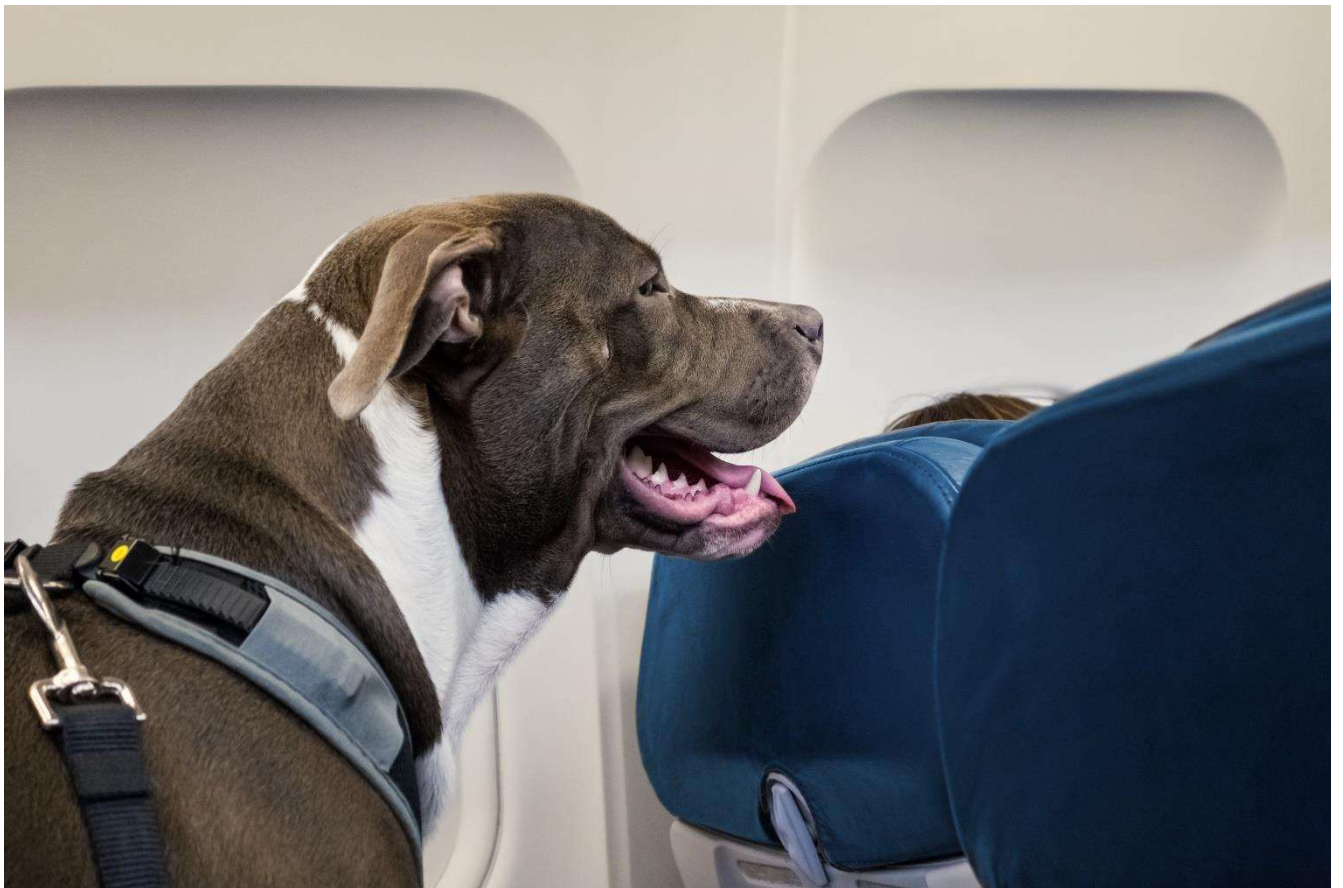


AVMA Public Policy/Animal Welfare Division

# ASSISTANCE ANIMALS: RIGHTS OF ACCESS AND THE PROBLEM OF FRAUD

04/21/17



## DISCLAIMER

This peer-reviewed whitepaper has been prepared by the American Veterinary Medical Association's Animal Welfare Division at the request of the AVMA's Steering Committee on Human-Animal Interactions. It is provided as information and its contents should not be construed as official AVMA policy. Mention of trade names, products, commercial practices or organizations does not imply endorsement by the American Veterinary Medical Association.

## EXECUTIVE SUMMARY

In 1990, The Americans with Disabilities Act (ADA) was established to guarantee individuals with disabilities, whether those are physical or mental, equal civil rights at the federal and state level, in employment and in public spaces. The ADA requires reasonable accommodations be made for these individuals. For some, these accommodations mean allowing individuals to be accompanied at all times by their service animal. Service animals are working animals intended to perform specific tasks related to the person's disability. Service animals, as defined in the ADA, may accompany their handler into areas the public is allowed to go, including on airplanes and in restaurants, without any additional fees that might otherwise be associated with an accompanying pet. The handler is still responsible for paying for any damages the animal may cause.<sup>1</sup>

Some service animals, such as guide dogs, are now widely recognized and understood by most members of the community. However, service dogs for people with "invisible disabilities", such as seizure alert dogs, hearing ear dogs, and mobility dogs (assisting with stability and walking), are not as readily recognizable as a service animal. As a result, these service animals are often subject to more scrutiny and may even be falsely denied access to public facilities. More recently, there has been increased recognition of how dogs may assist with psychological disorders. Mental health professionals are beginning to utilize the human-animal bond as a component of treatment for these individuals with diagnosed psychiatric disorders.

If the disorder is a psychiatric disability, such as post-traumatic stress disorder (PTSD) or autism, and the dog has been trained to perform a specific action that allows the person to carry out daily activities or takes specific actions to avoid or to mitigate the severity of the disorder, it is a service animal. Conversely, if the animal, which can be dog or any other species, provides companionship and emotional support for those diagnosed with a psychological disorder, it is an emotional support animal (ESA). ESAs serve a purpose in mitigating psychological disorders, but are not currently defined as service animals by the ADA.

Both service animals and ESAs are considered assistance animals as they accompany their handler and assist him or her; however because of their different legal statuses, the rights of access for ESA's are not as broad as service animals. Specifically, ESAs are only allowed to accompany their handler on airplanes and in the handler's residence without any fees that would be charged for accompanying companion animals. Similar to service animals, people with ESAs are subject to charges related to any damages the animal may have caused.

Currently, there is a perceived increase in problems caused by people fraudulently identifying their pet as an assistance animal to gain access and/or avoid pet fees, as shown by comments such as "I know



more faux emotional support dogs than real ones.”<sup>2</sup> This has led to calls for more regulations related to obtaining and identifying an assistance animal. Opponents, however, argue that a case can be made for permitting public access to any animal that accompanies a person and provides them some benefit, including companion animals, so long as those that are unsuitable, uncontrolled or dangerous are identified and denied access.

For those who wish to misrepresent their animals (either deliberately or because of a misunderstanding of its status), there are multiple entities that offer letter templates to provide as proof of ESA status, registrations as a service animal or ESA, official looking vests or harnesses, and other equipment to make an animal appear to be an assistance animal. As a result, disabled persons using a legally compliant assistance animal have reported that people in public spaces are becoming more hesitant and suspicious of allowing any animal into their business.<sup>2,3</sup>

Part of the problem is that the lack of a centralized or standardized form of proof that can be used to ascertain an assistance animal’s status makes fraudulent animals difficult to identify. The ADA does not require any standardized training or certification program for service animals, nor does it require the handler to provide any form of documentation stating the necessity for a service animal. Such documentation is considered a barrier or unreasonable burden that could limit access to a service animal. Conversely, people who use ESAs may need to provide documentation stating the need for an ESA, but that documentation can be easily counterfeited.

There are other underlying problems that motivate people to commit assistance animal fraud and allow it to be widely successful. This includes 1) unstandardized legal and regulatory definitions related to assistance animals, 2) a legal and regulatory framework that is complex and poorly understood by those who must implement it, 3) difficulties in objectively or accurately categorizing animals when implementing admission policies enabling widespread fraudulent access, and 4) a lack of access for some who legitimately need an assistance animal.

## Table of Contents

Disclaimer.....	2
Executive Summary.....	2
The Legal Context for Assistance Animal Use.....	5
AVMA Definitions.....	7
Service Animals .....	7
Emotional support animals (ESA) .....	7
Service Animals .....	7
Service Animals in Training .....	8
Emotional Support Animals .....	8
Summary of Legal Rights of Access for Assistance Animals .....	8
Differentiating Between Service Animals, Emotional Support Animals and Non-Assistance Animals.....	9
Assistance Animal Fraud.....	11
Current Attempts to Reduce Assistance Animal Fraud .....	12
State Legislation .....	12
Guidance for Admitting Assistance Animals.....	12
Future Approaches to Reducing Fraud .....	13
Reconcile Conflicts in Law .....	13
Clear and Consistent Definitions .....	13
Reduce Availability of Fraudulent Materials .....	14
Improved Access for Companion Animals.....	14
Improved Access for Emotional Support Animals .....	15
Discussion (Takeaways).....	15
Citations .....	16

## THE LEGAL CONTEXT FOR ASSISTANCE ANIMAL USE

Classification	Definition	As Defined by
Assistance Animal	<p>“Any animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability,” as defined by the ADA.<sup>4</sup> “Individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise impose restrictions or prohibitions on animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Further, there must be a relationship, or nexus, between the individual’s disability and the assistance the animal provides. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.”<sup>4</sup></p>	US Department of Housing and Urban Development (FHEO-2013-01)
Service Animal	<p>“Any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.”<sup>5,6</sup> Miniature horses have been added as a specific provision to the ADA. The miniature horse must be housebroken, under the handler’s control, can be accommodated for by the facility, and will not compromise safety regulations.</p>	Americans with Disabilities Act 1990 (Section 35.136)
	<p>Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well-being of a passenger... Psychiatric service animals are recognized as service animals, but are considered to be emotional support animals and, therefore, subject to the applicable regulatory requirements, i.e. documentation.<sup>7</sup></p>	Air Carrier Access Act (ACAA) and 14 CFR Part 382
Emotional Support Animal	<p>An emotional support animal (ESA) may be an animal of any species, the use of which is supported by a qualified physician, psychiatrist or other mental health professional based upon a disability-related need. An ESA does not have to be trained to perform any particular task. ESAs do not qualify as service animals under the Americans with Disabilities Act (ADA), but they may be permitted as reasonable accommodations for persons with disabilities under the Fair Housing Act. The Air Carrier Access Act provides specific allowances for ESAs traveling on airlines,</p>	Sources: Fair Housing Act (42 U.S.C. § 3604) & Air Carrier Access Act (14 C.F.R. § 382.117)

	though documentation may need to be provided. accommodation. <sup>8,9</sup> Emotional support animals are not recognized as service animals.	
Therapy Animal	A therapy animal is a type of animal-assisted intervention in which there is a “goal directed intervention in which an animal meeting specific criteria is an integral part of the treatment process. Animal-assisted therapy is provided in a variety of settings, and may be group or individual in nature.” <sup>10</sup>	Air Carrier Access Act (ACAA) and <sup>14</sup> CFR Part 382 American Veterinary Medical Association (Animal-Assisted Interventions: Definitions)

## **AVMA DEFINITIONS**

### **SERVICE ANIMALS**

The AVMA recognizes and will use the ADA definition for service animals. Other names for service animals include, but are not limited to guide dog, hearing dog, or psychiatric support dog.

### **EMOTIONAL SUPPORT ANIMALS (ESA)**

The AVMA recognizes and will use the ADA definition for ESAs. An ESA may also be referred to as a companion animal or comfort animal.

An ESA may be mistakenly called a therapy animal. A therapy animal assists other people, while an ESA assists their specific handler. Animals used in animal-assisted activities (e.g., therapy animal, residential animal) do not have federally protected rights of access and are not discussed in this paper. Unlike pets, however, they are often given access to public spaces where pets may not be permitted, such as elder care centers, schools, and hospitals.

### **SERVICE ANIMALS**

Under the Americans with Disabilities Act (ADA), “state and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal’s work or the individual’s disability prevents using these devices.”<sup>1, 5</sup> Service animals are not subject to additional fees that a pet would incur, such as a pet fee associated with residence in apartments or travel on airlines. However, if the animal does cause damage, the handler is responsible for those damages.<sup>1</sup>

There are no breed or size requirements for dogs acting as service animals. The dog must follow the required local vaccine laws and dog registration and licensing laws, but the handler does not have to register his or her dog as a service animal. Additionally, the service animal is not legally required to wear a vest, ID tag, or specific harness indicating that it is a service animal.<sup>6</sup>

Service animals are not required to complete certain training or certification requirements because “individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do works to accommodate their disability. A training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.”<sup>1</sup>

Service animals are allowed in public locations as long as they do not “fundamentally alter the nature of the business”, do not pose an immediate threat to the public, and are housetrained. A business cannot deny access to a service animal based on other people’s fear or allergies. In these situations, accommodations should be made for both parties.<sup>5</sup>



## SERVICE ANIMALS IN TRAINING

Service animals in training are protected differently than fully trained service animals. The ADA grants no protection to service animals in-training, but individual states can decide what protection is granted to them. The Air Carrier Access Act (ACAA) also does not recognize them, but the individual air carrier can create its own policy regarding service animals in training. The Fair Housing Act (FHA) does recognize them as a type of assistance animal. In this case, service animals in training are accorded a reasonable accommodation.<sup>11</sup>

## EMOTIONAL SUPPORT ANIMALS

ESAs are not covered under the ADA because they do not perform a certain task. Currently, the only laws regarding ESAs are the Fair Housing Act (FHA) and the Air Carrier Access Act (ACAA). In these two cases, ESAs are not subject to additional fees that would be associated with pets. In any other setting, ESAs have no federal protection.

Under the FHA, ESAs are classified as assistance animals and are accorded a reasonable accommodation. Any “no pet” rules or pet fees do not apply to ESAs. Under the ACAA, ESAs are classified as service animals. As service animals, they are allowed to accompany their handler in the cabin without any additional fees. In addition, service animals for psychiatric disabilities are considered ESAs under the ACAA.

Both landlords and airline personnel are permitted to ask for documentation from a licensed mental health professional stating the necessity of the animal for the individual’s mental health. This documentation must be dated within the last 12 months and certify that the individual is under the mental health professional’s care.<sup>4,7</sup>

## SUMMARY OF LEGAL RIGHTS OF ACCESS FOR ASSISTANCE ANIMALS

	Americans with Disabilities Act (ADA)	Air Carrier Access Act (ACAA)	Fair Housing Act (FHA)
Service Animal	Yes	Yes Service animals assisting with a psychiatric disability are considered ESAs, documentation may be required	Yes
Service Animal In-Training	No States have the power to decide whether or not to grant legal rights to service animals in-training.	No Individual air carriers can create their own policies regarding pets and service animals in-training.	Yes Does not require an animal to be trained or in training to be considered an assistance animal.
Emotional Support Animal	No ESAs are not trained to	Yes Under the ACAA, ESAs are	Yes Considered an assistance





	do work or perform tasks for individuals with disabilities.	considered service animals.	animal which is recognized as a reasonable accommodation.
--	---	-----------------------------	---

## DIFFERENTIATING BETWEEN SERVICE ANIMALS, EMOTIONAL SUPPORT ANIMALS AND NON-ASSISTANCE ANIMALS

It can be difficult to distinguish between a service animal and an ESA, especially in relation to assistance with psychological disabilities. The key difference is determining whether or not the animal has a specific task or function related to the handler’s disability. In cases of anxiety attacks, for instance, if the dog has been trained to sense when an anxiety attack is about to start and takes active measures to help avoid or lessen the attack, it is a service animal. If the dog’s presence simply provides comfort, it is an ESA.<sup>6</sup>

Looking at the animal’s skill level can also be a helpful tool in distinguishing the two. While the ADA does not require any specific certification or training, many service dogs are enrolled in programs that train them to do their task. Guide dogs and hearing dogs, for instance, have programs that will train them to become accustomed to novel stimuli, maneuver through the public, ensure their handler’s safety, and alert their handler of any potential dangers. These programs may then “certify” a dog as a service dog upon successful completion. Conversely, a service dog working for an individual with PTSD may learn to check around corners and rooms before the handler enters. This is a task the individual may have trained the dog to do rather than having the dog enrolled in a specific program. Because both situations are considered tasks performed for the individual’s disability, both would be considered service dogs.

ESAs, on the other hand, do not require or demonstrate any specific training. They provide emotional, physical, or psychological support through companionship. Ideally, they are calm, know basic commands, and respond to the owner’s call, but this does not differ much from the skills a pet might know.

Because, on a cursory glance, a pet can easily pass for an ESA or a service animal there is a large potential for fraud. Some organizations have taken advantage of the subtle distinction and the lack of regulations regarding assistance animal certification and will certify a pet as an ESA or a service animal.<sup>2</sup> This problem is compounded by the fact that states have varying definitions for what qualifies as a service animal.

## VARYING STATE PROTECTION

While most states follow the ADA definition of a service animal, there are a handful that have refined the definition to be more narrow and other states that have imposed or are trying to introduce legislature that is not consistent with the ADA regulations. This makes it nearly impossible to regulate on a federal level and does not ensure equal protection from state-to- state. For the purposes of this document, we will be using the definitions of an assistance animal, service animal, and ESA from the ADA.



States have varying definitions for what a service animal is and who is protected in public spaces. Some examples are provided below, however, a full and regularly updated list is available on the Michigan State University Animal Legal and Historical Center website<sup>a</sup>

- In addition to the term service animal, states have also used the terms<sup>b</sup> service dog (17 states), assistance dog (5), assistance animal (5), or some other term (5) to define a service animal.<sup>12</sup>
- Texas uses assistance and service animal interchangeably. Both refer to a “canine that is specially trained or equipped to help a person with a disability that is used by a person with a disability.”<sup>12</sup>
- Illinois defines a service animal as “an animal trained in obedience and task skills to meet the needs of a person with a disability”<sup>11</sup> while an assistance animal is “an animal trained to assist a physically impaired person in one or more daily activities.”<sup>12</sup>
- Alaska, Arkansas, Arizona, Connecticut, Georgia, Idaho, Illinois, Massachusetts, Mississippi, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, and Virginia have focused the definition of service animals on physical disabilities.<sup>12,13,14</sup>
- Alaska, California, Delaware, Maine, Maryland, New Jersey, North Dakota, Virginia, and West Virginia have added minimal protection<sup>c</sup>, reasonable protection, or protection services as a task service animals can perform.<sup>12,13</sup>
- Hawaii, Kentucky, Utah, Washington, and Wyoming do not protect service animal trainers or service animals in training.<sup>12,15,16,17,18</sup>
- Alaska, Arizona, Georgia, New Jersey, Ohio, and Tennessee require an organization or school to train and certify that a dog can become a service animal.<sup>12</sup>
- Alaska, Arizona, Delaware<sup>d</sup>, Florida, Illinois, Indiana, Iowa<sup>e</sup>, Maine, Maryland, Minnesota, Montana, Mississippi, Nevada, New York<sup>f</sup>, North Carolina, North Dakota, Oklahoma<sup>g</sup>, Oregon, South Carolina, South Dakota, Tennessee, Washington, and West Virginia<sup>h</sup> do not specify the service animal has to be a dog.<sup>12,14,15,17</sup>

---

<sup>a</sup> <https://www.animallaw.info/topic/table-state-assistance-animal-laws>

<sup>b</sup> Some states were counted multiple times if different terms were used to define a service animal under different laws

<sup>c</sup> The 1991 title II regulation in the ADA included “minimal protection” as a task for service animals. In 2002, some argued for further clarification to ensure “attack dogs” were not being used as service animals or that, in cases of an emergency, the service animal would not prevent first responders from approaching the handler. Others argued that it should be removed because it might allow untrained pet dogs to qualify as service animals. The definition was changed to “non-violent protection.”<sup>1</sup>

<sup>d</sup> Delaware defines a service dog (only dogs) and a support animal (any animal) under different laws, but both are granted equal access to public accommodations.

<sup>e</sup> Iowa defines a service animal and an assistive animal. A service animal specifies only dogs, but an assistive animal can be a simian or other animal. Under their current definitions, both are trained to assist a person with a disability and are granted equal protection to public spaces.

<sup>f</sup> New York defines a service dog (only dogs) and a service animal (any animal) under two different sections of McKinney’s Agriculture and Markets Law. Only service dogs are specifically granted access to public spaces.

<sup>g</sup> Oklahoma has defined both service dog and service animal (any animal) under two different laws. Only service dogs are specifically granted access to public spaces.

<sup>h</sup> Alaska, Arizona, Maryland, Montana, North Dakota, Oregon, and West Virginia define a service animal as a dog or other animal.



- Connecticut, Michigan, Minnesota, Mississippi, North Carolina, Virginia, and Wisconsin require or highly recommend the animal wear some form of identification such as a harness, orange blaze leash, vest, or backpack.<sup>12,19</sup>
- Other states will follow or will have similar definitions to the ADA definitions, but will enact laws that counteract ADA legislation. There are several cities and states that have enacted breed bans<sup>13</sup>, making it difficult for individuals with disabilities that use those breeds as a service animal to live in that area. Other states are trying to establish licensing programs that will require service dogs to be licensed.<sup>20</sup> Both of these regulations will place a burden of proof on people with disabilities contrary to the ADA.

Because states have the ability to expand upon federal laws, there is a great deal of inconsistency regarding service animals both at the federal and state level making it challenging to regulate on a federal level. There needs to be more consistency in federal and state laws especially because a handful of states allow animals besides a dog or miniature horse to be a service animal. While that person and his or her service animal will be granted protection in a certain state, the same level of protection may not necessarily be granted to them if they were to travel outside of the state. Furthermore, there are no state laws and limited federal laws regarding ESAs, leaving thousands of people with mental disorders who require an ESA, no public accommodations or protection in public places.

## **ASSISTANCE ANIMAL FRAUD**

One of the largest problems facing individuals with disabilities using assistance animals is the growing prevalence of fraudulent cases. Because the ADA does not specify training standards for service dogs and ESAs, there is a market for falsely “certifying” pets as an assistance animal. There are countless online sources that will, for the right price, “certify” a pet as an assistance animal after a brief, online questionnaire. The organization will then send that person a certificate, harness, etc. so the pet will appear like an assistance animal.<sup>3, 8</sup>

Many people in the general public are taking advantage of these online sources and the lack of oversight and are certifying their pets so they can bring them in public and avoid housing and airline pet fees. Staff members generally want to treat every individual with respect and dignity so when they see an animal with a harness that claims it is a service or ESA, they typically will not question it. While well intentioned, this creates a problem because these animals are not necessarily trained to handle various public situations the way a service animal is. A pet, for instance, may react negatively to a stimulus, such as a wheelchair, if it has never come in contact with one before. Service animals, conversely, have been trained, for the most part, to be accustomed to wheelchairs and not react when encountering one.

The presence of these untrained pets is becoming problematic for people with disabilities that actually require assistance animals. With more animals in public settings, it makes it difficult for a genuine service dog to do its job. There have even been cases when the service animal was attacked by a pet whose owner claimed it to be a service animal.<sup>3</sup> These fraudulent assistance animals can also potentially set a dangerous precedent for legitimate service animals and ESAs. If a fraudulent assistance animal misbehaves by biting or attacking a person or another animal, or it is not housebroken, an establishment has every right to ask that the animal be removed. This can set precedence for all future assistance



animals, whether genuine or fake, to be banned from certain areas because of a previous bad experience.<sup>3</sup>

## **CURRENT ATTEMPTS TO REDUCE ASSISTANCE ANIMAL FRAUD**

### **STATE LEGISLATION**

Lawmakers are attempting to fight these incidents by creating laws that will punish individuals who are intentionally misrepresenting their pet as an assistance animal, redefine service animal for that individual state, or make it harder to obtain a legitimate service animal.<sup>12,13,20</sup> When poorly constructed, these laws place an undue burden on people with disabilities and, potentially, even prevent people who require a service animal from obtaining one. Additionally, this makes it even more difficult for those who genuinely need an ESA in public to be able to bring that animal with them. It is also a concern that some states will deny service animal designation in relation to psychological disabilities and thus deny access or encourage fraud on the part of persons with disabilities of this type. While it is not optimal that bills on this issue are being developed on a state-by-state basis, thereby introducing inconsistencies, this pattern is typical for regulations that effect animals. The AVMA tracks such legislative efforts and is well-positioned to provide guidance on how such bills, if being developed, should be structured.

### **GUIDANCE FOR ADMITTING ASSISTANCE ANIMALS**

There is a growing need for employees who determine which animals may access a particular space (e.g., store, doctor's office, taxi) to know how to distinguish assistance animals from pets, and how to respond when an admitted animal becomes a problem. These decisions involve an element of judgement and more specific guidance would support facilities and their employees in behaving fairly and reasonably. Some of these materials have already been developed by various organizations, but have not been widely adopted by their intended audience.

An important factor for employees to consider is the animal's behavior. In general, assistance animals should be calm. They are working to calm their handler and reduce phobias or anxiety by actively trying to prevent these feelings from occurring or by remaining calm and being a good, steady companion. It should be possible to pick out some fraudulent service animals based on their behavior. Service animals, for the most part, are trained to handle various situations while remaining calm and still performing their required tasks. Many are trained to become virtually invisible while working.

If an employee is still unsure of whether or not the animal is an assistance animal, he/she can only ask the handler two questions. He/she can ask 1) if the animal is required for a disability. This question should only be asked if the disability or disability-related need for an assistance animal is not readily apparent.<sup>8</sup> If the employee is still unsatisfied with the answer, he/she can ask 2) what tasks the animal has been trained to do. Employees cannot ask about the individual's disability or require medical documentation for service animals.<sup>5</sup>

If the individual indicates the animal is an ESA, the landlord or airline personnel may request documentation from a medical health professional stating the necessity of the ESA for the individual's



mental health or as a part of his/her treatment. This documentation must be from a licensed medical professional who is treating the individual and the document must be under one year old.<sup>4, 7</sup>

Under certain circumstances, an employee is allowed to ask the individual with the assistance animal to leave. If the animal is not under the handler's control and the handler is not taking action to control it, the animal is not housetrained, or the animal is posing an immediate threat to the health and well-being of the public, staff may ask the animal to be removed.<sup>6</sup> A request that the animal be removed cannot be based on other people's allergies or possible fear of dogs. Reasonable accommodations should be made for those individuals as well as those with the assistance animal.<sup>6,7</sup>

## **FUTURE APPROACHES TO REDUCING FRAUD**

There are particular areas in which efforts might be made to improve the current situation. Most of these are not "easy fixes", however the AVMA recognizes that it, alone and in collaboration with other stakeholders, could be a constructive influence.

## **RECONCILE CONFLICTS IN LAW**

### ***Federal***

- Seek more uniform definitions in federal legislation; i.e., the ACAA could be modified to change its current definition of service animal to assistance animal or to differentiate between service animals and ESAs.
- Grant public access protection to service animals in training.
- Create public access laws for ESAs.
- Implement measures to make it illegal to knowingly falsify assistance animal documentation.

### ***State***

- Choose one definition at the state level for what a service animal is and ensure consistency in language across states.
- Create a uniform definition for service animals to ensure equal protection throughout the nation or adopt the ADA definition as the state's definition.
- Update current laws to also acknowledge people with mental disabilities.
- Implement measures to make it illegal to knowingly falsify assistance animal documentation.

## **CLEAR AND CONSISTENT DEFINITIONS**

Difficulty differentiating between service animals, ESAs, and pets is due, in part, to varying state and federal definitions; however, the problem is augmented by a general lack of understanding of the differences between each class. If federal and state laws included a more uniform definition, it would be easier to train people how to identify each.

Rather than automatically accepting or banning all animals from entering a facility, employees should be better educated on how to identify each type. They should be educated on what questions they can and cannot ask, what behaviors they should be looking for in a service animal versus an ESA, and they should also know when they can legally ask a service animal to be removed. Businesses should be training their employees to discern when an animal needs to be admitted versus when an animal should or should not be admitted.



Part of the education process includes educating the general public on the differences between each class of animal. For people who unknowingly classify their pet as an ESA, it would be beneficial if there were more educational tools available rather than being automatically prompted to register his or her pet as an ESA. If people had more access to educational tools that could help them assess whether they should see a trained mental health professional regarding their psychological disorders, it could lower the incidence of fraud.

Veterinarians are trusted authorities and can assist by correctly identifying animals, encouraging correct use of terminology by clients, and discouraging fraudulent activities. As a trusted convener, the AVMA might help stakeholders obtain the information they need to provide appropriate access and have the best chance to detect and respond appropriately to fraudulent activities without inconveniencing valid users of assistance animals.

### **REDUCE AVAILABILITY OF FRAUDULENT MATERIALS**

While a determined person can counterfeit materials such as an ESA letter or buy misleading service animal vests and badges, these materials could be made less readily available. The ease with which these materials may currently be accessed online might mislead some people into thinking these materials are legitimate. In recent years search engines, such as Google, and hosts, such as YouTube, have been more amenable to removing clearly fraudulent materials. As such, requests could be made to remove material that facilitates the creation of false ESA letters or that encourages fraudulent behavior. Many otherwise well-meaning pet owners could be discouraged from considering fraudulent activities by providing them with information that clearly identifies the features of valid and fraudulent documentation and that explains the negative effects fraud has on people with disabilities and their assistance animals. Social media is one means by which such messages might be shared.

### **IMPROVED ACCESS FOR COMPANION ANIMALS**

A problem underlying the increase in falsely identified assistance animals is that people want to live with their pets and have their pets accompany them in public. There are various housing regulations limiting the number of pets, the pet species, or the size and breed of pets that may be kept. Currently, the only animals that are legally allowed in public are service animals. While there is a slow, growing acceptance of ESAs in public spaces, pets are still predominantly confined to the owner's home.

To circumvent the law and to support their pets' access to public places, some people are falsely stating that they require an assistance animal and are self-certifying their pet as an assistance animal. There need to be better regulations and approaches to enforcement that reduce the incidence of fraud by punishing it and creating disincentives, while still ensuring appropriate access for assistance animals. Unfortunately, this is difficult to achieve because state laws differ from federal laws; there are few to no regulations governing the certification of service animals and ESAs; and it can be hard to differentiate between a service animal, an ESA, and a pet.

A part of the solution may be to allow more access for suitable companion animals in housing and public spaces. Many people are limited as to where they can live because of the animals they own. As a result, they may claim one or more pets as an assistance animal. If there were appropriate regulations that



supported access to housing and public spaces for well-behaved, healthy pets, there may be less incentive to falsify a pet as a service animal.

## **IMPROVED ACCESS FOR EMOTIONAL SUPPORT ANIMALS**

Because psychological disorders do not only occur at home or on airplanes, a case can be made that ESAs should be allowed to accompany their handlers in public areas. While they are not trained to perform a task, ESAs have value in that they provide support and help disabled persons carry out activities of daily living.

## **DISCUSSION (TAKEAWAYS)**

Among individuals with disabilities who use assistance animals, there is a growing concern regarding fake assistance animals. With more and more pet owners falsifying their pet as an assistance animal and bringing them into stores, restaurants, and other public places, it is interfering with assistance animal's jobs and may potentially limit where a person with disabilities can take their assistance animal. The extra animals make it more difficult for an assistance animal to maneuver which, in turn, can make it more difficult and dangerous for the handler to move. It also puts the assistance animal at a greater risk of being attacked by another, potentially fraudulent, animal.<sup>3</sup> Establishments may also become wary of anyone with an animal due to previous negative experiences and deny people with animals access or request people leave their animals outside, regardless of whether it is an assistance animal or not.<sup>3</sup> Members of the general public may also become more skeptical of, and less helpful to, people using assistance animals if they are frequently exposed to owners making fraudulent claims.

This problem is influencing lawmakers to draft legislation that attempts to fix the influx of fakes. Some states require proof, whether it be an identification card or identifiable harnesses, vests, or leashes, that the dog is a genuine service dog<sup>12</sup> and other states are trying to make it a requirement for service dogs to be licensed as a service dog.<sup>20</sup> However, this places an extra and unnecessary burden on people who actually require service animals and encroaches on their civil rights by requiring them to describe their disability and their need for an assistance animal.

Rather than attempting to fix the situation with more laws that potentially contradict the ADA, current laws should be amended to be more uniform. Where this is not possible, additional laws adopted should be as consistent as possible with Federal law. If state action is inevitable, a model bill could go a long way toward minimizing inconsistencies in standards adopted by states.

Furthermore, people need to be deterred from wanting to falsely certify their pet as an ESA or service animal and companies need to be deterred from distributing false certificates. Eighteen states currently have laws in place that punish people who knowingly misrepresent their pet as a service animal.<sup>12</sup>

One possible deterrent would be to educate businesses' employees about how to distinguish between service animals, ESAs, and pets, and to ensure they know when they need to allow access to the animal and when it is up to their discretion. Employees should also be aware of how the animal should behave and when it is within their right to ask the animal to be removed. If people knew there was a greater chance of getting caught when presenting a fraudulent assistance animal, they might be less likely to



commit fraud. Internet search engines and hosts should be asked to take action against websites that support the fraudulent identification of assistance animals.

Another possible deterrent to assistance animal fraud is to allow more pets in public settings. If pets were provided more access to parks and other public places, people might see less value in falsely identifying their pet as an assistance animal. ESAs and service animals would thereby be afforded more protection in these public situations, and access to assistance animals by those who require them could be assured.

## CITATIONS

1. US Government Publishing website. Electronic code of federal regulations: title 28, chapter 1, part 35. Available at: [http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=28:1.0.1.1.36#se28.1.35\\_1136](http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=28:1.0.1.1.36#se28.1.35_1136). Accessed June 6, 2016
2. Bowes P. BBC News Magazine website. Advocates fight against fake service dogs. 2015. Available at: <http://www.bbc.com/news/magazine-31646970>. Accessed June 3, 2016
3. CBS News website. Illegal fake service dogs may pose dangers to many. 2013. Available at: <http://www.cbsnews.com/news/illegal-fake-service-dogs-pose-dangers-to-many/>. Accessed June 2, 2016
4. US Department of Housing and Urban Development. FHEO Notice: FHEO-2013-01. Available at: [https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals\\_ntcfheo2013-01.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf). Accessed May 31, 2016
5. US Department of Justice website. Service animals. Available at: [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm). Accessed May 31, 2016
6. US Department of Justice website. Frequently asked questions about service animals and the ADA. Available at: [http://www.ada.gov/regs2010/service\\_animal\\_qa.html#cert](http://www.ada.gov/regs2010/service_animal_qa.html#cert). Accessed June 2, 2016
7. Service Animal Definition Matrix—Air Carrier Access Act vs. Americans with Disabilities Act. Available at: [https://www.transportation.gov/sites/dot.gov/files/docs/P2\\_SA\\_Issue%20List.SA%20Matrix.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/P2_SA_Issue%20List.SA%20Matrix.pdf). Accessed June 2, 2016
8. Llamas T, Wagschal G, Paparella A, et al. ABC News website. Some pet owners game the emotional support animal system to fly pets for free. 2015. Available at: <http://abcnews.go.com/Health/pet-owners-game-emotional-support-animal-system-fly/story?id=30064532>. Accessed June 2, 2016
9. Duffly Z. Psychiatric service dogs and emotional support animals: access to public places & other settings. NOLO website. Available at: <http://www.nolo.com/legal-encyclopedia/psychiatric-service-dogs-emotional-support-animals-access-public-places-other-settings.ht>. Accessed June 20, 2016
10. American Veterinary Medical Association website. Animal-assisted interventions: definitions. Available at: <https://www.avma.org/KB/Policies/Pages/Animal-Assisted-Interventions-Definitions.aspx>. Accessed June 1, 2016
11. Northwest ADA Center website. Service Animals Comparison Sheet. Available at: <http://nwadacenter.org/factsheet/service-animals-comparison-sheet>. Accessed June 6, 2016
12. Animal Legal and Historical Center website. Table of Assistance Animal Laws. Available at: <https://www.animallaw.info/topic/table-state-assistance-animal-laws>. Accessed June 6, 2016
13. Parenti L, Foreman A, Meade BJ, Wirth O. A revised taxonomy of assistance animals. *J Rehabil Res Dev* 2013;50:745-756.
14. South Dakota Division of Human Rights website. Service animals. Available at: [http://dlr.sd.gov/humanrights/service\\_animals.aspx](http://dlr.sd.gov/humanrights/service_animals.aspx). Accessed June 15, 2016
15. Department of Labor and Workforce Development website. Memorandum on state policy on service animals. Available at: [http://doa.alaska.gov/ada/policy/SOA\\_service\\_animal\\_policy\\_3-5-2007.pdf](http://doa.alaska.gov/ada/policy/SOA_service_animal_policy_3-5-2007.pdf). Accessed June 15, 2016
16. Animal Legal and Historical Center website. Consolidated assistance animal/guide dog laws. Available at: <https://www.animallaw.info/statute/mt-assistance-animal-assistance-animalguide-dog-laws#s203>. Accessed June 15, 2016
17. USA Service Dog Registration website. Mississippi service dog laws. Available at: <http://usaservicedogregistration.com/statelaws/mississippi-service-dog-laws>. Accessed June 15, 2016
18. Service Dog Central website. Alabama. Available at: <http://servicedogcentral.org/content/node/1>. Accessed June 15, 2016
19. USA Service Dog Registration website. Michigan service dog laws. Available at: <http://usaservicedogregistration.com/statelaws/michigan-service-dog-laws/>. Accessed June 15, 2016
20. State of Illinois 99th General Assembly. HB5807. Available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=88&GA=99&DocType=HB&DocNum=5807&GAID=13&LegID=95271&SpecSess=&Session=>. Accessed June 02, 2016

