

Northern New England Society for Healthcare Risk Management



Panel Case Study Discussions:

Unique Aspects of the Health Care Environment
and Reasonable Accommodations/ADA

Objectives

- ▶ Identify the differences or nuance in regional state laws (Vermont/NH/Maine) regarding accommodation requests
- ▶ Demonstrate an understanding of Title 1 and Employment accommodation requirements
- ▶ Demonstrate an understanding Title 3 obligations for public accommodation and accessibility



Definitions

- ▶ **Reasonable Accommodation** - (for qualified individuals with a disability) - Adjustments to job application process, to work environment, or enable an employee equal benefits/privileges when employed
- ▶ **Essential Function** - The fundamental job duties of the employment position the individual holds or desires
- ▶ **Qualified Individual/Applicant** - Individual with a disability who, with or without Reasonable Accommodations can perform essential functions.
 - Individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position.
 - An individual is not a qualified individual with a disability if that person poses a *direct threat*.*
- ▶ **Undue Hardship** - An action requiring significant difficulty or expense or an impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business should be considered
- ▶ **Direct Threat** - a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.



Relevant Law

Americans with Disability Act

- **Title I** - protects individuals from disability-discrimination in the workplace and when applying for employment
 - Employers must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship.
- **Title III** - provides places of public accommodation must not discriminate on the basis of disability. Health care providers are considered places of public accommodation.



Reasonable Accommodations in Healthcare Case

- Direct Patient Care Nurse suffered from obesity, hearing impairment, and hypertension
- Rated as satisfactory or higher during entire tenure
- Employer determined she created a safety risk because she could not get on the floor for CPR, her hearing deficit caused misinterpretations so staff members were afraid she could not properly respond to an emergency
- Employer terminated her because she was not qualified because of her impairments
- EEOC found she was a qualified individual and not a direct threat.
 - Only allegation supported by evidence was that she failed to become CPR certified
 - But the Employer allowed other nurses uncertified to continue working



Service Animals Cases

- Patient comes into a medical office with a dog on leash with no vest.
- Patient says the dog is an emotional support animal.

or

- Patient says the dog a service animal.
- Receptionist request certification of the dogs training and asks what the patient's disability is that requires the dog.
- Patient is told the service dog cannot go into the examination rooms.

or

- Nurse requests a service animal. The nurse takes patient vitals in examination rooms and sometimes takes blood samples.
- Service animal barks at all that pass by and often urinates in the office.



Service Animals - Discussion

Are dogs that are trained to do work for an individual with a disability. The work performed must directly relate to the person's disability.

- There is no specific certification or training requirement.
- Always allowed to ask:
 - 1) Is the dog a service animal required because of a disability?
 - 2) What work has the dog been trained to perform?
- Hospitals must allow service dogs in the **places the public and patients are allowed to go.**
- Generally, should ride in ambulance with patient.
- Service Animal must be under control of the handler at all times.
 - Family members may care for the dog in the hospital.
- ▶ **Service Dogs may be prohibited if their presences would fundamentally alter the nature of the service to the public.**



Medical Marijuana Employee Case:

- Pre-employment urine drug screen is non-negative for marijuana
- Lab reports marijuana level of 550 ng/mL
- Medical Review Officer interview → donor produces medical marijuana card
- Employee is applying to be Neurosurg Critical Care nurse



Medical Marijuana State Law Distinctions

- NH says that CSA does not override state anti-discrimination laws i.e. use of marijuana can be a reasonable accommodation
- VT says that CSA does override state anti-discrimination laws i.e. can't use marijuana as a reasonable accommodation
- ME also says CSA does override state anti-discrimination laws i.e. can't use marijuana as a reasonable accommodation but ME's cases are distinguishable to NH's as they all involve a federal facility or federal funds
- MA and CT say: use of medical marijuana off duty maybe a reasonable accommodation



Supported Decision Making Scenarios

▶ Informed Consent

- ▶ 30-year-old female patient with Down Syndrome and family history of uterine cancer is requesting a total hysterectomy. Patient is not under a guardianship, presents with Supported Decision Maker. How does clinician determine/document the patient's understanding of consent discussion and consent?

▶ Supportive Decision Maker vs Surrogate Decision Maker

- ▶ Patient with documented Supported Decision Maker agreement is incapacitated and requires consent for treatment. Patient's next of kin is estranged, but available. Supported Decision Maker is not related to the patient. Who provides consent? What if they disagree?



Supported Decision Making

- ▶ Supported decision-making (SDM) allows a person with disabilities to make their own decisions. It is an alternative to guardianship. Supported decision-making is flexible in how it is applied from individual to individual and even how it is applied to the same individual over time.
- ▶ A person using supported decision-making identifies what types of decisions they want help with. This might include decisions related to where and with whom they want to live, what services, supports, or medical care they want to receive, and where they want to work.
- ▶ The person with disabilities chooses people they trust to help them understand, make, and communicate those decisions. These trusted people are called “supporters”. Supporters may include trusted friends, relatives, neighbors, co-workers, providers, volunteers, or community members.
- ▶ Through a written supportive decision-making agreement, the person with disabilities legally designates which supporters will help them make which decisions.

[What is Supported Decision-Making? - DRCNH](#)



Supported Decision Making

How is Supported Decision-Making Different from Guardianship?

- ▶ Guardianship: The person with disabilities loses the legal right to make their own decisions. Instead, the guardian makes decisions for the person with the disability. The guardian should consider the wants and needs of the person with the disability, but that does not always happen.
- ▶ Supported decision-making: The person with disabilities gets the information and assistance they need from trusted supporters, so that they can understand, make, and communicate their own decisions.



Supported Decision Making

- ▶ Maine: Maine has codified supported decision-making as a less restrictive alternative to guardianship and conservatorship. [Title 18-C, §5-301: Basis for appointment of guardian for adult](#)
- ▶ New Hampshire: New Hampshire passed supported decision-making legislation in 2021. [Chapter 464-D SUPPORTED DECISION-MAKING](#)
- ▶ Vermont: Vermont has not enacted supported decision-making statutes or legislation.

[Supported Decision-Making | National Resource Center](#)



What I Want My Healthcare Provider to Know About Supported Decision-Making

NH law (NH RSA 464-D) formally recognizes supported decision-making (SDM) as an alternative to guardianship for adults with disabilities who seek assistance in making life decisions but who choose to retain all their legal rights.

Supported decision-making can be used in health care and medical treatment decisions. A person using supported decision-making for their healthcare-related decisions will choose people (Supporters) they trust to help them understand, make, and communicate their decisions. The Supporter may assist but the individual with disabilities makes their own healthcare decisions.

Please remember these things when interacting with me:

- Talk directly to me, not my Supporters.
- I can make my own decisions. Sometimes, I need help.
- I make my own decisions when I am feeling well and when I am sick.
- I am allowed to bring my Supporter with me (including into the exam room).
- Use language and explain things in a way that I can understand.
- Check to make sure that I understand what you are saying. Ask me if I have any questions.
- With my permission, my Supporter can help me understand what you are saying.
- With my permission, my Supporter can speak directly to you. My Supporter may ask you questions to help me understand my options.
- Give me time to think about what you are saying, speak with my Supporter, and make my own decision.
- When I am upset, worried, or confused, it may take me longer to make decisions.
Ask me how I might react when I am upset worried or confused, and what might calm me.
- Give me important information in writing. Make sure it is written in a way that I can understand.
- My Supporter may help me tell you what my decision is. The decision is mine.
- Please respect my decision.

Privacy and Confidentiality

As part of my supported decision-making agreement, I may allow my Supporter to access to my confidential healthcare information. I can also sign a release form to share this information.



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Thank you.

