

# A PROVIDER'S GUIDE TO EMOTIONAL SUPPORT ANIMALS

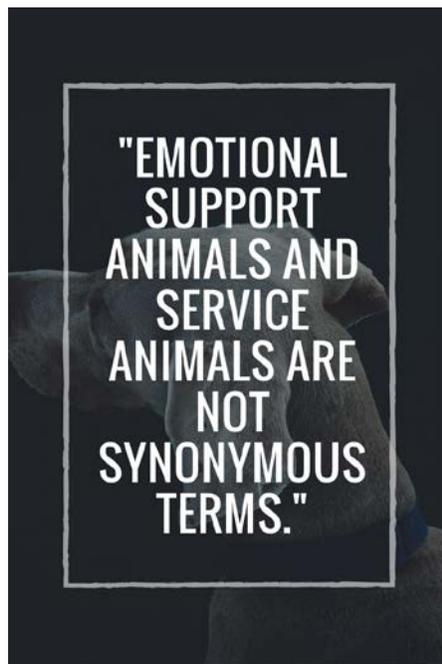
Provided by Jackson LLP: Healthcare Lawyers

Emotional support animals (ESAs) are an increasingly utilized therapeutic tool in the field of mental health. While there are notable differences between ESAs and service animals, both play a crucial role in supporting their owner's independence and dignity while mitigating the impact of physical or mental disabilities or challenges.<sup>1</sup> Unlike service animals, which are defined by the Americans with Disabilities Act (ADA) as those which are "individually trained" to "perform tasks for the benefit of an individual with a disability," ESAs do not undergo any training. Rather, they provide their owner "therapeutic contact" by easing mental and emotional disorders, providing companionship, and relieving loneliness.<sup>2</sup>

Only dogs can be classified as service animals under the ADA (some limited situations allow ADA protections to extend to miniature horses). In contrast, no such limitations are imposed upon the types of animals that can be classified as an ESA – although some limitations might be imposed upon their accommodation on airplanes or in housing.

ESAs and psychiatric service dogs are also not synonymous terms. Service dogs trained to perform tasks for an individual with a psychiatric disability receive protections under the ADA. These dogs commonly serve individuals with diagnoses like PTSD, for whom they may search a room prior to that person entering to verify its safety, or self-harming illnesses, for whom they may interrupt the behavior. ADA protections of psychiatric service dogs requires business owners to accommodate their presence in public places (like a coffeeshop or retail store). In contrast, an ESA provides emotional support, companionship, and comfort, but it does not perform a specific task directly related to its handler's disability. ESAs are not afforded the same right of access to public places except as discussed below.

ESAs are commonly used in the course of therapy for an individual diagnosed with at least one disorder specified by DSM-5.<sup>3</sup> For a patient to benefit from the legal protections afforded to ESAs, the patient must be able to produce an official letter from his current healthcare provider who is responsible for treating that DSM-recognized disorder and which details his need for an ESA. Most mental health providers have been asked to write these letters on their patients' behalf, and many have questions about the implications and requirements of these documents.



<sup>1</sup> **Learn more about the differences here:** <https://adata.org/publication/service-animals-booklet>

<sup>2</sup> **Read more about an ESA's important role here:** <https://adata.org/publication/service-animals-booklet>

<sup>3</sup> **Review the current DSM-5:** <https://www.psychiatry.org/psychiatrists/practice/dsm>

## What protections are extended to ESAs?

### Protection #1: Air travel

Legal protections for ESAs extend to air travel and housing accommodations. The Air Carrier Access Act of 1986 (“ACAA”), passed just four years before the Americans with Disabilities Act, prohibits air carriers from discriminating on the basis of physical or mental disabilities. The Department of Transportation has promulgated regulations which govern the application and enforcement of the ACAA.<sup>4</sup> Importantly, these regulations required airlines to take affirmative action if their existing policies were insufficiently protective of passengers with disabilities: “As a carrier, you must modify your policies, practices, and facilities when needed to provide nondiscriminatory service to a particular individual with a disability.... This requirement is part of your general nondiscrimination obligation....”<sup>5</sup> If a passenger will be traveling with an emotional support or psychiatric service animal, airlines can require that passenger provide the airline with 48 hours’ advance notice.<sup>6</sup>

Airlines cannot charge a passenger additional fees for traveling with an ESA or psychiatric support animal. The only pertinent exception to this is if the passenger’s accommodation requires him to occupy more than one airline seat. In those circumstances, extra fees can be charged.<sup>7</sup> Passengers traveling with an ESA may request to be seated in either a bulkhead seat or a seat other than a bulkhead seat, and the airline crew must accommodate those requests.<sup>8</sup>

The pertinent part of the regulations concerning service animals states:

As a carrier, you must permit a service animal to accompany a passenger with a disability. You must not deny transportation to a service animal on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft....You must permit the service animal to accompany the passenger with a disability at any seat in which the passenger sits, unless the animal obstructs an aisle or other area that must remain unobstructed to facilitate an emergency evacuation. If a service animal cannot be accommodated at the seat location of the passenger with a disability who is using the animal, you must offer the passenger the opportunity to move with the animal to another seat location, if present on the aircraft, where the animal can be accommodated. As evidence that an animal is a service animal, you must accept identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal....

---

<sup>4</sup> 14 CFR 382.

<sup>5</sup> 14 CFR 382.13.

<sup>6</sup> 14 CFR 382.27(c)(8).

<sup>7</sup> 14 CFR 382.31.

<sup>8</sup> 14 CFR 382.81(c).

If a passenger seeks to travel with an animal that is used as an emotional support or psychiatric service animal, you are not required to accept the animal for transportation in the cabin unless the passenger provides you current documentation (*i.e.*, no older than one year from the date of the passenger's scheduled initial flight) on the letterhead of a licensed mental health professional (*e.g.*, psychiatrist, psychologist, licensed clinical social worker, including a medical doctor specifically treating the passenger's mental or emotional disability) stating the following:

- (1) The passenger has a mental or emotional disability recognized in the [DSM];
- (2) The passenger needs the emotional support or psychiatric service animal as an accommodation for air travel and/or for activity at the passenger's destination;
- (3) The individual providing the assessment is a licensed mental health professional, and the passenger is under his or her professional care; and
- (4) The date and type of the mental health professional's license and the state or other jurisdiction in which it was issued.<sup>9</sup>

Airlines are not required to accommodate "certain unusual service animals (*e.g.*, snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin. However, if an airline decides not to accommodate a certain animal, it must provide the passenger with a written explanation of its reasoning.<sup>10</sup>

#### *Reminders:*

- \* Airline may require 48-hour notice that a passenger will be traveling with an ESA.
- \* If the passenger will occupy more than one seat, the airline may charge additional fees.
- \* The airline may prohibit a passenger from sitting in an exit row seat if the passenger is traveling with an ESA.<sup>11</sup>
- \* Not all animals are treated equally. If an ESA is an "unusual" animal, encourage your patient to seek the airline's advance approval.

## Protection #2: Housing

Additionally, ESAs are protected by the Fair Housing Act, which requires landlords to accommodate ESAs in pet-free housing if needed to ensure that person's equal opportunity to use and enjoy that housing. According to the Department of Housing and Urban Development (HUD), housing providers must make reasonable accommodations for assistance animals, and "[p]ersons with disabilities may request a reasonable accommodation for any assistance animal, including an emotional support animal..."<sup>12</sup> This applies to a variety of housing situations: public housing, private apartments or rental companies, and university housing.

---

<sup>9</sup> 14 CFR 382.117(a)-(e).

<sup>10</sup> 14 CFR 382.117(f)-(g).

<sup>11</sup> 14 CFR 382.41.

<sup>12</sup> [https://www.hud.gov/sites/documents/servanimals\\_ntcfheo2013-01.pdf](https://www.hud.gov/sites/documents/servanimals_ntcfheo2013-01.pdf)

Persons with disabilities who seek to use assistance animals (including ESAs) in their housing must be accommodated, even if the housing otherwise bans its residents from having pets, or if it imposes restrictions upon the types of pets or animals that can reside in its property. “An assistance animal is not a pet. It is an 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 [... including] providing emotional support to persons with disabilities who have a disability-related need for such support.”<sup>13</sup>

To establish one’s right to an accommodation of their ESA, a person needs to show that he (1) has a disability, and (2) has a disability-related need for the animal. If those two requirements are met, then the person must be allowed to live with his animal in the property. The only exceptions to this requirement are: (a) if allowing the animal in the property would impose undue financial or administrative burdens upon the landlord or property; (b) if the specific assistance animal in question would pose a direct threat to others’ health and safety; or (c) if the specific assistance animal in question would cause substantial physical damage to the property. Animal breed and size limitations cannot be imposed upon assistance animals, and the nuances of these exceptions to the accommodation requirements are beyond the scope of this guide.

*Reminders:*

\* Housing applicants or residents with an assistance animal cannot be charged pet deposits or fees.

## How can I help?

If your patient will be traveling with an ESA, prepare your patient for travel.

While ESAs can play a positive role in the management and improvement of a patient’s mental health, there are many ESA-related stressors awaiting your patients. Here are a few things we recommend you discuss with your patient:

### Fake ESA Registries and Products

There is no official ESA registry. To use an ESA, your patient only needs a letter from you with the required language about the patient’s reliance upon that ESA. Unfortunately, there are many scams, products, and websites through which one can “register” their pet as



---

<sup>13</sup> Id.

an ESA. Many of these websites sell so-called “official” ESA vests or leashes, identification cards, or letters. We encourage you to discuss this with your patients and remind them that your letter is the only thing that matters, and no one can require them to purchase products or services to legitimize their ESA.

### No Visible Identification Required

When traveling with an ESA, your patient’s animal is not required to wear a vest or display identification. The only required validation of the animal’s role as an ESA is the documentation that you provide, and which is discussed earlier in this guide.

### Angry Travelers

Airports are pressure cookers these days, and many travelers are stressed from the security, limited food options, and flight delays. For your patients, this amounts to resentful and sometimes angry travelers who are suspicious of those traveling with ESAs, believing them to be gaming the system so their “pet” can fly for free. Also, because ESAs are not required to display identification, other passengers may confuse pets and ESAs.

Unfortunately, the prevalence of ESA scams has desensitized the public to the important role that ESAs serve for those individuals who truly rely upon them for therapeutic purposes. Instead of viewing the animal as a therapy tool, fellow travelers may be overly inquisitive with invasive questions, and they may challenge the animal’s role as an ESA. To minimize your patient’s stress while traveling, we encourage you to have an open discussion about how to handle these situations *before* your patient’s trip.

### Invasive Inquiries

ADA-protected service animals tend to care for individuals with visible disabilities, while ESAs tend to care for those with invisible illnesses. This can make it difficult to determine the validity of an individual’s claim that his or her disability requires the support of an ESA. Before your patient’s trip, we encourage you to reiterate that the law allows airline staff to ask only two questions about the animal: (1) “Is the animal required because of a disability?”; (2) “What work or task has the animal been trained to perform?”<sup>14</sup>

However, even after these two questions, it is often unclear as to whether an animal is a ESA or a pet. Due to the growing presence of fake ESAs, staff may further call into question a patient’s need of an ESA. This confusion can cause airline staff to ask invasive, unlawful, or discriminatory questions that embarrass or offend your patients. *The growing number of ESAs at the airport is not your patient’s responsibility to remedy or address.* We recommend reminding your patient that he or she can always ask to speak to a supervisor. You may also want to review the pertinent laws with your patients before travel, ensuring that they understand their rights and are comfortable asserting them.

---

<sup>14</sup> Learn more: <https://www.newyorker.com/magazine/2014/10/20/pets-allowed>

## A Provider's Liability

Unlike service animals, which are intentionally socialized to behave in any environment, ESAs are neither vetted nor trained. Therefore, bringing an ESA into a new environment, like an airport, may cause that animal to behave erratically or unpredictably. There have been widely publicized news stories about ESAs biting airline staff, fellow passengers, or even their owners.

To ensure that you aren't held responsible for any harm that your patient's ESA may cause, we recommend that you meet and observe the animal prior to travel. Many mental health providers with whom we work are very familiar with their patients' ESAs, which often accompany them to routine therapy visits. If your patient's ESA is a dog, you may also require that the animal meet certain behavioral standards before you will provide the necessary documentation or, alternately, that the patient purchase dog-bite insurance prior to your providing the necessary documentation. This step is often unnecessary with smaller animals which can travel in onboard bags or be easily restrained, but it may be worth considering for large breed dogs or animals.

## What's next?

As a health care provider, you may have questions like:

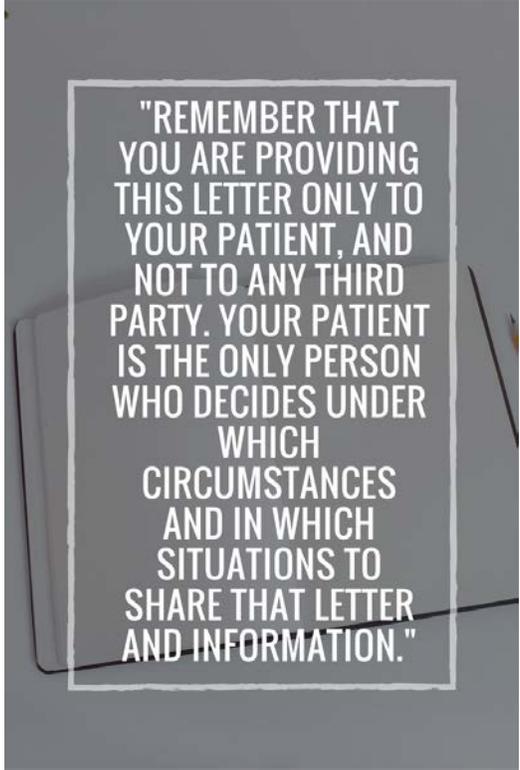
- ✓ What information must I include in an ESA letter to ensure that my patient can exercise his/her rights during air travel and in housing?
- ✓ Under what circumstances can I deny a patient's request for an ESA letter? How should I handle that situation to avoid undermining my therapeutic relationship with my patient?
- ✓ What information does HIPAA permit me to disclose to an airline that contacts me about my patient's ESA? Which authorizations does my patient need to sign?
- ✓ Do I need to have a written policy that outlines the terms under which I am providing an ESA letter?
- ✓ What types of animals can be ESAs?

Some mental health providers also get creative and use their patients' reliance on their animals to the benefit of their treatment. To do this, you might invite dog behavioralists into your practice to coordinate ESA training classes, therapy groups, or related programs. Just be sure that you have the necessary contracts, liability disclosures, and privacy notices in place before offering such a program.

## A few final reminders

Remember that you are providing this letter only to your patient, and not to any third party. Your patient is the only person who decides under which circumstances and in which situations to share that letter and information. It is also important to remember that your patient's specific diagnosis need not be included in the letter. Instead, it is appropriate to simply state that your patient has a DSM-recognized diagnosis for which her ESA is a necessary accommodation. Including too little information may cause your patient to be denied travel or housing. But if your letter includes unnecessary details about your patient, she might be hesitant to share that letter with those responsible for providing accommodations. Getting the substance and form of the letter correct is crucial.

If you have questions or concerns about the nuances of providing emotional support animal documentation to your patients, or about any other aspect of your practice, [schedule a consultation with a Jackson LLP attorney online now](#). We are happy to work with you to review best practices on this topic and to create standards to be followed by your practice when responding to patients' requests for ESA letters.



"REMEMBER THAT YOU ARE PROVIDING THIS LETTER ONLY TO YOUR PATIENT, AND NOT TO ANY THIRD PARTY. YOUR PATIENT IS THE ONLY PERSON WHO DECIDES UNDER WHICH CIRCUMSTANCES AND IN WHICH SITUATIONS TO SHARE THAT LETTER AND INFORMATION."