

Brief Guide for Sexual and Domestic Violence Agencies

Americans with Disabilities Act

Overview

The Americans with Disabilities Act (ADA) was signed into federal law on July 26, 1990. The purpose of the ADA is to prohibit discrimination and ensure equal opportunities for persons with disabilities.

People with disabilities experience sexual and domestic violence at the same or higher rates as the general public. Every community includes people with disabilities, yet they are underrepresented in sexual and domestic violence victim service reports.

This fact sheet offers Sexual & Domestic Violence Agencies the legal guidelines for providing accessible services as defined by the ADA. As with any underserved population, the first step toward true accessibility is learning about that community and changing our attitudes.

How does the ADA define “disability?”

- 1)** Individuals who have a physical or mental impairment that substantially limits one or more major life activities.
 - Major life activities include such activities as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning & working.
- 2)** Individuals who have a record of a physical or mental impairment that substantially limits one or more of the individual’s major life activities; including:
 - Person who has a history of an impairment but has recovered from it.
 - Person who has been misdiagnosed as having an impairment.
- 3)** Individuals who are regarded as having such an impairment, whether they have the impairment or not.
 - One who has an impairment that does not substantially limit him/her, but is treated as if it does (e.g. a person who has schizophrenia that is controlled by medication, yet is not allowed to participate in a support group);
 - One who has an impairment that substantially limits major life activities only as a result of the attitudes of others towards the impairment (e.g. someone denied shelter because she has cerebral palsy, although she can care for herself);
 - One who has no impairments but who is treated like s/he has an impairment that substantially limits a major life activity (e.g. someone who is believed to be HIV+ but is not).



Titles of the ADA

- Title I: Employment
- Title II: State/local government and transportation
- Title III: Private businesses, non-profits
- Title IV: Telecommunications
- Title V: Miscellaneous

Which titles apply to Sexual & Domestic Violence Agencies?

- ALL SDVAs operating under a local government agency are covered under Title II.
- ALL SDVAs that are non-profits, including those in umbrella non-governmental agencies, are under Title III.
- Any agency with 15 or more employees must comply with Title I when employing a person with a disability.

Overview of Requirements

Below are requirements in both Title II and Title III.

All agencies must:

- Not refuse, due solely to a disability, to allow a person to receive your services.
- Make reasonable modifications in policies, practices and procedures that would otherwise deny a person with a disability equal access to services, UNLESS the modification would fundamentally alter the services.
- Integrate a person with a disability into your agency services, unless providing separate services is the only way to provide equal opportunities for services. Persons with disabilities cannot be required to participate in separate services.
- Not directly ask about one's disability, but may ask about needed accommodations.
- Not charge persons with disabilities to cover the costs of needed accommodations.
- Allow service and companion animals in facilities unless the animal poses a direct threat to the health/safety of others.
- Eliminate unnecessary eligibility rules that deny persons with disabilities services (e.g., requiring a driver's license as ID; screening out persons using medications). Requiring proof of disability is not allowed.
- Provide auxiliary aids/services when they are necessary to ensure effective communication UNLESS doing so would cause an undue burden ("significant difficulty or expense") or fundamental alteration in services. (Auxiliary services could include reading a brochure to a survivor if providing it in Braille is too expensive)
- Deny a person services ONLY if s/he poses a direct threat (i.e. a significant risk to the health or safety of others that cannot be eliminated through modifications to policies, procedures or services).

The ADA describes the bare minimum for providing services to people with disabilities. Advocates are encouraged to go beyond these minimum guidelines to provide the most accessible services possible.

Facility Accommodations

Title II Programs in Local Government

Title III Non-profit Programs

Existing Construction

The first priority should be removing barriers so a person with a disability can “get in the front door.”

Must ensure that persons with disabilities are not excluded from services because buildings are inaccessible.

Need not remove physical barriers (e.g., stairs) in all buildings as long as the agency makes the services accessible to persons unable to use the inaccessible location:

- May provide the service in another location
- May provide a personal assistant
- May not carry a person up stairs

When an agency alters an existing building, it must ensure that the altered portions are accessible.

Architectural (physical elements of the building) and communication (e.g. signs, alarms) barriers to entering and using existing program locations must be resolved when “readily achievable.”

- “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense.”
- “Readily achievable” is determined case-by-case based on resources available.

Alterations to existing buildings must be accessible to the maximum extent feasible.

New Construction

Do not assume your contractor is familiar with the ADA. There are very specific rules related to new construction and alterations. Refer to the ADA Accessible Guidelines for Building and Facilities for specific information before undergoing construction or alterations.

Agencies must ensure that newly constructed buildings are free of architectural and communication barriers that restrict access or use by persons with disabilities.

All newly constructed places must be accessible to persons with disabilities unless it is structurally impracticable (i.e., building on stilts in a marshland).

ADA Complaints

Persons who believe they have been discriminated against by a Title II or III entity due to a disability can file a complaint with the U.S. Department of Justice Civil Rights Division or file a personal case in U.S. District Court.

A finding of an ADA violation by the Department of Justice may be handled in any of the following ways, depending on the pattern or type of discrimination:

- Legal action in U.S. District Court
- Mediation
- Out-of-court settlement
- Provision of technical assistance

Legal Notice

The information provided in this brochure should not be construed as legal advice nor used as such. Nor is this resource meant to encompass all ADA guidelines. If you have a legal question related to the ADA or other disability rights laws, please contact an attorney, or one of the resources listed below.

Case Law

ADA and similar disability-rights legal cases are often taken to court. The results of these cases often create “case law” which further interprets the ADA and can help to clarify sections of the ADA that seem vague. See Resources below if you have a question regarding case law.

Defining disability is not always clear:

Drug and Alcohol Abuse: Drug addiction is an impairment under the ADA. However, services can be withheld if an addict is illegally using controlled substances. Persons who have been rehabilitated or are in a treatment program and no longer using drugs are protected. Persons who are incorrectly perceived to be under the influence of illegal drugs are protected under the ADA. Alcohol is not a controlled substance, but alcoholism can be considered a disability.

The following are not considered disabilities: transvestism, transsexualism, and gender identity disorders not resulting from physical impairments. Pedophilia, exhibitionism, and voyeurism are not included. Nor are compulsive gambling, kleptomania, and pyromania.

People living with HIV/AIDS are protected by the ADA.

Resources

U.S. Department of Justice ADA Information Line

Provides general and specific ADA information, free ADA materials and information on filing a complaint.
800-514-0301 (voice) 800-514-0383 (TTY)

ADA Homepage

Has downloadable materials, technical assistance contacts, and proposed changes to the ADA.
www.ada.gov

ADA Accessible Guidelines for Buildings & Facilities

Provides detailed guidelines on building accessibility. www.access-board.gov/pubs.htm

Virginia Office for Protection and Advocacy

Provides technical assistance on questions regarding ADA compliance. Also provides advocacy services to people with disabilities if they are the victims of discrimination and their cases fall within VOPA's goals and focus areas. 804-225-2042 (V/TTY) www.vopa.state.va.us

Virginia Sexual & Domestic Violence Action Alliance

For Sexual and Domestic Violence Agencies and additional copies of this resource.
Technical Assistance Line: 866-3VSDVAA

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