



Assessment of Virginia's Disability Services System: Housing



Virginia Board for
People with Disabilities

2018 Assessment of Disability Services in Virginia Housing

First edition

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The Virginians with Disabilities Act § 51.5-33 directs the Virginia Board for People with Disabilities (VBPD), beginning July 1, 2017, to submit an annual report to the Governor, through the Secretary of Health and Human Resources, that provides an in-depth assessment of at least two major service areas for people with disabilities in the Commonwealth. In June 2017, the Board selected Housing and Transportation as the service areas to be covered in the 2018 Assessments. The Board, as part of its authority and responsibility as a Developmental Disabilities (DD) Council under the federal Developmental Disabilities and Bill of Rights Act (42 U.S.C. §15021-15029), is also required to complete a similar analysis as it develops and amends its federal State Plan goals and objectives.

The Assessments on Housing and Transportation, respectively, are not intended to be a comprehensive inventory of housing and transportation services and supports available to individuals with disabilities in the Commonwealth and should not be relied upon as such. Rather, in this Assessment, the Board seeks to identify critical issues, data trends, and unmet needs of people with developmental disabilities, and offer recommendations for improving the delivery of housing and transportation services for people with developmental disabilities in the Commonwealth. Although the focus of the analysis and recommendations is on individuals with developmental disabilities, the recommendations would also benefit the broader population of people with disabilities and other populations with similar housing and transportation needs, such as elderly and very low-income individuals.

The data for this Assessment was obtained from a variety of sources, including state and federal agency websites and reports, legislative studies, regional analyses of impediments to fair housing, national nonpartisan policy and research organizations, and various other research publications. We appreciate the assistance of the state agencies that provided information and clarification on the services relevant to their agencies. The policy recommendations contained within this Assessment were developed by an ad hoc committee of the Board and approved by the full Board at its December 6, 2017, meeting.

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Statement of Values

"Physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination ...; historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem ..."

— 42 U.S. Code § 12101 – Americans with Disabilities Act – Findings and Purpose

The Virginia Board for People with Disabilities serves as Virginia's Developmental Disability Council. In this capacity, the Board advises the Governor, the Secretary of Health and Human Resources, federal and state legislators, and other constituent groups on issues important to people with disabilities in the Commonwealth. The following assessment of housing services and outcomes is intended to serve as a guide for policymakers who are interested in increasing independent, integrated housing options for people with disabilities in the Commonwealth of Virginia. The Board's work in this area is driven by its vision, values, and the following core beliefs and principles:

Inherent Dignity: All people possess inherent dignity, regardless of gender, race, religion, national origin, sexual orientation, or disability status.

Presumed Capacity: All people should be presumed capable of obtaining a level of independence and making informed decisions about their living arrangements.

Self-determination: People with disabilities and their families are experts in their own needs and desires. They must be included in the decision-making processes that affect their lives. People with disabilities should be included in the decision-making processes that drive housing policy decisions, as well as in decisions about their own housing needs and supports.

Integration: People with disabilities have a civil right to receive services and supports in the most integrated setting appropriate to their needs and desires, consistent with the Supreme Court's Olmstead decision. Housing options for people with disabilities must not be unnecessarily segregated from the general population.

Diversity: Diversity is a core value. All people, including people with disabilities, should be valued for contributing to the diversity of our neighborhoods and of the Commonwealth.

Freedom from Abuse and Neglect: People with disabilities must be protected from abuse, neglect, and exploitation in all settings where services and supports are provided.

Fiscal Responsibility: Fiscally responsible policies are beneficial for the Commonwealth, and they are beneficial for people with disabilities.

Executive Summary

The Commonwealth of Virginia has made significant progress in improving the living situations of people with developmental disabilities in recent years. Fewer people with developmental disabilities reside in large segregated facilities today than did in the recent past (see Table 1). More people with developmental disabilities who are eligible for Medicaid Home- and Community-Based Services (HCBS) live independently in their own homes or apartments. Access to federal rental assistance has been increased and streamlined for people with developmental disabilities in many regions of the Commonwealth.

Despite this progress, people with disabilities continue to face multiple barriers to accessing independent housing options including affordability, discrimination, and physical accessibility (see Table 1). Supplemental Security Income (SSI), which many people with disabilities rely on as their sole or primary source of income, has not kept pace with the rapidly rising costs of rental housing. Data on the rates of housing discrimination against people with disabilities is insufficient to identify clear trends, but available evidence suggests that housing discrimination, both overt and subtle, continues to limit the housing options available to people with disabilities. Likewise, there is limited data on the available stock of accessible housing units, as well as on the rates of compliance with fair housing accessibility requirements among newly constructed rental housing. Anecdotal evidence, however, suggests that there is more work to be done to ensure that Virginia's housing stock meets the growing demand for accessible housing.

Key housing indicator	Data available as of date provided	Recent Trend
People living in the community		
Training Center census (Mar. 2018)	226	↓
Percentage of all licensed group home beds in group homes of four beds or fewer (Aug. 2017)	40%	n/a
Individuals in the Settlement Agreement target population living in their own home (Nov. 2017)	705	↑
Affordability of independent housing		
Statewide average rent for a one-bedroom apartment as a percent of monthly SSI payment (2016)	139%	↑
Statewide average rent for an efficiency apartment as a percent of monthly SSI payment (2016)	132%	↑
Housing discrimination		
Number of Virginia fair housing discrimination claims filed on basis of alleged disability discrimination (2016)	53	↑
Percent of total Virginia fair housing discrimination claims that were filed on the basis of alleged disability discrimination (2016)	59%	↑

Table 1: Key housing outcomes of people with disabilities.



Current demographic and housing trends threaten to increasingly strain housing resources for people with disabilities and other housing disadvantaged groups in the years ahead. An aging population, an increasing number of individuals with developmental disabilities residing with aging caregivers, and an ever greater percentage of individuals with developmental disabilities living in the community rather than in institutions suggest that demand for affordable, accessible housing will only continue to grow.

There are several areas where additional data and research are needed to adequately address the independent housing needs of people with disabilities in the Commonwealth. More data and research are needed, for example, about the rates of discrimination experienced by people with disabilities and other similarly housing challenged individuals in the housing market. More data is needed about the accessibility of Virginia's housing stock, particularly about the levels of compliance with existing housing accessibility standards by newly constructed apartment buildings. Additional research about the effectiveness of local housing policies aimed at promoting affordable housing development would also be helpful. And finally, additional research into the combined effects of housing and transportation costs, particularly in Virginia's rural regions, would be helpful in understanding the true housing affordability challenges of Virginians with disabilities in these regions.

Additional research will also be needed to assess the impact of Virginia's efforts to address the independent housing needs of individuals with developmental disabilities that are in their infancy. Virginia's new Medicaid Waiver-funded Shared Living benefit, for instance, has yet to be fully implemented as of the writing of this Assessment, and Virginia's overall efforts to redesign its services system in a way that will support more individuals with developmental disabilities in their own homes continue to unfold. The results of these changes will not be able to be adequately assessed for several years to come.

The Virginia Board for People with Disabilities offers eighteen recommendations to improve the availability of affordable, accessible, independent housing options to individuals with disabilities in the Commonwealth of Virginia. While the primary purpose of this Assessment is to inform state-level policymakers, many of the policy and enforcement decisions that affect housing are made at the local and regional level. It is important that local decision makers also receive input from their affected constituents, including people with disabilities and the elderly, about their housing needs. The Board's eighteen recommendations are grouped into three main goals:

1. *Expand access to affordable independent living options for people with developmental disabilities in Virginia*
 - a. Increase funding for Virginia's State Rental Assistance Program in accordance with Virginia's plan to increase independent living options (as updated in January 2017)
 - b. Continue to work with local housing authorities to set aside Housing Choice Vouchers for individuals in the Department of Justice Settlement Agreement population and encourage housing agencies that have not agreed to a set aside to do so
 - c. Review local zoning laws to ensure that they do not present unnecessary barriers to the development of affordable housing options
 - d. Explicitly empower local governments to promote affordable housing in their jurisdictions through the enactment of affordable housing ordinances, such as inclusionary zoning and density bonus ordinances
 - e. Enhance public education efforts related to independent housing options for individuals with intellectual and developmental disabilities, including education about the availability of housing resources and the processes of accessing and navigating those resources
 - f. Increase the representation of individuals with disabilities and agencies that serve individuals with disabilities on local housing planning bodies
 - g. Enhance cross-secretariat and agency collaboration to identify opportunities to access additional

federal and state resources to expand access to accessible affordable housing

2. Vigorously enforce Virginia's Fair Housing Laws

- a. Initiate a statewide Fair Housing testing program in Virginia to collect data on the frequency of fair housing violations and publish this data for use by researchers and housing professionals
- b. Expand education and outreach to individuals with developmental disabilities to inform them about their fair housing rights and the process for filing fair housing complaints
- c. Continue to educate building professionals, property managers, and other housing professionals about fair housing laws and accessibility requirements
- d. Prohibit discrimination against a potential tenant solely on the basis of the tenant's source of income
- e. Enact local fair housing ordinances in local jurisdictions that do not already have existing fair housing ordinances, and enforce fair housing at the local level

3. Adopt state and local policies and practices that encourage accessible development and hold violators of accessibility requirements accountable

- a. Vigorously enforce new construction accessibility requirements at the local level
- b. Adopt local accessibility incentives in localities where they do not already exist, such as permit discounts for qualifying homes
- c. Strengthen accessibility incentives built into Low-Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP)
- d. Expand access to home modification assistance and increase the home modification benefit limit in the DD Medicaid Waivers
- e. Increase the Livable Home Tax Credit funding limit from \$1 million dollars to \$2 million
- f. Increase education and outreach to home builders about how to affordably incorporate accessible features into housing designs



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People with Disabilities**

Background

Virginia's Aging Population

Virginia's population is aging. Between 2000 and 2010, Virginia's overall population increased by 13 percent, while the population of people sixty-five years and older increased by 23 percent and the population of people 85 years or older increased by 40 percent.

An aging population, aging caregivers, and increasing community integration of people with disabilities will exacerbate Virginia's housing challenges in the years to come. The University of Virginia Weldon Cooper Center projects that by 2030, one in five Virginians will be over the age of 65 (see Figure 1). According to these projections, the growth of Virginians over the age of 65 will account for over half of the total population growth in the state (Houp, 2017).

This aging trend is most pronounced in the rural regions of the state, which already struggle to meet the housing, transportation, and community living needs of individuals with disabilities. In some of the most rural regions of the Commonwealth, individuals over the age of seventy-five who are living by themselves already account for 10 percent or more of the population today (Housing Virginia, 2016). In much of rural Virginia, individuals over the age of 65

are projected to reach greater than 20 percent of the population by 2020 (Sen, 2017).

As the population ages, people with disabilities are living longer lives. The average life expectancy of adults with intellectual and developmental disabilities has increased due to medical advances and improved living conditions, and is now similar to that of people without disabilities (Heller, Winter 2010). The number of adults with developmental disabilities is expected to almost double nationwide between 2000 and 2030.

While these trends are positive, they also present planning challenges for the Commonwealth and its localities. As people with and without disabilities age, their support needs often increase. Those who lived in the community with natural supports, such as parents and other family members, may face additional challenges as well: aging caregivers may have difficulty continuing to provide for their loved ones, and eventually may be unable to remain their primary caregivers. The housing, transportation, and community living needs of these individuals may change rapidly in such situations.

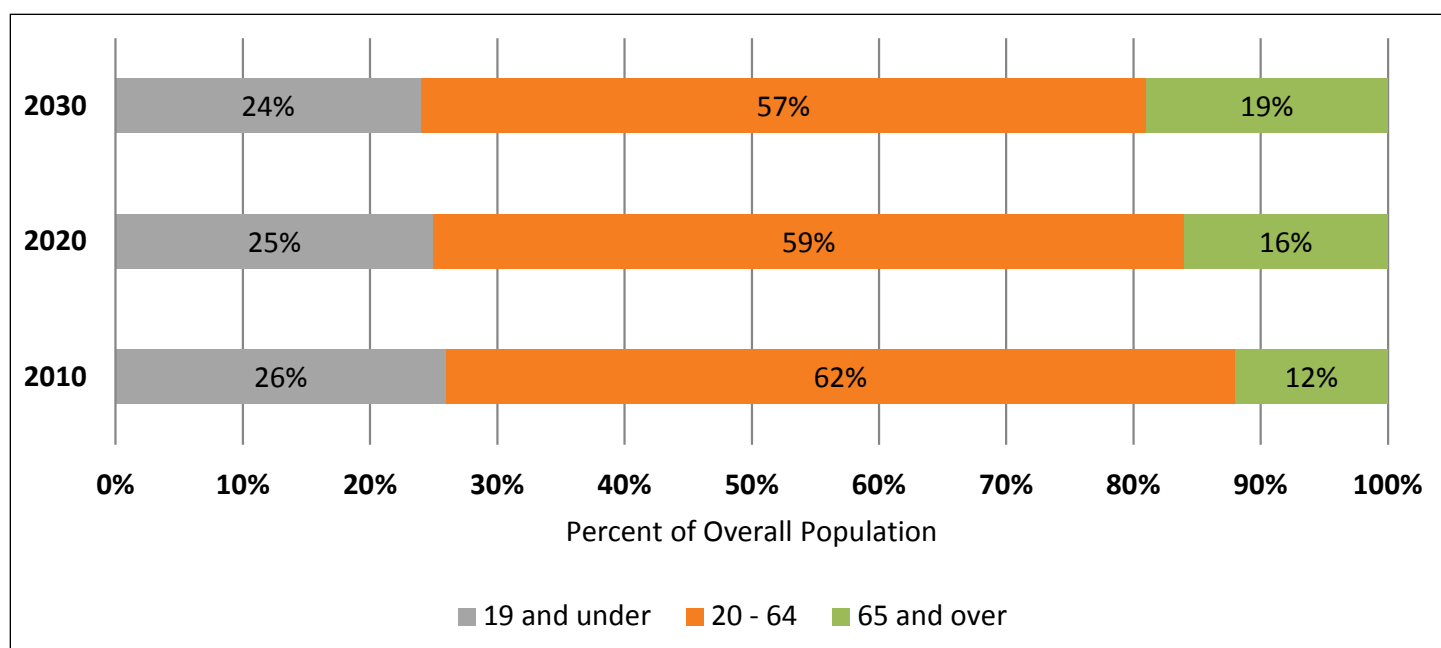


Figure 1: Age Group as a Percentage of Overall Population (Sen, 2017)

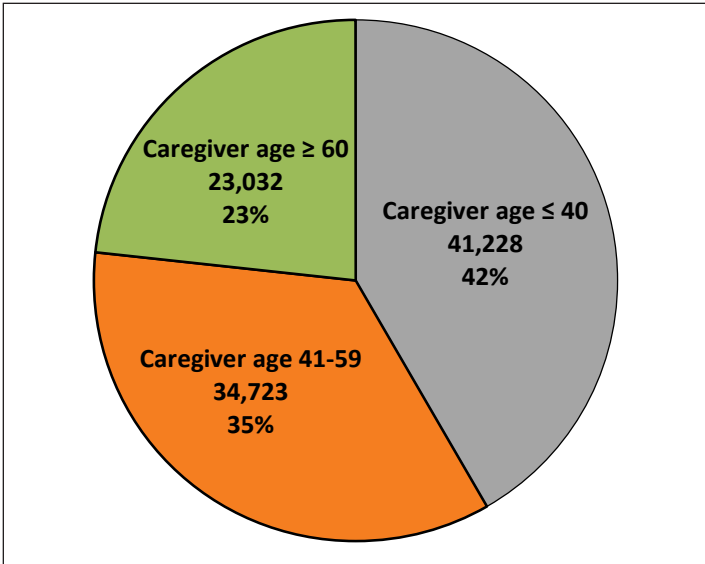


Figure 2: Virginians with a Developmental Disability Living with a Caregiver in 2015, by Caregiver Age (David L. Braddock, 2017)

Virginia’s Aging Caregivers

An increasing number of individuals with developmental disabilities rely upon aging caregivers for housing and supports.

Across the United States, family members are the most common providers of housing and supports to people with developmental disabilities today (AUCD and

AAIDD, 2015). In 2015, an estimated 98,983 Virginians with an intellectual or other developmental disability lived at home with a family caregiver, an increase of over 10,000 since 2003. Of those, 23,032 (23 percent) lived with a caregiver who was sixty years of age or older (see Figure 2). Some of these individuals may have other family members who can serve as a caregiver when their current caregiver can no longer provide the assistance that they need. Others, however, may find themselves in need of housing and support services in order to continue living in the community.

Increased Community Integration

Individuals with disabilities are increasingly living their lives in the community, rather than in institutions, often with the support of family caregivers.

This shift from institutional to community-based care for individuals with disabilities has been ongoing for many years and has been accelerated by recent regulatory and policy actions. There is increasing recognition in the Commonwealth and in the nation that people with disabilities who receive state-funded services have the right to live, work, and recreate as independent and fully

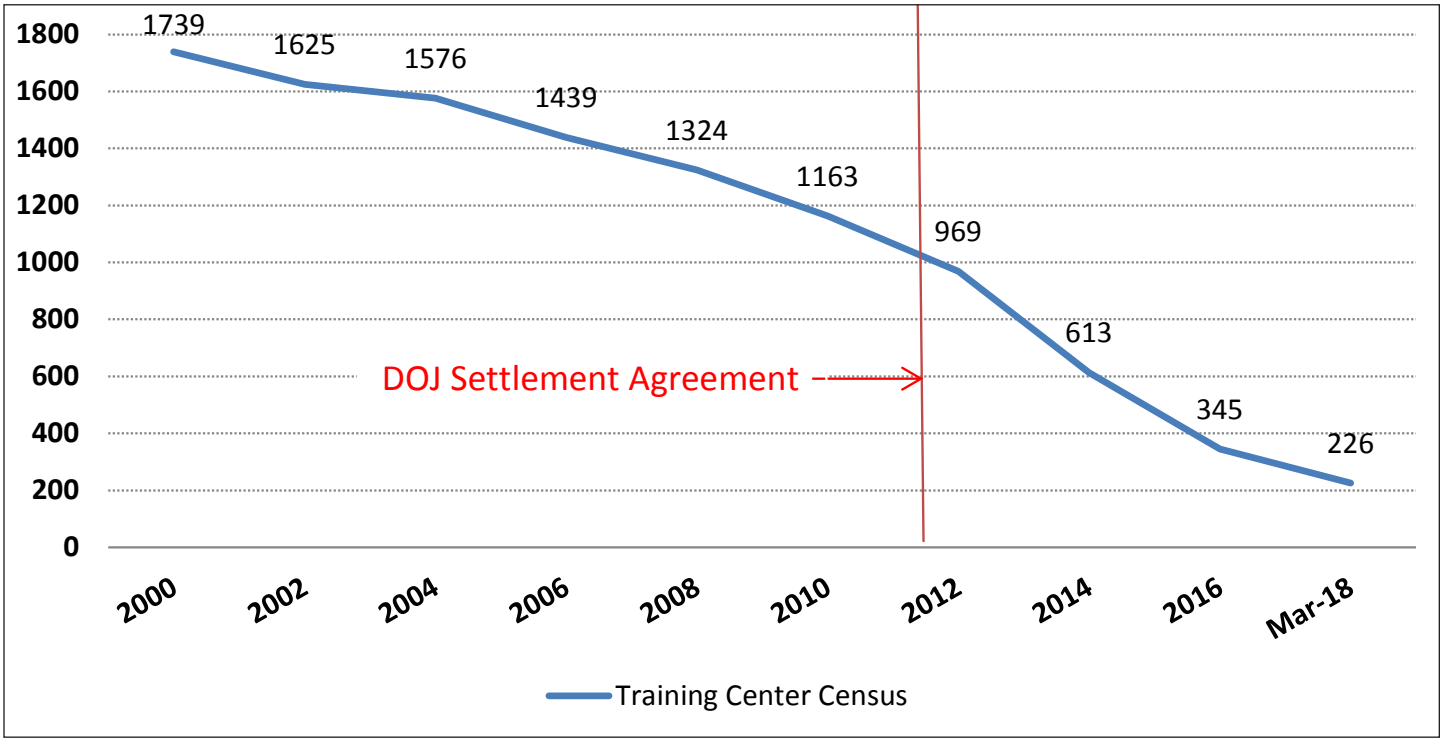


Figure 3: Training Center Census (Department of Behavioral Health and Developmental Services (DBHDS) Training Center Closure Report, 2017) *

*2018 census was updated based on information disseminated at a DOJ Settlement Agreement Stakeholders Group meeting in March 2018.

integrated members of their communities.

Virginia's State-Operated Training Center census has been declining for many years, and that decline has accelerated due to Virginia's Department of Justice (DOJ) Settlement Agreement activities. Historically, individuals with developmental disabilities were often housed in segregated institutional settings. The trend away from large institutional settings was already well established by the time of the 2012 DOJ Settlement Agreement. The census at Virginia's large state-run Training Centers had gradually decreased from 1,739 in 2000 to 1,163 in 2010, due to natural attrition and steadily declining admissions (see Figure 3, previous page). This trend accelerated in 2012, when Virginia adopted a plan to close four of its five Training Centers in order to fulfill the community integration requirements of its DOJ Settlement Agreement. By March 27, 2018,

the census had dropped to 226, significantly less than half of what it would have been without the affirmative commitment of the Commonwealth to shift to a community first system of care for its citizens with developmental disabilities.

Demand for community integration is also expected to increase as recent federal regulations regarding the use of Medicaid funding are implemented. In January 2014, the Center for Medicare & Medicaid Services (CMS) announced new rules that limit the settings in which individuals may receive Medicaid Home- and Community-Based Services (HCBS) to those that are truly community-based (see Exhibit 1). Implementation of these regulations is ongoing, as settings that were operating prior to March 2014 will have until March 2022 to comply.

All home- and community-based settings must meet the following criteria:	Provider-owned or controlled residential settings must also meet the following criteria:	Home- and community-based setting exclusions:
<p>Be integrated in and support full access to the greater community</p> <p>Be selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting</p> <p>Ensure an individual's rights to privacy, dignity and respect, and freedom from coercion and restraint</p> <p>Optimize individual initiative, autonomy, and independence in making life choices</p> <p>Facilitate individual choice regarding services and supports and who provides them</p>	<p>The unit or dwelling is a space that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protection from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity</p> <p>The individual must have privacy in their sleeping or living unit, including lockable entrance doors, choice of roommates, freedom to furnish and decorate sleeping and living units</p> <p>Individuals control their own schedules and activities and have access to food at all times</p> <p>Individuals can have visitors of their choosing at any time</p> <p>The setting is physically accessible to the individual</p>	<p>Nursing facilities</p> <p>Institutions for mental diseases</p> <p>Intermediate care facilities for individuals with intellectual disabilities (ICF-IIDs)</p> <p>Hospitals</p> <p>Any other locations that have qualities of an institutional setting</p>

Exhibit 1: Age Group as a Percentage of Overall Population (Sen, 2017)

The HCBS settings rules do not directly limit community-based residential settings based on the number of individuals with disabilities who reside in them. The size of a residence, however, is one of many characteristics of a residential setting that can contribute an institutional quality to the setting. Additionally, research supports the conclusion that the size of a residence can have an impact on the quality of life and independence of residents. The National Core Indicators (NCI), for instance, collects data on the settings in which individuals with intellectual and developmental disabilities receive services, as well as on numerous outcomes associated with those services. This data suggests that smaller settings, on average, produce better quality of life outcomes, including increased independence and greater life satisfaction (AUCD and AAIDD, 2015).

Although the majority of licensed settings in Virginia are relatively small, the majority of beds are still in relatively larger settings. Of the 1,685 total licensed group homes in Virginia in August 2017, 1,019 (60 percent) were licensed for four beds or fewer, while 666 (40 percent) were licensed for five beds or more. Of the total 8,792 beds in these licensed group homes, only 3,458 (39 percent) were in group homes of four or fewer beds

and 5,334 (61 percent) were in group homes of five or more beds. There were also a total of 63 licensed state-run intermediate care facilities for individuals with disabilities (ICF-IIDs) with a combined total of 518 licensed beds among them.*

There are regional differences in the distribution of group home beds among smaller and larger group homes in the Commonwealth (see Figure 4). While the percent of all licensed group home beds that were in group homes with four or fewer licensed beds was 39 percent statewide in August 2017, it ranged from 30 percent in the Southwest region to 46 percent in the Eastern region. While the percent of all licensed group home beds that were in group homes with five or more licensed beds was 61 percent statewide, it ranged from 54 percent in the Eastern region to 70 percent in the Southwest region. Interestingly, while Eastern Virginia has the greatest percentage of group home beds in the smaller four bed or fewer group homes, it also has the largest number of ICF-IID beds per licensed group home beds of any region: one ICF-IID bed per 7.2 licensed group home beds, compared to a statewide average of one ICF-IID bed per 17.0 group home beds.

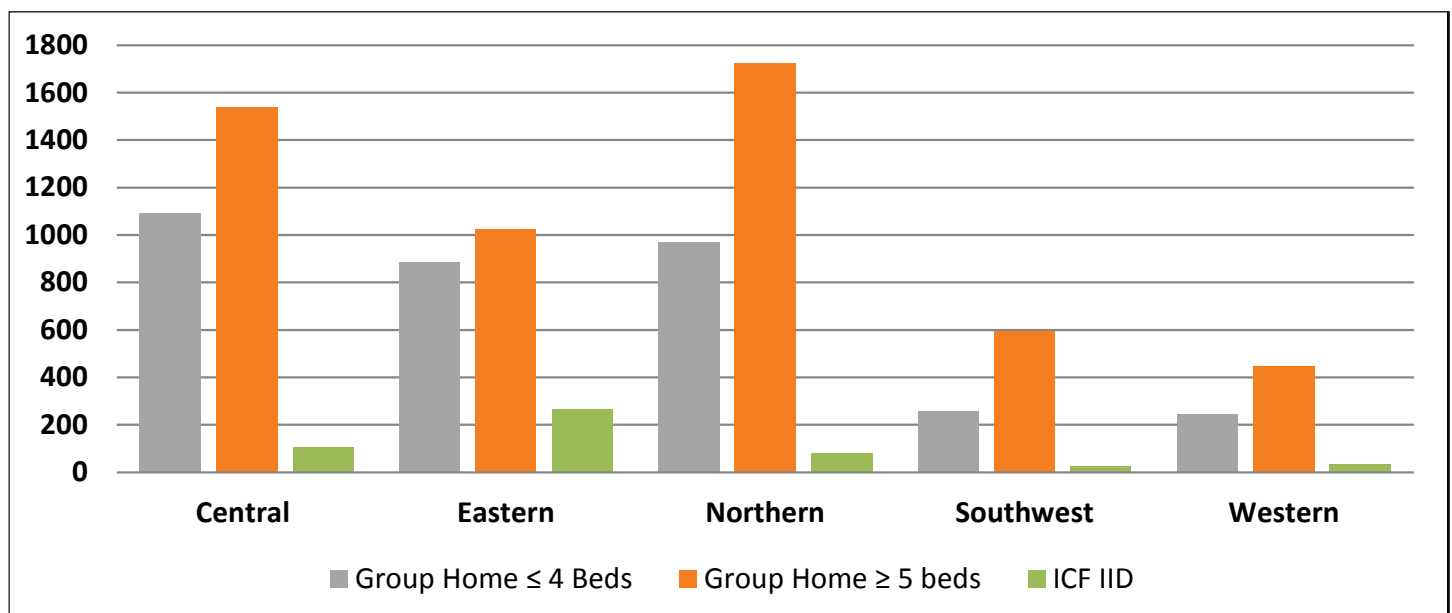


Figure 4: Age Group as a Percentage of Overall Population (Sen, 2017)

*Licensed provider data was obtained from DBHDS website: <http://www.dbhds.virginia.gov/quality-management/Licensed-Provider-Location-Searchon>.

Key Findings and Recommendations

Affordability of Independent Housing Options

The unaffordability of rental housing is a pervasive barrier to independent housing for people with disabilities.

Financial Barriers to Independent Living

Many people with disabilities are capable of living independently in the community with or without paid and/or natural supports but face substantial barriers to obtaining affordable independent housing.

The following are just some of the barriers identified in the literature and by housing experts that limit the ability of people with disabilities to obtain affordable independent housing:

- The cost of housing has increased at a faster pace than has Social Security Supplemental Security Income (SSI) payments;
- Restrictive local zoning laws limit the development of affordable housing in some regions of the Commonwealth;
- A real or perceived lack of local authority to take affirmative steps to advance the development of affordable housing because of Virginia's adherence to the Dillon Rule¹ and no delegated authority in this area;
- Rental assistance, such as federal Housing Choice Vouchers and State Rental Assistance is insufficient to meet the needs of individuals with very low income, including people with disabilities who depend on SSI;
- There is a lack of knowledge about the rental assistance that is available and about independent housing models for individuals with intellectual and developmental disabilities; and
- Many housing planning bodies lack representation of people with disabilities or the agencies that serve them.

A review of local analyses of housing needs indicates that localities in Virginia commonly experience these barriers. Localities are federally required to complete these analyses in order to receive certain federal housing grants. VBPD reviewed analyses from six localities (Harrisonburg, Fairfax, Richmond, Loudon, Hampton Roads, and Charlottesville) for this Assessment. Five of the six localities (Harrisonburg, Fairfax, Richmond, Loudon, and Charlottesville) identified a lack of affordable housing in their regions as a barrier to fair housing. Three of the six localities (Fairfax, Hampton Roads, and Charlottesville) identified zoning codes as a limitation to affordable housing development. One of the six localities (Fairfax) identified the Dillon Rule as a limitation to local authority to promote affordable housing.

Poverty is one of the most challenging barriers to independent housing for people with disabilities in Virginia, as it is throughout the United States. More than one in five people with disabilities in Virginia live in poverty, more than twice the rate of people without disabilities (see Figure 5). The gap in poverty rates between people with and without disabilities has not substantially narrowed over time. High rates of poverty leave independent housing unaffordable for many people with disabilities absent some form of rental assistance.

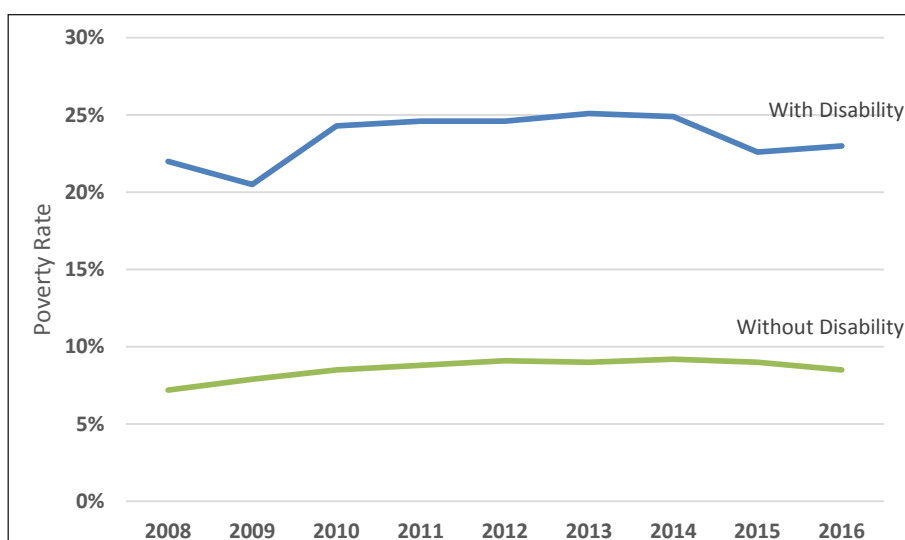


Figure 5: Poverty Rate of Virginia's Civilian, Non-Institutionalized Population Ages 21-62 (Disability Statistics, 2009 - 2017)

¹ The Dillon Rule (sometimes written "Dillon's Rule") states that localities possess only those powers that are expressly granted to them by the State, in contrast to state governments, which possess whatever power is not expressly limited by the state or federal constitution.

The high rate of poverty among people with disabilities is in part a consequence of insufficient financial assistance provided to individuals who are unable to work. Supplemental Security Income (SSI) does not provide sufficient income for individuals to afford housing without a housing subsidy. In 2016, SSI recipients in Virginia received a monthly payment of \$733, which represented just 16.2 percent of the median income for the state (see Figure 6). Meanwhile, the statewide average rent for a one-bedroom apartment and an efficiency apartment was 139 percent and 132 percent, respectively, of the monthly SSI payment. This is substantially more than the commonly accepted standard that affordable housing cost 30 percent or less of an individual's monthly income.

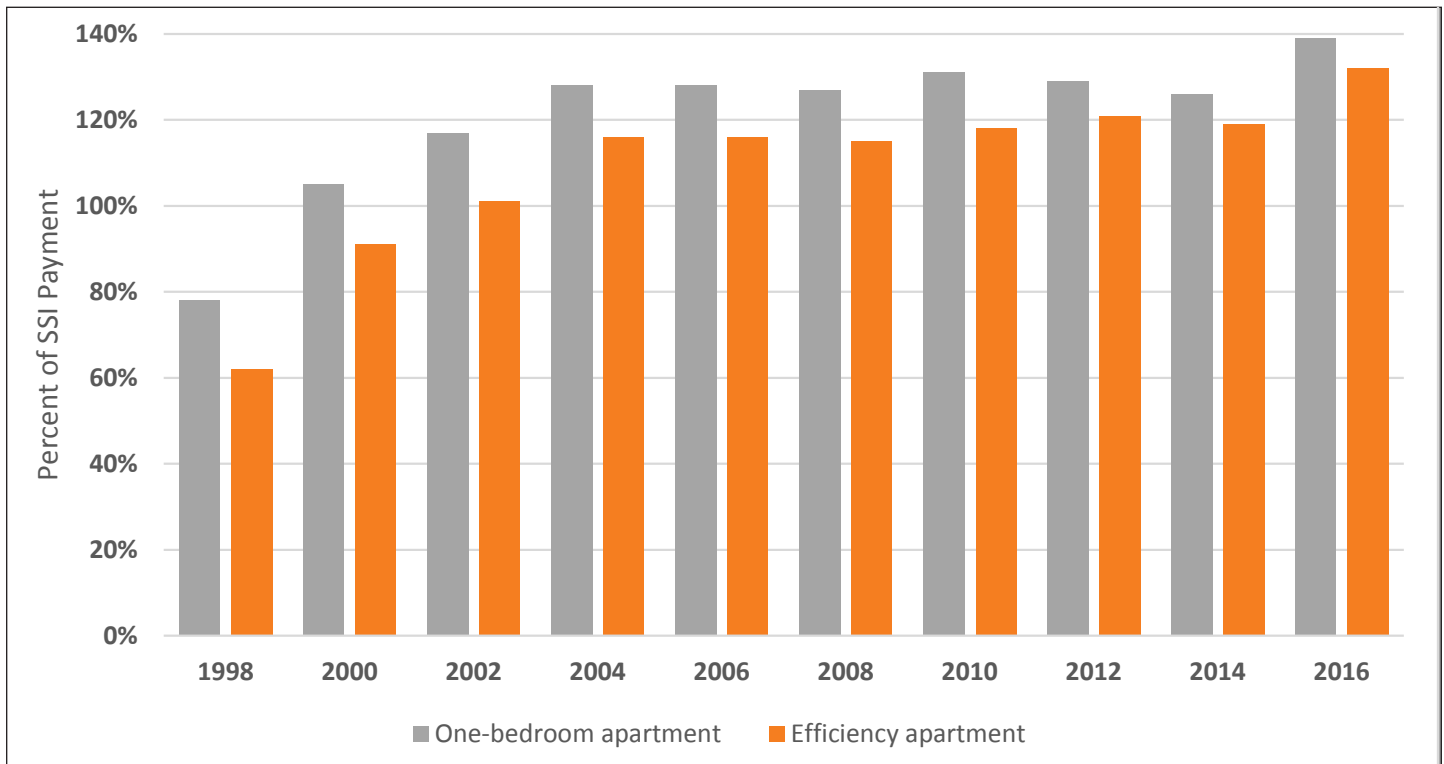


Figure 6: Statewide Average Rent as a Percentage of SSI in Virginia (Ann O'Hara, 2007) (Emily Cooper H. K., 2009) (Emily Cooper A. O., 2011) (Emily Cooper A. O., 2013) (Emily Cooper L. K., 2015)

The housing cost burden was not evenly distributed across the Commonwealth in 2016, but even the most affordable metropolitan areas of the Commonwealth were unaffordable to people who rely on SSI as their primary source of income. The most expensive region of Virginia was in Northern Virginia, the Washington Metropolitan area (see Table 2). In this region in 2016, an efficiency apartment cost 196 percent of the monthly SSI payment in the state, and a one-bedroom apartment cost 206 percent of the monthly SSI payment in the state. By contrast, the most affordable metropolitan area of the state is the Kingsport/Bristol area, where an efficiency apartment cost 62 percent the state SSI payment rate, and a one-bedroom apartment, 65 percent, in 2016.

Metropolitan Area	Cost of One-Bed Apt. as % of Monthly SSI	Cost of Efficiency Apt. as % of Monthly SSI
Kingsport/Bristol	65%	62%
Giles County	71%	60%
Floyd and Pulaski Counties	75%	71%
Virginia Beach/Norfolk/Newport News	128%	127%
Charlottesville	133%	97%
Washington/Arlington/Alexandria	206%	196%

Table 2: Three Most and Least Affordable Metropolitan Areas in Virginia in 2016

Housing choices can indirectly affect other costs of living. For instance, the most affordable regions of the Commonwealth tend to be located in the more rural reaches of the state, where transportation costs are often much higher than they are in the Commonwealth's urban localities. The most common metric for housing affordability, which recommends spending no more than 30 percent of one's income on housing, only considers the cost of housing. While some use a more nuanced metric that combines transportation and housing costs, such as the Center for Neighborhood Technology (CNT), there is no universally agreed upon metric for such combined measures. There is also limited data available on the combined transportation and housing costs on the local, regional, or state level of analysis. More research is needed to adequately assess the relationship of transportation costs and housing costs for people with disabilities in Virginia's rural communities.

Approaches to Improve Housing Affordability

There are two general approaches to addressing the unaffordability of housing for people with disabilities: States and localities can take steps to increase the development of affordable housing and they can increase the housing assistance available to people with disabilities.

The appropriate approach will vary depending on the locality because the factors that affect the development of affordable housing differ so markedly from one community to another. These factors include local zoning requirements, housing markets, housing density, and development trends. There is no uniform state-wide policy that can adequately address the housing needs of all communities. Rather, localities are best situated to identify and address barriers to affordable housing development in their communities.

There are affordable housing incentives that localities can utilize, some of which are available statewide, to further the first approach of increasing the development of affordable housing. Perhaps the most readily utilized state-level incentive for the development of affordable housing is the federally-funded Low-Income Housing Tax Credit (LIHTC) program, which is administered in Virginia by the Virginia Housing Development Authority. This program encourages the development of affordable rental housing by providing

qualified owners a federal income tax credit, and providing incentives for private investors to construct or rehabilitate low-income housing. States must incorporate program eligibility requirements and policies for distributing the state's allocation of LIHTC funds into a Qualified Allocation Plan (QAP).

In addition to encouraging the development of affordable housing, states and localities can expand access to affordable housing by providing rental assistance to people with disabilities and other housing disadvantaged populations. Indeed, federal and state rental assistance, such as the federal Housing Choice Voucher program and Virginia's State Rental Assistance Program, offer an avenue for individuals with very low income to afford independent housing. Unfortunately, these programs have failed to keep pace with the housing needs of low-income people. Over 103,000 low-income Virginia households receive some form of federal rental assistance, over half of which include individuals who are elderly or have a disability. Another 256,000 pay more than half their income for rent, a 32 percent increase from 2007.

Despite these challenges, Virginia has achieved some progress in expanding access to housing subsidies for people with developmental disabilities in recent years. When Virginia entered a Settlement Agreement with the US DOJ in 2012, it agreed among other things, to increase the availability of independent living options to individuals in the Settlement Agreement population. The terms of this agreement included the following:

1. Serve individuals in the target population in the most integrated setting consistent with their informed choice and needs;
2. Facilitate individuals who receive Medicaid Home and Community-Based Services Waivers to live in their own home, leased apartment, or family's home, when such placement is their informed choice and most integrated setting appropriate to their needs;
3. Provide information about and make referrals for individuals to apply for rental or housing assistance; and
4. Develop a plan to increase access to independent living options, such as an individual's own home or apartment.

Virginia is well on track to meet its independent housing initiative's target of obtaining independent housing for 1,866 individuals in the DOJ Settlement Agreement population by 2021. As of November 2017, the state had created or set aside 533 rental assistance resources, such as Housing Choice Vouchers and State Rental Assistance Program vouchers, for the Settlement Agreement population. The federal Housing Choice Vouchers allow individuals with low or very low income to afford rent by providing a housing supplement. Typically recipients of these housing vouchers pay 30 percent of their income for rent, and the remainder of their rent is paid for with the Housing Voucher. The State Rental Assistance Program operates similarly, but is state funded. As of November 2017, there were a total of 705 individuals in the Settlement Agreement population living in their own home, well ahead of the Commonwealth's target of obtaining independent housing for 591 individuals by July 2018 (see Figure 7). In order to meet its ultimate goal, however, the Commonwealth will need to successfully convince additional localities to set aside housing vouchers for the Settlement Agreement population, and additional

State Rental Assistance Program vouchers will have to be created.

Additionally, Virginia's redesigned Medicaid Waivers offer new housing options to people with intellectual and developmental disabilities. As of 2017, individuals enrolled in any of Virginia's three Medicaid Waivers for individuals with developmental disabilities, inclusive of individuals with intellectual disabilities, may be eligible for Waiver-funded Shared Living services. Shared living provides support to an individual who resides in his or her own home or apartment in the community with a roommate of the individual's choosing. In a shared living arrangement the roommate receives a stipend for the portion of the total cost of rent, food, and utilities that is attributed to the roommate in exchange for the roommate providing minimal supports to the individual with a disability. It is too early as of the writing of this Assessment to know what impact the implementation of this Shared Living benefit will have on the ability of individuals with developmental disabilities to live independently in the community, but this service provides an additional option for that choice.

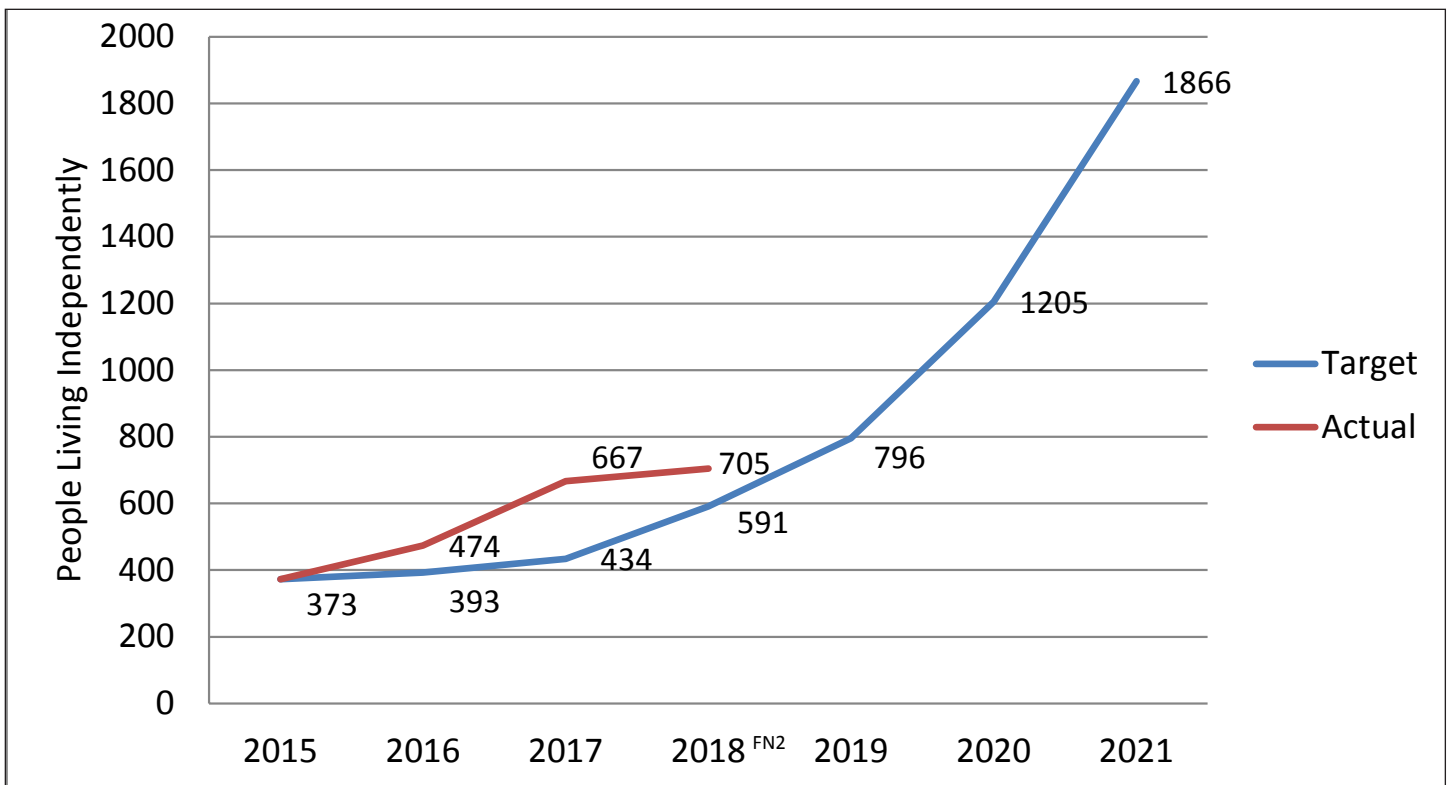


Figure 7: Targeted and Actual Number of People in Settlement Agreement Population Living Independently

* 2018 data is calculated as of November 27, 2017. Data is calculated by State Fiscal Year, which runs from July 1 – June 30.

Recommendation I

Recommendation 1: Expand access to affordable independent living options for people with developmental disabilities in Virginia:

Sub-recommendation		Responsible Party
1A.	Increase funding for Virginia's State Rental Assistance Program in accordance with Virginia's plan to increase independent living options (as updated in January 2017)	General Assembly
1B.	Continue to work with local housing authorities to set aside Housing Choice Vouchers for individuals in the DOJ Settlement Agreement population and encourage housing agencies that have not agreed to a set aside to do so	Department of Behavioral Health and Developmental Services; Department of Housing and Community Development
1C.	Review local zoning laws to ensure that they do not present unnecessary barriers to the development of affordable housing options	Localities
1D.	Explicitly empower local governments to promote affordable housing in their jurisdictions through the enactment of affordable housing ordinances, such as inclusionary zoning and density bonus ordinances	General Assembly
1E.	Enhance public education efforts related to independent housing options for individuals with developmental disabilities, including education about the availability of housing resources and the processes of accessing and navigating those resources	Department of Behavioral Health and Developmental Services; Virginia Board for People with Disabilities
1F.	Increase the representation of individuals with disabilities and agencies that serve individuals with disabilities on local housing planning bodies	Localities; Planning District Commissions
1G.	Enhance cross-secretariat and agency collaboration to identify opportunities to access additional federal and state resources to expand access to accessible affordable housing	Office of the Secretary of Health and Human Resources; and Secretary of Commerce and Trade

Housing Discrimination Against People with Disabilities

Despite strong Fair Housing protections in both federal law and Virginia law, housing discrimination against people with disabilities is a continuing and pervasive problem in the Commonwealth.

The Fair Housing Amendments Act (FHAA) of 1988 added people with disabilities as a protected class under Federal fair housing law, making it unlawful for housing providers to discriminate against people with disabilities. These protections are echoed in the Virginia Fair Housing Law as well (VA Code § 36 - 96.1). Federal and state law further require housing providers to make reasonable accommodations in rules, policies, and practices when such accommodations are necessary to afford a person with a disability the full enjoyment of the premises. Reasonable accommodations may include alterations to parking rules to ensure that a person with an ambulatory disability has access to parking sufficiently close to her dwelling, or exceptions to no pet policies to allow for a person with a disability to have an assistance animal in his dwelling. Despite these legal protections, however, discrimination continues to limit the availability of suitable housing for people with disabilities.

Prevalence of Housing Discrimination

There is limited data on the prevalence of housing discrimination in Virginia because there is no statewide fair housing testing program in the Commonwealth.

Virginia is not alone in lacking sufficient statewide data about the prevalence of fair housing abuses in the state. Most states lack a statewide fair housing testing program. Indiana became the first state to initiate a statewide fair housing testing program to identify differential treatment in the housing process of protected groups that would otherwise go undetected in 2014. Indiana's testing revealed evidence of housing discrimination, including the fact that 31 percent of multi-family rental units rejected, discouraged, or imposed fees or certification requirements on

service animals (Engaging Solutions, LLC, 2014).

Although Virginia lacks a statewide fair housing testing program, some planning regions in Virginia have conducted their own fair housing testing that suggests that housing discrimination against people with disabilities is a persistent impediment to obtaining independent housing. Five of the six local analyses of housing needs that were reviewed for this Assessment identified discrimination against individuals with disabilities as a continuing barrier to fair housing: Five of the six local analyses (Fairfax, Richmond, Loudon, Hampton Roads, and Charlottesville) identified direct housing discrimination as a barrier to fair housing, and two of the six (Richmond and Charlottesville) also identified discrimination based on source of income. Source-of-income discrimination occurs when housing providers refuse to rent to individuals based on the source of the individual's income. For instance, providers may refuse to rent to individuals whose primary source of income consists of Social Security Income (SSI), or whose rent will be paid in part or in whole by state or federal housing assistance. Source-of-income discrimination can have a negative impact on people with disabilities, many of whom rely on public benefits such as SSI and housing vouchers to live independent lives in the community. For this reason, source-of-income discrimination is prohibited in at least eight states, ten individual counties, twenty-eight cities, and the District of Columbia. It is not presently prohibited in Virginia.

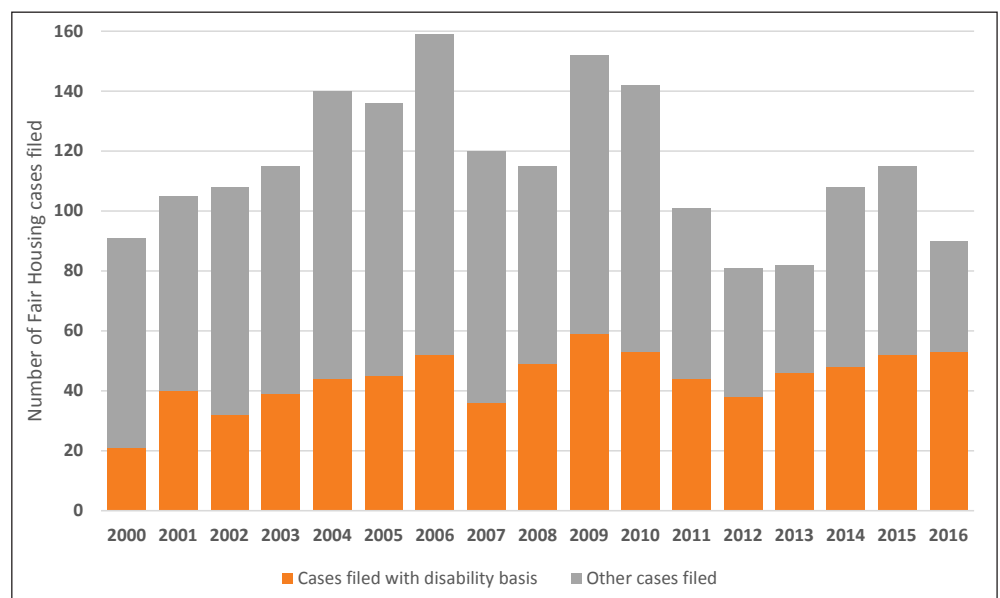


Figure 8: Fair Housing Cases Filed in Virginia, by Type, 2000-2016 (Department of Housing and Urban Development)

The persistence of housing discrimination against people with disabilities identified in the local analyses of housing needs is consistent with federal data on the frequency of fair housing cases. In Virginia, as in the nation as a whole, the percentage of fair housing discrimination claims that are filed on the basis of alleged disability discrimination has steadily increased over the years. In 2000, there were a total of 91 fair housing cases filed in Virginia, 21 of which (23 percent) included an allegation of disability discrimination (see Figure 8). In 2016, there were 90 fair housing case filed in Virginia, of which 53 (59 percent) included an allegation of disability discrimination. While the total number of fair housing claims fluctuated in the intervening years, the number of cases with a disability basis has trended upwards, both in total numbers and as a percentage of the overall number of claims.

The increasing number of fair housing cases filed based on disability discrimination likely has multiple causes, including perhaps increased awareness on the part of people with disabilities on what their fair housing rights are and how to enforce them. It is not possible to distinguish increases in the number of these claims based on this factor from increases based on the actual incidence of disability discrimination. It is also not possible to determine what percentage of cases involving an allegation of disability discrimination involved actual discrimination based on disability status, and which did not. What is clear is that allegations of disability discrimination have become the most frequently identified reason for filing a fair housing complaint throughout the United States, as well as in Virginia. Coupled with evidence of continued disability discrimination by housing providers from fair housing testing, there is reason to believe that disability discrimination in the housing market is a persistent problem in the Commonwealth of Virginia.

Barriers to Reducing Housing Discrimination

The six local analyses of housing needs reviewed for this Assessment identified a variety of barriers to reducing housing discrimination.

At least two regions (Harrisonburg and Loudon) identified a lack of local fair housing ordinances and enforcement authority as a barrier to the local enforcement of fair housing laws. Two regions (Fairfax and Loudon) also identified a lack of knowledge about fair housing law

among individuals and/or housing providers as a barrier. One region (Harrisonburg) noted an insufficient supply of legal assistance for individuals who believe they are victims of housing discrimination. These barriers highlight the continued need for state and local investments of time and resources to providing education and assistance to localities, individuals, and housing providers to understand and enforce fair housing laws.

Resistance to the establishment of group homes, often based on stereotypes about the individuals with disabilities who reside in them, is another example of disability housing discrimination. In addition to prohibiting discrimination in the rental market, the Fair Housing Act also prohibits discriminatory treatment of group homes for people with disabilities in the development and enforcement of state and local laws and ordinances. It is unlawful under the Fair Housing Act for states and localities to, for instance:

- Treat groups of persons with disabilities less favorably than groups of persons without disabilities by prohibiting housing for people with specific disabilities, while allowing other groups of unrelated individuals to reside together in that area;
- Deny a permit for a home because of the disability of individuals who would live there; and
- Refuse to make reasonable accommodations in land use and zoning policies and procedures when such accommodation is necessary to afford persons with disabilities equal opportunity to enjoy housing. (DOJ and Housing and Urban Development (HUD) Joint Statement, 2015)

One local analysis of housing needs (Harrisonburg) reviewed for this Assessment identified community resistance to group homes as a barrier to fair housing for people with disabilities in the city. Housing and disability advocates note continued resistance in many other communities as well, often referred to as Not-in-my-back-yard-ism, or NIMBYism.

Several lower courts have found that such community resistance is in violation of fair housing laws. In *Ben-gerter v. Orem City, Utah*, 46 F.3d 1491 (1995), for instance, the 10th Circuit held that a requirement that a group home for individuals with intellectual disabilities provide assurances of 24-hour supervision and establish a community advisory committee to receive and

act upon complaints from neighbors violated the Fair Housing Act. Additionally, neighborhood notification requirements prior to the establishment of a group home have also been held to violate the Fair Housing Act. As one court noted, “the [neighborhood notifica-

tion] requirement is as offensive as would be a rule that a minority family give notification and invite comment before moving into a predominantly white neighborhood.” (Potomac Group Home v. Montgomery County, 823 F. Supp. 1285, 1296-99 (D. Md. 1993)).

Recommendation II

Recommendation 2: Vigorously enforce Virginia’s Fair Housing Laws:		
Sub-recommendation		Responsible Party
2A.	Initiate a statewide Fair Housing testing program in Virginia to collect data on the frequency of fair housing violations and publish this data for use by researchers and housing professionals	Department of Professional and Occupational Regulation; General Assembly
2B.	Expand education and outreach to individuals with developmental disabilities to inform them about their fair housing rights and the process for filing fair housing complaints	Department of Professional and Occupational Regulation; Virginia Board for People with Disabilities
2C.	Continue to educate building professionals, property managers, and other housing professionals about fair housing laws and accessibility requirements	Department of Professional and Occupational Regulation; Virginia Board for People with Disabilities
2D.	Prohibit discrimination against a potential tenant solely on the basis of the tenant’s source of income	General Assembly
2E.	Enact local fair housing ordinances in local jurisdictions that do not already have existing fair housing ordinances, and enforce fair housing at the local level	Localities

Physical Accessibility of Independent Housing Options

There is an insufficient supply of physically accessible housing in Virginia to meet growing demand.

Under the Fair Housing Act, all covered housing that was built for first occupancy after March 13, 1991 must meet certain minimum accessibility requirements. Covered housing includes all units in housing with four or more units in a building with an elevator, and all first floor units in housing with four or more units in buildings without an elevator. The minimum accessibility standards that covered units must meet include the following:

- units must have an accessible entrance and must be on an accessible route;
- public and common-use areas must be accessible;
- the doors within units must be usable doors;
- there must be an accessible route into and through the unit;
- light switches, electrical outlets and environmental controls must be accessible;
- bathrooms must have reinforced walls; and
- kitchens and bathrooms must be usable.

Availability of Physically Accessible Housing

There is limited data available to assess the sufficiency of the accessible housing stock in Virginia. As discussed earlier in this report, there is no statewide fair housing testing program in Virginia to identify fair housing violations.

The only state to conduct a statewide fair housing testing program, Indiana, discovered that 80 percent of multi-unit apartments advertised as accessible failed to meet the Fair Housing Act's accessibility standards and nine percent of housing providers rejected or discouraged reasonable modifications like grab bars in bathrooms (Engaging Solutions, LLC, 2014). Without a statewide fair housing testing program, it is difficult to assess the level of compliance with Fair Housing accessibility standards in the Commonwealth.

Although Virginia has no statewide fair housing testing, available evidence suggests that the current supply is insufficient to meet growing needs for accessible housing. Four of the six local analyses (Charlottesville, Harrisonburg, Loudon County, and Hampton Roads) explicitly identified a lack of accessible housing in their regions as a barrier to fair housing for people with disabilities. While the other two analyses did not explicitly list a lack

of accessible housing as a barrier, they each addressed barriers to the development of accessible housing, such as a lack of mechanisms for ensuring compliance with accessible design requirements of Fair Housing Act (Fairfax), and housing market externalities that limit the development of affordable housing (Richmond). Additionally, housing advocates continue to identify new construction apartment buildings covered by the Fair Housing Act that do not comply with accessibility requirements.

Approaches to Improve Physical Accessibility of Housing

In addition to the required accessibility standards of the Fair Housing Act, the Commonwealth offers statewide incentives to builders to develop accessible housing.

The Livable Home Tax Credit (LHTC) program administered by the Department of Housing and Community Development (DHCD) provides tax incentives of up to \$5000 for the purchase, construction, or retrofitting of accessible housing (for retrofitting, the tax incentive may not exceed 50 percent of the cost of the renovation or \$5000, whichever is higher). There is a \$1 million limit on the value of tax credits that can be granted under this program, which is met in most years, indicating that the

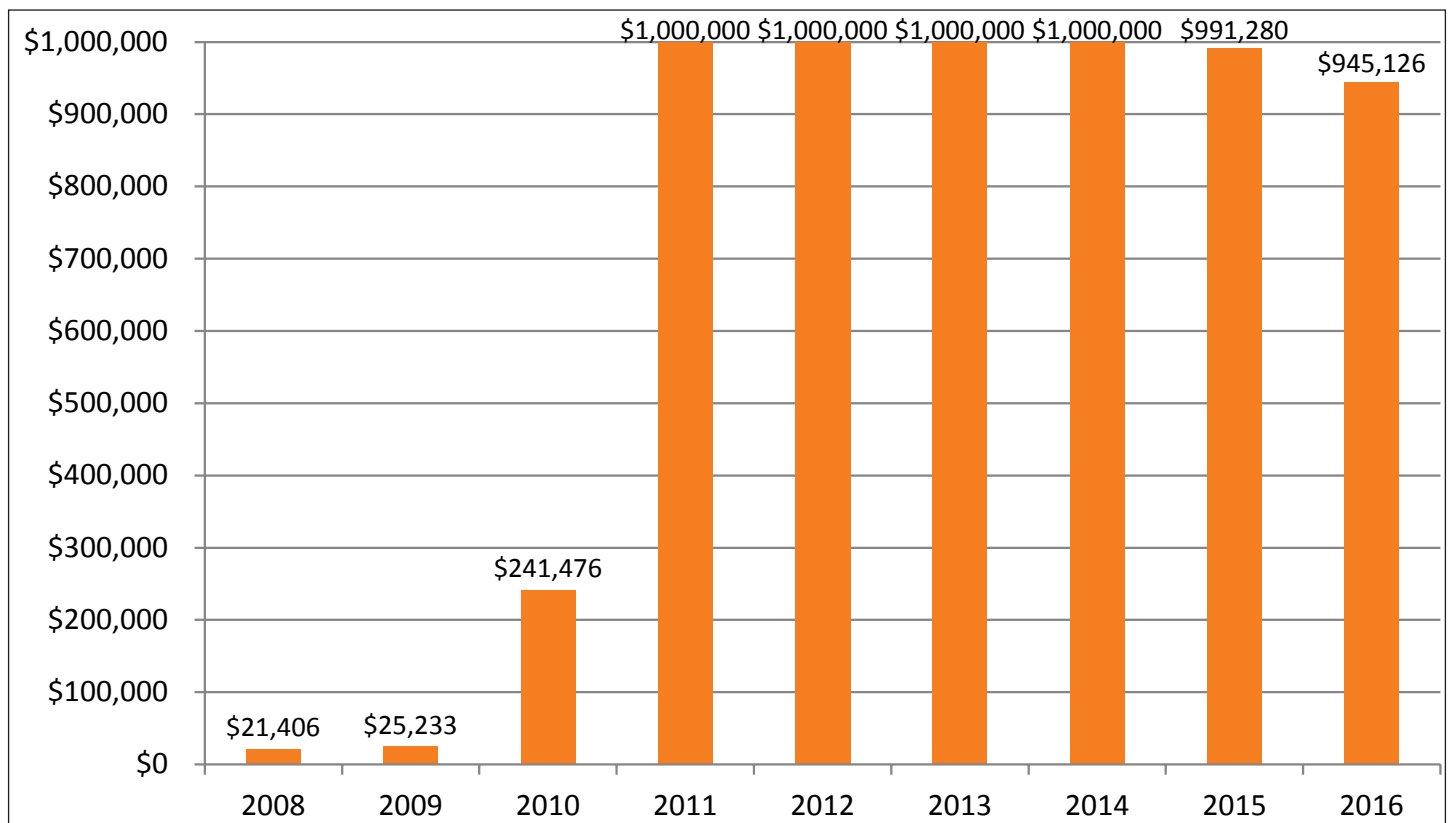


Figure 9: Value of Annual Tax Credits Awarded through Virginia's Livable Home Tax Credit (DHCD.virginia.gov)

current funding limit is not sufficient to meet demand (see Figure 9, previous page).

In addition to the Livable Home Tax Credit program, Virginia's Qualified Allocation Plan (QAP) for the distribution of its Low-Income Housing Tax Credits (LIHTC) incentivizes minimum accessibility standards by incorporating accessibility requirements of Section 504 of the Rehabilitation Act into the QAP. These standards, however, are minimal, and could be strengthened. The AARP has advocated, for instance, for structural changes to states' QAPs to incorporate meaningful accessibility standards into the program, such as promotion of universal design elements and prioritizing tax credits for projects that integrate affordable housing and adequate transportation (Gudzinis, 2017).

Some localities seek to promote the development of accessible housing by offering incentives to builders who construct accessible housing units. Charlottesville, for instance, provides incentives such as partial refunds of permit fees and favorable zoning eligibility for the development of homes that meet its visit-ability or livability standards. The visit-ability standards include having at least one building entrance on an accessible route and having an accessible interior route connecting to at least one usable bathroom. The livability standards include having at least one building entrance on an accessible route; having an accessible interior route connecting to at least one bedroom, one full bath, or an accessible kitchen; and having accessible controls and switches in all accessible interior routes and required usable spaces.

These incentives are not uniformly available throughout the Commonwealth. Like so many decisions that affect the availability of affordable housing, the decision to offer accessibility incentives, such as permit reimbursement, must be made at the local level. Too often, these local decisions are made with insufficient input from individuals with disabilities and other affected constituents because many localities and regional planning bodies lack formal disability advisory bodies.

Providing funding directly to individuals with disabilities for home modifications can also alleviate some of the accessibility barriers they face. While not all barriers to housing access can be easily remedied by modifying

the inaccessible features of the house, some barriers are relatively easily removed by simple modifications. Handrails in bathrooms, ramps to front entrances, and widened doorways, for instance, may allow an individual access to a dwelling that she would otherwise be unable to navigate. The Fair Housing Act establishes a right on the part of tenants to make reasonable home modifications when such modifications are necessary to afford the person the full enjoyment of the premises. There is no obligation, however, on the part of a landlord to pay for such modifications. These modifications must be made at the individual's own expense.

Individuals who have a slot in one of Virginia's home- and community-based waivers for individuals with developmental disabilities may receive waiver funding for home modifications. There is a hard cap, however, of \$5,000 that may be funded in any one plan year for this purpose. There are presently no exceptions to this funding limit.

The decision to offer accessibility incentives, such as permit reimbursement, must be made at the local level.

Individuals who do not qualify for funding under a home- and community-based waiver may be able to access funding for home modifications from a limited number of other programs. The Department for Aging and Rehabilitative Services (DARS), for instance, may be able to assist individuals with home modifications that are necessary to obtain or maintain employment. Individuals may also be able to obtain funding for home modifications from charitable and nonprofit entities. The availability of this funding will differ between communities, and access to information about this funding and how to obtain it is not always readily available.

Recommendation III

Recommendation 3: Adopt state and local policies and practices that encourage accessible development and hold violators of accessibility requirements accountable:

Sub-recommendation		Responsible Party
3A.	Vigorously enforce new construction accessibility requirements at the local level	Localities
3B.	Adopt local accessibility incentives in localities where they do not already exist, such as permit discounts for qualifying homes	Localities
3C.	Strengthen accessibility incentives built into Low-Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP)	Virginia Housing Development Authority
3D.	Expand access to home modification assistance and increase the home modification benefit limit in the DD Medicaid Waivers	Department of Behavioral and Developmental Services; Department of Medical Assistance Services
3E.	Increase the Livable Home Tax Credit funding limit from \$1 million dollars to \$2 million	General Assembly
3F.	Increase education and outreach to home builders and about how to affordably incorporate accessible features into housing designs	Department of Professional and Occupational Regulation; General Assembly; Department of Housing and Community Development; Virginia Board for People with Disabilities



**Virginia Board for
People with Disabilities**

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