



## HUD ISSUES NEW GUIDANCE FOR SERVICE AND ASSISTANCE ANIMALS

After months of rumors, HUD issued a [new guidance memo](#) (known as the “Assistance Animal Notice”)<sup>1</sup> for defining and evaluating reasonable accommodation requests for assistance animals under the Fair Housing Act (FHA) on January 28, 2020.<sup>2</sup> While major revisions to animal accommodation policies were anticipated, HUD instead used this as an opportunity to set best practices, both for residents who request reasonable accommodations for assistance animals and for the housing providers who evaluate the requests.

While minor, the revisions clarify common tensions involved in reasonable accommodation requests for assistance animals and shed light on how to resolve them without violating fair housing laws. The AAN synthesizes nearly all of the relevant laws, regulations, and agency rules in one document and is a helpful update from the 2013 guidance memo.

So what has changed? As it turns out, very little. The document doesn’t modify the rights or responsibilities of any party, but instead makes some common-sense adjustments in an effort to clarify the rules and mitigate frustrations for everyone involved.

The AAN is organized into two parts: An instruction manual for evaluating a reasonable accommodation request for service and assistance animals, and guidance on the information needed in a verification letter.

The most notable changes and clarifications are:

- Confirming the two categories of animals for reasonable accommodation requests:
  - Service animals and
  - Other assistance animals, of which an “emotional support animal” (referred to as a support animal) is one type.
- Restricting the species that can be used as assistance animals to common household pets.
- Listing impairments that will always be considered a disability under the Fair Housing Act (FHA).
- Requiring housing providers to evaluate a request using the service animal framework as the first step.
- Confirming that there are no certification, licensing, or registration requirements, and asserting that any document claiming to fulfill such a “requirement” is inadequate to establish a disability or related need for an assistance animal.

<sup>1</sup> U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity Notice FHEO-2020-01, dated January 28, 2020 (sometimes referred to as the “Assistance Animal Notice”) (AAN) at p. 3

<sup>2</sup> HUD notes on p. 4 of the AAN that it should be read together with Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act (May 17, 2004) (“Joint Statement”) available at <https://www.hud.gov/sites/documents/huddojstatement.pdf>

- Noting that verification letters should be written by those with personal knowledge of the individual’s disability and related need. It is not necessary that the letter be written by a healthcare provider.
- Designating a good-faith dialogue known as the “interactive process” as the appropriate initial response if the resident hasn’t provided reliable documentation (if needed).

## **Section 1: Assessing a Person’s Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act.**

The first section essentially serves as a step-by-step instruction manual for processing animal accommodation requests.

### **Part I: Service Animals**

- A. Animal Accommodation Labels:** HUD classifies service animals as dogs that are trained to perform a task for the benefit of an individual living with a disability and have access to public spaces. Assistance animals do work, perform tasks, assist, and otherwise provide support for individuals living with a disability and have access to dwellings. They can be other species (more on that below) and do not need training to perform their task.<sup>3</sup>

**Analysis:** As I’ve asserted in [past posts](#) and HUD now confirms, assistance animals can provide health benefits for countless impairments. An “emotional support animal” (referred to in the AAN as a “support animal”) is a type of assistance animal. For example, an animal that alerts “a person with diabetes when blood sugar is high or low” is an assistance animal, but is neither a service animal nor an emotional support animal.<sup>4</sup>

- B. Evaluation Framework:** Housing providers should begin the evaluation with the Department of Justice (DOJ) analysis for a service animal, which has a lower verification standard than for assistance animals.

**Analysis:** This is a helpful update. While the Americans With Disabilities Act (ADA) provides access to public spaces for service animals only, the FHA requires access for both service and assistance animals in dwellings. Until now it has been unclear how to evaluate a service animal in the fair housing setting considering that verification standards for service animals are lower than that of assistance animals. HUD is instructing housing providers to start the evaluation with the two questions to verify a service animal,<sup>5</sup> and only use the assistance animal verification framework if the animal doesn’t qualify as a service animal.<sup>6</sup>

<sup>3</sup> AAN at p. 3

<sup>4</sup> AAN at pp. 1, 7, 19

<sup>5</sup> The two verification questions for service animals are: Is the animal required because of a disability and what work or task is the animal trained to perform? No documentation is needed. *See* 28 C.F.R. §§ 35.136(f), 36.302(c)(6)

<sup>6</sup> Verification questions may only be asked if the disability or related need aren’t readily apparent.

## Part II: Evaluating a Request for a Reasonable Accommodation Under the FHA for Assistance Animals Other than Service Animals

- A. Timing for Evaluating an Animal Accommodation Request:** A housing provider should generally make an initial determination within 10 days of receiving the reasonable accommodation request.<sup>7</sup>

**Analysis:** This will help residents set realistic expectations on the process and ensure that housing providers don't attempt to drag out the process so long that the resident gives up. It's a reasonable time frame to strike a balance between providing stability for the resident and having time to validate the request.

## Part III: Criteria for Assessing Whether to Grant the Requested Accommodation

While the definition of disability under FHA hasn't changed ("a physical or mental impairment that substantially limits one or more major life activities"),<sup>8</sup> there are some modifications to the way disability can be evaluated.

- A. Invisible Disabilities:** While a housing provider may request verification of an individual's disability and related need for an assistance animal if the disability is not apparent, housing providers are not entitled to know the specific diagnosis.<sup>9</sup> Moreover, housing providers may not request or require an independent medical examination (either by the housing provider or an agent), details about the severity of the diagnosis, or access to medical records.<sup>10</sup>

**Analysis:** Individuals should remember that their health information is still private and housing providers aren't entitled to anything beyond what is needed for evaluating the request. Individuals need not give their healthcare providers permission to divulge information other than what is necessary to authenticate the verification letter – that the clinician wrote the letter and the signature is authentic. And housing providers should ensure that they are careful with the information they request from an individual. HUD has imposed heavy penalties in the past when a housing provider demands more information than necessary and they are sending a warning shot to housing providers who grill clinicians.<sup>11</sup>

- B. Types of Disabilities without an Evaluation:** The AAN includes a list of impairments that will always be considered a disability under the FHA:

“Deafness, blindness, intellectual disabilities, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, autism, cancer,

<sup>7</sup> AAN at p. 13, Joint Statement at Q and A 15

<sup>8</sup> AAN at p. 3, 9; 24 C.F.R. § 100.201

<sup>9</sup> AAN at p. 9

<sup>10</sup> AAN at pp. 9, 14; Joint Statement at Q and A 18

<sup>11</sup> See *Bhogaita v. Altamonte Heights Condominium Ass'n*, 765 F.3d 1277 (11th Cir. 2014); AAN at p. 16

cerebral palsy, diabetes, epilepsy, muscular dystrophy, multiple sclerosis, Human Immunodeficiency Virus (HIV) infection, major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia.”<sup>12</sup>

**Analysis:** While HUD is clear that individuals only need to provide the symptoms and not the actual impairment or diagnosis, HUD also states that if residents do establish one of the above diagnoses in support of their request, the housing provider would not need to further evaluate whether the individual qualifies as living with a disability.<sup>13</sup>

This is an important change that mainly impacts healthcare providers, particularly those who have become increasingly hesitant to provide verification letters. If a clinician has a patient who is living with one of the enumerated diagnoses, there is no need to conduct any kind of “disability assessment.” While the individual making the request would not be required to reveal a diagnosis, the verification provider need not be concerned as to whether the patient qualifies for disability protections under the FHA.<sup>14</sup>

It should be noted that an individual can still be considered “living with a disability” under the FHA without a medical diagnosis.

**C. Other Types of Disability Verification:** There are other ways to verify a disability besides a letter from a healthcare provider.<sup>15</sup> For example, a determination of a disability under other laws (e.g. workers compensation, social security disability), or eligibility for housing only available to individuals with disabilities, are sufficient. Moreover, someone from a peer support group, case worker, non-medical service agency, or reliable third party who has personal knowledge of an individual’s disability and the impact of an assistance animal may verify the disability and related need.<sup>16</sup>

**Analysis:** Because the threshold for disability under the FHA and ADA is low and encompasses the broadest number of people, proof of a disability under other laws that use a stricter definition of disability (e.g., workers compensation, social security disability, residence in a dwelling that only allows individuals with disabilities, etc.) will suffice as proof under the FHA and ADA even if the person who certified the disability does not have personal knowledge of the individual.

On the flip side, someone who does have personal knowledge of the individual but isn’t a healthcare provider may still be more reliable. That is, a letter from a medical clinician isn’t required as verification.<sup>17</sup> This makes sense. Not everyone has access to healthcare

<sup>12</sup> AAN at p. 10; this doesn’t mean that other impairments aren’t disabilities, it just means that these impairments are without any other verification needed.

<sup>13</sup> AAN at pp. 10, 14

<sup>14</sup> The verification letter would still have to establish that there is a disability related need for an assistance animal.

<sup>15</sup> AAN at p. 10

<sup>16</sup> Joint Statement, Q and A 18

<sup>17</sup> Joint Statement, Q and A 18; note that HUD states that a person with “personal knowledge” of the individual can be a reliable source. *See* AAN at p. 11

and the person with the most knowledge of the situation can easily be someone other than a doctor.

- D. Documentation from the Internet:** Documentation procured online that purports to serve as a certificate, registration, or license for an assistance animal is unreliable. As such, it is insufficient for verifying a disability and related need for an assistance animal, and the housing provider is not required to accept it.<sup>18</sup>

**Analysis:** This is the most anticipated aspect of HUD’s updated guidance. As there are no licensing or certification requirements to verify a service or assistance animal, any such documentation is legally meaningless. Housing providers (and commercial property managers) have never been required to grant an accommodation request based on these documents and now HUD is making this clear. In such instances, it is appropriate for the housing provider to engage in the interactive process and ask the individual for more reliable verification. Note that these documents aren’t proof of fraudulent intent, they simply don’t provide any relevant information.

- E. Verification Letters from Remote Services:** Licensed healthcare professionals can deliver their services remotely, including over the internet or telephone.<sup>12</sup> Reliable verification that an individual is living with a disability as defined by the FHA, and has a related need for an assistance animal, is based on personal knowledge of the individual.<sup>19</sup>

**Analysis:** This is perhaps the biggest source of aggravation for housing providers. There are clinicians who provide remote services to individuals online, including an evaluation to determine whether the individual has a disability and related need for an assistance animal. Although there may not be an ongoing clinical relationship, this is still an acceptable form of verification, much to the frustration of housing providers.

- F. Engaging in the Interactive Process:** If an individual provides verification that is unreliable, the housing provider should first engage in a good-faith dialogue with the resident, known as the interactive process, and ask for more reliable verification.<sup>20</sup> If the resident doesn’t provide additional verification, then the housing provider is within its right to deny the request.

**Analysis:** Many housing providers view the animal accommodation requests as an all-or-nothing endeavor, when this is not the case. HUD is clarifying that if the housing provider has good-faith questions about the verification provided, the housing provider isn’t required to automatically grant the request nor should the housing provider outright deny it. Instead, it’s important to engage in an interactive process and request a more

<sup>18</sup> AAN at p. 11; Joint Statement, Q and A 18

<sup>19</sup> HUD mentions various ways to establish disability through other means that have a stricter definition of disability. Because the threshold for disability under the FHA and ADA is low and encompasses the broadest number of people, proof of a disability under other laws (such as workers compensation, social security disability, residence in a dwelling that only allows individuals with disabilities, etc.) will suffice as proof under the FHA and ADA even if the person who certified the disability does not have personal knowledge of the individual. *See* AAN at p. 10, Joint Statement, Q and A 18

<sup>20</sup> AAN at pp. 9,14; *See* Joint Statement at Q and A 7

reliable verification letter that is based on personal knowledge. In fact, HUD recommends that the housing provider refer the individual to the “Guidance on Documenting an Individual’s Need for Assistance Animals in Housing” found on page 16 of the AAN. If the individual doesn’t provide additional verification, then the housing provider will be in a much stronger position to deny the request.

## Part IV: Type of Animals

- A. Allowable Species:** Up until now, assistance animals could be any species as long as it was “reasonable.” HUD now states that only common household pets may be considered as an assistance animal.<sup>21</sup>

There are exceptions when a request for an exotic animal or one that isn’t a traditional pet may be appropriate. For example, if the animal is trained to perform a task that another animal cannot do, the individual is allergic to common household pets, or the animal can be appropriately housed outdoors with a fenced-in yard.<sup>22</sup>

**Analysis:** This is a smart update. Previously, there were no limits as long as it was “reasonable.” I would hear horror stories from landlords of residents who requested pythons, tarantulas, and monkeys as a reasonable accommodation. These requests are challenging for housing providers because they hinge on whether the request is “reasonable.” While I would advise housing providers to deny requests for these inherently dangerous animals, they would often approve them regardless for fear of violating fair housing laws.

I still advise caution if a resident requests an accommodation for a non-traditional household pet, particularly a reptile, monkey, or other undomesticated animal. For instance, HUD uses a capuchin monkey as an example of a unique type of assistance animal, because monkeys have dexterity that a dog does not and depending on the disability and needed assistance, a monkey may be the best animal for the job. However, Opening Doors strongly opposes the use of any wild or exotic animal for an assistance animal. Although they are adorable, capuchin monkeys are not suited for captivity; are unpredictable, dangerous, aggressive, destructive, and unmanageable; can spread diseases, and often aren’t properly cared for by humans.<sup>23</sup>

<sup>21</sup> A common household animal is defined as “a dog, cat, small bird, rabbit, hamster, gerbil, other rodent, fish, turtle, or other small, domesticated animal that is traditionally kept in the home for pleasure rather than for commercial purposes.” AAN at p. 12

<sup>22</sup> AAN at p. 13

<sup>23</sup> Moreover, captive monkeys experience abuse, cruelty, and misery throughout their lives. Being social creatures who are hardwired to live with other monkeys, they are deprived of that companionship. Monkeys (and every animal in the exotic pet trade) are forcibly separated from their mothers who are often killed (causing physical and psychological harm to the mother), and are mutilated to prevent harm to people (and it doesn’t always work). Importantly, using a monkey or other wild or exotic animal only fuels the abusive exotic animal trade.

[https://www.primaterescue.org/10-reasons-monkeys-should-never-be-pets/;](https://www.primaterescue.org/10-reasons-monkeys-should-never-be-pets/)

<https://www.rspca.org.uk/adviceandwelfare/pets/other/primates/capuchins;>

[http://www.nbcnews.com/id/36829250/ns/health-pet\\_health/t/pet-capuchins-can-turn-their-owners](http://www.nbcnews.com/id/36829250/ns/health-pet_health/t/pet-capuchins-can-turn-their-owners)

Alternatively, a miniature pig can live in a dwelling (or outside in a fenced-in yard), and is a smart and sociable animal. A request for a miniature pig should be given more consideration depending on the other circumstances. Evaluating a request for a miniature horse, which is allowed as a service animal, should also follow this analysis.

## **Part V: General Considerations**

No new changes in this part. It summarizes the various rules concerning the reasonable accommodation process, when a housing provider can deny or rescind the accommodation, the individual's responsibilities for maintaining a healthy and clean environment within the property, and other similar regulations.

### **Section 2: Guidance on Documenting an Individual's Need for Assistance Animals in Housing**

This section provides guidance on the type of information an individual should include in the verification letter.

- A. Validating Verification Letters:** When validating verification letters, housing providers may not require those providing the statements “to use a specific form..., to provide notarized statements, to make statements under penalty of perjury, or to provide an individual's diagnosis or other detailed information about a person's physical or mental impairments.”<sup>24</sup>

**Analysis:** This is important. An increasing number of clinicians are reluctant to provide verification letters because a few bad actors are using intimidation tactics such as the ones listed above as a means of trying to reduce “illegitimate requests.” With what we know about the intent of anti-disability and fair housing laws, the definition of disability, and the ways in which animals can improve our health, the idea that “fraudulent requests” are rampant is simply untrue. HUD is warning housing providers who use these intimidation tactics that they are violating the FHA. I hope it encourages individuals not to reveal more information than is needed or provide access to any healthcare providers. In fact, if a clinician does speak with a housing provider and offers more information than authenticating the letter (without permission of the individual in question), it likely violates HIPAA and other privacy laws.<sup>25</sup>

### **Recommendations for Further Clarification**

- A. Definition of Disability:** One aspect that is frequently overlooked is the definition of disability under the FHA and ADA. A clearer understanding of “disability” under the FHA and ADA provides insight as to why such verification is valid and recourse that housing providers may have regardless.

<sup>24</sup> AAN at p. 16

<sup>25</sup> It also follows that individuals do not have to provide their clinicians with permission to speak with the housing provider. I have seen forms that purport to require individuals to allow their clinicians to speak with the housing provider about the diagnosis and other medical issues. This is another intimidation tactic and is inappropriate.

Under the FHA and ADA, disability is defined as “a physical or mental impairment that substantially limits one or more major life activities of such individual.<sup>26</sup> Congress enacted these laws for the purpose of protecting the broadest number of people from disability discrimination.<sup>27</sup> As such, rules for interpreting “disability” under the ADA and FHA were created with this purpose in mind:

- An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.
- Determination of whether an individual is living with a disability “**usually will not require scientific, medical, or statistical evidence.**”<sup>28</sup> (emphasis added)

Yes, this means that someone is living with a “disability” under the FHA and ADA if a physical or mental impairment makes it more difficult for the individual to perform a task of daily living than the average person and it does not take scientific, medical, or statistical knowledge or evidence to make this determination. This is a very low threshold to meet and doesn’t require a diagnosis or even a medical evaluation.

However, there is still an argument that verification letters based on a one-time online survey or phone call are not reliable. Housing providers are within their rights to ask the individual for more reliable verification written by someone who has personal knowledge of the individual’s impairment and disability related need.<sup>29</sup> This means that a verification letter is not like a prescription and doesn’t need to be written by a doctor.<sup>16</sup>

**B. Recommended Information in Verification Letters:** HUD suggests that a verification letter should include: the patient’s name, whether the individual and verification writer have a professional relationship, and the type of animal the individual using for the accommodation.<sup>30</sup> HUD is also recommending that a healthcare professional sign and date the documentation, provide contact information as well as professional licensing information.<sup>31</sup>

**Analysis:** This aspect of the guidance actually confuses more than clarifies. The Joint Statement and related case law make clear that verification can come from any reliable third party who has personal knowledge of the impairment and related need for an assistance animal.<sup>32</sup> By requiring knowledge as to whether the individual and verification writer have a professional relationship, it implies that they must. By requesting contact

<sup>26</sup> 42 U.S.C. § 3602; 42 U.S.C. § 12102(1); 24 CFR § 5.152

<sup>27</sup> 42 U.S. Code § 12101 Findings and Purpose.

<sup>28</sup> 81 FR 53204, 53204-05 (Aug. 11, 2016)

<sup>29</sup> 2017 VA Real Estate Board and Fair Housing Board Guidance Document: Reasonable Accommodation Requests for Assistance Animals (March 1, 2017) at p. 10; HUD states that a person with “personal knowledge” of the individual can be a reliable source. *See* AAN at p. 11

<sup>30</sup> AAN at p. 17

<sup>31</sup> AAN at p. 18

<sup>32</sup> Joint Statement at Q and A 18; *Castillo Condo. Ass’n v. United States HUD*, 821 F.3d 92 (1st Cir. 2016)



information without warning that privacy laws are involved, it implies that clinicians can share medical information.

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With this update, HUD is signaling that animal accommodation requests are here to stay. The notice offers clear guidance to housing providers, residents, and clinicians regarding the process for requesting an animal accommodation and lays to rest and clarifies common concerns. Housing providers are given defined guidance concerning their rights to deny or rescind requests and better instructions when evaluating verification letters, which should reduce concerns of fraud. Moreover, this is the first time HUD is addressing fears that clinicians face when a patient asks for a verification letter. Hopefully this will encourage clinicians who won't write verification letters as a matter of policy to make some changes. Overall, the updated memo from HUD is a positive development for everyone involved.

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