

# The Nuts and Bolts of the Americans with Disabilities Act

- MOLLY HOSTETLER, DISABILITY LAW COLORADO

- DEBRA DODD, ATTORNEY AT LAW

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## AGENDA & GOALS

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- Review the ADA in the context of the child welfare system
- Address ways to help both parents and children with disabilities through the ADA and other case law
- Discuss past discrimination and how to move towards justice equity
- Understand the basic concepts of the ADA and the legal obligations stemming from the ADA and other case law
- Be familiar with the different ways reasonable accommodations and/or modifications, along with other social programs, can improve the well-being of a parent or child with a disability
- Shape your practice with an eye toward disability equity

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# What is the ADA?

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## §504 of the Rehabilitation Act (1973)

- “no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program or activity that . . . Receives Federal financial assistance.

## ADA (1990)-

- Prohibits discrimination on the basis of disability:
  - Employment (Title I)
  - State/Local Government and Public Transportation (Title II)
  - Public Accommodations (Title III)
  - Telecommunications Relay Services (Title IV)
  - Other Miscellaneous Provisions (Title V)

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# Who does the ADA protect?

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“Disability” (2008 amendments broadened definition):

1. An individual who has a **substantial impairment** of a **major life activity**;
2. An individual who has a **record of** a physical or mental condition that limits a major life activity
3. An individual who is **regarded as** having such impairment (whether they have one or not)
  - e.g.HIV status or birth mark

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## Who does it obligate?

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All federal agencies involved in the child welfare system

All state agencies as well as the state courts

- CADA - §24-34-301 et seq.
- C.R.S. §24-34-805 “Family preservation safeguards for families that include a parent with a disability”
- Adopts and cites to the ADA throughout

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## When does ADA apply – Notice

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Sarah Gordon letter – 1/29/15

- Mass. Dept. of Children and Families; Mother with developmental disabilities
- DOJ found agency violated ADA for “the failure to reasonably modify policies and procedures”
- **ADA implicated because agency was aware of disability**
- Contrary to Colorado case law which requires parent to raise disability

Examples:

IEP/504 plan

Assistance from programs (SSI/DI); Medicaid waiver

Domestic Violence (TBI)

Prior DHS involvement

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# Substance Abuse

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Protected:

- Successfully completed drug rehab and is no longer engaging in illegal drug use or has otherwise been rehabilitated successfully and is no longer engaging
- Currently participating in rehab and no longer engaging in such use
- Individuals involved in Medication Assisted Treatment

Not protected → active users

**BUT...**

There may other disabilities that can be addressed in spite of active substance use.



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# Exclusions from the ADA

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- Kleptomania
- Pyromania
- Sexual Disorders
- General personality characteristics
- Gambling Disorders



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## How can the ADA help families?

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ADA requires individualized treatment plans

Reasonable Accommodations and/or Modifications

- Courts have an obligation to make **reasonable efforts** to make modifications or accommodations to services so that a person with a disability can experience the benefits of the service and engage in the service in a **meaningful way** - §24-34-805
- All parties involved have these obligations under CADA and ADA
- Exceptions:
  - Undue Hardship
  - Substantial Alteration of service

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## Accommodations & Modifications

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- Increase in frequency of in home visitation
- Offering parenting class in a different format, such as for a parent with a learning disability
- Allowing a parent with memory issues to record meetings
- Emotional Support Animal
- Para transit
- In home modifications
  - power chair with safety sling
  - Audio or visual alarms
- Adaptable child care items such as cribs, strollers, monitors, etc
- Job Accommodation Network (JAN)

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# MEDICAID WAIVERS

## hcpf.colorado.org

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### ADULT:

- Persons with Brain Injury
- Community Mental Health Supports
- Community and Integrative Health – Spinal Cord Injury
- Non narcotic pain management
- Persons with DD (housing; 12 year waitlist)
- Elderly, Blind, Disabled (housing)
- Supported Living Services

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# MEDICAID WAIVERS

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### CHILDREN

Extensive Support (CES) – IDD; severe

- AT
- Vehicle adaptations
- Specific therapies – hippotherapy, movement therapy
- Respite Care
- Parent Education
- Homemaker Services
- Specialized Medical Equipment and Supplies
- Home adaptations

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# MEDICAID WAIVERS

## hcpf.colorado.org

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### CHILDREN, cont.

Home and Community Based Services – severe medical needs; at risk of institutionalization

- In home health care services

Habilitation Residential Program – IDD; at risk of institutionalization

- Independent Living Training
- Personal Care services
- Self-Advocacy Training
- Respite Care
- Intensive Support Services
- Transition Services

Life-Limiting Illness

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## Consumer Directed Attendant Support Services (CDASS)

### hcpf.Colorado.gov

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Applies to

- Brain Injury,
- Community Mental Health Supports,
- Complementary and Integrative Health,
- Elderly, Blind, and Disabled,
- Supported Living Services

Allows individuals to direct and manage the attendants who provide personal, homemaker and health maintenance services.

Example: Mom with IDD. Grandmother can be Mom's caregiver ensuring that another adult is always at home with Mom and child

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## Ask an Expert

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Family Voice of Colorado

Developmental Pathways

Rocky Mountain Human Services



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## Other Resources

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Medicaid Buy-in

- Allows individual with income below the Federal Poverty Line but above the cut-off for SSI/DI, can retain Medicaid services

Division of Vocational Rehabilitation

ARC

Colorado Cross Disability Coalition

Disability Law Colorado



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# Disability Equity

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Long history of discrimination against parents and children with disabilities

- Recognized in C.R.S. §24-34-805
- Forced sterilization considered by the Colorado Supreme Court as recently as 1981
- Infants taken at birth

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DHS and DOJ joint Task Assistance - systemic need

- “Protecting the Rights of Parents and Protective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.”

National Council on Disability

- “Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children”
  - 2x more likely to live below the poverty line
  - 2x more likely to have an out of court suspension
- 2012 report - parents with disabilities are overly, and often inappropriately, referred to child welfare services, and once involved, are permanently separated at disproportionately high rates

## The Reality of Parents With Disabilities

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“Despite the difficult circumstances of their growing up, including being bullied and ostracized by their peers, most of the children discovered an **underlying personal strength** that enabled them to overcome these experiences.” [mothers with IDD]

“becoming better and stronger people, having greater compassion and tolerance, acquiring knowledge and skills, developing healthier attitudes and priorities, achieving stronger family bonds, experiencing pride and satisfaction as their parent recovered, and gaining greater appreciation of life.”

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## The Reality of Parents With Disabilities

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“Anecdotally, and in at least three studies, positive outcomes for older children of parents with disabilities have been cited. These include **learning early the value of family and friends, displaying greater flexibility in family roles, finding humor even in dark situations, and putting quotidian problems in perspective.** As children of parents with stigmatized conditions, they tend to **learn about oppression, empowerment, and civil rights from an insider perspective and at an early age.** Furthermore, children of parents with disabilities share in the disability experience and through it a connection to the disability community, a source of possible enrichment.”

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## PRACTICE TIP

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### ASK RPC ON THE RECORD ABOUT THE ADA

*Is your client asserting he or she has a disability?*

*Is your client asserting the ADA is applicable to them?*



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## PRACTICE TIP

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IF ADA-TYPE ISSUES ARE DISCUSSED OFF THE RECORD

RAISE IT ON THE RECORD WITH THE COURT



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## PRACTICE TIP

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BOX-IN RPC WITH SPECIFIC ADA QUESTIONS

ON THE RECORD



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## PRACTICE TIP

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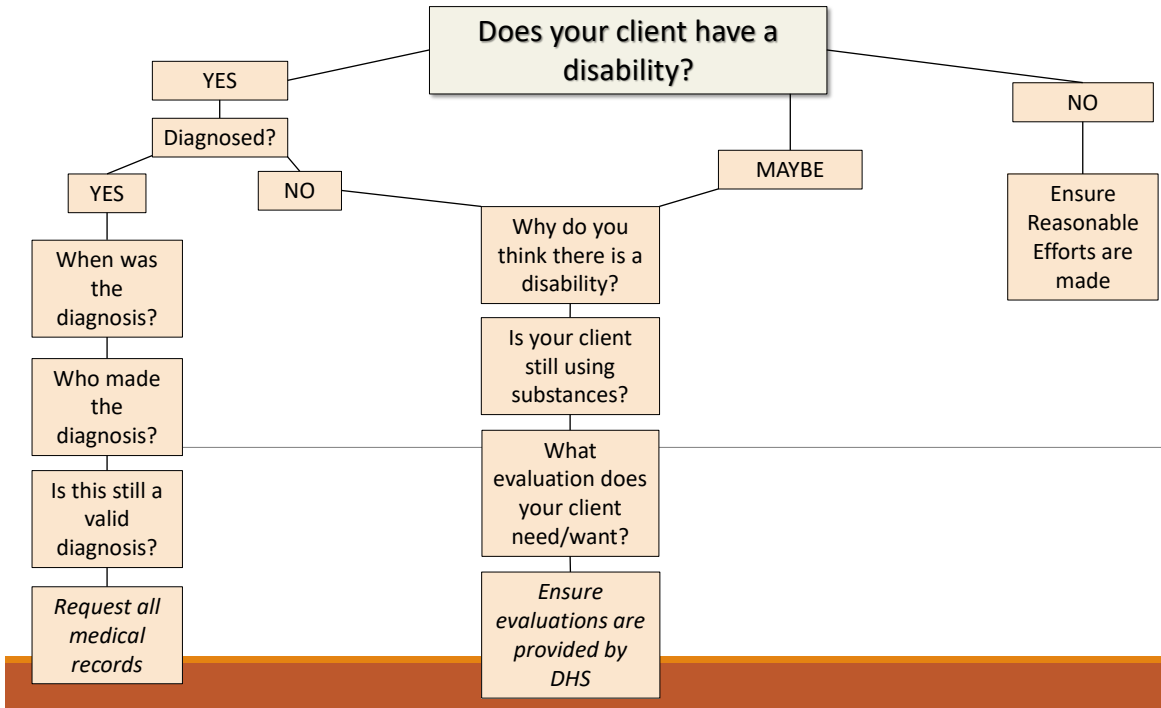
IF THERE WAS A PRIOR DIAGNOSIS, REQUEST ALL

MEDICAL RECORDS

*AND A RELEASE OF INFORMATION*



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## PRACTICE TIP

ENSURE DHS PROVIDES ALL NECESSARY EVALUATIONS  
OR ASSESSMENTS TO DIAGNOSE A DISABILITY

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## PRACTICE TIP

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ASK RPC ON THE RECORD WHAT *THIS* CLIENT NEEDS  
IN HIS OR HER INDIVIDUAL TREATMENT PLAN



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## PRACTICE TIP

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ONCE RECOMMENDATIONS ARE MADE IN AN  
EVALUATION, ENSURE DHS PROVIDES THE *SERVICES*  
NECESSARY TO COMPLETE THOSE RECOMMENDATIONS



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## PRACTICE TIP

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DRAW OUT TESTIMONY REGARDING THE NEEDS OF  
THE CHILD



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## PRACTICE TIP

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ASK THE COURT TO MAKE SPECIFIC ADA FINDINGS



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## Contact Information

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Molly Hostetler – Disability Law Colorado

[mhostetler@disabilitylawco.org](mailto:mhostetler@disabilitylawco.org)

720-830-7195

Debra Dodd

[debradoddlaw@gmail.com](mailto:debradoddlaw@gmail.com)

303-915-2106