

**Federal Anti-Discrimination Laws and Survivors of Domestic Violence
Who Have Mental Health Disabilities:
*Recommended Qualification and Intake Practices for Domestic Violence Shelters***

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The Americans with Disabilities Act, the Fair Housing Act, and Section 504 of the Rehabilitation Act prohibit discrimination on the basis of disability. These statutes apply to domestic violence shelters¹ and, in addition to proscribing discrimination against persons who have a physical disability, also make it illegal to discriminate against individuals who have a mental health disability. Shelters must ensure that they comply with these laws as they relate to persons with mental health disabilities during the provision of services, but also:

- ❖ When determining whether an individual qualifies for shelter services, and
- ❖ During conversations and processes that take place during intake once an individual arrives at shelter.

Below are some recommendations for compliance at these junctures. They do not address the post-intake provision of services. The guidelines also do not cover state statutes that may require more than the federal laws. *Please note that this document is not a substitute for legal advice. If you have questions about whether your shelter policies, protocols, procedures, or processes comply with these or other federal or state statutes, please consult an attorney in your state or tribe who has expertise in the subject matter.*

The following are recommended practices for shelter qualification and intake processes:

- ❖ Ask everyone the same qualifying questions.
- ❖ Ask the minimum number of questions needed to determine if someone qualifies for the shelter program.
- ❖ Include written information about rights under the ADA, FHA, and Section 504 of the Rehabilitation Act in the materials provided at intake.
- ❖ Post information about requesting reasonable accommodations where everyone can see it and refer to it. Include information on reasonable accommodations, such as what a reasonable accommodation is, who can request an accommodation, the process for

¹ Section 504 of the Rehabilitation Act applies to a shelter if it receives any federal funds, even if those funds pass through a state agency.

requesting an accommodation, and examples of reasonable accommodations for a person who has a physical disability and a person who has a mental health disability.

- ❖ Provide a list of available services to all persons seeking assistance from the shelter program, such as individual counseling, group counseling, mental health services, children's services, etc. that the person can request at intake or any time during their stay at the shelter.
- ❖ Ask each individual at intake whether there is anything that they need during their stay at the shelter. Requests can be communicated using any method, but it is helpful to have them in writing, if possible. Make it clear that even if the individual does not have any requests at the time of intake, they can tell you or another staff member at any time.
- ❖ Include a form for requesting accommodations and a description of the request process.
- ❖ Provide individual lock boxes or locking cabinets in sleeping rooms for shelter residents who have medications. If necessary, you may need to acquire a locking refrigerator for medications that must be refrigerated. You can require the individual to sign an agreement that she/he will keep all medications in the locked box or other container and can establish an appropriate penalty that would apply if medications are left out or are distributed to other residents.

The following are practices to avoid when determining whether a person qualifies for shelter or during intake:

- ❖ Asking the individual² seeking shelter whether she has a disability – mental health-related or otherwise – even if you suspect that she does, and even if you would like to ask for the purpose of making an appropriate referral.
- ❖ Asking whether the individual has a diagnosis of any kind.
- ❖ Asking questions to determine whether the individual qualifies for shelter based on her disclosure to you or your belief that s/he has a disability, including a mental health disability.
- ❖ Making assumptions about a person based on a disclosure or your perception that s/he has a disability, including a mental health disability.
- ❖ Denying a survivor shelter or services based on a disclosure or your perception that s/he has a disability, including a mental health disability.

² For all of the items on this list recommending that shelter staff avoid asking certain questions, those questions should not be asked of the individual seeking shelter *or her children*.

- ❖ Asking whether the person might need a referral to a counselor, social worker, psychologist, psychiatrist, or a mental health program or facility. The shelter program may provide information about services available to persons residing at the shelter (which may include mental health services) and a list of potential referrals or services that includes mental health workers or facilities, if this information is offered to everyone.
- ❖ Asking whether the individual would like to speak with an in-house or contracted mental health professional, unless you ask this of everyone.
- ❖ Asking for the names of medications, the dosage, the prescribing physician, why they are taking them, or their effect. It is fine to ask whether the survivor and/or the child/ren have medications, if shelter policy and procedure requires that medications be kept in a secure location and the question is asked in order to ascertain whether the survivor has anything to store in the designated area.
- ❖ Asking if the individual is a recovering, recovered, or former addict. Persons with addictions who are not currently using are covered by the ADA if the addiction qualifies as a disability. It is acceptable to ask whether the individual is currently using illegal drugs or prescription drugs not prescribed to her/him. Persons who are active users of illegal substances are not covered by the ADA.

Resources for more information

- ❖ ADA Regulations for Title III. <http://www.usdoj.gov/crt/ada/reg3a.html>
- ❖ Americans With Disabilities Act Home Page. <http://www.usdoj.gov/crt/ada>
- ❖ Domestic Violence and Mental Health Policy Initiative. *Access to Advocacy: Serving Women with Psychiatric Disabilities in Domestic Violence Settings*. Chicago: Domestic Violence & Mental Health Policy Initiative (2007).
- ❖ Fair Housing Laws and Presidential Executive Orders. <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>
- ❖ United States Department of Justice, Civil Rights Division, Disability Rights Section. *A Guide to Disability Rights Laws* (September 2005). <http://www.ada.gov/cguide.htm>
- ❖ United States Department of Justice, Civil Rights Division, and U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity. *Joint Statement of the Department of Housing and Urban Development and the Department of Justice – Reasonable Modifications Under the Fair Housing Act* (March 5, 2008). http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf
- ❖ Your Rights Under Section 504 of the Rehabilitation Act. <http://www.hhs.gov/ocr/504.html>