

FACT SHEET #11 - Summary

The Civil Rights of People with Disabilities under the Americans with Disabilities Act and Section 504 and Section 508 of the Rehabilitation Act

This fact sheet is to clarify some of the issues that may arise for Navigators when applicants and participants in the Marketplace need reasonable accommodations or policy modifications from Navigators, Assistors and Certified Application Counselors.

Q1. Which federal disability rights laws apply to Navigators, Assistors, and Certified Enrollment Counselors?

A. There are two main federal disability rights laws that are relevant to Navigators, Assistors, and Certified Application Counselors – the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Section 508 of the Rehabilitation Act (Section 508) is a third law that was enacted more recently in 1998 and applies directly to federal departments and agencies and its main application in the Navigator context is to the Marketplace website and online application process.

Q2. Who is protected by the federal disability civil rights laws?

A. A disability is defined under the ADA, with respect to an individual, as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.” The definition has multiple clauses, many of which have been the subject of much litigation. The Marketplace assistance program is there to help consumers apply for and enroll in health coverage that is available through the Marketplace, and this includes engaging in consumer outreach and education, helping consumers to find out if they qualify for premium or cost-share assistance or for Medicaid or CHIP, and providing referrals to independent consumer assistance programs if needed.

Q3. What kind of behavior is considered “disability discrimination” under the law?

A. “Discrimination” is a word that carries much emotional weight. It is important to know that discrimination under federal disability rights laws does not denote or require any degree of ill intention or malice. Instead, discrimination is an outcome. Discrimination occurs if an individual with a disability is denied “the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.” Another critical aspect of disability non-discrimination is that it places a proactive obligation on covered entities to make reasonable modifications in policies and procedures, provide auxiliary aids and services such as sign language interpreters or alternative reading formats, and remove architectural barriers and preserve accessible paths of travel to ensure that people with disabilities have an equal opportunity to partake of goods and services.

Q4. Are there limits on the Navigator's obligation to provide policy modifications, auxiliary aids and services, and physical accessibility?

A. In general, a covered entity is not required to provide reasonable policy modifications when doing so would "fundamentally alter the nature" of the goods or services being offered. This standard is quite high and is not invoked successfully very often. The ADA allows public accommodation to refer a person with a disability to another public accommodation if that individual needs or is looking for specialized services and the public accommodation would have made a similar referral for a consumer without disabilities. With regard to auxiliary aids and services, Navigators are not required to proactively take steps to ensure the availability of such aids or services if doing so would fundamentally alter the nature of the good or services *or* would result in an "undue burden," which the law identifies as "significant difficulty or expense." Finally, Navigators, Assistors or Certified Application Counselors are obligated to ensure that they operate in premises that are "readily accessible" if they occupy new construction, or they must engage in "readily achievable" barrier removal if they occupy existing facilities. These standards are evaluated with regard to the same variety of factors that require consideration in the "undue burden" standard.

Q5. There are many kinds of alternative formats, do I have to have them *all* on hand? Similarly, can't I use written notes to communicate with people who are Deaf and hard-of-hearing?

A. Effective communication requires you to take into account the nature, length and complexity of what is being communicated. A written note is likely effective when a consumer with hearing impairments needs directions to the bathroom, for example, but it is likely to be ineffective when providing assistance on a consumer's health insurance options available in the Marketplace. While there is some overlap, each type of alternative format provides effective communication for distinct groups of people. While you do not necessarily have to warehouse all of your Marketplace written materials in multiple alternative formats, you should have tested policies and procedures in place to give people with disabilities their preferred alternative format in a timely manner.

Q6. What referrals can I give to someone who believes his or her needs are not being met by me or by other Marketplace entities, like Qualified Health Plans (QHPs)?

A. Individuals with disabilities who believe that they have been subject to disability discrimination in the Marketplace have a number of options under federal law. They can file an administrative complaint with the Health and Human Services Office of Civil Rights and they also have the right under both the ADA, Section 504, and Section 1557 of the Affordable Care Act, to file a private lawsuit in federal court.

www.nationaldisabilitynavigator.org

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