

# SERVING PERSONS WITH DISABILITIES

*the legal responsibilities  
of emergency shelters*

# OVERVIEW OF DISABILITY DISCRIMINATION LAWS...

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- **Section 504 of the Rehabilitation Act of 1973**
- **Americans with Disabilities Act - Titles II and III**
- **Fair Housing Amendments Act of 1988**
- **North Carolina Fair Housing Act**

# SECTION 504

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- Applies to any program receiving federal \$\$\$
- Programs must be physically accessible for persons with disabilities
- Programs must be programmatically accessible for persons with disabilities
- Housing providers must provide *reasonable accommodations* in all rules, policies and procedures when needed by persons with disabilities to ensure equal access to their programs

# ADA – TITLE II

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- **Extends protections of Section 504 to all state and local government funded programs**
- **Applies to any transitional housing or emergency shelter that is operated by or receives funding from a state or local government**
- **Covered programs cannot discriminate against persons with disabilities**
  - ❖ **must make reasonable accommodations in policies and practices**
  - ❖ **and make reasonable modifications in physical structures to ensure equal access**

# ADA – TITLE III

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- **Prohibits discrimination against persons with disabilities or those affiliated with persons with disabilities in any privately owned “public accommodations” – *including homeless/emergency shelters***
- **Requires programs to provide reasonable accommodations in policies and practices and to remove physical barriers to the extent readily achievable**

# FEDERAL AND STATE FAIR HOUSING ACTS

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- Prohibit discrimination on the basis of race, color, religion, sex, national origin, familial status or disability in virtually all housing (public and private)
- Federal law interpreted broadly to apply to emergency shelters
  - ❖ Expectations and intentions of individual
  - ❖ Duration of stay
  - ❖ Whether individual considers the shelter her residence

# TITLE III VS FAIR HOUSING

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- **If shelter is for transient or short-term stay, Title III applies**
- **If shelter is intended and used for long-term stay, Fair Housing laws likely apply**

# WHO IS “DISABLED?”

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Individuals are protected if they

- a) **Have a physical or mental impairment which substantially limits one or more major life activities;**
- b) *Have a record of having such an impairment; or*
- c) *Are regarded as having such an impairment, even if they have no disability*



# PERSONS NOT COVERED

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- Individuals who are currently engaged in illegal drug use
- Individuals who pose a *direct threat*\* to the health or safety of other individuals or substantial physical damage to the property of others
- Convicted sex offenders

# WHAT IS REQUIRED?

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- **Equal Access**
- **Reasonable Accommodations**
- **Reasonable Modifications**
- **Under the ADA, services must be provided in the most integrated setting appropriate to the needs of the individual with a disability**

# EQUAL ACCESS

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- **Eliminate eligibility criteria that tends to screen out persons with disabilities, unless necessary to the provision of services**
- **Ensure that programs are physically accessible**
- **Provide auxiliary aids and services to ensure effective communication with persons with disabilities**
  - ❖ **no service charges for auxiliary aids or services**

# REASONABLE ACCOMMODATIONS

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- Providers *must* make reasonable accommodations in rules, policies, practices or services, when necessary to afford a person with a disability equal access to services, programs, or activities.
- Refers to the removal of administrative barriers

# REASONABLE MODIFICATION

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- Providers *must* provide reasonable modifications to the premises if necessary to afford a person with a disability equal access to services, programs or activities
- Refer to the removal of physical barriers to equal access

# REQUIREMENTS FOR RA/RM

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- Individual with a disability must ask for the reasonable accommodation/modification
- Request does not have to be in writing
- Individual does not have to use the magic words “accommodation” or “modification”
- Request should be granted if:
  - Person is a covered person (meets definition of disability)
  - The requested accommodation/modification is necessary to ensure equal access
  - There is a nexus/connection between the requested accommodation/modification and the person’s disability

# EXCEPTIONS TO RA/RM REQUIREMENT

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- **Undue administrative or financial burden**
- **Fundamental alteration in the nature of the program**
- **If the person with a disability seeks an accommodation/modification that is not reasonable, the shelter has a responsibility to work with the individual to find a reasonable alternate accommodation**

# HMIS VS ANTI-DISCRIMINATION LAWS

- Under the Anti-Discrimination laws. Questions about the presence of a disability or that might reveal the presence of a disability are prohibited unless the program is specifically designated for persons with disabilities (e.g. “are you currently taking meds?”)
- After the initial intake process is complete AND the applicant has been admitted into the shelter, shelter workers should explain the purpose of HMIS service assessment questions to the guest and that answering these questions is voluntary.
- SHELTER PROVIDERS THAT INCORPORATE SERVICE ASSESSMENT HMIS QUESTIONS INTO THEIR APPLICATION PROCESS ARE IN VIOLATION OF FEDERAL ANTI-DISCRIMINATION LAWS



# ENFORCEMENT

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- **ADA - individual can file a complaint with the Department of Justice**
- **FHAA - individual can file a complaint with the Department of Housing and Urban Development (HUD)**
- **Individual can file a civil lawsuit against the shelter provider**