

Federal Anti-Discrimination Laws and Survivors of Domestic Violence Who have Mental Health Disabilities (Part II)

Recommended Provision of Service 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 shelters 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 from the point of intake throughout an individual's stay at shelter and during the provision of services.

Below are recommendations for compliance with the federal anti-discrimination statutes, noted above. The guidelines do not cover state statutes that may have more stringent requirements 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 related to residence in shelter and the provision of services therein:

Physical Environment:

- ❖ Trauma survivors or individuals with other mental health disabilities may be sensitive to elements of the environment that are experienced as neutral by others. Allow survivors to develop methods for protecting themselves in a shelter environment; for example:
 - Providing options for accommodating privacy needs;
 - Offering secure, private sleeping spaces whenever possible;
 - Accommodating needs to control sensory stimulation such as noise, light, activity, and interaction with other residents through the provision of a quiet room and/or headphones.

- ❖ Do not segregate in a particular portion of the shelter individuals who have disclosed to shelter staff that they have a disability or who staff believe to have a disability.

Programmatic Environment:

- ❖ As noted in the Physical Environment section, above, individuals with mental health disabilities can be more affected by sensory stimuli. There will be times when interaction – either with groups of people or individuals – is difficult.
- ❖ Flexibility about participation in groups or attendance at meetings is essential.
- ❖ The imposition of schedules or routines can be helpful for some, but for others it can be too restrictive. For all survivors of domestic violence, a set of inflexible rules can be a reminder of rules imposed by the abuser, but it can be especially intolerable for survivors who have mental health challenges. Be flexible about times at which residents must be out of bed in the morning and dressed. Individuals who have mental health challenges may need more sleep and/or may not be able to be up at the same time as others in the shelter.
- ❖ Be cautious about conditioning a stay in shelter with requirements that a survivor be actively training for a job or seeking employment. An individual who has a mental health challenge may not be ready and/or able to train for or find a job easily.

Accommodations:

One type of disability discrimination prohibited by the federal anti-discrimination statutes is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy the shelter.

- ❖ Accommodations can be made orally or in writing and during any time of the shelter stay.
- ❖ There are no magic words that trigger the need to provide an accommodation. Survivors may say something like, “I am having trouble doing _____,” or, “I can’t _____.” It is recommended that the domestic violence program staff should respond as follows: “We can provide reasonable accommodations to our rules, policies, practices, or services for persons with a disability. If you think you are entitled, we can consider your request.” If a survivor has not used any words to request an accommodation, staff can respond to behaviors in a similar way. For example, staff has observed survivor struggling to comply with house rules. Staff can approach survivor and say: “We have observed [behavior]. We can provide reasonable accommodations to our rules, policies, practices, or services for persons with a disability. For example, if a person has a disability and cannot [insert behavior] we can change the rule. If you think you are entitled to this accommodation to our rules or another accommodation, we can consider your request.”

- ❖ Shelters must consider any request and provide it if it does not change the basic nature of the program or result in a “fundamental alteration” or undue financial or administrative burden.
- ❖ A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. A shelter program is entitled to obtain information that is necessary to evaluate if a *requested* reasonable accommodation may be necessary because of a disability. If a person’s disability is obvious or otherwise known to the provider and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information about the survivor's disability or the disability-related need for the accommodation. If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation. However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that:(1) is necessary to verify that the person meets the Act’s definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities); (2) describes the needed accommodation; and (3) shows the relationship between the person’s disability and the need for the requested accommodation. *See* HUD DOJ Joint Statement May 17, 2004.
- ❖ Information on disability in an accommodation request must be kept confidential.

Medications:

Medication issues in domestic violence shelter programs typically arise in three situations – intake, storage, and conditions of stay. The intake process is covered in the first tip sheet, which covers qualification for shelter and intake processes.

- ❖ Do not dispense medications unless you are licensed by the state. Instead provide individual lock boxes in each sleeping room bolted to the furniture or a locker with locks in a common area that residents can access at any time. Also provide small refrigerators with locks and fanny packs for emergency medications (e.g., EPI pen, diabetes medication, or heart medicine).
- ❖ Do not require that survivors take medication as a condition of shelter and/or services.
- ❖ Consider having a community nurse come to the shelter program once a week for any residents that have questions about medications. Do not monitor or give advice on medications unless you are licensed to do so.
- ❖ Consider the effects of medications and any requirements of communal living - dizziness, lethargy, anxiety, headaches, nausea. Effects of medication may require accommodations such as additional sleep, privacy, or a special diet.

- ❖ Practices and policies may need to be changed to accommodate a person with a disability and the effects of their medication. Examples:
 - ◆ Survivor is taking a medication that causes her to sleep. She has been unable to keep appointments for job training.
 - ◆ Survivor has indicated that medication makes it difficult for her to sit through group meetings and attendance is mandatory.
 - ◆ Survivor is not taking medications prescribed by her physician and staff are reporting that she is combative toward other residents. Shelters can rely on their policies regarding behavior toward other residents.
- ❖ The Fair Housing Act does not offer protections to person *currently* engaging in illegal use of controlled substances. Shelters can ask if a survivor is currently using illegal drugs; however, if this question is asked, it must be asked of everyone.

Emotional Support Animals:

Advocates and other professionals have long recognized the benefits of assistive animals for people with physical disabilities, including guide, hearing, or other service animals who are trained to perform tasks such as carrying notes and alerting their owners to oncoming traffic or other environmental hazards. Recent research suggests that people with mental health disabilities can benefit significantly from assistive animals, too. Emotional support animals have been proven extremely effective at ameliorating the symptoms of these disabilities by providing therapeutic nurture and support. Under the Fair Housing Act, an individual with a disability may request a reasonable accommodation to a “No Pets” rule to allow their emotional support animal in the shelter.

- ❖ The shelter can request verification of a disability as explained in the Accommodations section, above. For example: a survivor who uses a wheelchair advises the domestic violence shelter that she wishes to keep an assistance dog in the shelter even though there is a "no pets" policy. The individual’s disability is readily apparent but the need for an assistance animal is not obvious to the shelter program staff. The shelter program may ask the survivor to provide information about the disability-related need for the animal.
- ❖ Shelters do not have to grant the accommodation if it would fundamentally alter the nature of the program and place an undue burden on program.

Eviction:

- ❖ A shelter may not evict a survivor because of a disability or because of disability-related behavior that would not otherwise be considered a breach of shelter policy.
- ❖ If a behavior has resulted in a breach of shelter policy that a reasonable accommodation would enable the survivor to comply with, ask the survivor what kind of accommodation she would need, and, assuming the accommodation is reasonable, put the accommodation in place. However, a program may not be required to provide

shelter if a survivor's living at the shelter could cause a direct threat to the health or safety of other shelter residents or has resulted in substantial physical damage to the property of others.

- ❖ The shelter may be required to give a survivor time to seek or use services that would enable her to comply with shelter policy.