

North Carolina and The Deaf, Deaf Blind, and Hard of Hearing (DDBHH) Survivor Community: What obligations do domestic violence and sexual assault organizations have?

*Sawyer Davis, UNC Law Class of 2023
Amber Knepper, UNC Law Class of 2024
Halie Mariano, UNC Law Class of 2024*

***This document was approved for distribution to domestic violence and sexual assault providers by the North Carolina Domestic Violence Commission on February 25, 2022. It contains general legal information about ensuring meaningful access to services for the Deaf/DeafBlind, and Hard of Hearing population, not legal advice. If you have specific legal questions, please consult with an attorney.*

I. State Level Obligations:

A. Obligations Attached to Grants Received by SA and DV Organizations

Applies to: NC Council for Women & Youth Involvement grantees and Governor's Crime Commission grantees

Many North Carolina Domestic Violence and Sexual Assault assistance programs and shelters are funded in part by the North Carolina Department of Administration¹ through NC Council for Women & Youth Involvement grants established by state legislation (§ 143B-394.21, Sexual Assault and Rape Crisis Center Fund, and § 50B-9, Domestic Violence Center Fund).² The Governor's Crime Commission also provides grants under the Victims of Crime Act and the Violence Against Women Act.³ Grantees must follow guidelines produced by the North Carolina Office on Disability and Health on achieving the fundamental elements of accessibility. These guidelines include:

- Training staff and volunteers on basic disability awareness
- Intake procedures that include screening, referral, and/or the delivery of services to victims with disabilities
- Accessible communication (including equipment for loan to assist in communication with deaf and hard of hearing victims)
- Training staff and volunteers to use Telecommunications Relay Service
- Printing information to make it accessible for clients with disabilities
- Having physically accessible buildings or a plan with alternative accessible locations to provide services
- Welcoming service animals and personal care assistants

¹ NC DOA: Domestic Violence Program, <https://ncadmin.nc.gov/advocacy/women/domestic-violence-program> (last visited Dec 13, 2021).

² NC DOA: Council for Women Grants, <https://ncadmin.nc.gov/advocacy/women/council-women-grants> (last visited Dec 13, 2021).

³ The North Carolina Office on Disability and Health, Guide to Achieving the Fundamental Elements of Accessibility, <https://fpg.unc.edu/sites/fpg.unc.edu/files/resource-files/NCODH-FEA-guide.pdf> (last visited Dec. 28, 2021).

- Preparing staff and volunteers to advocate for accommodations during medical care for sexual assault survivors with disabilities
- Preparing staff and volunteers to advocate for accommodations during legal proceedings for sexual assault and domestic violence survivors with disabilities
- Providing disability related assistance or accommodations free of charge

These guidelines also make it clear that many services and types of equipment can be provided by the NC Coalition Against Domestic Violence as well as the NC Coalition Against Sexual Assault upon request.⁴

B. North Carolina Persons with Disabilities Protection Act

Applies to: shelters, other places of public accommodation

The North Carolina Persons with Disabilities Act is the state counterpart to the Rehabilitation Act (discussed below).⁵ Under the North Carolina Persons with Disabilities Protection Act, providers of covered public services and public accommodations must be informed by the person requesting an accommodation of their disability and their need for an accommodation and the covered organization must evaluate what accommodations are feasible.⁶ Once a person with a qualified disability requests an accommodation, or if a “potential accommodation is obvious in the circumstances,” a place of public accommodation or a covered governmental entity shall “investigate whether there are reasonable accommodations that can be made and make reasonable accommodations.”⁷

Covered government entities include those that contract with a state department, institution, or agency of the state for the delivery of public services including health and social services.⁸ Discrimination is also prohibited by public accommodations defined within the Act as including any place, facility, store, other establishment, hotel, or motel, which provides goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.⁹

Discrimination in public service is defined within the Act as excluding a qualified person with a disability from participation in or denying the benefits of services, programs, or activities because of a disability or refusing to provide reasonable accommodations including “auxiliary aids and services necessary for a . . . person with a disability to use or benefit from existing public services” provided accommodations do not impose undue hardship on the entity

⁴ *Id.*

⁵ *McCullough v. Branch Banking & Tr. Co.*, 35 F.3d 127, 130-31 (4th Cir. 1994).

⁶ N.C. Gen. Stat. § 168A-4(a) (2011)

⁷ *Id.* § 168A-4(b).

⁸ *Id.* § 168A-3(1).

⁹ *Id.* § 168A-3(8).

involved.¹⁰ This Act also requires that a covered governmental entity administer its services and programs in the most integrated setting appropriate to the needs of persons with disabilities.¹¹

Discrimination in public accommodations is defined as denying a qualified person with a disability the full and equal enjoyment of the services, advantages, and accommodations of a place of public accommodation on the basis of a disabling condition.¹²

A “reasonable accommodation” with respect to a place of public accommodation or covered governmental agency means that the agency is making “reasonable efforts to accommodate the disabling conditions of a person with a disability” including providing auxiliary aids and services needed to make materials available to those with hearing or sight impairments and providing other mechanical aids or assistance.¹³ Reasonable accommodations do not include those that would impose “undue hardship” on the entity. Undue hardship is defined as a “significant difficulty or expense” as determined by looking at several factors including the nature and cost of the accommodations as well as the financial resources of the entity.¹⁴

II. Federal Level Obligations:

A. Americans with Disabilities Act (ADA) Title II

Applies to: North Carolina Department of Administration and Governor’s Crime Commission (as grantors to programs providing services to the public)

Title II of the Americans with Disabilities Act (ADA) covers all services, programs, and activities provided or made available by public entities.¹⁵ “Public entity” is defined as any state or local government as well as any department, agency, or other “instrumentality” of a State or local government.¹⁶ The Department of Justice’s Civil Rights Division in its supplementary information on Title II makes it clear that, under this Act, a public entity, in providing any aid, benefit, or service, may not “directly or through contractual, licensing, or other arrangements” on the basis of disability:

- deny a qualified individual with a disability the opportunity to benefit from the aid, benefit, or service;
- provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

¹⁰ *Id.* § 168A-7(a).

¹¹ *Id.* § 168A-7(b).

¹² *Id.* § 168A-6.

¹³ *Id.* § 168A-3(10)(b).

¹⁴ *Id.* § 168A-3(11)(a)-(b).

¹⁵ 42 U.S.C.A. § 12132.

¹⁶ *Id.* § 12131(1).

- provide a service to a qualified individual with a disability that is not equal to that provided to others;
- afford a qualified individual with a disability an aid or service that is not as effective in affording equal opportunity to obtain the same result or benefit provided to others;
- provide different or separate aids, benefits, or services to individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with services that are as effective as those provided to others;
- aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program; or
- otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.¹⁷

Public entities may not either directly or through contractual or other arrangements utilize methods of administration that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.¹⁸

Public entities have a duty to take steps to ensure that communications with members of the public and companions with disabilities are as effective as communications with others.¹⁹ To meet this requirement, public entities shall provide appropriate auxiliary aids where necessary to afford qualified individuals with disabilities equal opportunity to enjoy the benefits of a service or program of a public entity.²⁰ The type of aid necessary to provide effective communication will vary in accordance with the method of communication used by the individual as well as the nature, length, and complexity of the communication involved and the context in which the communication is taking place.²¹ It is generally not enough for a public entity to require an individual with a disability to bring another individual interpreter for themselves, or to rely on an adult accompanying an individual with a disability to interpret or facilitate communication. An exception exists in emergency situations involving an “imminent threat” to the safety 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” and the accompanying adult agrees to interpret and reliance on that adult is appropriate under the circumstances.²² A public entity shall not rely on a minor child to interpret

¹⁷ 28 CFR § 35.130(b)(1)(i)-(vii).

¹⁸ *Id.* § 35.130(b)(3)(ii).

¹⁹ *Id.* § 35.160(a)(1).

²⁰ *Id.* § 35.160(b)(1).

²¹ *Id.* § 35.160(b)(2).

²² *Id.* §§ 35.160(c)(1)-(2)(i-ii).

except in an emergency involving an imminent threat to the safety of the individual or the public where there is no interpreter available.²³

If a public entity chooses to provide video remote interpreting (VRI) services to provide qualified interpreters, it must ensure that the VRI provides “real-time, full-motion video and audio” that provides high-quality video images that “do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication.”²⁴ The VRI must also produce an image that is large and sharp enough to display the interpreter’s and participating individual’s face, arm, hands, and fingers, as well as the clear, audible transmission of voices.²⁵ The entities must also provide adequate training to users of the technology so they may “quickly and efficiently” set up and operate the VRI.²⁶

Under this Act, if a public entity communicates by telephone with beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf, deafblind, or hard of hearing or those with speech impairments.²⁷ If a public entity uses an automated-attendant system, that system must also provide effective real-time communication with individuals using auxiliary aids and services including TTYs and other relay systems.²⁸ A public entity must respond to calls from relay services in the same manner it replies to other phone calls.²⁹ Telephone emergency services must provide direct access to individuals who use Telecommunications Devices for the Deaf (TDDs).³⁰

A public entity is not required to take an action that it can demonstrate would result in a “fundamental alteration in the nature of a service” or in “undue financial and administrative burdens.” The public entity has the burden of proving that complying with communications related duties would result in such an alteration or burden.³¹ If an action required to comply with an entity’s communications related duties under § 35.160-163 would result in a fundamental alteration or undue burden, a public entity shall instead take any other action that would avoid the alteration or burden but would ensure that individuals with disabilities receive the benefits or services provided by the public entity to the extent possible.³²

“A public entity may not place 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 or program accessibility.”³³ However, the ADA does not require a public entity to

²³ *Id.* § 35.160(b)(3).

²⁴ *Id.* § 35.160(d)(1).

²⁵ *Id.* § 35.160(d)(2)-(3).

²⁶ *Id.* § 35.160(d)(4).

²⁷ *Id.* § 35.161(a).

²⁸ *Id.* § 35.161(b).

²⁹ *Id.* § 35.161(c).

³⁰ *Id.* § 35.162.

³¹ *Id.* § 35.164.

³² *Id.*

³³ *Id.* § 35.130(f).

provide personal devices such as wheelchairs or individually prescribed devices such as prescription eyeglasses or hearing aids.³⁴

A public entity shall also modify its policies and practices to permit the use of service animals by an individual with a disability.³⁵

B. Americans with Disabilities Act (ADA) Title III

Applies to: Domestic Violence and Sexual Assault programs; domestic violence shelters

Title III of the Americans with Disabilities Act (ADA) applies to any public accommodation and prohibits discrimination on the basis of disability in the full and equal enjoyment of the services, goods, or advantages of a place of public accommodation by any person who owns or operates a place of public accommodation.³⁶ Title III defines a place of public accommodation as “a facility operated by a private entity whose operations affect commerce” and fall within at least one of the following categories: a place of lodging; a professional office of a healthcare provider or other service establishment; or a homeless shelter, food bank, or other social service establishment.³⁷

Public accommodations and those they contract with or those with other arrangements with the public accommodation are generally prohibited from denying participation to those with disabilities, providing those with disabilities with unequal participation, and providing those with disabilities with separate or different services unless such action is necessary to provide the service.³⁸ For the purposes of discrimination by public accommodations, discrimination includes:

- a failure to make reasonable modifications when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to those with disabilities, unless the entity can demonstrate that such accommodations would “fundamentally alter” the nature of such services or accommodations;
- a failure to take steps necessary to ensure no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids or services, unless the entity can demonstrate that such accommodations would “fundamentally alter” the nature of such services or accommodations; or
- a failure to remove communication barriers that are structural in nature, where removal is readily achievable.³⁹

³⁴ *Id.* § 35.135.

³⁵ *Id.* § 35.136(a).

³⁶ 42 U.S.C.A. § 12182(a).

³⁷ *Id.* § 12181(7).

³⁸ *Id.* § 12182(b)(1)(A)(i-iii).

³⁹ *Id.* § 12182(b)(2)(A)(ii-iv).

“Readily achievable” is defined as “easily accomplishable” and able to be carried out without much difficulty or expense taking into account factors such as: the nature and cost of the action needed; the financial resources of the facility involved in the action; the overall financial resources of the covered entity; and the type of operation or operations of the covered entity.⁴⁰

In a supplement to Title III of the ADA, the Justice Department’s Civil Rights Division makes it clear that a public accommodation must furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.⁴¹

“Auxiliary aids and services” are defined within the supplement as including:

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.⁴²

It is generally not enough for a public accommodation to require an individual with a disability to bring another individual interpreter for themselves, or to rely on an adult accompanying an individual with a disability to interpret or facilitate communication. An exception exists in emergency situations involving an “imminent threat” to the safety 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” and the accompanying adult agrees to interpret and reliance on that adult is appropriate under the circumstances.⁴³ A public entity shall not rely on a minor child to interpret

⁴⁰ *Id.* § 12181(9)(A-D).

⁴¹ 28 CFR § 36.303(c).

⁴² *Id.* § 36.303(b).

⁴³ *Id.* § 36.303(c)(1-3).

except in an emergency involving an imminent threat to the safety of the individual or the public where there is no interpreter available.⁴⁴

Where a public accommodation uses an automated-attendant service for receiving and directing incoming calls, that system must provide “effective real-time communication” with individuals using auxiliary aids and services including text telephones (TTYs) and all forms of FCC approved telecommunications relay systems.⁴⁵ Public accommodations that offer the opportunity to make outgoing phone calls using their equipment on more than an “incidental convenience” basis must make available public telephones, TTYs, or other telecom systems for use by deaf or hard of hearing individuals.⁴⁶ A public accommodation must respond to calls from relay services in the same manner it responds to telephone calls.⁴⁷

Places of lodging that provide TVs in five or more guest rooms shall provide upon request a means for decoding captions for use by persons with impaired hearing.⁴⁸

A public accommodation that provides qualified interpreters via VRI service must ensure that the VRI provides: “real-time, full-motion video and audio” that provides high-quality video images that “do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication.”⁴⁹ The VRI must also produce an image that is large and sharp enough to display the interpreter’s and participating individual’s face, arm, hands, and fingers, as well as the clear, audible transmission of voices.⁵⁰ The accommodation must also provide adequate training to users of the technology so they may “quickly and efficiently” set up and operate the VRI.⁵¹

A public accommodation must also remove architectural barriers in existing facilities, including communication barriers that are “structural” in nature, where removal is readily achievable.⁵² These changes include things such as rearranging furniture, repositioning telephones, and adding raised markings on elevator control buttons.⁵³

Public accommodations are not required to provide participants with personal devices such as wheelchairs or hearing aids.⁵⁴

⁴⁴ *Id.* § 36.303(c)(4).

⁴⁵ *Id.* § 36.303(d)(1).

⁴⁶ *Id.* § 36.303(d)(2).

⁴⁷ *Id.* § 36.303(d)(4).

⁴⁸ *Id.* § 36.303(e).

⁴⁹ *Id.* § 36.303(f)(1).

⁵⁰ *Id.* § 36.303(f)(2)-(3).

⁵¹ *Id.* § 36.303(f)(4).

⁵² *Id.* § 36.304(a).

⁵³ *Id.* § 36.304(b)(1)-(6).

⁵⁴ *Id.* § 36.306.

C. Fair Housing Act

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex, familial status, national origin, and disability. It also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively further fair housing.⁵⁵

The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions. Title III of the ADA prohibits discrimination based on disability in the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodations owned, leased, or operated by private entities. The Department of Justice enforces Title III of the ADA, but certain US Department of Housing and Urban Development (HUD) recipients and private entities operating housing and community development programs are covered by Title III of the ADA.⁵⁶

Under Title III comments: “A similar analysis would also be applied to other residential facilities that provide social services, including homeless shelters, shelters for people seeking refuge from domestic violence, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. Such facilities should be analyzed under the Fair Housing Act to determine the application of that statute.”⁵⁷

D. Protections for Service Animals and ESAs in Shelter Settings

The ADA says service animals are allowed anywhere the public can go. Government programs and services including most shelters fall under ADA Title II. Places of public accommodation including privately owned accommodations such as shelters operated by private non-profits would fall under the ADA Title III. Service animals are dogs specifically trained to perform a task or service related to a person’s disability. Tasks can include: (1) guiding people who are blind; (2) alerting people who are deaf; (3) pulling a wheelchair, alerting, and protecting a person who is having a seizure; (4) reminding a person with a mental health diagnosis to take prescribed medications; and (5) calming a person with PTSD during an anxiety attack.

Emotional Support Animals (ESAs) not specifically trained to perform a specific service including comfort, emotional support, or therapy animals are not specifically protected under the ADA. Because an ESA may not be permitted to enter the emergency shelter with an individual, it is suggested to bring medical documentation and any supporting letters to the emergency shelter. It is possible that the staff and volunteers at the shelter will be able to assist in finding another option. Additionally, the Pet Evacuation and Transportation Standards (PETS) Act ensures that state and local emergency plans help people with household pets and services. This means if a

⁵⁵ 42 U.S.C. §§ 3601-19.

⁵⁶ *Id.* § 12181-12189.

⁵⁷ 28 CFR Appendix C to Part 36.

pet is not permitted to stay at a shelter, they will be provided with a safe place to stay overnight.
58

The Fair Housing Act (FHA) protects individuals with “assistance animals” who need the animal as a reasonable accommodation for use/enjoyment of a dwelling. Assistance animals can be dogs but do not have to be; they can include cats, birds, monkeys, and other animals. Assistance animals do not have to be specifically trained or certified. Assistance animals perform many disability-related functions, including but not limited to: (1) guiding individuals who are blind; (2) alerting individuals who are deaf or hard of hearing to sounds; (3) providing protection or rescue assistance; (4) pulling a wheelchair; (5) fetching items; (6) alerting persons to impending seizures; or (7) providing emotional support to persons with disabilities who have a disability-related need for such support.

Housing providers must consider whether the person requesting to live with the animal has a disability and whether the animal provides assistance to the individual that is related to the disability. Housing providers may request further documentation that states the individual has a disability and that the animal provides support for that person or alleviates a disability-related symptom or need. Examples of documentation can include a letter from a physician explaining how the animal assists the individual. If the animal’s service to the person is “obvious and readily apparent,” housing providers may not ask for this documentation under the FHA.

Both the ADA and FHA (and sometimes the Rehabilitation Act discussed below) apply to Shelters. HUD and DOJ have stated that if a person in a shelter situation asks to be accompanied by a service or assistance animal, the ADA definition of a service animal must be applied first. If the ADA does not protect the animal, the FHA definition is then used if applicable. Service animals can be any breed of dog, even “restricted breeds.” The animal must be under the handler’s control. The animal must not be expected to wear a particular type of vest, harness, or identification. The housing provider must not charge for a service or assistance animal, even if there is generally a “pet fee.” The handler is responsible for the animal’s care (grooming, vet care, feeding, bathroom breaks). The handler and the animal should not be separated even in cases of emergency. The handler and the service animal must not be segregated from the rest of the population due to fears or allergies of other shelter residents. If an animal is currently exhibiting behavior threatening to the handler or other residents, the animal, not the handler, may be asked to leave. Under DOJ and HUD, it is possible for an individual to have more than one animal for different tasks, functions, or needs. An animal can provide assistance to multiple family members.

If an individual is hospitalized while in the shelter, hospitals must allow the animal to remain with the person, wherever possible. If a person cannot care for their animal, the hospital must first allow the individual to make arrangements for someone else to care for the animal. If

⁵⁸ <https://disabilityrightsnyc.org/resources/assistance-animals-in-emergency-shelters>.

that individual is unable to make arrangements, the hospital can board the animal at a nearby facility until the handler is well enough to make other arrangements or provide care.⁵⁹

E. Rehabilitation Act Section 504

Applies to: Shelters and programs receiving federal funds

The Rehabilitation Act states in section 504 that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.”⁶⁰ The Code of Federal Regulations further states that “recipients [of Federal financial assistance] shall insure [sic] that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance because the recipients facilities are inaccessible to or unusable by handicapped persons.”⁶¹

A recipient of federal financial assistance is defined in the Code of Federal Regulations as any “public or private agency, institution, organization, or other public or private entity, or any person to which Federal financial assistance is extended directly or through another recipient . . . excluding the ultimate beneficiary of the assistance.”⁶² Federal financial assistance is defined as “any grant . . . subgrant, contract under a grant or any other arrangement by which the Department [of Justice] provides or otherwise makes available” in the form of funds, real and personal property, or any other thing of value by way of grant, loan, contract, or cooperative agreement.⁶³

The Governor’s Crime Commission provides grants to domestic violence and sexual assault organizations under the Violence Against Women Act as well as the Victims of Crime Act,⁶⁴ both federal laws, meaning these recipients would be beneficiaries under section 504 of the Rehabilitation Act and thus subject to the non-discrimination provision of the Rehabilitation Act.

⁵⁹ *Id.*

⁶⁰ 29 U.S.C.A. § 794(a).

⁶¹ 28 C.F.R. § 42.520.

⁶² *Id.* § 42.540(e).

⁶³ *Id.* § 42.540(f)(1), (3) & (4).

⁶⁴ The North Carolina Office on Disability and Health, Guide to Achieving the Fundamental Elements of Accessibility, <https://fpg.unc.edu/sites/fpg.unc.edu/files/resource-files/NCODH-FEA-guide.pdf> (last visited Dec. 28, 2021).