

# Weapons Policies in Aging Services Organizations

**I**n the wake of mass shootings occurring across the country in recent years, LeadingAge has received many inquiries regarding the ability of senior living communities to institute weapons policies on their campuses. Here are some answers to the questions that LeadingAge members have asked.

## **Does the 2nd Amendment to the U.S. Constitution prevent a senior living community from implementing a weapons policy, including a policy that bans weapons on campus?**

No, the 2nd Amendment does not prevent a senior living community from banning weapons on campus. The 2nd Amendment specifies that “the right of the people to keep and bear arms shall not be infringed.” The amendment applies to governments, not individuals or private entities. Therefore, a private business is not covered by the 2nd Amendment, and can institute a weapons policy. That policy can, in most cases, include a ban on weapons in a senior living community or on a campus. Please see the response below as to state and local laws, which must also be considered.

## **How do state or local laws allowing people to possess or carry weapons, including carrying concealed weapons, affect the ability of senior living communities to implement weapons policies?**

There are a variety of laws across the country that allow citizens to carry weapons, including concealed weapons (“concealed carry”), and in some states openly carry without concealment (“open carry”). Most states require a permit to carry a weapon, but some states allow “permit-less carry,” and many states allow an individual who can legally own a weapon to possess (but not carry) that weapon in his/her home or vehicle without any permit (see ATF Form 4473 for information as to who can legally own a weapon under federal law). Check with local counsel about the specific requirements of all such laws in your location. Keep in mind, however, that such laws generally allow private entities, including senior living communities, to ban weapons on their premises. You may need to comply with certain requirements, including giving residents adequate notice about the policy, and possibly allowing residents to have a weapon (properly secured) in a vehicle in your parking lot or garage (please see the response below as to state laws allowing weapons in an employee’s vehicle). However, a no-weapons policy is typically allowed in most locales.



## **We are a HUD-assisted housing program. Does the fact that we receive federal funds make us a governmental agency that is covered by the 2nd Amendment?**

The receipt of federal funds alone does not make you a governmental entity. Therefore, HUD-assisted housing programs are still considered to be private entities. As stated above, most jurisdictions will allow you to enforce a weapons policy, including a ban on weapons

## **We are a Medicare-and/or Medicaid-certified nursing home. Does this make a difference?**

No. Medicare- and/or Medicaid-certified nursing homes are still considered to be private entities. The Requirements of Participation do give residents the right to have their own property/furnishings, unless those possessions pose a safety hazard. However, this right does not apply to weapons, because a senior living community has an obligation to keep residents safe.

## **We operate a home care and home health care agency. What can we do if one of our team members encounters a client who has a weapon?**

Most likely, it is legal for the home care or home health client to own a weapon, unless he or she meets the federal and state requirements noted above which prohibit gun ownership for certain people. Therefore, there really isn't much the team member can do about a client who owns a weapon. The team member could ask the client to secure the weapon in a safe place in the home or apartment. If the team member is very uncomfortable about the weapon, the agency could assign to the client someone else who isn't bothered by weapons. Of course, if the client handles the weapon in a threatening manner, the team member should exit the residence immediately and call the police.

## **Can we ban employees, staff, visitors and vendors from bringing weapons to work?**

Generally speaking, the answer to this question is "yes, you can." However, a number of states have laws that prohibit employees (and sometimes other individuals) from bringing guns onto your premises, but allow such individuals to keep guns in other places, like a locked car in an employee parking lot. Check with your local counsel.

## **What if we decide to allow weapons with certain restrictions? What are some examples of the kinds of restrictions we should include in our policy?**

There are several criteria that are often included in policies that restrict, but do not ban, weapons in a senior living environment. First and foremost, be sure to include your weapons policy in the resident handbook, and make sure every resident is familiar with its provisions. Your leases, admissions contracts, and similar documents should include a provision that the resident handbook provisions are binding on the residents, and may be changed from time to time by the community. If the community is faith-based, any general requirements the broader organization places on its affiliated facilities as to weapons should also be noted. Specific provisions of a weapons policy might include these requirements:

Notices must be posted telling residents, staff, vendors, and visitors about the policy. Note that state laws can be very specific as to the requirements (language, font size, etc.) for a notice or sign to be considered enforceable.

- The resident must at all times comply with all requirements of federal and state law concerning weapons (consider specifically noting references to such requirements in the handbook).
- If a community is located in a state which allows “medical marijuana,” federal law prohibits the possession of a weapon by any person using marijuana, even for medical purposes pursuant to a physician’s order.
- Weapons are not allowed in common areas of the community or campus.
- Weapons must be unloaded and stored in a locked weapons case.
- Ammunition must be stored in a locked container that is separate from the weapon.
- Weapons and ammunition must be in a locked case when they are being transported.
- Limitations on the number and type of weapons a resident can possess.
- Weapons can be banned in certain parts of a community, such as assisted living or nursing care, but allowed, with restriction, in residential living.
- Assessment of residents with cognitive or behavioral issues to determine appropriateness for weapons possession can be conducted.
- Antique or collectable firearms in a display case must be incapable of firing.
- Violations of these policies, and/or federal and state law, gives the community the immediate right to terminate the residency.