



ADA Compliance for Healthcare Providers

REASONABLE MODIFICATIONS OF POLICIES & PROCEDURES



WHAT IS THE AMERICANS WITH DISABILITIES ACT?

The Americans with Disabilities Act ("ADA") prohibits discrimination against individuals who have disabilities in private and public accommodations, including hospitals, doctors' offices, and other healthcare facilities. Healthcare providers must treat patients equally, provide reasonable modifications to policies, procedures, and practices, provide effective communications, and remove physical barriers to accessibility.



DOES THE ADA APPLY TO YOU?

- The ADA governs healthcare agencies run by state and local governments under its Title II and those run by private businesses under its Title III.
- Additionally, Section 504 of the Rehabilitation Act protects people who have disabilities from discrimination and exclusion from participation in federally funded program or activities, including provision of healthcare. Section 1557 of the Affordable Care Act protects people who have disabilities from any health program or activity funded or administered in any part by the federal government.

What is a "disability?"

The ADA provides that "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.

The EEOC provides direct examples for what falls into these categories. These include, that: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may substantially limit additional major life activities not explicitly listed above.

What is discrimination against people who have disabilities?

- The ADA gives another expansive definition for discrimination in Title II that no “qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of services, programs, or activities.”
- Title III of the ADA “prohibits discrimination on the basis of disability in the activities of places of public accommodation,” which generally encompasses a variety of businesses that are open to the public.

What is a “reasonable modification” of policies and procedures?

- Put simply, it means that healthcare providers must thoughtfully create new or modify existing policies and procedures to accommodate the needs of people who have disabilities.
- The meaning of disability is broad and those who meet the legal standards are incredibly diverse. It encompasses a wide variety of individuals whose needs will vary greatly; some disabilities will be obvious, but others will be hidden. Talk to your patients about their individual needs.

Examples of how a healthcare provider might recognize and respond to a reasonable modification situation could include:

- A person who has autism approaches their physician that the lamps used in the examination rooms make them very uncomfortable during their visits. The patient and physician consult about possible accommodations that could assist this patient and others with similar sensitivities. They determine that it would be reasonable to have separate low-watt lightbulbs available in the examination rooms for physicians to switch out upon patient request.
- A patient who has a learning disability requests assistance filling out paperwork before seeing the doctor. The office institutes a policy where specific staff members are prepared to assist patients with completing paperwork or by entering information directly into the patient's file.
- A patient tells their healthcare provider that they are immunocompromised due to cancer treatment and cannot safely sit in a waiting room full of sick patients before their appointment. The provider institutes a new policy allowing patients to check-in for their appointments from their cars and wait outside until it is time to see the doctor. This solution also accommodates patients with difficulties in loud, crowded spaces.



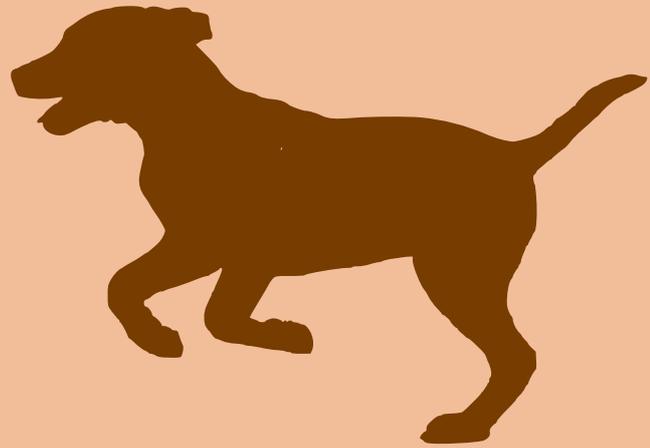
Examples of how a healthcare provider might recognize and respond to a reasonable modification situation could include:

- During the COVID-19 pandemic, many healthcare providers switched to telehealth for most, if not all, of their services. As businesses begin returning to normal, a physician is approached by a patient whose care requires an accommodation. The physician considers that, instead of updating their in-office policy, it would be less burdensome to simply require that this patient continue virtually. However, this is not a reasonable accommodation for such a patient under the ADA. If this physician is regularly allowing patients who do not have disabilities to visit the office, but patients who have disabilities are forced to stay at home, telehealth becomes an accommodation only for the benefit of the physician and not for the patient.
- A doctor receives an appointment request from a patient who informs the doctor that they are particularly sensitive to certain chemicals in industry-standard cleaning supplies and cannot comfortably come into the office while they are in use. As a solution, the doctor offers the patient an appointment outside of regular business hours while no one is around and constantly cleaning.



Reasonable Modifications for Service Animals

- Allowing a service animal is a reasonable modification of a No Pets rule.
- A service animal is a dog or a miniature horse that is individually trained to do work or perform tasks for the benefit of an individual who has a disability. They can go anywhere that patients can go and can only be excluded if their presence interferes with legitimate safety requirements of the facility, which does not include allergies or fear of dogs.



- Service animals must be in a harness or on a leash controlled by the handler unless the patient is unable to use a handle or the animal's task cannot be performed on a leash. If that is the case, then the service animal must be under control.
- There is no recognized entity that certifies service animals, and the ADA does not require that they be professionally trained or wear identifying patches, vests, etc.
- There are only two questions that a healthcare provider can ask when it is not obvious that it is a service animal:
 - 1. Is the dog (or miniature horse) required because of a disability?
 - 2. What work or tasks has the dog been trained to perform?

WHAT IS AN UNDUE BURDEN?

- Sometimes healthcare agencies and facilities may feel that a change to their policies is too cumbersome to their business. However, accommodations **MUST** be made unless there is a showing of a true "undue burden."
- A true undue burden on a business must be an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, and structure of the operation.
- A showing of an undue burden does not automatically remove the obligation of accommodation, it merely shifts it so that the healthcare provider must substitute a less burdensome accommodation to ensure that people who have disabilities receive equal access to healthcare.

ARE THERE TAX INCENTIVES AVAILABLE FOR PROVIDING REASONABLE MODIFICATIONS OF POLICIES AND PROCEDURES?

- Yes, the federal government offers a tax credit to qualifying small businesses with no more than 30 employees and gross receipts under \$1,000,000 for some of the costs of improving access in businesses for people who have disabilities. This is designed to reduce undue burdens and avoid unlawful cost-shifting to patients.





What does this mean for your office?

- Regularly train your staff about disability etiquette and any practical information about reasonable modifications of policies and practices.
- Identify at least one person in your practice who is responsible for approving all ADA compliance decisions. All personnel should be trained to go to that person before denying a patient's request for a reasonable modification. Proper oversight and internal accountability are vital to defending any decisions to turn down a request.
 - For example, an oncologist is approached by a parent of a child who has a disability who would like to see them as a primary pediatrician for personal reasons. The oncologist would not need to accept this patient as it would fundamentally alter the nature of their specialized practice and thus amount to an undue burden.

- Healthcare providers must be prepared to modify policies on an individual basis, they need not create their own undue burden by attempting to meet every possible individual need before even being presented with them.
- The reasonableness standard gives a healthcare provider room to creatively consider modifications that could simultaneously benefit different populations or expand upon policies that are already in place.
- Even where certain accommodations may seem like they could be easily handled by the individual patient, such as bringing their own ASL interpreters to appointments, it is not the patient's duty to create the safe environment. The provider has that duty and must not push the personal or financial cost onto their patients who have disabilities.
- Notify all patients at or in advance of their visit regarding your office policy on requesting reasonable modifications.

- During COVID, a child who has PTSD who cannot tolerate wearing a mask is allowed to be seen without wearing a mask but with other, separate safety protocols in place.
- The general practice is to call a patient's name when summoning them to the examination room, but for an individual who is hard of hearing, the healthcare provider can distribute a pager or set up alerts to their cell phones.

Further examples of reasonable modifications

- A medical staff member is designated to provide assistance to a patient who has cerebral palsy to remove their clothes before certain examinations if they are unable to do so themselves.
- A person who has a learning disability cannot fill out the forms, so a designated staff member interviews them and completes the form on their behalf.



- When the parents of a child who has a learning disability tells their pediatrician that the child had been struggling to read and understand some of the child-friendly pamphlets available for their review. The physician's lawyer suggests that they reprint those same pamphlets in a variety of fonts and colors and distribute it across different reading levels.

Resources

- THE AMERICANS WITH DISABILITIES ACT:
[HTTPS://WWW.ADA.GOV/PUBS/ADASTATUTE08.HTM#12132](https://www.ada.gov/pubs/ada statute08.htm#12132)
- THE EEOC REGULATIONS (WITH EXAMPLES):
[HTTPS://WWW.GOVINFO.GOV/CONTENT/PKG/FR-2011-03-25/PDF/2011-6056.PDF](https://www.govinfo.gov/content/pkg/FR-2011-03-25/pdf/2011-6056.pdf)
- CODE OF FEDERAL REGULATIONS, SECTION 1630:
[HTTPS://WWW.GOVINFO.GOV/CONTENT/PKG/CFR-2020-TITLE29-VOL4/XML/CFR-2020-TITLE29-VOL4-PART1630.XML](https://www.govinfo.gov/content/pkg/CFR-2020-title29-vol4/xml/CFR-2020-title29-vol4-part1630.xml)
- ADA CHECKLIST FOR HEALTHCARE FACILITIES AND SERVICE PROVIDERS: [HTTPS://WWW.AFB.ORG/BLINDNESS-AND-LOW-VISION/YOUR-RIGHTS/ADVOCACY-RESOURCES/ADA-CHECKLIST-HEALTH-CARE-FACILITIES-AND](https://www.afb.org/blindness-and-low-vision/your-rights/advocacy-resources/ada-checklist-health-care-facilities-and)
- SECTION 1557 OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT: [HTTPS://WWW.HHS.GOV/CIVIL-RIGHTS/FOR-INDIVIDUALS/SECTION-1557/INDEX.HTML](https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html)
- SECTION 504, REHABILITATION ACT OF 1973:
[HTTPS://WWW.DOL.GOV/AGENCIES/OASAM/CENTERS-OFFICES/CIVIL-RIGHTS-CENTER/STATUTES/SECTION-504-REHABILITATION-ACT-OF-1973](https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973)
- FEDERAL TAX INCENTIVE FORMS: [HTTPS://WWW.IRS.GOV/PUB/IRS-PDF/F8826.PDF](https://www.irs.gov/pub/irs-pdf/f8826.pdf) & [HTTPS://WWW.IRS.GOV/PUB/IRS-PDF/P525.PDF](https://www.irs.gov/pub/irs-pdf/p525.pdf)
- ADA Q&A FOR HEALTHCARE PROVIDERS:
[HTTPS://WWW.PACER.ORG/TRANSITION/LEARNING-CENTER/LAWS/ADA/HEALTH-CARE-PROVIDERS.ASP](https://www.pacer.org/transition/learning-center/laws/ada/health-care-providers.asp)