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Service animals in healthcare settings: Complying with laws and regulations

by Robyn Hoffmann

On September 14, 2023, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a proposed rule in the *Federal Register* to update and amend Section 504 of the Rehabilitation Act of 1973.^[1] This proposed rule (45 C.F.R. Part 84, Discrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance) would also update the definition of disability and other provisions to ensure consistency with statutory amendments to the Rehabilitation Act, the enactment of the Americans with Disabilities Act (ADA), the Americans with Disabilities Amendments Act of 2008, and the Affordable Care Act (ACA).

OCR enforces protections against disability discrimination in healthcare

OCR enforces federal civil rights laws, conscience and religious freedom laws, HIPAA Privacy, Security, and Breach Notification rules, and the Patient Safety Act and Rule to protect rights of nondiscrimination, conscience and religious freedom, and health information privacy.^[2]

In protecting individuals' rights against discrimination on the basis of disability, OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination in the provision of benefits and services as amended 29 U.S.C § 794 against otherwise qualified disabled individuals. These protections also extend to those participating in programs and activities that receive financial assistance from 45 C.F.R. § 84 and programs or activities conducted by 45 C.F.R. § 85.

Definition of disability

The ADA defines the term “disability” in 42 U.S.C. § 12102.^[3]

“The term ‘disability’ means, with respect to an individual—

- “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment . . .”

Major life activities include but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating,

thinking, communicating, and working.

Major bodily functions include the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

ADA's definition of service animal

The ADA defines a service animal as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability . . . The work or tasks performed by a service animal must be directly related to the individual's disability.”^[4]

In its definition, the ADA offers examples of the types of tasks that a service dog may perform, which include but not be limited to:

- “assisting individuals who are blind or have low vision with navigation and other tasks,
- “alerting individuals who are deaf or hard of hearing to the presence of people or sounds,
- “providing non-violent protection or rescue work,
- “pulling a wheelchair,
- “assisting an individual during a seizure,
- “alerting individuals to the presence of allergens,
- “retrieving items such as medicine or the telephone,
- “providing physical support and assistance with balance and stability to individuals with mobility disabilities, and
- “helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.”

Emotional support animals

Emotional support animals are not included in the ADA's definition of a service animal. Emotional support animals, comfort animals, and therapy dogs are not service animals under Title II and Title III of the ADA. Other species of animals—whether wild or domestic, trained or untrained—are not considered service animals either. The work or tasks performed by a service animal must be directly related to the individual's disability.

The terms “emotional support animal,” “comfort animal,” and “therapy dogs” are used to describe animals that provide comfort just by being with a person. Because these animals have not been trained to perform a specific job or task, they do not qualify as service animals under the ADA. However, some state or local governments have laws that allow people to take emotional support animals into public places. The compliance officer should check with your state and local government agencies to find out about these laws.^[5]

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