

## ADA Discussion Topics

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### **Resources: Where can providers get detailed information about their obligations to comply with the ADA?**

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Contact the Northwest ADA Center-Idaho go to our website for frequently asked questions about our organization: <http://nwadacenter.org/idaho>

### **Brief overview of the 5 Titles of the ADA**

**Title I: Employment:** Under the ADA if an employer has 15 or more employees the entity cannot discriminate in any areas of the employment process.

- **Idaho Human Rights Act is stricter** than the ADA and covers employers with 5 or more employees.

### **Title II: Public Services. State and Local Government:**

- Prohibits discrimination on the basis of disability by “public entities,” which are programs, services and activities operated by state and local governments. Requires public entities (programs, services and activities operated by state and local governments) to be accessible to individuals with disabilities.

### **Title III: Places of Public Accommodations and Services Operated by Private Business includes both for profit and not for profit entities.**

- Prohibits places of public accommodation from discriminating against individuals with disabilities.
- Public accommodations include privately-owned, leased or operated facilities that affect commerce. For example, it applies to providers of both physical and mental health care. Hospitals, nursing homes, psychiatric and psychological services, offices of private physicians, dentists, health maintenance organizations (HMOs), and health clinics are included among the health care providers covered by the ADA. If a professional office of a doctor, dentist, or psychologist is located in a private home, the portion of the home used for public purposes (including the entrance) is considered a place of public accommodation.

- Title III of the ADA applies to all private health care providers, regardless of the size of the office or the number of employees.
- Sets the minimum standards for accessibility for alterations, new construction and barrier removal.
- Directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities.
- Requires that businesses take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities.

#### **Title IV - Telecommunications**

#### **Title V - Miscellaneous Provisions**

#### **Who is protected by the ADA?**

- The ADA applies to a person who has a physical or mental impairment that substantially limits one or more major life activities (like sitting, standing, or sleeping, hearing, seeing, talking)

The ADA covers more than just people who are deaf, people who are blind, or people who use wheelchairs.

People who have physical conditions such as epilepsy, diabetes, HIV infection or severe forms of arthritis, hypertension, or carpal tunnel syndrome may be individuals with disabilities.

People with mental impairments such as major depression, bipolar (manic-depressive) disorder, and mental retardation may also be covered.

- The ADA also protects a person with a **record** of a substantially limiting impairment. Example: A person with a history of cancer that is now in remission may be covered.
- And the ADA protects a person who is **regarded** (or treated by an employer) as if s/he has a substantially limiting impairment.

#### **Architectural Barrier Removal**

#### **New Construction and Alterations**

New Construction and Alterations: All new construction and alterations must meet the 2010 ADA Standards for Accessible Design and state and local laws and building codes. Building code departments do not enforce the 2010 ADA Accessibility Standards because the ADA is a civil rights law not a building code.

#### **What is Readily Achievable Barrier Removal?**

The Americans with Disabilities Act (ADA) requires public accommodations (businesses and non-profit organizations) to provide goods and services to people with disabilities on an equal basis with the rest of the public.

Businesses and non-profit organizations that serve the public are to remove architectural barriers when it is “readily achievable” to do so; in other words, when barrier removal is “easily accomplishable and able to be carried out without much difficulty or expense.”

The decision of what is readily achievable is made considering the size, type, and overall finances of the public accommodation and the nature and cost of the access improvements needed. Barrier removal that is difficult now may be readily achievable in the future as finances change.

### **Effective Communication**

Title III requires Behavioral Health providers to take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

Title III further stipulates that Behavioral Health providers shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.

### **Provider and Client Relationship**

What are Best Practice Tips on how to inquire if individuals need an accommodation and what accommodation they need?

- Always ask the individual if he or she needs an accommodation to participate in your services.
- Include on your website and outreach materials a brief statement that says something like, if you have a disability and need an accommodation to participate in our services, programs or activities please contact us at the following....
- Include a statement about effective communication that says something like the following: If you need effective communication such as Sign Language Interpreters, reader, assistive listening devices, large print, audio please contact the following....

## **Service Animal vs Assistance Animal**

What are the differences between service animals and emotional support animals?

Service animals are individually trained to do work or perform tasks for an individual with a disability who, if asked, must be able to describe the specific tasks performed or work done by the animal.

The work done or tasks performed by a service animal must be directly related to the handler's disability.

Some service animals may be owned by individuals who have a non-apparent disability, such as a seizure disorder. The disability may not be visible.

A "comfort" or "emotional support" animal, or one that provides aid without performing a specific task or duty, means that it does not meet the definition of service animal under the ADA. However it may meet the definition under the Fair Housing Act.

If the animal is not individually trained to do work or perform a task, it is considered a pet under the ADA. Obedience training alone is not a sufficient qualification to make a service animal.

### **Are there other laws that apply to residential treatment providers focusing on service animals or assistance animals?**

Depending on the type of the residential treatment provider the Fair Housing Act (FHA) might apply. Please call the Intermountain Fair Housing Council or the Northwest ADA Center-Idaho for questions.

## RESOURCES

### **Contact the Northwest ADA Center-Idaho for Questions, Technical Assistance and Training on the ADA, Section 504 and other Civil Rights Laws.**

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Website: <http://www.nwadacenter.org/idaho>

Northwest ADA Center-Idaho Website: Frequently asked questions about our organization:

<http://nwadacenter.org/idaho>

### **Additional Resources in Idaho**

#### **Fair Housing**

Intermountain Fair Housing Council

5460 West Franklin Road, Suite M

Boise, ID 83705

1-208-383-0695 (Phone)

1-800-717-0695 (Toll Free)

1-208-383-0715 (Fax)

#### **Idaho Human Rights Laws**

Idaho Commission on Human Rights

Idaho Department of Labor

317 West Main Street | Boise, ID 83735-0660

208-334-2873

Fax: 208-334-2664

### **Overview of the ADA**

- Factsheet describing the 5 Titles of the ADA:  
[https://adata.org/sites/adata.org/files/files/ADA\\_Overview\\_2015-handout.pdf](https://adata.org/sites/adata.org/files/files/ADA_Overview_2015-handout.pdf)
- ADA Basic Building Blocks Course: Introductory web course designed to help increase knowledge and understanding of the basic principles and core concepts in the ADA and the ADA Amendments Act of 2008 (ADAAA). ADA Basic. Certificate available when completed. Login <http://adabasics.org/>

### **Effective Communication**

- Revised ADA Requirements: Effective Communication <http://www.ada.gov/effective-comm.htm>
- Idaho Resource Guide & Checklist: Providing Effective Communication for Your Customers.  
[http://nwadacenter.org/sites/adanw/files/files/Idahoeffectivecommunicationguide8-22-14\\_DOCTRaining.pdf](http://nwadacenter.org/sites/adanw/files/files/Idahoeffectivecommunicationguide8-22-14_DOCTRaining.pdf)

## Facility Checklist and Videos: Removing Architectural Barriers

- Checklist to identify architectural barriers in facilities based on the 2010 ADA Standards for Accessible Design Updated Feb 2014  
[http://nwadacenter.org/sites/adanw/files/files/2010%20ADA%20Standards%20Checklist\\_Feb%202014%20Edition.pdf](http://nwadacenter.org/sites/adanw/files/files/2010%20ADA%20Standards%20Checklist_Feb%202014%20Edition.pdf)
- Guide to the ADA Standards - Video and illustration of accessible bathrooms and clear floor space  
<http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards>
- A video providing information on human factors to consider when conducting an accessibility review. The Corridor of Accessible travel or building block used in the ADA Standards of accessibility is also illustrated. Watch this short video before reviewing buildings using checklist above <http://youtu.be/r1qoGGfI95E>

## FACT SHEETS

- Tax Credits and Deductions: [http://nwadacenter.org/sites/adanw/files/files/Tax%20Incentives\\_10-2012.pdf](http://nwadacenter.org/sites/adanw/files/files/Tax%20Incentives_10-2012.pdf)
- Accessible Parking Fact Sheet 2010 Standards: Link to fact sheet:  
[http://adata.org/sites/adata.org/files/files/Accessible\\_Parking\\_2012.pdf](http://adata.org/sites/adata.org/files/files/Accessible_Parking_2012.pdf)
- Fact sheet providing an Overview of Language Etiquette focusing on Medical Facilities:  
[http://nwadacenter.org/sites/adanw/files/files/LanguageEtiquette-MedicalFacilities\\_12-10-2013\\_DOC.doc](http://nwadacenter.org/sites/adanw/files/files/LanguageEtiquette-MedicalFacilities_12-10-2013_DOC.doc)
- Small business guide highlighting the ADA requirements that a Title III entity must follow:  
<http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm>
- Health Care Facility Fact Sheet:  
[http://nwadacenter.org/sites/adanw/files/files/AccessibleHealthCareOverview\\_031614.pdf](http://nwadacenter.org/sites/adanw/files/files/AccessibleHealthCareOverview_031614.pdf)

## Service Animals

- Fact sheet describes the Revised ADA Requirements concerning Service Animals:  
[http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)
- Service Dog Tasks for Psychiatric Disabilities: [http://www.iaadp.org/psd\\_tasks.html](http://www.iaadp.org/psd_tasks.html)
- Services Animals Questions and Answers:  
[http://nwadacenter.org/sites/adanw/files/files/ServiceAnimal%20FAQs\\_10-2012.pdf](http://nwadacenter.org/sites/adanw/files/files/ServiceAnimal%20FAQs_10-2012.pdf)
- Service\_Animal\_Booklet\_final.pdf [http://adata.org/sites/adata.org/files/files/Service\\_Animal\\_Booklet\\_final.pdf](http://adata.org/sites/adata.org/files/files/Service_Animal_Booklet_final.pdf)
- Service Animal Matrix State Laws\_Final\_10-2012  
[http://nwadacenter.org/sites/adanw/files/files/SA%20Matrix\\_withStateLaws\\_Final\\_10-2012.pdf](http://nwadacenter.org/sites/adanw/files/files/SA%20Matrix_withStateLaws_Final_10-2012.pdf)

## Employment

- A new Resource Guide for Employers on recruiting, hiring, retaining and promoting people with disabilities. Targeted at businesses of all sizes, the publication addresses leading practices in four key areas: 1) hiring (including strategies for recruiting youth and veterans with disabilities); 2) retention and promotion; 3) providing reasonable accommodations; and 4) understanding responsibilities under the ADA, Section 503 of the Rehabilitation Act, and other related regulations. Employers can use this tool as an easy reference guide for implementing a new breed of curb cuts — inclusive policies and practices that empower more Americans with disabilities to contribute their skills and talents in the workplace, and more businesses to benefit from them. Go to the following link:  
[http://m.whitehouse.gov/sites/default/files/docs/employing\\_people\\_with\\_disabilities\\_toolkit\\_february\\_3\\_2015\\_v2.pdf](http://m.whitehouse.gov/sites/default/files/docs/employing_people_with_disabilities_toolkit_february_3_2015_v2.pdf)
- The Americans with Disabilities Act: A Primer for Small Business  
<http://www.eeoc.gov/eeoc/publications/adahandbook.cfm>
- Reasonable Accommodations in the Workplace  
[http://nwadacenter.org/sites/adanw/files/files/Reasonable%20Accommodations%20in%20the%20Workplace\\_3-2013.pdf](http://nwadacenter.org/sites/adanw/files/files/Reasonable%20Accommodations%20in%20the%20Workplace_3-2013.pdf)
- JAN: Accommodation and Compliance Series: Service Animals in the Workplace  
<http://askjan.org/media/servanim.html>

## NW ADA Center Video Series on Disability Etiquette

- Youtube Video: Introduction to Respectful Interaction <http://youtu.be/5F5QAKQIGbY>
- Youtube Video: People Who Use Wheelchairs <http://youtu.be/Bxcd3rPr58k>
- Youtube Video: People Who are Blind <http://youtu.be/U8C8LhiHB4E>
- Youtube Video: People Who Have Speech Disabilities <http://youtu.be/kt2rVQ9AvCs>
- Youtube Video: People Who Are Deaf or Hard of Hearing <http://youtu.be/LDxbpBm0tGg>
- Youtube Video: People Who Have Non Apparent Disabilities <http://youtu.be/5W9zwb1PNI8>
- Youtube Video: People Who Use Service Animals <http://youtu.be/yGZHK5UN3io>

## **Five Frequently Asked Question by Behavioral Health Providers on the Responsibilities to provide Auxiliary Aids and Services such as Qualified Interpreters under the Americans with Disabilities Act.**

### **Question 1**

#### **Who has the obligation to pay for sign language interpreters?**

The provider of the service is obligated to pay for Sign Language Interpreters. In certain cases Medicaid may help with the cost if the person is Medicaid eligible. It is also my understanding that if the individual is ordered by the court to participate in treatment classes the court is responsible for paying for interpreters.

Behavioral Health providers fall under Title III of the Americans with Disabilities Act (ADA) and is considered a place of public accommodation. A place of public accommodation is defined as a facility operated by a private entity whose operations affect commerce and fall within at least one of the 12 categories listed under the Title III Regulation § 36.104 Definitions. Specifically a Behavioral Health facility falls under category 11 that includes the following businesses: a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other **social service center establishment**.

Title III requires Behavioral Health providers to take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

Title III further stipulates that Behavioral Health providers shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This

includes an obligation to provide effective communication to companions who are individuals with disabilities.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.

Behavioral Health providers should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

## **Question 2**

### **Are Behavioral Health providers required to provide a certified interpreter?**

According to the ADA entities must hire a **Qualified Interpreter** defined as an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

## **Question 3**

### **What if the cost of the sign language interpreter or other auxiliary aid or service cost more than the appointment or service?**

The Department of Justice expects to treat the costs of providing auxiliary aids and services as part of the overhead costs of operating a business. It is also suggested that a business entity can include a reasonable accommodation category in their budgeting process. In addition tax credits and tax deductions are available for business to take on a yearly basis please see the resource section for more detailed information.

#### **Question 4**

**Can a business place a surcharge on a person or group of individuals for the cost of an accommodation?**

The ADA is clear in Subpart C – Specific Requirements § 36.301 Eligibility criteria, section (c)- A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

#### **Question 5**

**Can a public accommodation pay a family member or friend to provide interpreting services?**

This question depends on the circumstances and the person. The ADA requires that the interpreter must be qualified. The ADA also states a place of public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.

Even though there are a number of highly qualified and certified interpreters that have family members who are deaf. In most cases the family member who is an interpreter does not want to interpret at the appointment because they want to participate in the appointment as a family member.

A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –

- In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

- A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

## RESOURCE LIST

1. Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities. Title III regulations governing business entities go to the following link: go to the following link [http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm#subparta](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm#subparta)
2. Revised ADA Requirements: Effective Communication Factsheet DOJ: go to the following link <http://www.ada.gov/effective-comm.htm>
3. Questions and Answers for Health Care Providers | National Association of the Deaf: go to the following link <http://www.nad.org/issues/health-care/providers/questions-and-answers>
4. Accessible Health Care Factsheet: go to the following link [https://adata.org/sites/adata.org/files/files/AccessibleHealthCareOverview\\_6-6.pdf](https://adata.org/sites/adata.org/files/files/AccessibleHealthCareOverview_6-6.pdf)
5. Factsheet on Tax Credits and Deductions: [http://nwadacenter.org/sites/adanw/files/files/Tax%20Incentives\\_10-2012.pdf](http://nwadacenter.org/sites/adanw/files/files/Tax%20Incentives_10-2012.pdf)

NOTE: The information, materials, and/or technical assistance that are provided by the Northwest ADA Center-Idaho is intended as general, and are neither a determination of your legal rights or responsibilities under the ADA or any other law nor binding on any agency with enforcement responsibilities under the ADA.