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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]

Staff education about service animals

Compliance professionals should collaborate with healthcare administrators to help ensure that patient-facing

staff and clinicians are educated about the important role of service animals for individuals with disabilities who require such assistance. This collaboration is particularly significant in ambulatory care settings; increasing numbers of patients are returning onsite for face-to-face visits following the end of the COVID-19 public health emergency.

In developing tools for staff, the following resources can be of assistance:

- “Know the Rights That Protect Individuals with Disabilities from Discrimination”^[6]
- “Guidelines for Environmental Infection Control in Health-Care Facilities” (Recommendations of the Centers for Disease Control and Prevention and the Healthcare Infection Control Practices Advisory Committee)^[7]
- “Frequently Asked Questions about Service Animals and the ADA” (The U.S. Department of Justice (DOJ) Civil Rights Division)^[8]

DOJ’s FAQs about service animals and the ADA

According to DOJ’s “Frequently Asked Questions about Service Animals and the ADA,” these FAQs can be used to address many of the questions that staff in healthcare organizations have about service animals.^[9] A key starting point when training staff is to identify what they may and may not ask a patient if it is not obvious that the dog is a service dog. Only two questions may be asked under these circumstances (see Table 1).

Questions that a healthcare provider’s employees may ask to determine if a dog is a service animal:	Questions that a healthcare provider’s employees may not ask to determine if a dog is a service animal:
Is the dog a service animal required because of a disability?	What documentation do you have for your dog?
What work or task has the dog been trained to perform?	Can you have your dog demonstrate its task(s)?
	What is the nature of your disability?

Table 1

Table 2 lists additional questions and answers about service animals, which are relevant to health care organizations.

Note: Both tables were developed as an excerpt from the FAQs.

Question	DOJ response
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<p>Does the ADA require service animals to be professionally trained?</p>	<p>No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.</p>
<p>Do service animals have to wear a vest or patch or special harness identifying them as service animals?</p>	<p>No. The ADA does not require service animals to wear a vest, ID tag, or specific harness.</p>
<p>Who is responsible for the care and supervision of a service animal?</p>	<p>The handler is responsible for caring for and supervising the service animal, which includes toileting, feeding, grooming, and veterinary care. Covered entities are not obligated to supervise or otherwise care for a service animal.</p>
<p>Can a person bring a service animal with them as they go through a salad bar or other self-service food lines?</p>	<p>Yes. Service animals must be allowed to accompany their handlers to and through self-service food lines.</p>
<p>Does a hospital have to allow an in-patient with a disability to keep a service animal in his or her room?</p>	<p>Generally, yes. Service animals must be allowed in patient rooms and anywhere else in the hospital the public and patients are allowed to go. They cannot be excluded on the grounds that staff can provide the same services.</p>

What happens if a patient who uses a service animal is admitted to the hospital and is unable to care for or supervise their animal?	If the patient is not able to care for the service animal, the patient can make arrangements for a family member or friend to come to the hospital to provide these services, as it is always preferable that the service animal and its handler not be separated, or to keep the dog during the hospitalization. If the patient is unable to care for the dog and is unable to arrange for someone else to care for the dog, the hospital may place the dog in a boarding facility until the patient is released, or make other appropriate arrangements. However, the hospital must give the patient the opportunity to make arrangements for the dog's care before taking such steps.
Must a service animal be allowed to ride in an ambulance with its handler?	Generally, yes. However, if the space in the ambulance is crowded and the dog's presence would interfere with the emergency medical staff's ability to treat the patient, staff should make other arrangements to have the dog transported to the hospital.
Does the ADA require that service animals be certified as service animals?	No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry. There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and DOJ does not recognize them as proof that the dog is a service animal.
Can service animals be any breed of dog?	Yes. The ADA does not restrict the type of dog breeds that can be service animals.

Table 2

Implications for your organization's compliance plan

When assessing your organization's compliance plan, do not neglect to conduct an internal analysis of how established or potential new patients' rights are protected against discrimination.

- Ensure that your organization's protections against forms of discrimination are addressed when orienting all new staff and clinicians.
- Assess your website and signage within your organization to confirm the accuracy of content about patients' rights and protections against discrimination.
 - During this annual assessment, check your website and signage for compliance with DOJ guidance pertaining to service animals.^[10]
- Evaluate your organization's policy (or policies) that focus on protecting patients' rights.
 - Assess all related workflows concerning the rights of patients with disabilities, focusing on accessibility aids and services and your guidance pertaining to service animals.

- Review your organization’s process for investigating patient complaints, including any allegations of discrimination.
 - Reinforce with staff the importance of reporting all complaints that they may receive.
 - Remind staff that an individual may report allegations of discrimination directly to OCR, bypassing your organization’s complaint resolution process.
- In your compliance dashboard report, document the number of investigations focused on patients’ allegations of discrimination.
 - Disaggregate the data to determine the type of allegation based on:
 - Disability
 - Gender identity
 - Limited English proficiency
 - National origin
 - Pregnancy
 - Race/color
 - Religion
 - Sex
 - Sexual orientation
- Provide focused training and determine whether existing policies or workflows should be revised or enhanced based on any internal investigations that addressed allegations of discrimination or any complaints received from OCR.

Conclusion

Going forward, compliance officers should regularly monitor the *Federal Register* and the OCR’s websites to ascertain when the HHS will issue its final rule pertaining to 45 C.F.R. Part 84. OCR closed the comments period for this proposed rule on November 13, 2023. Upon HHS’s final rule, healthcare organizations should reevaluate all policies concerning patient rights and protections against discrimination and associated workflows. In addition, patient-facing guidance on your website and any signage posted at your facilities should be rechecked to confirm compliance. Training materials for all staff should also be reexamined. Ideally, this analysis and any necessary modifications will be completed prior to the effective date of the anticipated final rule.

Takeaways

- The U.S. Department of Health and Human Services Office for Civil Rights (OCR) enforces laws and regulations prohibiting discrimination in healthcare on the basis of disability.
 - Laws offering protections against disability discrimination in healthcare include the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Affordable Care Act.
 - Patients who believe that they have been discriminated against on the basis of disability may file a
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complaint directly with OCR.

- Only two questions may be asked to determine if a dog is a service animal, based on U.S. Department of Justice (DOJ) regulations implementing the ADA.
- DOJ has issued FAQs about services animals and the ADA, which can be useful for compliance training.

1 Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63,392, 63,478–63,480, 63,500, 63,506–63,507 (Sept. 14, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-09-14/pdf/2023-19149.pdf>.

2 U.S. Department of Health and Human Services, Office for Civil Rights, “About Us,” content last reviewed September 12, 2022, <https://www.hhs.gov/ocr/about-us/index.html>.

3 U.S. Department of Justice, Civil Rights Division, “Americans with Disabilities Act of 1990, As Amended: Sec. 12102. Definition of disability,” accessed January 18, 2024, <https://www.ada.gov/law-and-regs/ada/#section5>.

4 Code of Federal Regulations, 28 C.F.R. §35.104, “Service animal,” accessed January 18, 2024, [https://www.ecfr.gov/current/title-28/part-35/section-35.104#p-35.104\(Service%20animal\)](https://www.ecfr.gov/current/title-28/part-35/section-35.104#p-35.104(Service%20animal)).

5 Jacquie Brennan and Vin Nguyen (Ed.), *Service Animals and Emotional Support Animals*, ADA National Network, 2014, <https://adata.org/guide/service-animals-and-emotional-support-animals>.

6 U.S. Department of Health and Human Services, Office for Civil Rights, “Know the Rights That Protect Individuals with Disabilities from Discrimination,” accessed January 18, 2024, <https://www.hhs.gov/sites/default/files/knowyourrights504adafactsheet.pdf>.

7 Lynne Sehulster and Raymond Y. W. Chinn, “Guidelines for Environmental Infection Control in Health-Care Facilities: Recommendations of CDC and the Healthcare Infection Control Practices Advisory Committee (HICPAC),” *Morbidity and Mortality Weekly Report* 52, no. RR-10 (2003), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5210a1.htm>.

8 U.S. Department of Justice, Civil Rights Division, “Frequently Asked Questions about Service Animals and the ADA,” last updated February 20, 2020, <https://www.ada.gov/resources/service-animals-faqs/>.

9 U.S. Department of Justice, Civil Rights Division, “Frequently Asked Questions about Service Animals and the ADA.”

10 U.S. Department of Justice, Civil Rights Division, “Frequently Asked Questions about Service Animals and the ADA.”

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