



January 20, 2015

Mr. William Russo
Acting Director, Regulation Policy and Management (02REG)
Department of Veterans Affairs
810 Vermont Avenue, NW, Room 1068
Washington, DC 20420

Re: RIN 2900—AO39-Animals on VA Property

Dear Mr. Russo,

The Consortium for Citizens with Disabilities (CCD) Veterans and Military Families Task Force submits the following comments on the proposed rule announced by the Department of Veterans Affairs (VA) concerning the presence of animals on VA property. The notice was officially published for comment on November 21, 2014.

CCD is a coalition of national consumer, service provider, and professional organizations which advocates on behalf of people with disabilities and chronic conditions and their families. The Veterans and Military Families Task Force follows issues of concern to veterans with disabilities and military families with members who have disabilities.

The task force supports efforts to ensure that veterans and all people with disabilities who use service animals have full access to VA facilities. Service animals provide multi-faceted assistance to people with disabilities. Individuals who use service animals will be harmed if there are unnecessary restrictions placed on access.

VA's regulations related to service animal access should be substantially similar to those provided for under the Americans with Disabilities Act (ADA). The ADA governs service animal access policies for a variety of state, local, and commercial facilities, including healthcare systems. VA's health and safety issues are similar to those faced by facilities covered by the ADA. Thus, we applaud VA's efforts to adopt regulations that reflect ADA's access for service animals.

Although the task force believes that the proposed rule closely follows ADA's regulation and guidance related to service animals, we propose the following changes to ensure that access to all

VA facilities more closely mirrors the experience veterans encounter in other administrative and healthcare facilities.

§ 1.218(a)(11)(i)

Section 1.218(a)(11)(i) states that, “A service animal must be in a guiding harness or on a leash, and under control of the individual with the disability at all times while on VA property.” It appears under this section that other means of exerting control of a service animal would be prohibited. ADA regulations require control of the service animal while allowing the service animal handler to exercise different types of control as may be necessary due to the individual’s disability or the work or tasks that the service animal must perform.¹

We believe that VA should amend this regulation in accordance with ADA regulations governing control of service animals to provide greater flexibility for individuals with disabilities who use service animals. Expanding the appropriate means of exerting control of a service animal will not harm VA’s need to ensure a safe and accessible environment at its facilities. It may, however, prove helpful to individuals with disabilities.

§ 1.218(a)(11)(ii)(A)

Section 1.218(a)(11)(ii)(A) allows VA to deny access to or remove from VA property a service animal that “is not under the control of the individual with a disability.” While we agree that any service animal must be under control requiring it to be under the control of the person with a disability seems overly burdensome. A family member who is accompanying the person with a disability should be able to take control of the service animal if needed. For example, in developing access requirements for healthcare facilities under the ADA, the Department of Justice (DOJ) followed the guidance of the Centers for Disease Control and Prevention (CDC). The CDC guidance states that in a healthcare setting, healthcare personnel and a patient with a disability might develop a plan for taking care of the patient’s service animal in the healthcare setting in case the patient is unwilling or unable to perform that duty. The CDC suggests that such a plan may “include family members taking the animal out of the facility several times a day for exercise and elimination....”²

If VA’s proposed requirement for the individual with a disability to be in control of the service animal were strictly enforced, then veterans with disabilities using VA healthcare facilities would not be able to follow the CDC’s guidance. In fact, they would face stricter access requirements than they would face in non-VA healthcare facilities. We believe that this provision

¹ 28 C.F.R. § 35.136(d). “A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).”

² Centers for Disease Control and Prevention, “Guidelines for Environmental Infection Control in Health-Care Facilities: Recommendations of CDC and the Healthcare Infection Control Practices Advisory Committee” (June 2003).

should be clarified to allow for the handler as opposed to the individual with a disability to be in control of the service animal to account for these types of situations.

§ 1.218(a)(11)(iii)

Section 1.218(a)(11)(iii) lists areas of property under the control of the Veterans Health Administration from which service animals will be restricted “to ensure patient care, patient safety, or infection control standards are not compromised.” Restricted areas include locked mental health units [§ 1.218(a)(11)(iii)(C)] and patient rooms or treatment areas where another patient has animal allergies or a fear of animals [§ 1.218(a)(11)(iii)(E)]. We have concerns about this section’s restriction of the number of areas in which service animals will be allowed.

For example, we believe that granting a blanket restriction against service animals in locked mental health units is overly broad. As stated in the CDC’s guidance, “The determination that a service animal poses a direct threat in any particular health-care setting must be based on an individualized assessment of the service animal, the patient, and the health-care situation.”³ In relying on the CDC’s guidance, DOJ stated that, “it is generally appropriate to exclude a service animal from limited-access areas that employ general infection-control measures, such as operating rooms and burn units.”⁴

Although access is restricted to locked mental health units, the restriction is not based on infection-control measures for which there is a scientific reason for exclusion. It may be appropriate in some cases to exclude a service animal from a locked mental health unit. However, that decision should be based on an individualized assessment and not a blanket restriction against the use of service animals in these units. We believe that the use of blanket restrictions on access should be limited.

Consequently, we are also concerned about restrictions based on another patient’s allergies to or fear of animals. According to DOJ, allergies and fears are not sufficient reasons for denying access for a service animal. Instead, the needs of the individual with allergies should be accommodated but so should those of an individual who uses a service animal. In many cases, it will be possible to meet the needs of both individuals without simply denying access for the service animal.

§ 1.218(a)(11)(viii)

Section 1.218(a)(11)(viii) defines a service animal as “any dog that is individually trained to do work and perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” We believe that this section should

³ *Id.*

⁴ Appendix A to Part 35—Guidance to Revisions to ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services. September 15, 2010.

be amended to require that the animal be trained to do work OR perform tasks. This change is consistent with the ADA definition of a service animal.⁵

Otherwise, we support VA's interpretation of Section 109, Public Law 112-154 as not limiting access to VA facilities to only those service animals that have been trained by a specific entity. We believe that any other interpretation would be an unnecessary restriction on access. VA's interpretation will also limit confusion for veterans who use service animals as the ADA allows access for properly trained service animals regardless of whether they were trained by an accredited organization or not. In addition, we support VA's defining service animal to include all service dogs regardless of whether or not VA provides benefits to a veteran for a particular service animal.

Thank you for the opportunity to comment on the proposed rule regarding animals on VA property. If you have any questions, please contact Heather Ansley, CCD Veterans and Military Families Task Force Co-Chair, at (202) 416-7794 or by e-mail at heathera@pva.org.

Sincerely,

ACCSES
American Association on Health and Disability
Easter Seals
National Disability Rights Network
National Industries for the Blind
Paralyzed Veterans of America
Veterans Health Council
VetsFirst, a program of United Spinal Association
Vietnam Veterans of America

⁵ 28 C.F.R. § 35.104. "Service animal means 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."