

PUBLICATION

Answers to Your Most Biting Questions About Service and Comfort Animals

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It is becoming more common to see people accompanied by an animal at a variety of locations – grocery stores, malls, big box stores, post offices, etc. But what happens when a patient or employee arrives at your health care facility or office with an animal? You will likely have many questions. What are the dog owner's rights? What are your rights as a business owner, health care provider, and employer? And, most importantly, what are your responsibilities to your other patients or employees?

Health care providers have a legal obligation to accommodate disabled patients and members of the public. Protections for individuals with disabilities are addressed in numerous federal and state statutes, including Section 1557 of the Patient Protection and Affordable Care Act. Health care entities receiving federal financial assistance (including Medicaid and Medicare payments) are subject to the requirements of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). The Centers for Medicare and Medicaid Services notes in its State Operations Manual that these statutes and their implementing regulations require that covered entities administer their services, programs, and activities in the most integrated setting appropriate to individuals with disabilities, and prohibit covered entities from using criteria or methods of administration that lead to discrimination. This article addresses the requirements of the ADA, which is a federal anti-discrimination statute that provides civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The ADA is implicated when a patient presents to a health facility with an animal.

Today, the odds are that hospitals, medical offices, dialysis facilities, assisted living facilities, skilled nursing facilities, and almost every other health care facility will encounter a patient (or member of the public) with a service animal or comfort animal sooner rather than later. Your facility or office, including your employees, should be prepared to handle either situation. Below are answers to the most common questions for health care providers facing an animal in their facility or office.

1. What is the difference between a service animal and a comfort or therapy animal, and are both covered under the ADA?

A *service animal* is defined by the ADA as a dog or miniature horse that is individually trained to perform a task or work for an individual with a disability that is directly related to that individual's disability. According to regulations issued by the Department of Justice, a service animal is not required to be professionally trained; the individual with the disability may train the dog himself as opposed to using a professional service dog training program. The dog, however, must be trained before it can be taken into a public accommodation (although some state laws permit service dogs "in training" to enter public accommodations). An individual who requires a service animal generally must be accommodated under the ADA. Animals that *solely* provide comfort or emotional support through companionship, otherwise known as *comfort animals*, and that do not perform a specific job or task, are not service animals and do not need to be accommodated under the ADA, although your facility may choose to voluntarily accommodate such animals. Both service animals and comfort animals are subject to (i) local animal control or public health requirements and (ii) local licensing and registration requirements.

2. What are some examples of a task or work performed by a service animal?

Tasks and work performed by service animals include:

- alerting and protecting an individual having a seizure
- pulling a wheelchair
- guiding someone who is blind
- recognizing and interrupting early signs of anxiety or panic attacks

3. Are service animals required to be restrained?

Yes. The ADA requires that service animals be harnessed, leashed, or tethered, unless such devices would interfere with the service animal's work or if the individual's disability prevents using these devices.

4. What should I do if a patient presents for an appointment with an animal?

When encountering a patient with an animal presenting for an appointment, staff should determine whether the animal is a service animal. If it is not obvious that the animal is a service animal, staff may ask only *two* questions:

- Is this service animal required because of a disability?
- What task or work has the animal been trained to perform?

Staff may *not*, however, do the following:

- Request documentation showing the animal is a service animal
- Request that the animal wear any special harness or vest
- Request that the animal demonstrate its task or work
- Isolate individuals with service animals from or treat them less favorably than the rest of the patient population
- Inquire about the nature of the individual's disability

If the individual answers that the animal is required for a disability and explains the task or work that the animal performs, a health care facility typically must accommodate the animal. If the individual is unable to answer the question in the affirmative, then staff should invite the individual to return without the animal at a later time.

5. Does a facility have any outside reporting requirements for animals that come on site?

All health care facilities should have a written policy delineating the steps it will take to report the presence of an animal, and should notify patients and members of the public who bring animals on site. Any service animal that belongs to a patient admitted to the facility should be reported to the local infection control center or program. The same rule applies to comfort animals, should your facility allow such animals to remain with admitted patients.

6. May a facility impose a fee on a patient with a service animal?

No. A facility may not impose a surcharge on an individual with a disability to cover the costs associated with measures and modifications taken to provide the individual with nondiscriminatory treatment (for example, charge a cleaning fee because the patient brought his or her service animal to an appointment). However, a facility may impose a surcharge on comfort animals if it allows such animals on site.

7. What requirements can a facility impose on patients with comfort animals, if allowed on site?

A facility that chooses to allow comfort animals on site should develop a written set of guidelines for what the animal is and is not allowed to do, and any behavior that will not be tolerated. The guidelines should also require that an animal have all appropriate immunizations, and provide that failure to comply with one of the guidelines will result in expulsion of the animal from the facility.

8. Under what circumstances can a patient be asked to remove his/her service animal from the premises?

A person with a disability can be asked to remove his/her service animal only if: (1) the animal is out of control and the individual does not take effective action to control the animal; (2) the animal is not housebroken; (3) the animal or the animal's behavior poses a direct threat to the health or safety of others; (4) for miniature horses, the facility cannot accommodate the service animal's type, size, or weight; or (5) admitting the animal would fundamentally alter the nature of a service or program. In these situations, the individual should be invited to return without the animal at a later time.

9. What if a hospitalized patient has a service animal, but is unable to care for it?

The patient should make arrangements for a family member or friend to visit the facility to care for the animal, or arrange for the service animal to be removed from the premises. If a patient is unable to care for the service animal and unable to make arrangements for its care, the health facility may place the service animal in a boarding facility. Health facility staff are not held responsible under law for any element of the animal's care (including walking, toileting, and feeding).

10. Must a service animal be allowed to go anywhere in a health care facility?

No. The service animal can accompany the patient to all areas where the *public* is normally allowed to go, including patient rooms, clinics, cafeterias, and examination rooms (including rooms where scans, such as mammograms, are done). Service animals need not be allowed into areas if their presence would fundamentally alter the nature of a service or program. (For example, an animal could compromise a sterile environment, such as an operating room or burn unit, and should not be allowed in those areas.)

11. What are some of the risks of having a service animal in a health care setting?

Zoonotic infections or disease that can be transmitted from animal to human are one of the risks of having animals in health care settings. Many patients already have compromised immune systems, which increases their risk of infection. *Escherichia coli*, *Campylobacter*, *Salmonella*, and *Cryptosporidium* infections can be spread when a person exposes him/herself to saliva contact by petting or kissing an animal. Allergies are another concern with animals in the health care setting. Exposure to animals' skin, dander, fur, feathers, urine, or saliva can elicit an allergic response in susceptible individuals. Finally, injuries, including bites, falls, kicks, or scratches, also pose risks.

Please be sure to join Baker Donelson for our bimonthly Labor & Employment Webinars for Health Care Employers. Our September 13, 2018 session, "[When the Dog Bites: Health Care Employer Responsibilities for Patient \(and Employee\) Comfort Animals](#)," will be a follow-up to this article. The program will present a deeper dive into the rights and obligations of health care facilities as they relate to patients, employees, and members of the public with service animals or comfort animals.