



**Department
of Health**

Reasonable Accommodations and Reasonable Modifications

Questions and Answers

June 2023

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The questions below were received following the Department of Health's [May 4, 2023 webinar](#) regarding Changes to Admission and Retention Regulations as illustrated in [Dear Administrator Letter \(DAL\) #23-15](#). Answers to each question follow. If you have a question not addressed herein, please consider the referenced resources, consult your counsel, and/or outreach the New York State Division of Human Rights or the Office of the Attorney General, Civil Rights Bureau at civil.rights@ag.ny.gov.

Service Animals

Question: If a prospective resident has a service animal, can the adult care facility refuse the individual's admission if the facility has current residents with a documented allergy to that type of animal?

Answer: According to the New York State Office of the Attorney General, "Allergies or fear of dogs are not valid reasons for denying access." We recommend you outreach the New York State Division of Human Rights, or the Office of the Attorney General, Civil Rights Bureau, or consult your own counsel. For further information please consider the following resources:

- [Service Animals \(ny.gov\)](#);
- [EmotionalSupportAnimals Housing FactSheet.pdf \(nyc.gov\)](#); and/or
- [fact-sheet-44-12-2022.pdf \(ny.gov\)](#).

Question: If a prospective resident has a service animal, can the adult care facility charge a pet fee at the time of admission?

Answer: According to the New York State Office of the Attorney General, "A business may not impose extra deposits, fees, or surcharges because of a service animal, but may charge a fee if a service animal causes damage – as long as it regularly charges nondisabled customers for the same types of damages." If you have additional questions, we recommend you outreach the New York State Division of Human Rights, or the Office of the Attorney General, Civil Rights Bureau, or consult your own counsel. Please consider the following resources:

- [Service Animals \(ny.gov\)](#);
- [EmotionalSupportAnimals Housing FactSheet.pdf \(nyc.gov\)](#); and/or
- [fact-sheet-44-12-2022.pdf \(ny.gov\)](#).

Question: What is the Operator's responsibility to care for the service animal if the resident is admitted to the hospital?

Answer: We recommend you outreach the New York State Office of the Attorney General, Civil Rights Bureau at civil.rights@ag.ny.gov, or consult with your own counsel and work with the hospital where the individual is admitted.

Non-Discrimination Statement

Question: Are Operators expected to have a non-discrimination statement within their Residency or Admission Agreements or is just having a policy sufficient?

Answer: As explained in DAL #23-15, adult care facilities should adopt a non-discrimination statement and policy, and post the poster developed by the United States Department of Housing and Urban Development. Certainly, it would be a best practice to incorporate facility policy into the Admission and/or Residency Agreement, but there is not currently a requirement to do so.

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Admission/Retention

Question: If there is not a ground floor room/apartment available, and none of the current residents wishes to move to accommodate a mobility-impaired individual, is this sufficient justification to deny admission to a mobility-impaired individual?

Answer: A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. A reasonable modification is a structural change to the existing premises. Neither of these definitions of “reasonable” indicates that an existing resident must be moved against their will to accommodate a prospective resident’s admission. However, if it is the adult care facility’s policy to house all individuals with mobility impairments on the first floor, then said facility is required to ascertain if they can safely accommodate the individual with a mobility impairment on another floor through the same assessment process as it uses for the admission and retention of all residents.

Question: If there is currently enough staff to adequately assist the adult care facility’s existing residents with safe evacuation and adding one more resident to the census could disrupt safety, is this sufficient justification to deny admission?

Answer: The adult care facility is required to prioritize the preservation of health and safety of all residents. If the facility is limiting admissions to preserve a delicate balance, then this *might* be a sufficient basis for denial of admission to any prospective resident if the assessment process remains consistent among all prospective residents irrespective of the individual’s mobility needs.

Bear in mind that a safety concern must be specific to individual circumstances and an individual’s abilities and needs, and the facility’s ability to meet those needs. A reasonable accommodation may include reassigning staff and/or providing additional assistance to a mobility-impaired resident during an emergency provided it is not an undue burden.

Question: What specific documentation is needed to justify denied admission?

Answer: Justification is dependent on the individual circumstance of the denied admission. As such, there is no specific form or documentation that can be referenced. However, if you have concerns that you are not properly considering an accommodation request, you should consult your counsel or the New York State Division of Human Rights or the Office of the Attorney General, Civil Rights Bureau at civil.rights@ag.ny.gov.

Question: What documentation is required to justify whether the costs associated with a reasonable accommodation or reasonable modification presents an undue hardship?

Answer: Justification is dependent on the individual circumstance of the request. As such, there is no specific form or documentation that can be referenced. However, if you have concerns that you are not properly considering an accommodation request, you should consult your counsel or the New York State Division of Human Rights or the Office of the Attorney General, Civil Rights Bureau at civil.rights@ag.ny.gov.

Question: Does the Department expect that every prospective resident will be admitted to the adult care facility?

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Answer: The Department does not expect that every prospective resident seeking admission will successfully be admitted, but it does expect that adult care facilities will individually assess prospective residents and that such facilities will not engage in discrimination during the admission process.

Question: Must an adult care facility seek enhanced assisted living residence certification to accommodate an individual with a mobility impairment?

Answer: An adult care facility need not seek nor secure layered licensure or certification (e.g., enhanced assisted living residence, assisted living program, etc.) to admit and/or retain an individual solely based on the individual's mobility needs.