Rights of People with Disabilities in the Community

All people have the right to be free from mental and physical abuse, neglect, financial and sexual exploitation, and violations of their legal and human rights.

Right to Self-Determination

◆ All persons with disabilities have the right to have relationships.
◆ If an individual is adjudicated incompetent, as many rights as possible must be preserved.
◆ If an individual is adjudicated incompetent, s/he keeps the right to vote, unless that right is specifically taken away, which is rare.

All People Have the Right to Live in the Community

◆ All people have the right to live in the setting that is the least restrictive of the individual’s personal liberty.
◆ All people have the right to be free from discrimination in housing and the affirmative right to reasonable accommodations and modifications in housing.
  ● It is illegal for a housing provider to fail to make reasonable accommodations in rules, policies, and services to give a person with disability equal opportunity to occupy and enjoy the full use of a housing unit.
  ● It is illegal for a housing provider to fail to allow a tenant to make reasonable modifications to the premises if the modification is necessary to allow full use of the premises.
  ● Determining what is a reasonable accommodation or a reasonable modification is a case-by-case determination.
  ● The accommodation or modification must be requested,

From the Director

Disability Rights North Carolina (DRNC) values the dignity of ALL people and champions their freedom to control their own lives. We work for justice upholding the fundamental rights of people with disabilities to live free from harm in the communities of their choice with the opportunity to participate fully and equally in society.

Thousands of people all over North Carolina who have a disability have established lives in the community of their choice. They live independently and fulfill many different roles in their communities: employers, employees, marriage partners, parents, students, athletes, politicians, taxpayers — the list is unlimited. In most cases, the barriers facing these people haven’t been removed, but these individuals have been successful in overcoming or dealing with them.

Sadly, many North Carolinians with disabilities have not been able to overcome the barriers they face. These barriers may be obvious, such as lack of ramped entrances for people who use wheelchairs, lack of

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preferably in writing.

- All people with disabilities have the right to seek appropriate healthcare, including mental health treatment, habilitative and rehabilitative services in the community.
  - There is no right to a particular type or level of service, and most services require pre-approval.
  - Individuals who qualify for Medicaid have certain due process rights under federal law, including notice and the right to appeal when their services have been denied, reduced or terminated (this includes Medicaid waiver programs like CAP-MR/DD, CAP-C and CAP-DA).
  - Individuals who receive non-Medicaid state-funded services have the right to appeal a decision to deny, reduce, suspend or terminate such services – first to the LME, and then to the Division of the Mental Health/Developmental Disabilities/Substance Abuse. There is no right to judicial review. State-funded services must only be provided within available resources.
  - Individuals under 21 years of age who receive Medicaid are entitled to any services that are medically necessary to correct or ameliorate an impairment, physical or mental illness, or a condition identified by screening whether or not those services are covered under the North Carolina State Medicaid Plan.

**Voting**

Voters with disabilities have the right to:
- Vote, regardless of disability.
- Choose a person to help them when voting. This person cannot be the person’s employer or an agent of the employer or union.
- Be reassigned before the election to a site that is accessible.
- Cast a vote by absentee ballot, within the timelines and restrictions set by North Carolina.

**Employment**

Job applicants and workers have the right to be free from discrimination in employment.
- Employment anti-discrimination laws cover individuals with a physical or mental impairment that substantially limits one or more major life activities (like walking, seeing, speaking, or hearing).
- Employers cannot discriminate in application procedures, hiring, job training and other employment practices.
- Employers cannot:
  - Ask if a person has a disability.
• Ask about a person’s use of medication.
• Require a medical exam before making a job offer.

◆ A person with a disability is entitled to request a reasonable accommodation (a modification or adjustment to the work environment, job functions, or “the way things are usually done”).

◆ An employer may refuse an accommodation that would cause an undue hardship to the employer. (An undue hardship exists when a reasonable accommodation would result in significant difficulty or expense, based on the employer’s resources and the operation of the business.)

◆ The employee must request the reasonable accommodation and should do so in writing. If you do not ask, you are not entitled to a reasonable accommodation.

◆ Once a request is made, the employer may require documentation of the disability and an explanation of how it relates to the requested accommodation.

◆ If the employer cannot grant the requested accommodation, the employer should propose an alternative recommendation.

What employment anti-discrimination laws do NOT provide:

◆ Entitlement to a job for which you are not qualified. (Qualified means you must have the skills, experience, and education required for the job, with or without a reasonable accommodation.)

◆ Preference to a qualified applicant with a disability over a qualified applicant without a disability.

◆ Protection from termination for other, non-discriminatory reasons.

A person with a disability who receives Social Security benefits has the right to seek work or return to work while receiving disability benefits and to utilize work incentives designed by Social Security to avoid an immediate loss of benefits.

A person with a disability has the right to apply for rehabilitative services from Vocational Rehabilitation, such as counseling, training, supported employment or other assistance, and also has the right to receive a vocational assessment from Vocational Rehabilitation. The application process, the assessment, and all of the services provided by Vocational Rehabilitation must be accessible to individuals with disabilities.

Federal and state laws give civil rights protections to individuals with disabilities similar to the protections provided to individuals who may face discrimination on the basis of race, color, sex, national origin, age, or religion. This issue of New Directions will highlight the rights of people with disabilities living in the community.

Barriers to employment, housing, transportation, public accommodations, public services, telecommunications and voting have imposed staggering economic and social costs on our society and have undermined efforts of people with disabilities to live productively in a community of their choice. It is the role of DRNC to break down those barriers by protecting the rights of people with disabilities.

Protecting the rights of people with disabilities enables society to benefit from the skills and talents of individuals with disabilities. Everyone wins.

Vicki Smith
Executive Director
Access to buildings, programs and services of the federal, state and local governments

- A government agency or office:
  - May not refuse to allow a person with a disability to participate in a service, program, or activity because of the disability.
  - Is required to make reasonable modifications to policies, practices and procedures that deny equal access.
  - Must furnish auxiliary aides and services when necessary to assure effective communication (i.e., sign language interpreters, large print materials, and assistive listening devices and headsets).
  - May not impose special charges on individuals to cover the costs of necessary measures such as auxiliary aids and services or modifications.

- All new buildings must be built to particular state and federal accessibility standards.
  - However, unlike private entities, state and local government entities are not required to make alterations on older buildings. Instead, the entity must ensure program accessibility, which can be achieved by: relocating the program or activity offered to an accessible facility; providing the activity, services, or benefit in another manner that meets ADA requirements; or making modifications to the building or facility itself to provide accessibility.
  - For example, a courthouse that has courtrooms on the second floor and no elevator may allow court to be held in an alternative location that is accessible upon request and need not install an elevator in order to comply with the law.

Access to Places of Public Accommodation (private businesses open to the public)

- A place of public accommodation (a private business open to the public, such as a mall, a doctor's office, or a lawyer's office) cannot deny goods or services because a person has a disability or is associated with a person with a disability, cannot offer only unequal or separate benefits, AND must offer services in the most integrated setting possible.

- A public accommodation must make reasonable modifications in policies, practices and procedures in order to become accessible to individuals with a disability unless it would fundamentally alter the nature of the goods and services offered or cause an undue financial or administrative burden.

- A newly constructed public accommodation must meet all of the physical access requirements of the ADA Accessibility Guidelines (ADAAG), unless a state standard is stricter.

What it means...

Assistive Technology Device is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive Technology Service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an Assistive Technology device.

A qualified individual with a disability is a person who, with or without reasonable accommodation, can perform the essential functions of the job in question.

A reasonable accommodation is a change in a rule, policy, practice or procedure to allow a “qualified person with a disability” equal access to employment or housing.

Examples of reasonable accommodations include: 1) making facilities readily accessible to and usable by people with disabilities; and 2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

An accommodation that would impose an undue hardship on the...
A public accommodation being remodeled must have the part being altered accessible to the “maximum extent feasible,” according to the ADAAG. If the part being altered is a primary function area (e.g., training center), then that area must be connected to the main entrance by an accessible route which includes accessible bathrooms, drinking fountains, etc. along the route.

There is no grandfather provision to these rules! An existing public facility which is not undergoing alterations must be made accessible if it is “readily achievable,” meaning “without much difficulty or expense,” according to the ADA. An entity should look at its total budget versus the cost of the features to determine whether the cost of accessibility would be undue. Examples of “readily achievable” alterations include: ramps, curb ramps, rearranging furniture, moving plants, widening doorways, or putting tactile markers on elevators.

If an existing facility cannot be made accessible, then it must provide services in an alternative manner, e.g., free delivery, taped tours of inaccessible exhibits, or Dixie cup dispensers on water fountains.

One example of a reasonable modification could be to allow service animals into an establishment that would generally not allow pets. The “no pets” policy is modified to allow the service animal, which is not a “pet,” into an establishment under the control and responsibility of the person with a disability.
Transportation

- Federal laws provide specific requirements for transportation services offered by state and local governments and private operators.
- All new public buses and commuter trains must be accessible (lift-equipped, proper signage, warning symbols, etc.).
- For those people with disabilities who cannot use mainline transportation, paratransit (door-to-door) service must be offered with service response time, cost and availability comparable to the mainline service.
- At least one car per commuter train must be accessible; key stations must also be accessible.
- All new Amtrak trains must have one accessible car per train; intercity rail stations must be accessible by 2010.
- New buses purchased by private entities not in the business of transportation (e.g., hotel shuttle services, buses offered to tour facilities) which seat more than 16 people (including the driver) must be accessible; if the service is “demand responsive” (available on demand) not all buses need to be accessible. If the buses purchased hold fewer than 16 people, the entity providing the service must assure that the service “when viewed in its entirety” is accessible to people with disabilities. The entity must be able to show that it can meet the demand for its services by people with disabilities within the same time frame as it meets the demand by non-disabled persons.
- The Air Carrier Access Act prohibits discrimination on the basis of disability in air travel and requires air carriers to accommodate the needs of passengers with disabilities.

Protection of Health Information

HIPAA, the Health Insurance Portability and Accountability Act, set national standards for the protection of individually identifiable health information.

- Who Must Protect Health Information Under HIPAA?
  HIPAA only applies to covered entities such as health insurance programs/companies, including Medicaid and Medicare, most health care providers, and health care clearinghouses. Organizations such as life insurers, employers, and workers compensation carriers do not have to follow HIPAA privacy rules. Additionally many schools and school districts, state agencies like child protective service agencies, law enforcement, and municipal offices are not covered under HIPAA privacy rules.

- What Information is Protected?
  Most health information that is created by and/or held by the organizations covered is protected. This will mainly be
information health care providers put in your medical record, including conversations your doctor may have about your care with nurses and others. It may also include information about you in a health insurer’s computer system and billing information about you. Although your information is protected, you do not always have the right to access a provider’s psychotherapy notes. These notes are required to be kept separate from the patient’s medical and billing records. Also, information is no longer protected when it is stripped of identifiers such as name and social security number.

Generally, family and friends do not have a right to your medical information, but there are certain circumstances where it is allowed, especially if you have given permission.

This information is a general summary that was largely taken from www.hhs.gov/ocr/hipaa/ and more information is available on that site.

What it means...

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- stations used for public transportation
- places of public display or collection (e.g., museums, gardens, galleries)
- places of recreation (e.g., parks, zoos)
- places of education (e.g., private schools)
- social service centers (e.g., homeless shelters, day care centers)
- places of exercise or recreation (e.g., gymnasiums, golf courses).

Examples of reasonable accommodations:

- Allowing a service animal when there is a no-pets policy
- A tenant with a mental disability yells at other tenants during delusional periods (treatment and medication will relieve the behavior)
- Providing an assigned parking spot near the unit of a person with a mobility disability
- Allowing a variance of a Homeowner’s Association covenant to accommodate the needs of a resident with a disability
- Assigning a mailbox to an accessible location
- A ramp
- Putting a desk up on blocks for a wheelchair
- A modified work schedule
- Providing an assistive technology device
- Job restructuring
- Appropriate adjustments of an examination or test
Imagine that you have no limitations and then decide what’s right before you decide what’s possible.

Brian Tracy