

THE AMERICANS WITH DISABILITIES ACT AND CHILDCARE CENTERS

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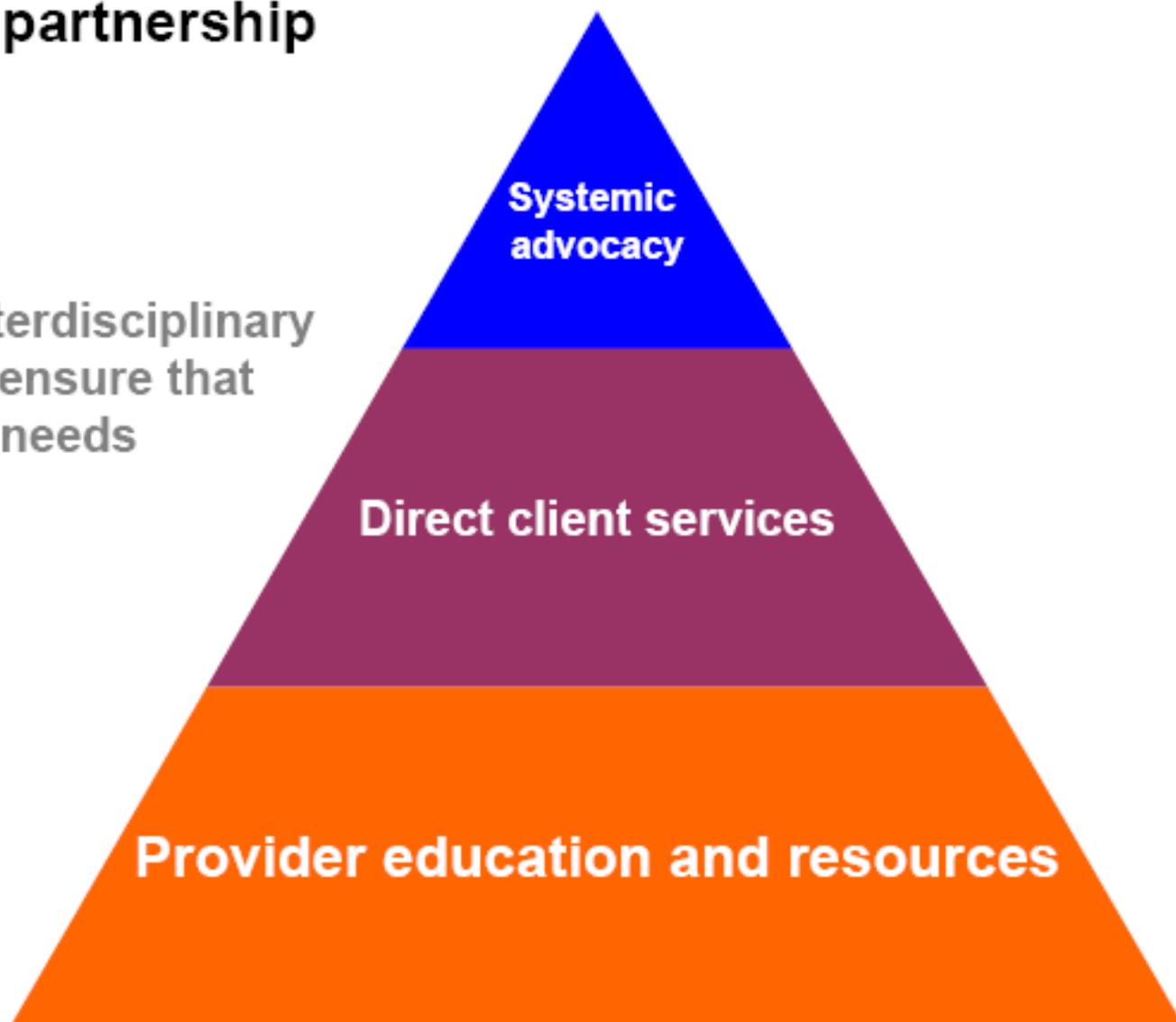
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Tiered model of medical-legal partnership

MLPC fosters interdisciplinary collaboration to ensure that children's basic needs are met



WHAT IS THE ADA?

- Enacted in 1990
- Prohibits discrimination based on disability
- Contains 4 different titles
 - Title I – Employment
 - Title II – Public entities (and public transportation)
 - Title III – Public accommodations (and commercial facilities)
 - Title IV – Telecommunications
 - Title V – Miscellaneous provisions

TITLE II VS TITLE III

WHO MUST COMPLY?

- **Title II - Prohibits discrimination by all public entities at the local and state level**
 - **What daycares are covered under Title II?**
 - Child care services provided by government agencies (Head Start)
 - Summer programs run by a public school district
 - Extended school day programs
- **Title III – Prohibits discrimination in places of “public accommodation”**
 - **What daycares are covered under Title III?**
 - Privately run day care centers – covered regardless of size or number of employees
 - Includes daycare centers that may be exempt from state licensing requirements
 - Privately run daycares who accept children who receive a state subsidy are covered under Title III

TITLE III EXCEPTION

- Child care centers that are run by religious entities (i.e. churches, mosques, synagogues, etc.) are not required to comply with the ADA
- Private child care centers that are operating on the premises of a religious organization, but are not operated by the religious organization itself are NOT exempt from the ADA

TITLE II VS. TITLE III

WHAT IS REQUIRED

- **Title II: “No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.”**
- **Title III: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.”**

WHAT IS A DISABILITY UNDER THE ADA?

- The ADA protects three groups of people:
 - People with a physical or mental impairment that substantially limits one or more major life activities;
 - People with a record (history) of a physical or mental impairment that substantially limits one or more major life activities;
 - People who are regarded as having a physical or mental impairment that substantially limits one or more major life activities

DEFINITIONS

- **“Physical or mental impairment”**
 - Includes a condition that is episodic or in remission, if it would substantially limit a major life activity when it is active. Similarly, the condition is a disability if it would substantially limit a major life activity without any mitigating measures, even if mitigating measures such as medication, equipment, or accommodations ameliorate the condition’s effects.
 - Exception: Near or far sightedness that can be corrected with normal contacts and eyeglasses
- **Major life activities**
 - Very broad list including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working, as well as the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

- Whether a condition is a disability is determined on a case-by-case basis and the ADA does not contain a list of conditions that are considered disabilities.
 - HOWEVER, it is possible to draw some conclusions based upon the definitions and previous cases
 - Diabetes
 - Food allergies
 - Epilepsy
 - Learning disorders
 - Behavior disorders

WHAT IS REQUIRED UNDER THE ADA?

- Generally, providers cannot exclude children because of their disabilities and they must provide children and parents with disabilities with an equal opportunity to participate in the daycare center's programs.
 - Admissions policies that screen out or tend to screen out persons with disabilities are prohibited

Two steps:

1. Provider must make a case-by-case assessment of what a child with a disability requires to be integrated into the provider's program.
2. Based on what is required, provider must assess whether accommodations can be made to include the child.

REASONABLE ACCOMMODATIONS

- **Three primary types of accommodations:**
 - Changes in policies, practices, or procedures;
 - Provision of auxiliary aids and services to ensure effective communication; and
 - Removal of physical barriers in existing program facilities

- **Assessing whether an accommodation is reasonable. Three variables:**
 1. The needs of a person with a disability;
 2. The accommodations requested; and
 3. The resources available to the program
 - Example: a home daycare may not be required to make the accommodations of a large daycare center

- Accommodations must be made for a child with a disability unless:
 - A change in policies, practices, or procedures, would fundamentally alter the nature of the program or services offered;
 - An auxiliary aid or service would fundamentally alter the nature of the program or pose an undue burden (i.e. pose a significant difficulty or expense)
 - The removal of physical or structural communication barriers is not readily achievable.

- It is important that the daycare makes an individualized assessment of the child before determining whether the child can be integrated into the daycare

EXAMPLES OF REASONABLE ACCOMMODATIONS

- **Increase in insurance premiums:**
 - Higher insurance rates are not a valid reason for excluding children with disabilities
 - Extra cost should be treated as overhead and divided equally among all paying customers
- **Wait lists:**
 - The ADA does not require that children with disabilities be moved up on a wait list
- **Child requiring one-to-one care:**
 - If a child who needs one-to-one attention can be integrated without fundamentally altering a child care program, the child cannot be excluded solely because the child needs **1:1** care
 - However, ADA does not require centers to hire additional staff or provide constant one-to-one supervision of a particular child with a disability

- Children whose presence are a danger to others:
 - Children who pose a direct threat do not have to be admitted into a program. Determination of whether a child is a direct threat must be based on an individualized assessment

- Service animals:
 - ADA requires a daycare to modify any no pet policy to allow the use of service animals by a person with a disability

- Children with developmental disabilities:
 - Under most circumstances, children with disabilities must be placed in their age appropriate classroom and not with younger children

■ Medication:

- Daycare centers cannot refuse to give medication to a child with a disability

■ Children with diabetes:

- Cannot be excluded on the basis of their diabetes
- DOJ entered into a settlement with La Petite Academy and KinderCare requiring them to accommodate diabetic children, including testing blood sugar levels and treating hypoglycemia
 - Did not address administering insulin
 - La Petite Academy also agreed to administer epinephrine to children who have severe food allergies
- Parents must provide all testing equipment, special food, and training to staff

■ Diapering or toileting assistance

- Generally, centers that provide personal services such as diapering or toileting for young children must modify their policies and provide diapering services for older children.
- Centers that only accept children who are toilet trained may still be required to accept children who require diapering. Consider:
 - Whether other non-disabled children require intermittent toileting assistance;
 - Whether providing toileting assistance would require the child care provider to leave other children unattended; and
 - Whether the center would have to purchase diapering tables or other equipment

WHO PAYS FOR THE ACCOMMODATIONS?

- If the service is required by the ADA, daycares cannot impose a surcharge for the service.
- If the daycare goes beyond what is required by the ADA, they can charge for those services (i.e. providing licensed personnel for medical procedures)
- Tax credits are available for small daycare centers (revenue of less than \$1M and fewer than 30 employees) to offset the costs of complying with the ADA
- Some low income families may also qualify for a special needs subsidy through the state to help pay for child care

ENFORCEMENT OF THE ADA

- Write a letter to the daycare that you believe is in violation of the ADA. Make sure to include what actions you believe the daycare needs to take in order to comply with the ADA.
- File a complaint with the Department of Justice. Information at http://www.ada.gov/filing_complaint.htm
 - DOJ may agree to investigate complaint
 - Resolves most complaints through formal or informal settlement
 - May refer to attorney general to file lawsuit if settlement is not possible
- File a complaint in federal court
 - 3-year statute of limitations

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QUESTIONS?

Thank you!

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