Best Practices…..
Privacy, Confidentiality, and Discrimination

- First and foremost is simply to consider how you would want your private medical information managed, discussed and stored. Then the key is to do the same for your patients.

- Second is to be familiar with any and all policies regarding confidential information including who has a “right to know”, who has access to the information, and how it stored is.

- Third would be to become familiar with and State or Federal Laws which apply to the area where your program operates.

- Fourth is to train all staff, including front desk, on how to manage confidential information. This applies to patient calls, referrals, records, and any situation where information may be discussed.

- Fifth is to review your medical history form and process for completion. Does the patient have a private place to complete and discuss this form? Are patients assured of the respect to confidentiality of the information? Do patients understand the dental healthcare workers need to access this information?

In summary, create a program designed to maintain confidentiality, train all staff, limit access to health records, and periodically review your procedures.
1. **Know Your Rights**

Have a legal question? Want to know your rights? Look for answers to your questions in our online resources or in a GLAD publication, or contact [GLAD Answers](#).

Click to contact GLAD Answers by live chat or call 800-455-GLAD M-F 1:30-4:30 p.m. Or, email us anytime. Always free & confidential. Language translation is available.

- Information by State
  - Connecticut

---

**HIV Anti-Discrimination Law in Connecticut**

Connecticut law protects people who with HIV from discrimination in employment, public accommodations and housing.

**Questions & Answers (Accurate as of May 13, 2014)**

**Discrimination Based on HIV Status**

Does Connecticut have laws protecting people with HIV from discrimination?

---
Yes, Connecticut has enacted anti-discrimination laws protecting people with HIV from discrimination in employment, housing, public accommodations and credit. In addition, there are a number of federal laws that protect people from discrimination based on their HIV status.

**Who is protected under these anti-discrimination laws?**
- People with AIDS or who are HIV-positive, even if they are asymptomatic and have no outward or manifest signs of illness.
- Under the ADA, but not Connecticut law, persons who are regarded or perceived as having HIV.
- Under the ADA, but not Connecticut law, a person who does not have HIV, but who “associates” with a person with HIV — such as friends, lovers, spouses, roommates, business associates, advocates, and caregivers of a person or persons with HIV.

**Employment**

**ADVERSE TREATMENT**

**What laws protect people with HIV from discrimination in employment?**
People who are HIV-positive or who have AIDS are protected from employment discrimination under both Connecticut Human Rights Law and the federal Americans with Disabilities Act (ADA). Both of these statutes prohibit discrimination in employment on the basis of a person’s disability. The Connecticut law covers employers with 3 or more employees in the United States; the ADA covers employers with fifteen or more employees.

**What do these anti-discrimination laws prohibit?**
An employer may not take adverse action against an applicant or employee simply on the basis that the person has a disability such as HIV or AIDS. This means that an employer may not terminate, refuse to hire, rehire, or promote, or otherwise discriminate in the terms or conditions of employment, based on the fact that a person is HIV-positive or has AIDS.

The focus here is whether a person with AIDS or HIV was treated differently than other applicants or employees in similar situations.

The following are examples of unlawful discrimination:
- An employer may not refuse to hire a person with HIV based on fear that HIV will be transmitted to other employees or to customers.
- An employer may not refuse to hire or make an employment decision based on the possibility, or even probability, that a person will become sick and will not be able to do the job in the future.
- An employer cannot refuse to hire a person because it will increase health or workers’ compensation insurance premiums.
REASONABLE ACCOMMODATION

What does it mean that an employer may have to provide a “reasonable accommodation” for an employee with a disability?

Persons with disabilities, such as HIV/AIDS, may experience health-related problems that make it difficult to meet some job requirements or duties. For example, a person may be exhausted or fatigued and find it difficult to work a full-time schedule.

In certain circumstances, the employer has an obligation to modify or adjust job requirements or workplace policies in order to enable a person with a disability, such as HIV or AIDS, to perform the job duties. Under the ADA and the Connecticut Fair Employment Practices Act, this is known as a “reasonable accommodation.”

Examples of reasonable accommodations include:

- Modifying or changing job tasks or responsibilities;
- Establishing a part-time or modified work schedule;
- Permitting time off during regular work hours for medical appointments;
- Reassigning an employee to a vacant job; or
- Making modifications to the physical layout of a job site or acquiring devices such as a telephone amplifier to allow, for example, a person with a hearing impairment to do the job.

There is no fixed set of accommodations that an employee may request. The nature of a requested accommodation will depend on the particular needs of an individual employee’s circumstances.

How may a person obtain a reasonable accommodation?

It is, with rare exception, the employee’s responsibility to initiate the request for an accommodation. In addition, an employer may request that an employee provide some information about the nature of the disability. Employees with concerns about disclosing HIV/AIDS status to a supervisor should contact GLAD Answers by email or live chat at (800) 455-GLAD (4523) in order to strategize about ways to address any such requests.

Does an employer have to grant a request for a reasonable accommodation?

No, an employer is not obligated to grant each and every request for an accommodation; an employer does not have to grant a reasonable accommodation that will create an “undue burden” (i.e., significant difficulty or expense for the employer’s operation). In addition, the employer does not have to provide a reasonable accommodation if the employee cannot perform the job function even with the reasonable accommodation.

When is a “reasonable accommodation” for an employee an “undue burden” for an employer?

In determining whether a requested accommodation creates an undue burden or hardship for an employer, courts examine a number of factors, which include:
- The employer’s size, budget and financial constraints;
- The costs of implementing the requested accommodation; and
- How the accommodation affects or disrupts the employer’s business.

Again, each situation is examined on a case-by-case basis.

An employer only has an obligation to grant the reasonable accommodation if, as a result of the accommodation, the employee is then qualified to perform the essential job duties. An employer does not have to hire or retain an employee who cannot perform the essential functions of the job, even with a reasonable accommodation.

**EMPLOYER HEALTH INQUIRIES**

**What may an employer ask about an employee’s health during the application and interview process?**

Under the ADA, prior to employment, an employer cannot ask questions that are aimed at determining whether an employee has a disability. Examples of prohibited pre-employment questions are:

- Have you ever been hospitalized or under the care of a physician?
- Have you ever been on workers’ compensation or received disability benefits?
- What medications do you take?

**After an offer of employment, can an employer require a medical exam? What guidelines apply?**

If an employer has 15 or more employees, they must comply with the ADA. After a conditional offer of employment, an employer may require a physical examination or medical history. The job offer, however, may not be withdrawn unless the results demonstrate that the person cannot perform the essential functions of the job with or without reasonable accommodation. The same medical inquiries must be made of each person in the same job category. In addition, the physical examination and medical history records must be segregated from personnel records, and there are strict confidentiality protections.

After employment has begun, the ADA permits an employer to only require a physical examination if it is job-related and consistent with business necessity.

**HEALTH CARE WORKERS**

**How have the courts addressed fears that health care employees who perform invasive procedures, such as surgeons, will transmit HIV to patients?**

The risk of HIV transmission from a health care worker to a patient is considered so small that it approaches zero. Nevertheless, in cases where hospitals have sought to restrict or terminate the privileges of HIV-positive health care workers who perform invasive procedures, courts have reacted with tremendous fear and have insisted on an impossible “zero risk” standard. As a result, the small number of courts that have addressed this issue under the ADA have upheld such terminations.
The employment provisions in the ADA provide that an employee is not qualified to perform the job if he or she poses a “direct threat to the health or safety of others.” To determine whether an employee poses a “direct threat,” a court analyzes:

- The nature, duration and severity of the risk;
- The probability of the risk; and
- Whether the risk can be eliminated by reasonable accommodation.

However, in the case of HIV-positive health care workers, courts have ignored the extremely remote probability of the risk and focused on the nature, duration and severity of the risk. The following excerpt from a recent case is typical of courts’ approach:

“We hold that Dr. Doe does pose a significant risk to the health and safety of his patients that cannot be eliminated by reasonable accommodation. Although there may presently be no documented case of surgeon-to-patient transmission, such transmission clearly is possible. And, the risk of percutaneous injury can never be eliminated through reasonable accommodation. Thus, even if Dr. Doe takes extra precautions … some measure of risk will always exist …”

It is important to note that only a small number of courts have addressed the rights of HIV-positive health care workers. The AIDS Law Project believes that these cases have been incorrectly decided and are inconsistent with the intent of Congress in passing the ADA. Because of the unsettled nature of the law in this area, a health care worker who is confronted with potential employment discrimination should consult a lawyer or public health advocate.

**ASSESSING DISCRIMINATION**

**How does an employee determine whether he or she has experienced discrimination?**

While it may be useful to consult with a lawyer, the following steps can be helpful in beginning to consider and assess a potential employment discrimination problem.

1. Consider the difference between unfairness and illegal discrimination. The bottom line of employment law is that an employee can be fired for a good reason, bad reason, or no reason at all. A person can be legally fired for a lot of reasons, including a bad “personality match.” What they cannot be fired for is a **discriminatory** reason specifically outlawed by a statute.
2. In order to prove a discrimination claim (i.e., that you were fired, demoted, etc. because of discrimination and not because of some legitimate reason), you must be able to show the following:
   - You were qualified to perform the essential functions of the job with or without reasonable accommodation;
   - Adverse action was taken against you because of your HIV or AIDS status and the pretextual reason given by the employer for the adverse action is false.
3. If your employer knows that you have HIV or AIDS, identify exactly who knows, how they know, and when they found out. If you have not told your employer, is there any other way the employer would know or suspect your HIV status?
4. Consider the reasons why you believe that you are being treated differently because of HIV status, including the following areas:
   - Have other employees in similar situations been treated differently or the same?
   - Has your employer followed its personnel policies?
   - Did the adverse treatment begin shortly after the employer learned of your HIV status?
   - Have you been out of work due to illness for any period of time and did the adverse treatment begin upon your return to work?
What will your employer’s version of events be? How will you prove that the employer’s version is false?

5. Do you have any difficulty fulfilling the duties of your job because of any HIV-related health or medical issue? Does your condition prevent full-time work, or require time off for medical appointments, lighter duties or a less stressful position? You might want to try brainstorming to create a reasonable accommodation that you can propose to your employer. Here are some points to consider:
   - How does the company operate and how would the accommodation work in practice?
   - Put yourself in your supervisor’s shoes. What objections might be raised to the requested reasonable accommodation? For example, if you need to leave at a certain time for medical appointments, who would cover your duties?

Public Accommodation

Do Connecticut laws protect against discrimination by health care providers, businesses, and other public places?

Yes, under Connecticut law, and the ADA, it is unlawful to exclude a person with HIV from a public place (what the law refers to as a “public accommodation”) or to provide unequal or restricted services to a person with HIV in a public place. Under both statutes, the term “public accommodation” includes any establishment or business that offers services to the public.

Therefore, people with HIV are protected from discrimination in virtually every public place or business, including bars, restaurants, hotels, stores, schools, vocational or other educational programs, taxi cabs, buses, airplanes, and other modes of transportation, health clubs, hospitals, and medical and dental offices, as long as these facilities are generally open to the public.

Is discrimination by health care professionals against people with HIV still a problem?

Believe it or not, yes, people with HIV still face discrimination by hospitals, doctors, dentists, and other health care providers. This discrimination can take the form of an outright refusal to provide medical services or an illegal referral because of a patient’s HIV status.

What types of arguments do doctors who discriminate against people with HIV make, and are they legitimate?

Doctors typically try to justify discrimination against people with HIV with one of two arguments:

1. “Treating People with HIV is Dangerous” (Some doctors refuse to treat people with HIV based on an irrational fear of HIV transmission); and
2. “Treating People with HIV Requires Special Expertise” (Some doctors refer patients to other medical providers based on an inaccurate belief that general practitioners are not qualified to provide care to patients with HIV).

Both an outright refusal to provide medical treatment and unnecessary referrals on the basis of a person’s disability are unlawful under the ADA and Connecticut law.

How have courts and medical experts responded to these arguments?
Courts and medical experts have responded to these arguments in the following ways:

1. **“Treating People with HIV is Dangerous”**— Doctors and dentists may claim that a refusal to treat a patient with HIV is legitimate because they fear they might contract HIV themselves through needle sticks or other exposures to blood. However, studies of health care workers have concluded that risk of contracting HIV from occupational exposure is minuscule, especially with the use of universal precautions. For this reason, in 1998, the United States Supreme Court ruled in the case *Bragdon v. Abbott* that health care providers cannot refuse to treat people with HIV based on concerns or fears about HIV transmission. In addition to the legal perspective, both the American Medical Association and the American Dental Association, and many other professional health care organizations, have issued policies that it is unethical to refuse treatment to a person with HIV.

2. **“Treating People with HIV Requires Special Expertise”**— In these cases, the merits of a discrimination claim depend upon whether, based on objective medical evidence, the services or treatment needed by the patient require a referral to a specialist or are within the scope of services and competence of the provider. In *United States v. Morvant*, a federal trial court rejected a dentist’s claim that patients with HIV require a specialist for routine dental care. The court agreed with the testimony of experts who said that no special training or expertise, other than that possessed by a general dentist, is required to provide dental treatment to people with HIV. The court specifically rejected the dentist's arguments that he was unqualified because he had not kept up with the literature and training necessary to treat patients with HIV. While this case arose in the context of dental care, it is applicable to other medical settings as well.

**What are the specific provisions of the ADA that prohibit discrimination by health care providers?**

Under Title III of the ADA, it is illegal for a health care provider to:

1. Deny an HIV-positive patient the “full and equal enjoyment” of medical services or to deny an HIV-positive patient the “opportunity to benefit” from medical services in the same manner as other patients.
2. Establish “eligibility criteria” for the privilege of receiving medical services, which tend to screen out patients who have tested positive for HIV.
3. Provide “different or separate” services to patients who are HIV-positive or fail to provide services to patients in the “most integrated setting.”
4. Deny equal medical services to a person who is known to have a “relationship” or “association” to a person with HIV, such as a spouse, partner, child, or friend.

**What specific health care practices constitute illegal discrimination against people with HIV?**

Applying the specific provisions of the ADA above to the practice of health care, the following practices are illegal:

- A health care provider cannot decline to treat a person with HIV based on a perceived risk of HIV transmission or because the physician simply does not feel comfortable treating a person with HIV.
- A health care provider cannot agree to treat a patient only in a treatment setting outside the physician’s regular office, such as a special hospital clinic, simply because the person is HIV-positive.
- A health care provider cannot refer an HIV-positive patient to another clinic or specialist, unless the required treatment is outside the scope of the physician’s usual practice or specialty. The ADA requires that referrals of HIV-positive patients be made on the same basis as referrals of other patients. It is, however, permissible to refer a patient to specialized care if the patient has HIV-related medical conditions which are outside the realm of competence or scope of services of the provider.
• A health care provider cannot increase the cost of services to an HIV-positive patient in order to use additional precautions beyond the mandated OSHA and CDC infection control procedures. Under certain circumstances, it may even be an ADA violation to use unnecessary additional precautions which tend to stigmatize a patient simply on the basis of HIV status.

• A health care provider cannot limit the scheduled times for treating HIV-positive patients, such as insisting that an HIV-positive patient come in at the end of the day.

**How does Connecticut law compare with the ADA?**

Connecticut law will be interpreted in a similar manner to the ADA.

**Housing**

**What laws prohibit discrimination in housing?**

It is illegal under both Connecticut law and the National Fair Housing Amendments of 1989, to discriminate in the sale or rental of housing on the basis of HIV status. A person cannot be evicted from an apartment because of his or her HIV or AIDS status, or because he or she is regarded as having HIV or AIDS.

**Are there exceptions to the housing anti-discrimination laws introduced above?**

Yes, Connecticut law exempts a rental portion of a single-family dwelling if the owner maintains and occupies part of the living quarters as his or her residence, or for the rental of a unit in a residence that has four or fewer apartments when the owner occupies one apartment. In addition, the Fair Housing act exempts, in some circumstances, ownership-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit the occupancy to members.

**Credit**

**What protections exist under Connecticut anti-discrimination law with regard to credit?**

Any person who “regularly extends or arranges for the extension of credit” for which interest or finance charges are imposed (e.g. a bank, credit union, or other financial institution), may not discriminate because of HIV status in any credit transaction.

**Remedies for Discrimination**

**CONNECTICUT LAW**

**How do I file a complaint of discrimination?**

You file your complaint with the Connecticut Commission on Human Rights and Opportunities (CHRO). The main office of the CHRO is at 21 Grand St., Hartford, CT 06106. You should call them because
they will want you to file your case in the appropriate regional office. Their number is (800) 477-5737, and their website is http://www.state.ct.us/chro/; there is no charge to file a complaint.

The complaint must be in writing and under oath, and it must state the name and address of the individual making the complaint as well as the entity he or she is complaining against (called the “respondent”). The complaint must set out the particulars of the alleged unlawful acts, and it is advisable also to state the times they occurred.

If you are a state employee, you may file your case directly in court. State employees can skip over the CHRO process entirely.

Do I need a lawyer?

No. The process is designed to allow people to represent themselves. However, GLAD strongly encourages people to find lawyers to represent them throughout the process. Not only are there many legal rules governing the CHRO process, but also employers and other defendants are likely to have legal representation.

What are the deadlines for filing a complaint of discrimination?

For most people, a complaint must be filed with the CHRO within 180 days of the last discriminatory act or acts. There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

What happens after a complaint is filed with the CHRO?

When you file a complaint with the CHRO, you will be given a packet of information explaining the CHRO procedures and deadlines. Please review these and follow the deadlines.

After filing your complaint, and within 90 days of receiving the answer of the respondent, the CHRO will review the complaint and answer to determine if any further investigation is necessary. This is called a merit assessment review (MAR). Since many cases are dismissed at this stage of the proceedings, it is important that you reply to the respondent’s answer within 15 days of receiving it.

After the MAR, if the case is dismissed, you will be given 15 days to request the right to move your complaint from CHRO into the courts. If you do not request to remove your complaint from CHRO, there will be a review of your case, and within 60 days a decision will be made to either reinstate your complaint or to uphold the dismissal.

After the MAR, if the case is not dismissed, an investigator will be assigned and a mandatory mediation conference will be held within 60 days. If negotiations fail to produce a settlement agreeable to all parties, either party or the CHRO can request early legal intervention. The CHRO has 90 days to act upon this request and make one of the following decisions:

1. the investigator will continue to collect evidence and will make a decision of “reasonable cause” or “no reasonable cause.”
2. a Hearing Officer will be appointed to decide the merits of the case in a trial-type hearing.
3. the complaint will be dismissed.

Note that in housing discrimination cases, the CHRO must complete both its investigation within 100 days of filing and the final disposition within one year, unless it is impracticable to do so.
What are the legal remedies the CHRO may award for discrimination if an individual wins his or her case there?

**Employment:** may include hiring, reinstatement or upgrading, back pay, restoration in a labor organization, cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g., training programs, posting of notices.)

(Note that when cases are filed in court, emotional distress damages and attorneys’ fees are also available to a successful complainant. These are not available from the CHRO.)

**Housing:** damages (expenses actually incurred because of unlawful action related to moving, storage, or obtaining alternate housing); cease and desist orders, reasonable attorney’s fees and costs, and other relief that would fulfill the purposes of the anti-discrimination laws. The CHRO may also order civil fines to be paid to the state.

**Public Accommodations:** cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws. The CHRO may also order civil fines to be paid to the state.

**Credit:** cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g. allowing person to apply for credit on non-discriminatory terms).

Should I take my case away from the CHRO and file in court? How do I do so?

This is a decision you should make with your lawyer. Greater damages are available to you in state court than at the CHRO, including emotional distress damages and attorney’s fees.

To sue an entity in state court as opposed to the CHRO, you must follow several steps and meet various deadlines.

- Your complaint must have been filed on time at the CHRO (i.e., within 180 days of the last act of discrimination);
- Your complaint must have been pending with the CHRO more than 180 days (although if you and your employer agree to request the case’s removal to court, you may do so before the 180 days elapse), or the merit assessment review must have been completed;
- You must request a release of your complaint from the CHRO for the purpose of filing a court action (which the CHRO must grant except when the case is scheduled for public hearing or they believe the complaint can be resolved within 30 days);
- You must file your court action within 2 years of the date of filing your complaint with the CHRO; and
- You must file your court action within 90 days after you receive a release from the CHRO to file your case in court.

What can I do if my employer fires me or my landlord evicts me for filing a complaint of discrimination?

It is illegal for any employer to retaliate in these circumstances, and the employee could file an additional complaint against the employer for retaliation. “Retaliation” protections cover those who oppose any discriminatory employment practice, as well as those who participate in certain other proceedings. If the employer takes action against an employee because of that conduct, then the employee should be able to state a claim of retaliation.

Likewise, it is illegal for a landlord to “coerce, intimidate, threaten or interfere with” anyone who files a complaint.

What can I do to prepare myself before filing a complaint of discrimination?
As a general matter, people who are still working with or residing under discriminatory conditions have to evaluate how filing a case will affect their job or housing, and if they are willing to assume those possible consequences. Of course, even if a person has been fired, or evicted, he or she may decide it is not worth it to pursue a discrimination claim. This is an individual choice which should be made after gathering information to make an informed choice.

Some people prefer to meet with an attorney to evaluate the strength of their claims. It is always helpful if you bring an outline of what happened on the job that you are complaining about, organized by date and with an explanation of who the various players are (and how to get in touch with them). Try to have on hand copies of your employee handbooks or personnel manuals, any contracts, job evaluations, memos, discharge letters and the like. If you are concerned about a housing matter, bring a copy of your lease, along with any notices and letters you have received from your landlord.

**FEDERAL LAW**

**What are some potential remedies for discrimination under federal law?**

To pursue a claim under the Americans with Disabilities Act for employment discrimination, a person must file a claim with the Equal Employment Opportunity Commission (EEOC) within 180 days of the date of the discriminatory act and the employer must have at least 15 employees. However, an employee filing a disability case with the CHRO does not have to file a separate claim with the EEOC. There is a check-off on the CHRO complaint form to have the CHRO file the claim with the EEOC. The EEOC will then defer to the CHRO’s investigation. If a person initially institutes his or her complaint with the CHRO, the time limit for filing a Federal complaint is extended to the earlier of 300 days or 30 days after the CHRO has terminated the case. A person may remove an ADA claim from the EEOC and file a lawsuit in state or federal court.

To pursue a claim under the Americans with Disabilities Act for discrimination in a place of public accommodation, a person may, without first going to an administrative agency, file a claim in state or federal court for injunctive relief only (i.e., seeking a court order that the discriminatory conduct cease). Money damages are not available for violation of Title III of the ADA unless they are sought by the United States Department of Justice. However, a person may recover money damages under the Federal Rehabilitation Act in cases against entities that receive federal funding. To pursue a claim under the Rehabilitation Act, a person may file an administrative complaint with the regional office of the federal Department of Health and Human Services and/or file a lawsuit directly in court.

To pursue a claim under the National Fair Housing Act for discrimination in housing, a person may file a complaint with the United States Office of Housing and Urban Development within one year of the violation. A person may also bring a lawsuit within two years of the violation. A lawsuit may be filed whether or not a person has filed a complaint with HUD.

**Footnotes**

1. CGSA sec. 46a-60
2. Doe v. University of Maryland Medical System Corporation, 50 F.3d 1261 (4th Cir. 1995)
3. CGSA sec. 46a-64
5. 898 F. Supp. 1157 (E.D. La 1995)
6. 42 U.S.C. §§ 12181-12188
7. CGSA sec. 46a-64c
See generally Public Act 11-237, Conn. Gen. Stat. sec. 64c(f)

See Bridgeport Hospital v. CHRO, 232 Conn. 91 (1995); Delvecchio v. Griggs & Browne Co., Inc., 2000 Conn. Super. LEXIS 1149 (April 17, 2000) (“The CHRO is without authority to award a prevailing party attorneys’ fees, punitive or compensatory damages or damages for emotional distress.”)

Compare Provencher v. CVS Pharmacy, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998) (upholding federal retaliation claim of gay man)
**Definition of a Disability**

A disability is defined as having the following:
1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual
2. A record of such impairment
3. Being regarded as having such an impairment.

The “regarded as” part of the definition of a disability covers individuals with asymptomatic HIV even if they are not limited in any major life activity, but are excluded from services based on the negative perceptions or reactions of others to their physical impairment.

**The Federal Rehabilitation Act of 1973: Section 504**

Section 504 prohibits discrimination against people with disabilities from agencies or programs who receive federal funds, including private dental or medical offices and hospitals that accept Medicare or Medicaid. This law only applies to places that receive federal funds. If any program in an institution receives federal funds (even federal research monies), then all programs and employees are covered by the Rehabilitation Act and are prohibited from discriminating against people with disabilities.

**The Americans With Disabilities Act (AwDA): Titles I, II, III**

Title I: employers
Title II: state and local governments
Title III: privately owned businesses referred to as “places of public accommodation”

AwDA, Titles III as it applies to dentistry, it is illegal to:
1. Deny an HIV-positive person the “full and equal enjoyment” of dental services or to deny an HIV-positive person the “opportunity to benefit” from dental services in the same manner as other patients.
2. Establish “eligibility criteria” for the privilege of receiving dental services. These criteria tend to screen out persons who have tested positive for HIV.
3. Provide “different or separate” services to patients who are HIV-positive or fail to provide services to patients in the most “integrated setting.”
4. Deny equal services to a person who is known to have a “relationship” or “association” to a person with HIV, such as a spouse, partner, child, or friend.

In applying these specific provisions of the AwDA to dentistry, be mindful that the following practices are illegal:
- A dentist cannot decline to treat a person with HIV based on the perceived risk of HIV transmission or because the dentist simply does not feel comfortable treating a person with HIV.
- A dentist cannot agree to treat a patient only in a treatment setting outside the dentist’s regular office, such as a special hospital dental clinic.
• A dentist cannot require that a patient take an HIV test prior to providing dental treatment.
• A dentist cannot refer an HIV-positive patient to another clinic or dentist, unless the required dental treatment is outside the scope of the dentist’s usual practice or specialty. The AwDA requires that referrals of HIV-positive patients be made on the same basis as are referrals for other patients.
• A dentist cannot increase the cost of services to an HIV-positive patient in order to use additional precautions beyond the mandated OSHA and recommended CDC infection control procedures. Under certain circumstances, it may well be an AwDA violation even to use unnecessary additional precautions that tend to stigmatize a patient simply on the basis of HIV status.
A dentist cannot limit the scheduled times for treating HIV-positive patients, such as insisting that an HIV-positive patient come in at the end of the day.