

SERVING PERSONS WITH DISABILITIES
LEGAL RESPONSIBILITIES OF EMERGENCY SHELTERS¹

I. Overview of Disability Discrimination Laws

a. Section 504 of the Rehabilitation Act of 1973:

Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to any program receiving federal funds. Section 504 provides that no otherwise qualified person with a disability shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving federal financial assistance. Pursuant to Section 504, housing providers, including emergency shelters and transitional housing programs, that receive federal financial assistance are responsible for ensuring that their programs are both physically and programmatically accessible for persons with disabilities. Housing providers are required to provide reasonable accommodations in all rules, policies, and procedures in order to afford persons with disabilities equal access to their programs. In addition, housing programs must be readily accessible to and useable by individuals with disabilities.

b. Americans with Disabilities Act – Titles II and III:

Title II:

Title II of the Americans with Disabilities Act (ADA) extends the mandates of Section 504 to all state and local government funded programs, regardless of whether they receive federal funds. Title II applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government and prohibits discrimination in the form of excluding an otherwise qualified person with a disability (i.e. a person who would qualify for the program or activity but for her disability) from participating in programs or activities. Pursuant to Title II, housing providers are required to make reasonable accommodations in policies and practices and to make reasonable modifications in physical structures to ensure equal access to the programs.

¹ Information contained in this handout is intended only as a reference and does not constitute legal advice. Much of the information in this handout was taken from “Fair Housing For People With Disabilities,” a guide by Mental Health Advocacy Services, Inc., Los Angeles, CA (February 2007); “Serving People with Disabilities: A Handbook for Emergency Shelter Providers in Massachusetts,” by the Disability Law Center, Inc., Boston, MA (May 2002) and “Fair Housing for Tenants with Disabilities: Understanding Reasonable Accommodations and Reasonable Modifications,” by the NC Department of Health and Human Services, NC Housing Finance Agency, School of Government at the University of NC at Chapel Hill and the Reasonable Accommodation Study Group (2005).

Anti-discrimination laws as they apply to persons with disabilities can be confusing because there are few clear rules. Terms such as “reasonable accommodation,” “reasonable modification,” and “undue financial or administrative burdens” are used to describe responsibilities of providers and must be considered on a case by case basis. Because the law is often unclear and individual scenarios vary greatly, it is important to consult with an attorney if you need guidance in a specific case to ensure that you comply with the law.

Title III:

Title III of the ADA prohibits discrimination against persons with disabilities or those who are affiliated with persons with disabilities in any privately owned “public accommodations,” including homeless/emergency shelters. Title III requires housing programs to provide reasonable accommodations in policies and practices and to remove all physical barriers to the extent that such removal is readily achievable and not an undue burden.

c. Fair Housing Amendments Act:

The Fair Housing Amendments Act (FHAA) prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or disability in the sale or rental of virtually all housing², regardless of whether the housing is public or private. The FHAA has been interpreted broadly to frequently apply to emergency shelters depending on the expectations and intentions of the persons staying at the shelter, the duration of their stay, and whether the persons consider the shelter their residence.³

d. CONCLUSION: Generally, homeless/emergency shelters are either covered under the FHAA or Title III of the ADA. If a shelter is intended and used for long-term stay, then the FHAA would likely apply. If a shelter is more transient in nature, then Title III of the ADA would apply.

II. Who is a Covered Person under the Disability Discrimination Laws?

The definition of “disability” is the same for all of the anti-discrimination laws.

a. Individuals are protected if they

- i. have a physical or mental impairment which substantially limits one or more major life activities;
- ii. have a record of having such an impairment (*e.g. a person who is denied access to programs or services because of a previous hospitalization for a mental illness is protected even if she is not currently mentally ill*); or
- iii. are regarded as having such an impairment, even if they have no disability (*e.g. a person is incorrectly believed to have HIV/AIDS and is discriminated against because of this belief*).

b. Individuals are NOT protected under the anti-discrimination laws if they

² Exceptions to the FHAA are very limited. In the context of homeless/emergency shelters, if a shelter is owned by a private club or a religious organization that restricts occupancy to its members, it may be exempt from the FHAA.

³ See *Woods v. Foster*, 884 F. Supp. 1169 (D. Ill. 1995); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123 (D. Conn. 2001).

- i. are currently engaged in illegal drug use.
- ii. pose a *direct threat* to the health or safety of other individuals or substantial physical damage to the property of others.

The finding of “direct threat” must be based on an individualized assessment of the facts of a particular situation (objective evidence) and not generalized assumptions, subjective fears and speculations about a particular disability. If a reasonable accommodation could eliminate or sufficiently reduce the risk to health or safety, the shelter provider would be required to provide the accommodation.

- iii. are convicted sex offenders.

III. What is Required Under the Anti-Discrimination Laws?

Generally, all of the anti-discrimination laws require program accessibility for covered persons. Persons with disabilities cannot be excluded from participation in or denied the benefit of services, programs, or activities because of their disabilities. In addition, the ADA requires that services be provided in the most integrated setting appropriate to the needs of the individual with a disability.

- a. Equal Access – providers must make their programs accessible to persons with disabilities.
 - i. Providers must eliminate eligibility criteria that tend to screen out persons with disabilities, or persons with certain types of disabilities. Safety requirements must be based on actual risks posed by an individual and not on speculation, stereotypes or generalizations about persons with disabilities.
 - ii. Providers must ensure that their programs are physically accessible. Providers are required to remove architectural barriers in existing places of public accommodation where removal is readily achievable (*e.g. installing a wheelchair ramp or grab bars for persons with mobility impairments*). Providers are also required to make their programs accessible by furnishing auxiliary aids and services to ensure effective communication with persons with disabilities (*e.g. TTY for persons who are deaf, materials in Braille or tape recorded for persons with visual impairments, having information presented in simple language with pictures or commonly understood symbols substituted for writing for persons with cognitive disabilities, etc.*). Providers may not assess a surcharge for auxiliary aids or services.

b. Reasonable Accommodations – providers *must* make reasonable accommodations in rules, policies, practices or services, when such accommodation is necessary to afford a person with a disability equal access to services, programs or activities. Reasonable accommodations generally refer to removal of administrative barriers to equal access. Shelters can not charge a fee for providing a reasonable accommodation. Examples of reasonable accommodations include allowing an emotional support animal into the shelter despite a “no pets” policy⁴ or allowing someone who needs assistance with personal care to have an assistant provide services to the individual at the shelter.

c. Reasonable Modifications – providers must provide reasonable modifications⁵ to the premises if necessary to afford a person with a disability equal access to services, programs or activities. Reasonable modifications generally refer to removal of physical barriers to equal access as opposed to administrative barriers.

d. Requirements for Reasonable Accommodation/Reasonable Modifications

It is the responsibility of the person with a disability to ask for the reasonable accommodation/modification. There is no requirement that the request be made in writing or that the person use the words “accommodation” or “modification.” The request is sufficient if a reasonable person would understand that the person is seeking an accommodation/modification. A request for a reasonable accommodation/modification should be granted if the following conditions are met:

- i. the person requesting the accommodation/modification is a person with a disability covered by the anti-discrimination laws⁶;
- ii. the requested accommodation/modification is necessary to afford the person an equal opportunity to use and enjoy the dwelling and related services; and
- iii. there must be a nexus/connection between the requested accommodation/modification and the person’s disability.

e. Limitations to the Reasonable Accommodation/Reasonable Modification Requirement:

⁴ Under the anti-discrimination laws, there is no requirement that the service or support animal be specially trained or certified.

⁵ If the program is covered only by the FHAA, the individual with a disability would be responsible for the cost of the modification. Most shelters are covered by the ADA or Section 504 and therefore would be responsible for the cost of modifications.

⁶ If the disability is non-apparent, the provider may ask for verification of disability from a medical provider. For persons with disabilities who are homeless, verification may be difficult to obtain. Providers should be flexible and proceed as if the disability has been verified, request that the verification be provided within a reasonable time, and allow the individual to use the telephone and fax machine for this purpose if it would facilitate the process.

- i. Undue Administrative or Financial Burden – If the requested accommodation/ modification would impose an undue burden on the provider, the provider is not required to grant the accommodation/modification. Undue burden means significant difficulty or expense. Considerations include the nature and cost of the action and the overall financial resources of the provider (failure to budget for modifications/ accommodations does not mean that the requested accommodation/modification imposes an undue financial burden).
- ii. Fundamental Alteration in the Nature of the Program – A proposed accommodation “fundamentally alters” the nature of a program when it requests something outside of the scope of the program’s mission or would change the nature of the services provided by significantly modifying, eliminating, or adding to the services a program provides (*e.g. A participant requests assistance with personal hygiene because her disability makes self-care very difficult. Granting this request would be a fundamental alteration of the program if the program provides shelter only; therefore, the request would not be reasonable. However, a request for a personal care assistant to come to the shelter to assist with personal hygiene would not be a fundamental alteration of the program and would likely be reasonable*).

NOTE: *If a participant seeks an accommodation that is not “reasonable,” the shelter has a responsibility to work with the person with a disability to find a reasonable alternate accommodation. In the above example, a reasonable alternate accommodation to the request for a shelter worker to assist a person with a disability with personal hygiene may be providing the individual with a list of personal care service agencies and assisting the individual with a referral to one of those agencies.*

IV. Homeless Management Information Strategies (HMIS) Requirements vs. Anti-Discrimination Laws

Anti-discrimination laws prohibit shelter providers from requesting information about the presence of a disability or the details regarding a disability unless the applicant is applying for a program restricted by the funding source to individuals with disabilities or to individuals with specific disabilities. Programs can not ask questions that might reveal the existence of a disability or details about a disability. Examples of prohibited questions include: “can you live independently?”; “have you ever been in a mental hospital?”; “are you currently taking medications?”; etc. For programs specifically designated for persons with disabilities, the provider may only ask questions to verify that the applicant qualifies for the program and may not ask for details of the person’s condition or treatment.

Shelter providers must refrain from asking questions about disability during the intake process until it has been made clear to the applicant that he has been admitted into the shelter. After the initial intake process is complete, shelter workers should inform guests that answering assessment questions that will be entered into the HMIS is voluntary and that any information gathered is for services assessment purposes only and will not affect his ability to stay in the shelter. Federal law specifically prohibits shelter providers from asking assessment related HMIS questions before an applicant has been admitted into the program. **Shelter providers that incorporate service assessment HMIS questions into their application process are in violation of federal anti-discrimination laws.**

V. Enforcement

Anti-discrimination laws are enforced in a variety of ways depending on the particular law that was violated and how the victim chooses to proceed. A person with a disability who believes he has been discriminated against because of his disability can try to resolve the matter informally by talking with the shelter provider. He may also file a complaint with an administrative agency like the Department of Justice (DOJ) for violations of the ADA or with the Department of Housing and Urban Development (HUD) for violations of the FHAA. The victim of discrimination may also file a civil lawsuit against the shelter provider.