communities West Inc.
 - (consent decree) Reasonable time, place, and manner restrictions on use of motorized scooters survived
- U.S. v. Twining
 - DOJ alleged CCRC prevented use of motorized carts in certain common areas
 - Required residents to indemnify facility

Animals

- Even if facility has a “no pets policy” must allow service and companion animals for residents with disabilities;
- No limit on size or type of animal;
- Reasonable rules of behavior, supervision, care, ok;
- Public Accommodation need only permit service dogs, not other animals;
- Service animal must be trained to provide service but no special certification needed;
- Companion animal (covered under FHA and Rehab Act only) need not be trained to provide service.



The integration mandate of the ADA requires that public entities administer services, programs and activities in this setting.

What is the "most integrated setting appropriate to the needs of qualified individuals with disabilities"
28 C.F.R. § 35.130(d)?



Integrated Setting

- An “integrated setting” is one “that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.” 28 C.F.R. pt. 35, app. A (preamble to ADA regulations governing public entities) at 452 (1994).

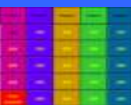


Promise of *Olmstead v. L.C.*

- *Olmstead* and related cases address the right of people with significant disabilities to receive long term supportive services in community based settings. *Olmstead v. L.C.*, 527 U.S. 581 (1999).
- Hallmarks of integrated, community living are to share in the “family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment”. *Id.*

Government funded housing services covered by ADA

- Home and Community Based Services waivers,
- Money Follows the Person program,
- rehabilitation service options and similar optional programs paid for through the federal-state Medicaid or a comparable state government financed program.
- settlement agreements and court orders reached in *Olmstead* litigation, or under state or local government plans designed to assure compliance with *Olmstead* obligations without litigation.
- Chronically homeless individuals may be served through the state or local Continuum of Care Plan.



**This important guarantee
of the ADA facilitates
access to many
other services.**

**What is
transportation?**



Transportation

- Equal access to public and private transportation is one of the most important rights guaranteed by the ADA because it facilitates the exercise of so many other ADA rights.
- Working, accessing government services, purchasing groceries – many people with disabilities can only do these things if they have accessible transportation.
- Helps integrate people with disabilities into the mainstream of American life.
- About 560,000 people with disabilities indicate they never leave home as a result of transportation difficulties.

Driving

- “Out of home” mobility makes it possible to contact with people, obtain services, and participate in activities, maintain contact with the larger society.
- Driving cessation associated with an increased incidence of depressive symptoms and a loss of autonomy resulting from a reduced ability to accomplish both required and recreational activities; the stigma associated with dependency, and the approach of the end of life.
- Cessation of driving has significant direct and indirect health impacts with economic consequences.
- A person’s declining physical condition can be both a cause and a consequence of loss of mobility.

Paratransit

- Paratransit is a civil right under the ADA.
- Transit agencies must provide service to qualifying individuals for trips that start and end within $\frac{3}{4}$ miles of the agency's fixed-route system.
- Generally, must be provided at the same hours and days as the fixed-route service, for no more than twice the regular fixed-route fare.
- Must be provided to all eligible riders if requested any time the previous day, within an hour of the requested time.

Public Transportation Access Violations

- Buses with inoperable wheelchair lifts and insufficient maintenance.
- Drivers and mechanics untrained in the proper way to deploy wheelchair lifts and to assist passengers with disabilities with courtesy and respect.
- No alternative transportation when there are breakdowns in accessible service.
- Failure to announce stops, kneel bus.
- No accessible taxi cabs or rental car shuttles.

Taxis

- 10% of taxi business provided to people with disabilities
- Few accessible taxi cabs
- Problems include refusal to:
 - help stow wheelchair in the trunk
 - Transport service animal
 - charge the same fares and fees to individuals with disabilities accompanied by service animals or equipment as is charged to others

Transportation Related Services

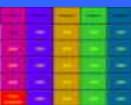
- Retail establishments such as convenience stores connected to gas stations must comply with the ADA's new construction alterations and barrier removal requirements.
- Parking areas, entrances, product displays, restrooms and other areas available to the store's customers must comply with the ADA
- Employees must be trained to assist customers with disabilities with refueling

Safe Sidewalks

- *Californians for Disability Rights v. Caltrans*: State Dept. of Transportation violated the ADA by failing to make the sidewalks, crosswalks, ramps, and park-and-ride facilities under its control accessible. The state settled the case with an agreement to spend \$1.1 billion over 30 years to address these accessibility issues.
- *Frame v. City of Arlington*: sidewalks are a public service, program, or activity of a Title II entity; statute of limitations does not run 2 years after construction.

Transportation Resources

- Easter Seals Project Action
- 49 CFR Part 37--Transportation Services for Individuals with Disabilities, Subpart F
- Federal Transit Administration Web page of 49 CFR Part 37.
- Determining ADA Paratransit Eligibility: An Approach, Guidance and Training Materials (2004).
- TCRP Synthesis Report 74, <http://www.trb.org/Publications/PubsTCRPSynthesisReports.aspx>.
- National Council on Disability (2005), The Current State of Transportation for Persons with Disabilities in the United States and National Disability Policy: A Progress Report (2011).



**These are 3 key laws
that support
aging in place.**

What are Section 504 of the Rehabilitation Act of 1973, The Fair Housing Amendments Act of 1988, and The Americans With Disabilities Act?



Statutory and Regulatory Sources

- Section 504 of the Rehabilitation Act of 1973, (29 USC § 794; 24 CFR Part 8).
- The Fair Housing Amendments Act of 1988, (42 USC § 3604 et seq.; 24 CFR Part 100).
- The Americans with Disabilities Act (42 U.S.C. § 12131 et. seq.; 28 CFR Part 35).



This law applies to housing providers only if they receive federal financial assistance.

What is Section 504 of the Rehabilitation Act of 1973, (29 USC § 794; 24 CFR Part 8)?



Section 504 Obligations

- Make program accessible as a whole
- Pay for modifications and reasonable accommodations unless undue financial and administrative burden or fundamental alteration
- Provide auxiliary aids and services necessary for effective communications;
- Operate programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

Federal Financial Assistance

- Does Not Include Low Income Housing Tax Credits or Housing Vouchers
- Does include Medicare and Medicaid (received by nursing facilities)
- HUD has posted information on Section 504 duties at <http://www.hud.gov/offices/ftheo/disabilities/sect504faq.cfm>



Zoning restrictions that limit housing choice for people with disabilities may be illegal under these laws.

What are the
Fair Housing Act
and the
Americans With
Disabilities Act?



Zoning and Land Use

Housing Discrimination

- FHAA legislative history: “...prohibition against discrimination against those with handicaps apply to zoning decisions and practices... prohibits special land use requirements or permits, restrictive covenants, discriminatory application or affect of health, safety and land use rules and regulations.”
- Zoning can't have the effect of limiting the ability of an individual with a disability to live in the residence of their choice in the community, including limiting supply of affordable housing available to people with disabilities.

Zoning and Land Use Guidance

- Examples: Family composition; “proper supervision”; Alarms, sprinklers, other fire related; Geographic dispersal; Neighbor notification; Redevelopment and code enforcement; Special use permits .
- DOJ and HUD have issued a Joint Statement on Group Homes, Local Land Use and the Fair Housing Act, *available at* http://www.usdoj.gov/crt/housing/final8_1.php.

Hovsons, Inc. v. Town of Brick

- Zoning ordinances may not be imposed to limit housing choice to people with disabilities. The FHAA “is intended to prohibit ... [the imposition of] terms or conditions ... which have the effect of excluding ... congregate living arrangements for persons with handicaps.” 89 F.3d 1096, 1106 (3rd Cir. 1996) (citing H.R. Rep. No. 711, 100th Cong., 2d Sess. 23, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2184).
- “strict adherence to a rule which has the effect of precluding handicapped individuals from residing in the residence [of their choice] was precisely the type of conduct which the [FHAA] sought to overcome” 89 F.3d at 1106 (citing *United States v. Village of Marshall, Wisconsin*, 787 F.Supp. 872, 879 (W.D.Wis.1991)).

Special Use Permits

- S. Ct. in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985) held that the Equal Protection clause prevents a city from requiring a special use permit for group homes for people with mental retardation when not required from others.

Family composition and maximum occupancy restrictions

- Reasonable occupancy restrictions addressing health and safety allowed
- *City of Edmonds v. Oxford House, Inc.* 514 U.S. 725 (1995). Narrow decision holding ordinance was not an occupancy restriction
- Many cases since then decided under intent, effect, and reasonable accommodation theories



A housing provider may be required to pay for structural modifications if this law applies.

What is Section 504
of the Rehab. Act?



Private providers may charge \$

- If not federally subsidized (i.e., Public Housing, Sec. 202, other project based housing) then provider may charge for physical modification and collect a deposit to return the building to original condition.
- To avoid charge to return to original condition, try arguing that modification makes housing more marketable.



**These classes of people
are protected by the
Fair Housing Act.**

What are Race, Color,
Religion, National Origin,
Sex, Familial Status,
and Handicap?



States Add Other Protection

- Age is not a protected class under the FHA but age is protected class in 16 states and at least 3 municipalities.
- Source of Income (Section 8, SSDI, SSI, Social Security) is protected in at least 13 states and 15 local jurisdictions.
- Can usually protect people's housing options using the FHA disability provisions.



You can influence how
Community Development
Block Grant Funds are
allocated in communities
during this process.

What is Consolidated Planning?



What YOU Can Do

- Engage in Consolidated Planning, Public Housing Administrative Plan, and Qualified Allocation Plan Processes.
- Write letters to educate gov't and public about needs of aging community before process starts.
- Go to public meetings in broad-based coalitions.
- Serve on Metropolitan Planning Organization Boards or advisory bodies for transportation issues (pedestrian safety, crossing times, service routes).
- Work with AARP state offices.

A-A-R-P! I wanna join the A-A-R-P!



The Retirement Village People

“No Certification, No Money”

- 42 U.S.C. §5304(b)(2): “Any grant under [the CDBG program] shall be made only if the grantee certifies to the satisfaction of the Secretary that ... the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] and the Fair Housing Act [42 U.S.C. 3601 et seq.], and the grantee will affirmatively further fair housing.”

Executive Order 12892 (1994)

- “[A]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of the [Fair Housing] Act....” §2-202
- *See also* Executive Order 11063, Nov. 20, 1962, §102; Executive Order 12259, Dec. 31, 1980, §1-202

CDBG/Con Plan AFFH Regs

- A grantee is “required to submit a certification that it will affirmatively further fair housing, which means that it will (1) conduct an analysis to identify impediments to fair housing choice within the jurisdiction; (2) take appropriate actions to overcome the effects of any impediments identified through that analysis; and (3) maintain records reflecting the analysis and actions in this regard.”
 - 24 C.F.R. § 570.601(a)(2)
 - 24 CFR § 91.225(a).

Analysis of Impediments to Fair Housing Choice

- Ensure Analysis of Impediments addresses housing needs of an aging population (AFFH).
- Urge adoption of Universal Design and Visitability standards for single family and multifamily housing.
- Make HOME funds available for modifications.
- Counsel people on using reverse mortgages to make modifications or make other funds (HOME, property tax rebates) available.
- Encourage Certified Aging In Place (CAPS) training.

Fair Housing Planning

- Include stakeholders from the aging, disability, and health care communities.
- Coordinate planning and design neighborhoods, homes, and transportation/mobility options.
- Ensure that communities have a sufficient supply of housing types that are affordable to people as they age and bear increased housing cost burdens.
- Coordinate services and health care with housing to serve people in the least restrictive environment and meet *Olmstead* requirements.



**You can seek a
reasonable
accommodation
at this time.**

What is at any time (to get admitted into housing, to enjoy the housing, and to avoid being evicted)?



ANY Time

- Douglas v. Kreigsfeld: requested accommodation to clean home after eviction proceedings started.



This funding source may be available to pay for home modifications necessary to support aging in place.

What are HOME Funds?



Home Modifications

- HOME funds allocated during the Consolidated Planning process.
- Approximately half of homeowners have made home modifications that make their homes safer and more appropriate for them as they age.
 - Adding safety-related and universal design features (e.g., grab bars, hand rails, lever knobs) supports aging in place.
 - Cost is a major barrier to home modification to make homes safer.



**Influencing this may
support aging in place.**

**What is the way the
community develops
and plans for an
aging population?**



Aging Population

- People over 65 will increase from 1/8 to 1/5 – 20 % – of the overall population in the next 20 years:
 - 35.0 million (12.4%) in 2000
 - 39.7 million (13.2%) in 2010
 - 53.7 million (16.5%) in 2020
 - 70.0 million (20.0%) in 2030 (last baby boomer turns 65).

By 2050

- The number of people:
 - over 65 will more than double
 - over 75 will triple
 - over 85 will quintuple
- In 2000 - 5 workers to every 1 person over 65.
- In 2050 - 2 workers to every 1 person over 65.

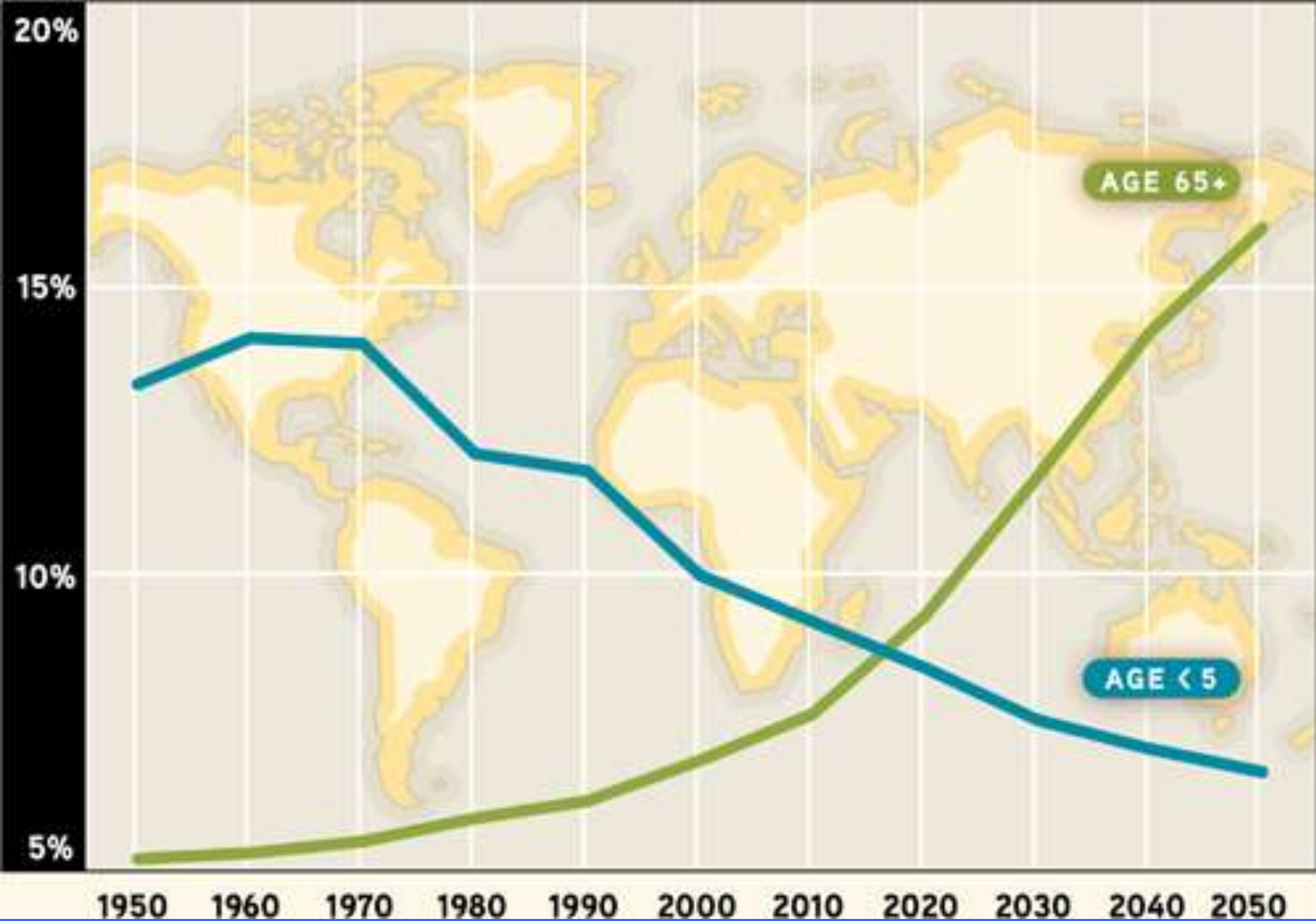
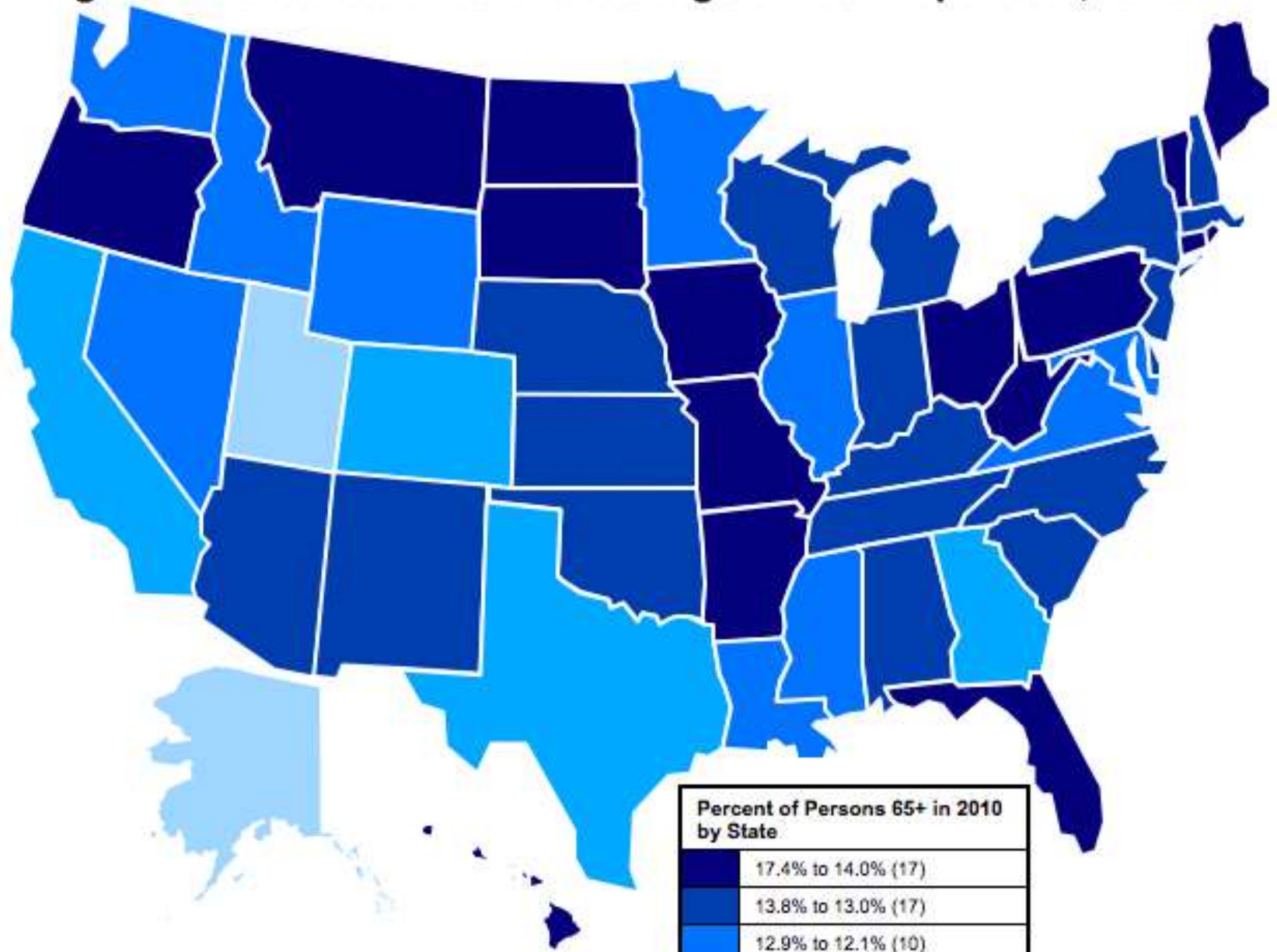







Figure 4: Persons 65+ as a Percentage of Total Population, 2010



| Percent of Persons 65+ in 2010 by State | |
|---|---------------------|
|  | 17.4% to 14.0% (17) |
|  | 13.8% to 13.0% (17) |
|  | 12.9% to 12.1% (10) |
|  | 11.4% to 10.4% (5) |
|  | 9.0% to 7.7% (2) |

(Source: 2010 Population Estimates from the U.S. Bureau of the Census)

WAKE UP!

- Most communities have not yet started to plan for an aging population.
- Those communities that have started planning have not made major progress.
- The longer we wait, the more difficult it will become to make the changes necessary to create environments for successful aging

(Source: The Maturing of America—Getting Communities on Track for an Aging Population)



There is an inadequate supply of this to serve an aging population.

**What is appropriate,
affordable, accessible
housing?**



Inadequate Supply of Affordable Housing

- Only 64 affordable, available, and adequate rental units were available for every 100 very low-income renter households in 2009.
- Extremely low-income rental households (with incomes below 30 percent of area median) outnumber affordable, available, and adequate units almost three to one.
- Supply gap increasing due to rising demand and rising costs.

Housing Cost Burden

- For all incomes, 1 in 4 renters and 1 in 8 owners were cost burdened in 2008.
- Renters below the federal poverty level paid 71% of their income in rent in 2009.
- 64 % of the bottom quartile income and 58 % of the middle income were paying more than 30 % of their income for rent in 2009.
- 61 % of the lowest income quartile paid more than 50 % of their income in rent.

Unaffordable Housing

- Homeowners over 65
 - 23.8% pay 30% or more of income for housing
 - 9.7% pay 50% or more of income for housing
- Renters over 65
 - 51.5% pay 30% or more of income for housing
 - 26.3% pay 50% or more of income for housing
- Cost Burden Increases with Advancing Age
 - 54% of renters over 85 pay 50% or more of income for housing

(Source: AARP State Housing Profiles—A Special Analysis of the Census Bureau's American Community Survey, 2006)

Multifamily Rental Housing

- The higher densities of multifamily rental housing can serve more economically and efficiently the needs of older people who require special services like medical care, meal preparation, and help with activities of daily living.
- Older people whose homes were foreclosed upon will have a hard time returning to homeownership. These factors will put even greater pressure on the availability of affordable rental housing.

Single Family Households

- The second fastest growing family type over the next 10 to 20 years will be single persons living alone, nearly half (45 percent) of whom rent.
- From 2000-2020, as the number of older people begins to skyrocket, the largest generation of children below the age of 20 in the history of the US will also reach adulthood, competing with older people for the limited supply of rental housing available.

Fair Housing Planning: Affordability

- Prohibit source of income discrimination
- Provide funding and incentives to support provision of services with housing
- Provide property tax relief and rental assistance for older people with a housing cost burden
- Provide incentives for shared housing arrangements



Resources

- AARP Livable Communities:
<http://www.aarp.org/research/ppi/liv-com/>
- *The Maturing of America—Getting Communities on Track for an Aging Population* (www.n4a.org).
- *Blueprint for Action: Developing a Livable Community for all Ages* (www.n4a.org).
- Barrier Free Environments, Inc. (1998), *Fair Housing Act Design Manual*. Washington, U.S. Department of Housing and Urban Development.

Further Reading

- Schwemm and Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*:
<http://www.bazelon.org/issues/housing/moreresources/articles/11-04iowalawreview.pdf>
- Allen, *We Are Where We Live: Seniors, Housing Choice, and the Fair Housing Act*
<http://www.abanet.org/irr/hr/spring04/seniors.html>
- Allen and Silverstein, *Preserving Elders' Housing Rights*: <http://www.bazelon.org/issues/housing/moreresources/articles/10-03trial.htm>

Further Reading

- Carlson and Allen, *Why Does the Business Manager Need My Complete Medical History? An Examination of Housing Discrimination in Long-Term Care:*
<http://www.bazelon.org/issues/housing/more/resources/articles/3-04naela.pdf>
- Bierma, Nepveu, and Wilkinson, “*We Can’t Meet Your Needs*” *Fair Housing Opens Doors to Housing With Services: Clearinghouse Review* Vol 42, Nos. 5-6, Sept.-Oct. 2008.



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