

# **LAW: Understanding Disabled Pharmacy Patients' Right to Nondiscrimination**

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## **Learning Objectives**

1. Describe the federal and state laws that protect patients with disabilities
2. Recognize situations in which accommodations should be provided to disabled patients
3. Recall examples of common modifications for patients with disabilities

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## Disclosures

I, Caroline Wick, have no financial relationships with ineligible companies.

This presentation provides legal information only; it is not legal advice.

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## Outline

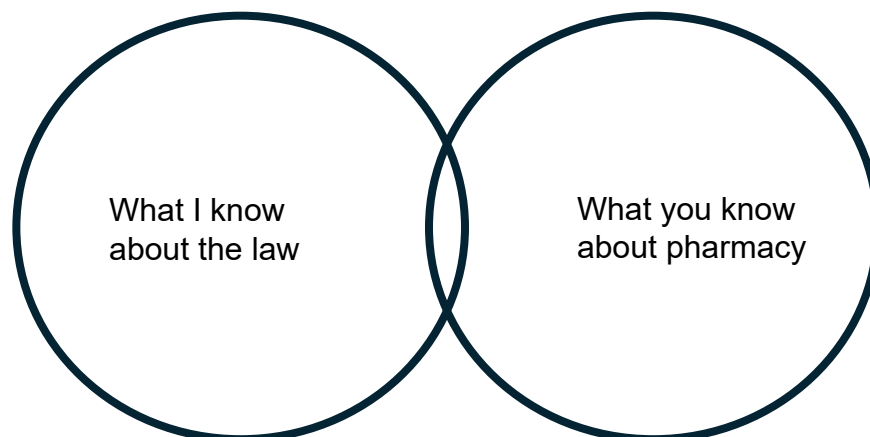
- I. Introduction
- II. Applicable Federal Laws
  - a. Section 504
  - b. Americans with Disabilities Act
  - c. Affordable Care Act
  - d. Who qualifies as a person with a disability?
  - e. Required modifications
- III. Brief Discussion of State Laws
- IV. Wrap-Up and Questions

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# I. Introduction

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## Caveat



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## Why this topic?

- More than 61 million Americans have a disability
- Health disparities for disabled patients persist.
- Frequently not covered in school.

National Council on Disability. Health equity framework for people with disabilities. Washington (DC): NCD; 2022. Available from: <https://ncd.gov/publications/2022/health-equity-framework>

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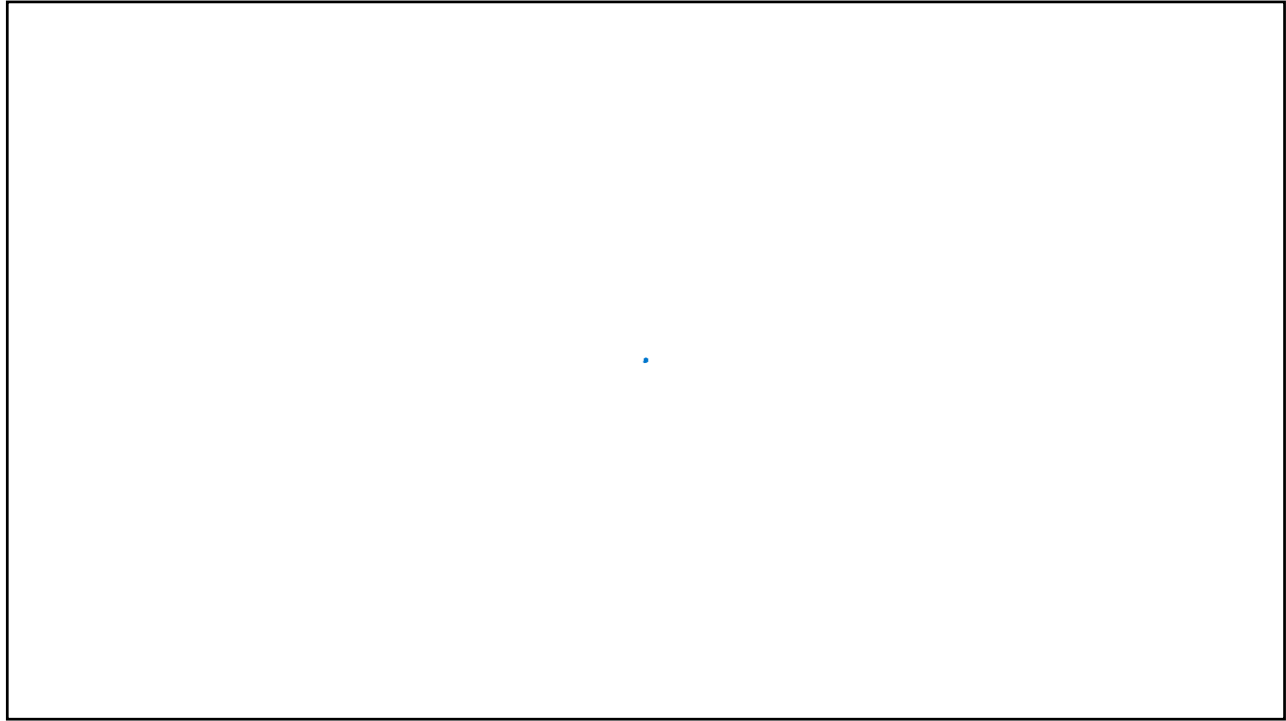
## Note About Language

- People with disabilities vary in whether they prefer disability-first (Autistic person) or person-first (person with Autism).
- **Best practice:** Ask someone how they would like to be described.

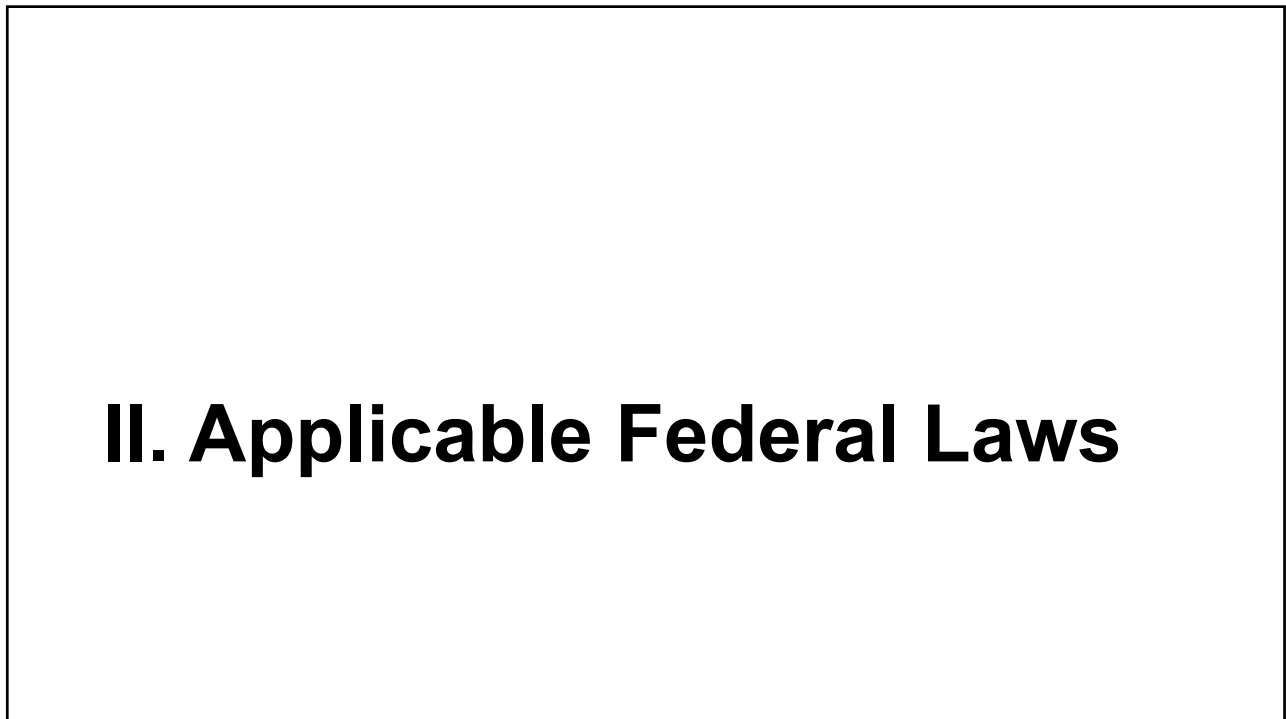


**Cite:** Andrews EE, Powell RM, Ayers K. The evolution of disability language: Choosing terms to describe disability. Disabil Health J. 2022 Jul;15(3):101328.

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## Section 504 of the Rehabilitation Act (1973)

“No 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....**”

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## The Americans with Disabilities Act's Structure

~~Title I: Employment~~

Title II: State and Local Governments ("public entities")

Title III: Places of Public Accommodation

~~Title IV: Telecommunications~~

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## Title III: Places of Public Accommodation

### What is a public accommodation?

- Private entities that affect commerce, including
  - "(F) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment"



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## Patient Protection and Affordable Care Act (2010)

Section 1557 of the ACA prohibits discrimination on the basis of sex, race, color, national origin, age, and **disability** in “**any health program or activity**” that either receives federal financial assistance or is administered by a federal agency.

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## Who is an “individual with a disability” under these laws?

An individual must:

- A. Have a physical or mental impairment that substantially limits one or more of their major life activities
- B. Have a record of such an impairment; or
- C. Be regarded as having such an impairment

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## **Who is an “individual with a disability”?, contd.**

- Generally, people who are currently using illegal drugs are not protected
  - People who are rehabilitated or who are in rehabilitation programs are protected
- In addition, covered entities cannot deny health services (or services in connection with drug rehabilitation), on basis of the current illegal use of drugs if the individual is otherwise entitled to such services

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## **Multiple Choice Question 1**

What was Congress' purpose when it wrote the definition of “individual with a disability”:

- A. To make it easier for people with disabilities to be covered by federal law
- B. To restrict coverage to people with certain medical diagnoses
- C. To only cover people with physical impairments

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## Nondiscrimination Requirements

- Requirements include that covered entities must not:
  - Exclude/deny an individual with a disability from participation
  - Deny the individual the benefits of services, programs, or activities
  - Discriminate against the individual

NOTE: You can refer a disabled patient elsewhere if the patient needs services outside your area of specialization and you would refer a patient without a disability elsewhere

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## Nondiscrimination Requirements, contd.

- Federal laws do not require a covered entity to serve an individual when that person is a **direct threat** to the health or safety of others
- In determining whether someone is a direct threat, entity must make an individualized determination:
  - Current medical knowledge or best evidence
    - Nature, duration, and severity of the risk
    - Probability that the potential injury actually will occur
    - Whether reasonable modifications or auxiliary aides and services will mitigate the risk

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### **Case Example: Refusal to Administer Flu Shot to Person with HIV**

- A patient filed a complaint with the U.S. Department of Justice when a pharmacist at Walgreens refused to give him a flu shot when he disclosed on a form that he has HIV.
- DOJ's findings:
  - A healthcare provider cannot refer a patient with HIV or AIDS to another provider simply because the patient has HIV or AIDS. *Any referral may be based on the fact that the treatment the patient is seeking is outside the expertise of the provider, but cannot be based on the patient's HIV or AIDS status alone.*
  - Walgreens discriminated against the patient.

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## **Multiple Choice Question 2**

When may a pharmacist refuse to administer the flu shot to a person with HIV?

- A. If the patient is in a rehabilitation program for using illegal drugs.
- B. If the patient hasn't made an appointment ahead of time and all patients must make appointments ahead of time.
- C. If special gloves are not available for administering shots to people with communicable diseases.

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## Requirement to Make Reasonable Modifications

- Covered entities must make **reasonable modifications**
- in policies, practices, or procedures
- when such modifications are necessary to avoid discrimination on the basis of disability,
- unless the entity can demonstrate that making the modification would **fundamentally alter** the nature of the service.

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### Specific Example: Service Animals

- Must make modifications to allow for service animals.
- Cannot charge a surcharge for the service animal.
- The service animal must be allowed to accompany the disabled individual
  - Except, consistent with CDC guidance, the service animal can be excluded from “limited-access areas that employ general infection-control measures, such as operating rooms and burn units.”
- Service animal must be under handler’s control

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### Specific Example: Service Animals

- A covered entity can ask an individual with a disability to remove a service animal if:
  - The animal is out of control and the handler does not try to control it or
  - The animal is not housebroken



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### Specific Example: Service Animals

#### 2 Permitted Questions:

- Is the animal required because of a disability?
- What work or task has the animal been trained to perform?

#### Prohibitions:

- Asking about the nature or extent of disability
- Requiring documentation
  - e.g., proof that the animal is certified, trained, or licensed when readily apparent that the animal is a service animal

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## Multiple Choice Question 3

A patient enters the pharmacy with a dog, and you are not sure if it's a service animal or not. Which of the following questions may you ask the patient?

- A. What is the nature and extent of your disability?
- B. Do you need the dog to be present because of a physical, sensory, psychiatric, intellectual or other mental disability?
- C. Is the dog required because of a disability?

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## Requirement to Provide Effective Communication

- People with disabilities may need **auxiliary aids and services** to communicate.
- Auxiliary aids and services for people who are deaf or hard of hearing include, but are not limited to: Qualified interpreters (on site-or through video remote interpreting); written materials; exchange of written notes; etc.
- Auxiliary aids and services for people who are blind or have low vision include: Braille materials, screen reader software, large print materials, etc.

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## Requirement to Provide Effective Communication

Covered entities must:

- Ensure that communication with individuals with disabilities (and their disabled companions) is as effective as communication with non-disabled individuals
- Provide appropriate auxiliary aids and services to individuals with disabilities free of charge, in accessible formats, in a timely manner, and in a way to protect the privacy and independence of the disabled patient

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## Requirement to Provide Effective Communication



- The type of auxiliary aid or service necessary to ensure effective communication will vary based on:
  - The method of communication used by the disabled individual;
  - The nature, length, and complexity of the communication involved; and
  - The context in which the communication is taking place.

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## Requirement to Provide Effective Communication

- Covered entity should consult with disabled individual whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication.
- A covered entity shall not require an individual with a disability to bring another individual to interpret for him or her.
- A covered can only rely on the adult accompanying a disabled individual to interpret if it's an emergency.

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## Case Example: Failure to Provide Effective Communication

- A CVS MinuteClinic patient filed a complaint with the DOJ when she was not provided with a qualified sign language interpreter that she had requested and was necessary for her MinuteClinic medical appointments.
- In the Settlement Agreement with MinuteClinic, the DOJ discussed situations under which an interpreter may be required, which include when the communication is particularly complex or lengthy, including when **providing instructions for medications.**

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### Specific Example: Prescriptions for Blind and Visually Impaired Patients

- Blind people and people with visual impairments who cannot read prescription labels are at risk
  - Coping mechanisms that work for one vial don't work when taking multiple medications
- Risks:
  - Take the wrong amount
  - At the wrong time
  - Under the wrong instructions
  - Take expired medications
  - Inability to detect medication errors or need for refills



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### Specific Example: Prescriptions for Blind and Visually Impaired Patients

#### Methods to Provide Accessible Prescription Drug Labels

- Hard copy braille or large print labels
- Electronic labels
- Smart devices and computers

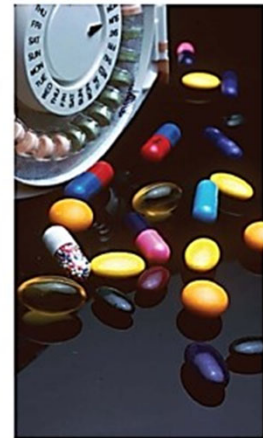
#### Best Practices:

- <https://www.access-board.gov/rx.html>

**PRACTICE TIP:** Check your state's laws!

#### BEST PRACTICES FOR ACCESSIBLE PRESCRIPTION DRUG LABELING:

Pharmacies have a critical role to play to ensure the safety of blind, visually impaired, and elderly customers



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### Specific Example: Mobility Devices

- Covered entities must allow disabled patients to use wheelchairs and manually-powered mobility aids in any areas open to pedestrian use.
- Covered entities must make reasonable modifications to allow the use of the mobility devices, unless the mobility device cannot be operated in accordance with legitimate safety requirements that the public accommodation has adopted.

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### Specific Example: Mobility Devices

#### Permitted Inquiries:

- May ask for credible assurances that the mobility device is required because of the person's disability

#### Prohibitions:

- May not ask about the nature or extent of the person's disability

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## Multiple Choice Question 4

If a patient enters the pharmacy using a mobility device, a pharmacist is permitted to inquire about which of the following?

- A. The nature and extent of the patient's disability.
- B. What paperwork the patient has with them to prove that the mobility device has been serviced recently.
- C. Whether the mobility device is needed because of the patient's disability.

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## Example: Reas. Mod. for PTSD and Agoraphobia

- A Black man and Marine veteran had PTSD and experienced extreme agoraphobia and panic attacks.
- His doctors suggested that he ask places of public accommodation to allow him to enter during nonbusiness hours. A state agency and some private businesses agreed. A large pharmacy chain, however, did not.
- He sued for discrimination based on race, gender, and disability.
- The court held that he had a claim under the ACA for discrimination.

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## III. Brief Discussion of State Laws

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### **State Civil Rights Laws**

- Many states also have laws that prohibit discrimination the basis of disability
- Connecticut, for example, prohibits discrimination on the basis of blindness, mental disability, and physical disability
- Many other states include similar prohibitions

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## IV. Wrap Up and Questions

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### Additional Resources

1. Iezzoni LI, McKee MM, Meade MA, Morris MA, Pendo E. Have Almost Fifty Years Of Disability Civil Rights Laws Achieved Equitable Care? Health Aff (Millwood). 2022 Oct;41(10):1371-1378. doi: 10.1377/hlthaff.2022.00413.
2. National Council on Disability, Health Equity Framework for People with Disabilities, February 2022. Available at: [https://www.ncd.gov/assets/uploads/reports/2022/ncd\\_health\\_equity\\_framework.pdf](https://www.ncd.gov/assets/uploads/reports/2022/ncd_health_equity_framework.pdf)
3. U.S. Access Board, Prescription Drug Container Labels, <https://www.access-board.gov/rx.html>

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## Questions?

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