

NAHP Update

Rights Strengthened for Americans with Disabilities

BY RHONDA HUE

IN THIS ISSUE

- 3 The Write Move for Your Career**
- 4 Field Update**
Calming swine flu fears
- 5 Smart Advice**
Do you have enough insurance?
- 6 NAHP Profile**
Isha Francis: Success is all about the training

Many people with disabilities, including epilepsy, diabetes, intellectual and developmental disabilities, muscular dystrophy and cancer, among many others, became clearly eligible for protections under both the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act when The ADA Amendments Act (ADAAA) was signed into law in September 2008. It became effective January 1, 2009.

The reforms will restore the intent of the bipartisan Congress that passed the ADA in 1990.

The ADA was intended to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Since 1990 there have been a few U.S. Supreme Court decisions, including *Sutton v. United Air Lines*, *Murphy v. United Parcel Services, Inc.* and *Toyota v. Williams*, which narrowed the definition of disability considerably, resulting in the erosion of protections for many people with disabilities.

For example, in the *Murphy* case, *Murphy* had severe high blood pressure but, with medication, he could function nor-

mally and engage in a full range of activities. *Murphy* was prevented from pursuing an ADA claim after UPS found him unfit for his driver position. The court ruled that he was not disabled under the ADA because the use of medication controlled the effects of his high blood pressure. The ADAAA now mandates that, in determining whether an individual is disabled under the ADA, the person must be evaluated as if untreated, without considering the improved effects of medication.

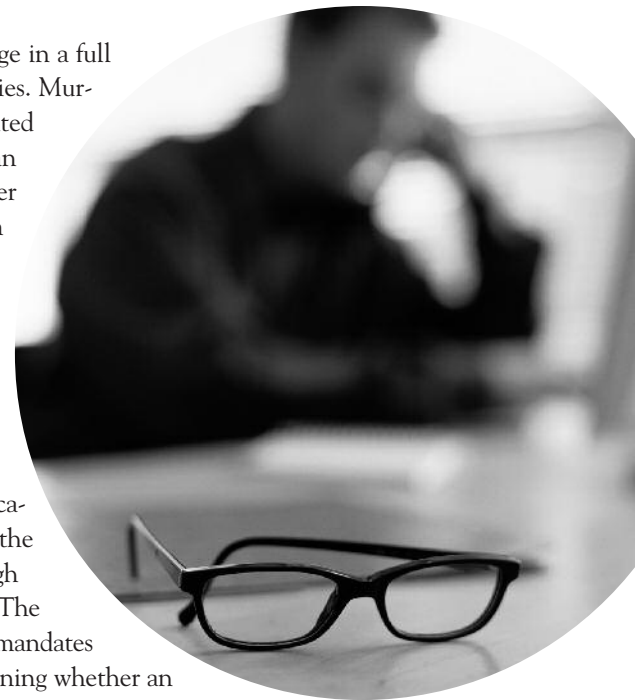
In the *Sutton* case, the new ADAAA further expands the ADA's definition of disability, specifically the “regarded as” prong of that definition, by now including a person who has been discriminated against because of an actual impairment or a perceived impairment, whether or not the impairment limits or is perceived to define a major life activity. This differs from the expressed requirement in the U.S. Supreme Court case

in *Sutton v. United Air Lines* which was that perceived impairment must, like any actual impairment, substantially limit a define major life activity.

RESTORING THE STRENGTH OF THE ADA

The ADAAA was created to restore the original intent of the ADA by rejecting strict interpretation of the definition of disability and stating clearly that the ADA is to provide broad coverage to protect anyone who has, or is regarded as

See *Rights Strengthened*, page 2



NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION (NAHMA)—Protecting the Interests of Affordable Housing Property Managers and Owners

having, a disability.

The Equal Employment Opportunity Commission (EEOC), the legal enforcer of the ADA and ADAAA, is currently evaluating the impact of these changes on its enforcement guidelines. The following are initial thoughts and suggestions for employers, organizations and individuals to consider.

What ADAAA Means for Individuals and/or Employees with Disabilities:

Overall, the ADAAA restores protections against disability discrimination to a broader range of individuals including those with mental illness, epilepsy, muscular dys-

trophy, cancer, diabetes, cerebral palsy and perceived disabilities.

- “Substantially limits” now needs to be interpreted less severely with regards to effect on a major life activity.
- Mitigating measures can no longer be considered when determining whether a person has a disability.

What This Means for Employers:

Organizations that have been complying with the original intent of the ADA will likely be unaffected, since the ADAAA merely restores that original intent and more clearly defines disability.

- Existing policies and procedures, including written ones, should be reviewed and updated to ensure that they are in compliance with the ADA and this Act, especially given that more conditions are now explicitly considered disabilities.
- Reasonable accommodations are only required to be provided to individuals who currently have or have a record of an impairment that substantially limits a major life activity, not for employees who are



“regarded as” disabled.

KEY POINTS OF THE ADAAA

The ADAAA continues to define a person as having a disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having an impairment. See table below for key clarifications and/or additions further provided by the ADAAA. **NU**
Rhonda Hue is Compliance Manager for the Seattle Housing Authority.

ADA Amendments Act Clarifications

ASPECT OF DEFINITION	ORIGINAL ADA	ADA AMENDMENTS ACT
Major Life Activities	Includes activities such as seeing, hearing, eating, sleeping, walking, breathing, thinking, etc.	Expands non-exhaustive list to include activities like reading, communicating, bending, and the operation of major bodily functions such as normal cell growth and those of the neurological, immune, digestive, endocrine, circulatory and reproductive systems.
Major Life Activities	Was interpreted to refer to activities that are central to daily life only	Impairment that limits one major life activity (e.g., work) does not need to limit other activities, including those central to daily life.
Major Life Activities	Was interpreted to refer only to active impairments.	An impairment that is episodic, for example in the case of multiple sclerosis, or is in remission, is still a disability if it limits a major activity when active.
“Substantially Limits” Major Life Activities	“Substantially limits” meant “prevents or severely restricts the individual from performing the activity.”	The Equal Employment Opportunity Commission (EEOC) and Supreme Court interpreted “substantially limits” to establish a greater degree of limitation that Congress had intended.
Mitigating Measures	The effects of assistive aids such as low vision devices, hearing aids, medications, mobility devices, adaptive neurological modifications, prosthetics and assistive technology were considered when deciding if a disability existed.	Disability determinations must be made without considering the effects of mitigating measures, with the exception of ordinary eyeglasses. NOTE: Uncorrected vision testing is no longer acceptable to use in job hiring criteria unless the testing is job related and a function of business necessity.
“Regarded As” Disabled	Was applied if the impairment was seen as limiting a major life activity	An impairment does not have to be, or be seen as, limiting a major life activity for a person to be “regarded as” having a disability
“Regarded As” Disabled	Was unclear whether this definition was contingent upon length or duration of impairment.	Definition does not apply to impairments that are minor and that last, or are expected to last, six months or less.

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The Write Move for Your Career

By Brian Carnahan

Do you ever wonder who writes the articles in trade magazines and newsletters? Many are written by professionals in the field—those ‘in the know.’ Seeing your expertise in print may be easier than you think, particularly if you take time to explore your topic and follow the right steps.

BE COMMITTED TO WRITING

The first step is being committed to writing. Writing is a skill that improves with practice. Take time to read books on writing and take a class if you need additional help.

Once you feel fairly confident in your skills, pick a topic that will have relevance for your target audience—people in your profession.

Avoid topics that are too basic or too complicated. Articles that sell include: “how to” topics; profiles of industry leaders; new trends, techniques and technology; and basics with a new spin.

LEARN WHERE TO PUBLISH

For many industries the list of possible publishing outlets is quite short. A few key newsletters or magazines cover an industry. Check out a target publication’s ‘instructions to authors’ page on its website. If there is not such a page, e-mail the editor for its guidelines.

Once you have an understanding of the editor’s requirements, consider formatting, article length, organization, and pictures and graphics. Instructions to authors usually indicate what is expected with regard to these.

Be a regular reader of the publication to be familiar with its standard article.

Requirements for each publication differ. For example, every publication has a maximum article length, usually based on a word count. Feature articles are typically longer than announcements, such as recent promotions.

CHECK WITH YOUR EMPLOYER

Approach your employer about the company’s



policy on employees publishing articles related to their job duties or the company. While it’s possible your company has a policy, it’s more likely it does not have a formal position. Questions to think about from the perspective of your employer include:

- Does the article concern information that is proprietary?
- Could the article open the employer to criticism or public relations problems?

Strategies to handle employer objections:

- Reinforce the benefit to the company of having an employee published in a trade magazine or newsletter. The higher profile for you equals a higher profile for the company.
- Highlight the positive aspects for your career development. Emphasize what you are learning, how your skills and knowledge are improving, and how in turn this will improve

your performance at work.

If your employer is not excited about you being identified as an employee, ask if there are any objections to publishing the article without your employer being identified. For example, instead of being identified as “Mary Jones works for Tuffenuff Equipment in South River, Ohio,” you could say “Mary Jones works for an equipment manufacturer in the Midwest.”

If that strategy proves unsuccessful, you can

REINFORCE THE BENEFIT to the company of having an employee published in a trade magazine or newsletter.

More than Just Fine Print

Insurance Requirements and Certificates of Insurance

By Al Shapiro

When vendors, contractors, consultants and yes, even REAC inspectors perform work for you or even step foot on your premises, you could be assuming responsibility for any injury or damage that they cause—unless you take measures to protect your organization. Protection most often takes the form of evidence that the service provider maintains adequate insurance coverage.

Your organization should require minimum levels of insurance for all service providers to protect your own insurance program from their operations. When choosing a contractor, the quality of their coverage and their ability to provide proof of insurance should be almost as important as the type and quality of the work to be performed.

Ideally, a contractor agreement should be executed with anyone who performs work on your property. You should draft a standard agreement in conjunction with your legal counsel and insurance advisor, which should include three important elements (in addition to a description of the scope of work or project).

1. Insurance Requirements
2. A Hold Harmless Agreement

3. Indemnification Language

Your organization's insurance requirements should be enforced whenever a contractor is engaged to do work for you. Any deviation from these requirements must come from a designated central authority who can weigh the deficiency against the potential risks to the organization.

Property managers should insist that all contractors provide evidence (a certificate of insurance) of the insurance requirements before they commence work. Insurance is important for a number of reasons, not the least of which is that the contractor's insurance represents the funds available to meet their obligations arising out of injury or damage they cause.

The contractor should agree to hold the property manager and owner harmless for any damage or injury that they cause while on the job. The hold harmless provision states that the contractor will assume third-party liability arising out of their negligence.

The contractor should also agree to indemnify you for any injury to third parties or damage to property that they cause – in other words, they promise to pay for the resulting injury

or damage (as well as related expenses) should you be deemed liable.

However, the indemnification "promise" has no teeth if there is no money to back it up, and the service provider's insurance policies represent the funds available to make you whole. Without a valid certificate of insurance, you may not know where to find the contractor's insurance when you need to—or worse, it may not exist at all. Keep the certificates in a safe place!

The certificate can affect your property's finances beyond the scope of the work performed. In most cases, proper certificates are easy to obtain and rarely cost the contractor any additional premium.

As an aside, if you cannot provide valid contractors' certificates of workers' compensation insurance to your workers' compensation auditors, you could be required to pay additional premium to your insurer.

Protect yourself contractually, require proper insurance and collect contractor's certificates, otherwise your organization may be taking on more risk than you bargained for. **NU**

Al Shapiro is a Senior Consultant with Albert Risk Management Consultants.

identify yourself as a freelance writer. In the end, you may have to obey your employer's wishes and simply not publish your article.

Once you've submitted an article for consideration, do not count on a quick response. Editors are busy people, and many publications have cut staff, putting even more demands on editors. Still, editors understand that you are both on the same team—you want to publish and they need material.

Some authors make a living from their writing, but unless this is your goal, you are not likely to augment your income with earnings from writing. Your payment will likely be the satisfaction of having written the article and seeing it in print.

Writing for publication can be fun and satisfying. It is an experience that expands your knowledge and sharpens your writing skills. Even if few of your articles make the cut, each article is a learning experience—in both the subject matter of the article and the writing process. **NU**

Brian Carnahan is Director of the Ohio Housing Finance Agency's Office of Program Compliance.

NAHP Update is interested in what you have to say. If you have advice to share, the answers to commonly asked question, or solutions to problems common to property management, contact the editor, Catherine Smith, at cbc.smith@comcast.net.

Answers from Your Peers

What to Do About the Swine Flu Scare



Q: My residents are worried about the swine flu epidemic. What can I say to reassure them?

A: On April 29, the World Health Organization raised the worldwide pandemic alert level to Phase 5, a “strong signal that a pandemic is imminent and that the time to finalize the organization, communication, and implementation of the planned mitigation measures is short.”

This led the U.S. Government to declare swine flu a public health emergency. It’s no wonder your residents are worried. The best thing you can do is find good sources of information and communicate what you learn through newsletter articles, flyers, emails, meetings or whatever other ways you communicate with residents.

One of the best places to go for information on swine flu and how to protect yourself and those around you against it is the Centers for Disease Control and Prevention (www.cdc.gov). In response to the rapidly evolving situation, the CDC issues an interim guidance daily at www.cdc.gov/swineflu/recommendations.htm.

There is no vaccine avail-

able right now to protect against swine flu. However, there are medicines to treat swine flu. CDC recommends the use of antiviral drugs for the treatment and/or prevention of infection with these swine influenza viruses. These are prescription medicines (pills, liquid or an inhaler) that fight against the flu by keeping flu viruses from reproducing in the body. For treatment, antiviral drugs work

best if started soon after getting sick (within two days of symptoms).

People who live in areas where swine flu cases have been identified and become ill with flu-like symptoms, should see a doctor who can determine whether influenza testing or treatment is needed. Flu symptoms include fever, body aches, runny nose, sore throat, nausea, vomiting or diarrhea.

Anyone who is sick should stay home and avoid contact with other people as much as possible to keep from spreading an illness to others.

In children, emergency warning signs that need urgent medical attention include:

- Fast breathing or trouble breathing
- Bluish skin color
- Not drinking enough fluids
- Not waking up or not interacting
- Being so irritable that the child does not want to be held

the spread of germs that cause respiratory illnesses like influenza. Advise them to do the following:

- Cover your nose and mouth with a tissue when you cough

THE BEST THING YOU CAN DO is find good sources of information and communicate what you learn through newsletter articles, flyers, emails, meetings or whatever other ways you communicate with residents.

- Flu-like symptoms that improve but then return with fever and a worsening cough
- Fever with a rash

In adults, emergency warning signs that need urgent medical attention include:

- Difficulty breathing or shortness of breath
- Pain or pressure in the chest or abdomen
- Sudden dizziness
- Confusion
- Severe or persistent vomiting

Let your residents know that there are everyday actions that can help prevent

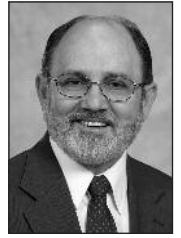
or sneeze. Throw the tissue in the trash after you use it.

■ Wash your hands often with soap and water, especially after you cough or sneeze. Alcohol-based hand cleaners are also effective.

■ Avoid touching your eyes, nose or mouth. Germs spread this way.

■ Try to avoid close contact with sick people.

■ If you get sick with influenza, CDC recommends that you stay home from work or school and limit contact with others to keep from infecting them. **NU**



Success Is All About the Training

NAHP: Isha Francis, NAHP-e, CPO

MANAGEMENT COMPANY: Benchmark Management Corporation

POSITION: President

YEAR OF CERTIFICATION: 2003

Isha Francis had an uncommon introduction to affordable housing. A world traveler since he was a young man, in 1980 he was asked by a friend to oversee a land acquisition and construction project in an extremely poor area of New Delhi, India.

Being in publishing at the time, "I had no qualifications for this, except that my friend knew he could trust me with their money." He and his wife

took up the challenge of moving into such a different culture, and Isha took on the task of dealing with government officials, bankers, and, ultimately, landlords and tenants.

After two years, he and his wife wanted to get back to the States, but he no longer wanted to work in publishing. A friend in Buffalo, New York, was starting a real-estate com-

pany and suggested they move there. Isha became Benchmark's first employee in 1983.

"We were looking at

acquiring conventional and commercial properties and this wonderful new product of apartment properties with Section 8 subsidies appeared on our radar," he said.

Benchmark now owns or manages 14 affordable properties in the Southeast and the Midwest, with a little over 2,000 units of family and senior housing.

Isha became very involved with SAHMA and to some extent with MAHMA. He serves on SAHMA's board of

directors and was named SAHMA Volunteer of the Year in 2007. Isha and his staff attend state and regional meetings "religiously." His employees in the Midwest take courses offered by MAHMA.

"I feel ongoing training and education is very important," he said. "The truth is, the only constant thing in this world is change, and this is particularly

so with HUD. If you don't have good industry connections at every level, you will be lost very quickly." **NU**

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PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS

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