

18.0 DISABILITY RIGHTS IN DISASTERS

OBLIGATIONS OF UNIT OF LOCAL GOVERNMENT EMERGENCY MANAGEMENT

(Also refer to Chapter 2.1)

18.1 Overview

One of the primary responsibilities of state and local governments is to reduce vulnerability of people and communities to damage, injury, and loss of life, and property resulting from disasters and emergencies. Texas Gov't Code Ch. 418.

State and local governments must comply with Texas Human Resource Code and Title II of the ADA in emergency and disaster related programs, services, and activities they provide. TX. Hum. Res. Code Ch. 121 et seq., 42 U.S.C. § 12132; *see generally* 28 C.F.R. § 35.130, § 35.149. This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties.

Under Title II of the ADA, emergency programs, services, activities, and facilities must be accessible to people with disabilities. This also requires making reasonable modifications to policies, practices, and procedures when necessary to avoid denying participation or benefit of a program, service, or activity. Section 504 of the Rehabilitation Act may also be applicable depending on the type of service or activity provided by the local jurisdiction. 29 U.S.C. § 701 et seq.

18.2 Common Issues

- Lack of inclusive emergency preparedness planning
- Inaccessible emergency notifications
- Inaccessible emergency shelters
- Equitable access to emergency services, including evacuations

18.3 FAQs

Q. 18-1 How do you ensure emergency services are equitable for individuals with disabilities?

Contact the local office of emergency management within either your county or municipality to ask questions based on the individual's need. For example, if an individual relies on public or paratransit services, and in the event of a potential disaster is considering evacuation, what are the thresholds for when transportation services will terminate? Is there a voluntary registry to be notified of such occurrences? If an individual needs to be evacuated, can the local jurisdiction evacuate those with service animals or a fixed-frame wheelchair?

Q. 18-2 *Do warnings and notifications have to be accessible to those with hearing and visual impairments?*

Yes. State and local governments must use warning methods and emergency notifications that ensure all residents have the information necessary to make sound decisions and take appropriate action. Telecommunications must have visual and audio supports to supplement content, either through interpretation services, captioning, and if posted on-line, screen reader availability.

Q. 18-3 *Do mass care and emergency shelters have to accommodate individuals with disabilities?*

Yes. ADA and Section 504 require those entities providing services to be conducted in such a way that affords individuals with disabilities the same benefit received by others (i.e., safety, comfort, food, medical care, and support of family and friends). Buildings must be physically accessible, without any architectural barriers, but they must also provide the opportunity for continuum of care (i.e., ability to allow service animals, appropriate medical care and attendant services, modifications to feeding program to address nutritional needs, and trained staff to address both physical and mental needs).

FEMA (*Also refer to Chapter 2.2*)

18.4 Overview - FEMA

Individuals with disabilities must be afforded an equitable opportunity to participate and benefit from FEMA's programs. Section 504 of the Rehabilitation Act of 1973 is applicable because FEMA is a federally funded program, thus FEMA must ensure policies and procedures do not discriminate against individuals with disabilities. 29 U.S.C. § 701 et seq. Section 308 of the Stafford Act also affords nondiscrimination in disaster assistance and specifically regulates equitable and impartial relief operations. 42 U.S.C. § 5151.

18.5 Common Issues

- Inaccessible application process
- Failure to make reasonable accommodations to policies/procedures
- Ineffective Communication

18.6 FAQs

Q. 18-4 *What if I do not comprehend the FEMA application?*

FEMA must provide assistance if the applicant cannot understand the application itself or the application process. FEMA must provide translators or physical assistance in completing the application process to afford an equitable opportunity for those with English language deficiencies, visual or hearing impairments, or cognitive concerns. FEMA has a variety of options to apply for assistance, either online at

<https://www.disasterassistance.gov/>, by phone 1-800-621-FEMA (3362) or 1-800-462-7585 (TTY); or in-person at a shelter or Disaster Recovery Center.

Q. 18-5 *What if my disability prevented me from applying for FEMA assistance within the 60-day initial timeframe?*

An applicant may request a reasonable accommodation to FEMA's policy regarding the timeframe. The applicant must establish how the disability prevented them from applying to FEMA in a timely manner. For example, if an individual with a disability experienced additional medical needs, which resulted in hospitalization, a reasonable accommodation for extended time to apply might be appropriate. This same approach may also be used for the 60-day timeline in appealing FEMA denials.

Q. 18-6 *What if FEMA does not take into account my disability when determining if my residence is safe from disaster-related hazards?*

An applicant may disclose on the FEMA application any functional or access needs. However, this disclosure may not always ensure FEMA's ability to accurately determine the habitability of a residence. During the inspection process, an applicant should discuss any health concerns or mobility concerns that would prevent them from the same use and enjoyment of the residence as a non-disabled individual would be afforded. For example, if the residence has any airborne or environmental hazards created by the disaster, which could impair the individual's ability to stay safely in the residence, and are not taken into account, this denies equitable access to housing assistance under FEMA's programs. Thus, a modification to FEMA's habitability standard as a reasonable accommodation would ensure individuals with underlying health conditions are not prohibited from benefiting from FEMA's programs. In addition, if the disability creates any type of safety concerns due to mobility or limited sensory awareness, and the residence contains potential hazards for the individual, the residence should be deemed unsafe to occupy. Failure to consider the needs and impact of the disability within the environment discriminates against individuals with disabilities.

Q. 18-7 *May an individual with a mental health impairment, residing in a temporary housing unit provided by FEMA, request a reasonable accommodation to FEMA's recertification process due to the exacerbation of the disability?*

Yes. FEMA's recertification process requires timely visits from FEMA employees to ensure the applicant is making progress towards a Permanent Housing Plan ("PHP"). However, sometimes these reoccurring visits may create an unwanted severity of a mental illness. While disaster trauma is a concern for all survivors, those with pre-disaster mental impairments may experience an intensity that creates an ineffective situation when working towards a PHP. The constant reminder of the situation and the inability to provide for their own stability may create a mental strain where the applicant becomes non-responsive or fails to meet deadlines. The applicant should engage with FEMA to determine what reasonable accommodations may be appropriate. For example, appropriate reasonable accommodations might be decreasing the number of timely visits, or allowing alternatives to show verifiable documentation for PHP.

Q. 18-8 *What do I do if FEMA has failed to accommodate my disability?*

Unfortunately, discrimination may occur at various times in dealing with FEMA. If at any time through the application process, eligibility determination, or administration of FEMA's programs, an individual with a

disability has been denied access or an opportunity to benefit from FEMA's program, the situation should be looked at more closely. Seeking legal advice as quickly as possible would be advised to ensure the applicant is not missing timelines within FEMA's informal procedures and also to consider the breadth of the entire situation. An applicant may also contact FEMA's Office of Equal Rights at (202) 212-3535, or the main FEMA number at (800) 621-3362, or (800) 462-7585 (TTY), or visit <https://www.fema.gov/about/offices/equal-rights>.

HOUSING (Also refer to Chapter 4)

18.7 Overview – Housing

In the event of a disaster or emergency, certain rights and remedies exist for all owners and occupants under Texas statutes and common law. However, in addition to the substantive legal issues related to housing, individuals with disabilities are afforded protections under federal law to ensure their rights to equitable housing opportunities are upheld. Under the Fair Housing Act ("FHA"), Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("504") and state law, Ch. 121 of the Texas Human Resource Code, safeguards are utilized to prohibit discriminatory conduct toward individuals with disabilities. 42 U.S.C. §§ 3601 et seq., 42 U.S.C. § 12101, 29 U.S.C. § 701 et seq.

FHA protects people from a landlord or other housing provider's discriminatory behavior or actions based on a tenant's disability or that of their guests. It applies to most housing situations. Examples: landlords, apartments, trailers, rental homes, public housing, and numerous others. 42 U.S.C. §§ 3601 et seq. (2019); see Housing Discrimination under the Fair Housing Act, HUD.gov, https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview.

ADA prohibits discrimination because of someone's disability by state and local governments. It also prohibits discrimination in most public places. Examples: apartment leasing offices, public housing, housing authorities, transportation providers, and shelters. 42 U.S.C. § 12101; see Americans with Disabilities Act, U.S. Department of Justice Civil Rights Division Disability Rights Section, <https://www.justice.gov/crt/disability-rights-section>; <https://www.ada.gov/cguide.htm#anchor62335>. Section 504 ensures people are not excluded from programs or activities funded by the federal government or operated by a government agency like Housing and Urban Development ("HUD"), FEMA, or Health and Human Services ("HHS"). Examples: public housing, Housing Choice vouchers, shelters, some housing for people who are seniors or people with disabilities, and some nursing homes and group homes. 29 U.S.C. § 701 et seq.; see Rehabilitation Act, U.S. Department of Justice Civil Rights Division Disability Rights Section, <https://www.ada.gov/cguide.htm#anchor65610>.

18.8 Common Issues

- Failure to provide reasonable accommodations (i.e., to the lease agreement, a repair policy, HOA restrictions, housing authority, landlord rules, or city regulation/ordinances)
- Residence uninhabitable due to disability related needs
- Inaccessible housing

18.9 FAQs

Q. 18-9 Must I still pay rent if my residence is uninhabitable?

Yes. At least until your contractual obligations are concluded either by termination of your lease agreement with the landlord or by an adjudication. However, if your landlord has refused to make repairs, after a reasonable time to ensure habitability, a reasonable accommodation may be requested to terminate the lease agreement or, if applicable, to provide an alternative residence.

Q. 18-10 Does the habitability standard in Texas account for the needs of individuals with disabilities?

A disaster-related hazard, left unmitigated, might substantially impact the health of an individual with a disability. Texas Property Code § 92.052(a) addresses the landlord's duty to repair or remedy if the condition materially affects the physical health or safety of an ordinary tenant. A landlord might argue the condition would not impact an ordinary tenant under Texas law and thus he has no duty to repair. This is not accurate, as the FHA would ensure repairs or mitigation of the hazard for an individual with a disability to ensure the same use and enjoyment of the residence as a non-disabled peer would enjoy.

Q. 18-11 When must a public housing authority relocate an individual due to a disaster damaging the residence?

A public housing authority ("PHA") must relocate any resident when displaced from a federally funded program. The Uniform Relocation Act ("URA") is a federal law to ensure recipients who benefit from federally funded programs are not disproportionately impacted due to displacement and to prevent homelessness. 42 U.S.C. §4601 et seq., 49 C.F.R. pt. 24. Due to the large number of individuals with disabilities who rely on benefits for economic assistance and who are also below the adjusted median income, they also rely on public housing assistance. If the individual with a disability is part of a project-based housing program, the PHA has an obligation to relocate (or provide financial assistance) to another accessible, safe, and sanitary unit.

Q. 18-12 When may I request a reasonable accommodation?

Any time when you are being denied access to, the benefit of, or use and enjoyment of your residence, a disaster or emergency notwithstanding, reasonable accommodation requests may remedy an unlawful policy, procedure, or practice. A reasonable accommodation request is made when someone asks for a change or exception to a rule, practice, or service that may be necessary for a person with a disability to have the same opportunity as someone without a disability to use and enjoy their home (or amenities owned by or controlled by your landlord or HOA). For example, in the event of a disaster or emergency, a disability may prevent an individual from complying with an HOA expectation to clean up or remove debris from their property. A reasonable accommodation to extend the timeframe for HOA compliance might be appropriate to afford the individual additional time to arrange supports. If a disability is exacerbated and prohibits the individual from the same use and enjoyment of their residence, a request for a reasonable accommodation may start the process of remedying the situation.

In the event discriminatory conduct persists, immediately seek legal advice. Additional option to consider: filing a Texas Workforce Commission ("TWC") housing complaint. See TWC website

<https://www.twc.texas.gov/partners/how-submit-housing-discrimination-complaint> for details or call: 512-463-2642 (Austin area and out-of-state) or 888-452-4778 (Texas only).

The Department of Justice (“DOJ”) also addresses housing violations under the FHA. See <https://www.justice.gov/crt/housing-and-civil-enforcement-section> or call (202) 514-4713; –(202)305-1882 (TTY). Call the Housing Discrimination Tip Line to report an incident of housing discrimination: 1-800-896-7743.

EMPLOYMENT (Also refer to Chapter 6)

18.10 Overview – Employment

The Americans with Disabilities Act and state laws protect individuals with disabilities from discrimination in employment. The law covers private employers with 15 or more employees. The law also covers state government agencies, local government offices, employment agencies, and labor unions. Finally, even private employers with fewer than 15 employees may be covered if they receive federal money. 42 U.S.C. §§ 12101 et seq.; 29 CFR pts. 1630, 1602; Tex. Hum. Res. Code Ch. 121 et seq.

The law makes discrimination illegal in all employment practices. This includes job applications, hiring, firing, promotion, pay, training, and other terms, conditions, and privileges of employment. The law also applies to recruitment, advertising, layoff, leave, benefits, and all other employment-related activities.

18.11 Common Issues

- Failure to accommodate an individual with a disability in the workplace
- Unlawful termination

18.12 FAQs

Q. 18-13 Must my employer provide reasonable accommodations in the event of a disaster?

It depends. The law requires employers to engage in an interactive process to determine appropriate reasonable accommodations for employees with disabilities who need an accommodation to perform the essential functions of their job. The ADA provides protection regardless of whether there is a disaster, but, in a disaster, a person with a disability who previously did not need an accommodation may suddenly need one. An employer still has to provide a reasonable accommodation to an employee with a disability, even if it only became necessary because of the disaster. An example of this may include someone who is immunocompromised and may need to work from home if she or he is at particular risk from contracting a communicable disease. In this example, working from home could be considered a reasonable accommodation under the Americans with Disabilities Act.

Q. 18-14 How does an individual with a disability request a reasonable accommodation in the workplace?

If a person with a disability needs an accommodation at work, they usually have to ask for one. Although there are no magic words that have to be used in the request, using the term “reasonable accommodation” can help. A request may be oral, but it is usually a good idea to put it in writing. The employer may have special forms for an accommodation request and it is usually a good idea to use them, though it is not required. The employee should ask for the accommodation as soon as they think they need one. The employer has the right to request limited medical information in support of the accommodation request.

The request should be made to the supervisor or to the company’s personnel or human resources department.

While requesting an accommodation, it is recommended to give examples of the requested accommodation. For example, if the request is to be reassigned to a different job, the request should make that clear. The main thing is to let the employer know that a change or adjustment is needed because of a disability.

Q. 18-15 What do I do if I feel I have been discriminated against or unlawfully terminated because of my disability?

The Equal Employment Opportunity Commission investigates complaints of disability discrimination. For additional information on filing an EEOC complaint, please see: <https://www.eeoc.gov/how-file-charge-employment-discrimination>.

For additional information about employment rights generally and in times of disaster like the COVID-19 pandemic, please see:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

<https://www.eeoc.gov/laws/guidance/your-employment-rights-individual-disability>

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

<https://www.disabilityrightstx.org/en/handout/employment-discrimination/>

<https://www.disabilityrightstx.org/en/handout/disability-discrimination-at-work-now-that-covid-19-is-here/>

<https://media.disabilityrightstx.org/wp-content/uploads/2020/03/31210515/covid19-employment-rights-DRTx-EJC-LSLA-WDP-FINAL.pdf>

VOTING (Also refer to Chapter 12)

18.13 Overview – Voting

Voting in Texas is governed by the Texas Election Code. In the event of a disaster or emergency, all Texans are afforded alternatives when documentation has been damaged or lost.

<https://www.votetexas.gov/harvey/index.html>. In addition, individuals with disabilities are afforded additional protections under ADA, 504, and chapter 121 of the Texas Human Resource Code. See also <https://www.votetexas.gov/voters-with-special-needs/>.

18.14 Common Issue

- Lost identification

18.15 FAQs

Q. 18-16 What do I do if I have lost my ID?

Generally, a voter with a disability who doesn't have a photo ID has two options:

1. Get a permanent exemption from the photo ID requirement if he or she:

- Can provide proof (benefit verification letter) to the county voter registrar that he or she has a disability determination from the U.S. Social Security Administration, OR
- Is a veteran who can provide proof (rating percentage letter) to the county voter registrar that he or she has a disability rating of more than 50% from the U.S. Department of Veterans Affairs; AND
- Complete the Disability Exemption Form on the Texas Secretary of State website and mail it, along with the proof of disability letter, to the county voter registrar so that it is received at least 30 days prior to an election. <https://www.sos.state.tx.us/elections/forms/pol-sub/request-for-exemption-permanent.pdf>.

2. If the voter is eligible to vote by mail because of a disability, the voter may do so without having to provide a photo ID. A voter with a disability who isn't eligible for the exemption and doesn't want to vote by mail is bound by the same requirements for a photo ID as voters who don't have a disability.

Voters can also call the Disability Rights Texas Voting Rights Hotline at 1-888-796-VOTE (8683) or for general contact information, see <https://www.disabilityrightstx.org/en/contact-us/>. For general resources, please see: <https://my.lwv.org/texas>.

For additional information about voting by mail in light of COVID-19, please see <https://www.disabilityrightstx.org/en/handout/covid-19-voting-questions/>.

SOCIAL SECURITY *(Also refer to Chapter 7)*

18.16 Overview – Social Security

Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) benefits are the largest of several Federal programs that provide assistance to people with disabilities. While these two programs are different in many ways, both are administered by the Social Security Administration (“SSA”) and only individuals who have a disability and meet medical criteria may qualify for benefits under either program. SSDI pays benefits to an individual with a disability and certain members of the family if they are "insured," meaning they worked long enough to be vested in receiving benefits and paid Social Security taxes, while SSI pays benefits based on financial need.

18.17 Common Issues

- Inability to receive payments
- Accessing SSA offices

Q. 18-17 How can I ensure receipt of SSDI/SSI payments in the event of a disaster?

The most efficient way to ensure continuity of SSDI and SSI payments is by setting up direct deposit into an account at a banking institution. Federal law now mandates that all Federal benefit payments be made electronically. To switch if you still receive paper checks, visit <https://godirect.gov/gpw/> or call the Treasury’s Electronic Payment Solution Center at 1-800-333-1795. <https://www.ssa.gov/deposit/>. *See generally* <https://texaslawhelp.org/article/social-security-and-ssi-after-disaster>.

Q. 18-18 How do I contact SSA in the midst of a disaster or emergency?

If SSA offices stop in-person services to the public due to a disaster/emergency, people needing assistance can still get help from SSA by using the online services or calling SSA 1-800-772-1213 <https://www.ssa.gov/onlineservices/>. The SSA Hearing Office can help with the following issues: confirming availability for a telephone hearing or documenting that the person would like a postponement if they would prefer to wait until an in-person or video hearing is available, updating records to ensure SSA has the appropriate telephone number and address, and providing status for pending hearings. You can find your local hearing office at 1-800-772-1213 or 1-800-325-0778 (TTY) or online https://www.ssa.gov/appeals/ho_locator.html.

Q. 18-19 May I still receive SSA benefits if I also receive unemployment assistance due to a disaster/emergency?

Maybe. While it is possible to receive both unemployment and SSA benefits, it is not usual. Also, receiving SSA benefits may reduce your unemployment compensation. Unemployment assistance at the state (Texas Work Force Commission) or federal level (FEMA’s disaster unemployment assistance) are contingent on the inability to stay employed, and anything received is considered taxable income. *See* <https://www.twc.texas.gov/jobseekers/unemployment-benefits-services;> <https://www.ssa.gov/coronavirus/assets/materials/economic-impact-payments-for-social-security-and-ssi-recipients.pdf>.

Protection and Advocacy for Beneficiaries of Social Security (PABSS) at Disability Rights Texas may be able to assist. To complete an intake application, call 1-800-252-9108 Monday through Friday, 9:00 a.m. to 4:00 p.m., or apply online at any time at <https://securec24.ezhostingserver.com/drtx-org/WebIntake/>. Individuals who are deaf or hard of hearing can call the toll-free video phone at 1-866-362-2851 or the Purple 2 video phone at (512) 271-9391. See <https://media.disabilityrightstx.org/wp-content/uploads/2018/08/15005002/PABSS-brochure-large-print-aug-2015.pdf>.

Another resource might be Community Work Incentive Coordinators (CWICs) at Work Incentives Planning and Assistance (WIPA) projects. WIPA projects provide free benefits counseling to eligible Social Security and Supplemental Security Income beneficiaries who have a disability to help them make informed choices about work. WIPA projects are staffed by Community Work Incentive Coordinators (CWICs) who provide in-depth counseling about working, earning more money, and how working may affect your benefits. To find the local CWIC/WIPA provider visit <https://choosework.ssa.gov/findhelp/> or call Ticket to Work at 1-866-968-7842 (TTY 1-866-833-2967).

Q. 18-20 May I take legal action if I have been taken advantage of as a member of a vulnerable class?

It depends. If you have sustained economic injury, there is a possibility to pursue legal remedies. It would depend on the specific details of your case. If you receive calls, emails, or other communications claiming to be from the U.S. Treasury Department, the Internal Revenue Service (IRS), the Social Security Administration (SSA), or another government agency offering related grants or economic impact payments in exchange for personal financial information, or an advance fee, or charge of any kind, including the purchase of gift cards, please do not respond as it is likely fraud or a scam. Generally, these agencies will correspond either by mail notifications or by on-line accounts set up by user.

Contact an attorney to discuss the details of your case, or you may contact the Office of the Inspector General of SSA to report suspected fraud or scams at <https://oig.ssa.gov/>, Texas Attorney General at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint> or call (800) 621-0508, file Better Business Bureau complaint at <https://www.bbb.org/consumer-complaints/file-a-complaint/get-started> or call 1 (703) 276-0100 or even file a Federal Communications Commission complaint at <https://consumercomplaints.fcc.gov/hc/en-us> or call 1-888-225-5322; TTY: 1-888-835-5322, or Videophone: 1-844-432-2275.

HEALTH CARE (Also refer to Chapter 10)

18.18 Overview - Health Care

Following a disaster and emergency, people with disabilities must be afforded a continuity of care in the least restrictive and most integrated environment possible. Some individuals with disabilities rely on critical support services funded by state and federal programs for continued community integration, while other individuals may reside in state-supported facilities. In the event of a disaster, continuity of these

support services is critical to ensure the physical and mental well-being of residents in long-term care facilities and would ensure continued autonomy for those in the community to prevent unnecessary institutionalizations.

Continuity of Services. The Texas Administrative Code (TAC), Title 26, Part 1, Chapter 558, § 558.256, relating to Emergency Preparedness Planning and Implementation, applies to all categories of service on a Home and Community Support Service Agency (HCSSA) license. Sections 558.403(w)(2) and 558.871 contains additional licensing standards for a hospice inpatient unit.

An HCSSA is responsible for the care and services it agrees to provide to its clients and for the coordination of care. For a client whose services provided by the agency must continue uninterrupted to maintain the client's health and safety, the response phase of an HCSSA's emergency preparedness plan must include procedures for communicating with other healthcare providers that can provide the necessary services during an emergency.

The rules do not require HCSSAs, other than hospice inpatient unit, to evacuate or transport clients in an emergency or to continue to provide care to clients in emergency situations that are beyond the agency's control and that make it impossible to provide services. Because HCSSA clients do not receive 24-hour care from the HCSSA and because they reside in the community, clients have the same choices and options as other members of the community to shelter in place, evacuate, or arrange for evacuation through family, community resources, or by calling 2-1-1.

Unnecessary Institutionalizations

The right of an individual with a disability to not be unnecessarily institutionalized is delineated in the U.S. Supreme Court case of *Olmstead v. Georgia*. This 1999 decision was based on the Americans with Disabilities Act (ADA) Title II and incorporates the "integration mandate." The integration mandate requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of the qualified individual with disabilities."

The *Olmstead* case only involved one type of institution, which was a psychiatric hospital. Courts quickly made clear that *Olmstead* applied to all state and Medicaid funded institutions, including nursing facilities. Because of the *Olmstead* decision, the State of Texas has developed a variety of programs for individuals who qualify for Medicaid.

However, as a result or in the aftermath of a disaster, some individuals with disabilities are unnecessarily institutionalized in restrictive placements such as nursing homes because agencies that provide general disaster recovery resources are often less familiar with the continuum of services and placements for people with disabilities.

18.19 Most Common Issues

- Continuum of Care
- Forced Institutionalizations
- Unreasonable delay or denial of community integration and continuity of services

18.20 FAQs

Q. 18-21 What do I do if I am an individual with a disability who relies on critical support services, and I have been displaced from my residence and have not received my services?

First, contact the individual who oversees your services, referred to as a service coordinator, case manager, or direct service manager, to determine continuity of services. In some cases, previous arrangements with contiguous jurisdictions might have been pre-arranged. If this option does not produce a remedy, contact the HHSC regional program manager for the geographic area in which you are located, <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/home-community-support-services-agencies/hcssa-emergency-preparedness>, or the local mental and public health authority for the geographic area in which you are located. In the event you are relocated, you may also want to update your demographic information at <https://www.yourtexasbenefits.com/Learn/Home> or contact HHSC customer service at 877-541-7905.

Q. 18-22 What if a resident wants to leave or evacuate a nursing facility?

Normally, there is nothing preventing a nursing home resident from leaving a nursing facility at any time, provided that they have somewhere to live and the appropriate supports and services to maintain their health and safety. However, attempting to leave during a disaster or emergency could possibly be complicated by a “shelter in place order” within your geographic area or if your facility is under quarantine because of a suspected communicable disease.

The State of Texas does have a variety of programs that provide in-home supports and services that are available to nursing home residents that qualify for Medicaid. These programs could potentially allow a resident to leave a nursing facility and return to the community. Applying for these programs can often be confusing. You should ask the service coordinator of your managed care company (MCO) or the social worker at your particular facility to inquire as to what in-home supports and services are available should you choose to leave.

Q. 18-23 What if I have a dependent or family member who currently resides in a state supported hospital or state supported living center and I am concerned about their well-being after a disaster?

Facility administrators and government officials are all cognizant of the fact that movement of any critical care patient from a hospital, or evacuation of a substantial number of individuals, increases the potential for morbidity and mortality risks. Because of the inherent risks that people with medical needs face during the evacuation of a medical facility, certain critical-care patients should not be moved unless absolutely necessary. Experts in emergency management and health care endorse the concept of sheltering-in-place and support efforts to harden structures so that individuals may be safely sheltered in place.

The administrators of each facility, in close coordination with their local officials and emergency management, determine the need to evacuate or shelter-in-place. Local and regional authorities will utilize the capabilities of volunteers Medical Reserve Corps (MRC), Citizen Corps, Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP), professional associations, and other non-governmental agencies to support the response to the emergency.

Facilities licensed and regulated by HHSC are required to have disaster plans that address minimum requirements, such as, but not limited to, alternative energy sources, communication, and continuity of services. Contact the facility for specific procedures.

Q. 18-24 In the event of a shelter-in-place order, may a resident still receive visitors at a long-term care facility?

In some situations, state agencies may restrict visitations to protect the most vulnerable populations and for the interest of public safety and welfare. To stay up to date on guidelines, contact your local mental or public health authority, or the Office of Emergency management within your jurisdiction. To accommodate this need, facilities may be encouraged to use alternate means of communication such as FaceTime, Skype, or other video or audio systems for residents to maintain contact with family and friends.

Q. 18-25 In the event of a disaster or emergency, will residents of long-term care facilities who are forced to shelter-in-place or relocated still be able to see their doctor, when not within their physical location?

Generally, yes. During disaster declarations, the Governor may suspend or grant the Centers for Medicare and Medicaid Services (CMS) waivers that would allow the utilization of telehealth services. This waiver or temporary suspension negates the requirement that physicians and non-physician practitioners perform in-person visits for nursing home residents.

Q. 18-26 I have been diagnosed with mental illness (MI), an intellectual developmental disability (IDD), or related condition, and referred to a nursing facility. Are the Preadmission Screening Resident Review (PASRR) Requirements still in place?

Yes and no. While specialized services are still available in nursing facilities for persons with MI, IDD, or a related condition, in the event of a disaster or emergency, the Center for Medicare and Medicaid Services (“CMS”) may institute waivers allowing states and nursing homes to suspend PASRR assessments. For example, a resident with MI, IDD, or a related condition may be admitted for 30 days as a new patient without the PASRR assessment but should receive their assessments as soon as resources become available.

Q. 18-27 What if I need help understanding or exercising my rights in a nursing home?

If you are a person with a disability in the state of Texas and you are experiencing a legal problem, are having difficulty obtaining disability services, or are having your rights violated, seek legal advice. Disability Rights Texas (DRTx) is a nonprofit in Texas with experience navigating the community integration of people with disabilities. With advocacy, many such individuals can access Medicaid waiver programs that can provide staff support in a community-based residence that allows more freedom. This advocacy requires knowledge of the complex system of long-term supports and services, where different programs serve different age and disability groups. It is very likely that there are impacted individuals not receiving Medicaid supports and services (e.g., nursing, prescription medications, community waivers, and durable medical equipment), and these individuals have been unnecessarily institutionalized, or at risk of unnecessary institutionalization. Call the intake line at 1-800-252-9108 Monday through Friday, 9:00 am to 4:00 pm, or you can apply online at any time at <https://securec24.ezhostingserver.com/drtx-org/WebIntake/>.

To file a complaint against a nursing facility, home health, assisted living facility, or state supported living centers, contact: Texas Health and Human Services Complaint and Incident Intake at 1-800-458-9858; or <https://hhs.texas.gov/about-hhs/your-rights/complaint-incident-intake>. For more general information and to learn about your rights, contact the Office of the State Long-Term Care Ombudsman at 1-800-252-2412 or https://apps.hhs.texas.gov/news_info/ombudsman/.

EDUCATION (Also refer to Chapter 14)

18.21 Overview – Education

In the event of disasters and emergencies, students with disabilities are entitled to continuity of programming and equitable access. Federal laws that afford students with disabilities protections are the Individuals with Disabilities Education Act (“IDEA”) or Section 504 of the Rehabilitation Act (“504”). 20 U.S.C. § 1412 and 29 U.S.C. § 701 et seq. Depending on the nature of the event and subsequent impact on families and individuals, programming and accessibility options may vary. *Please see Ch. 14 for specific information* on McKinney-Vento Act and displaced students in attendance of public schools.

If the disaster leads to a virtual or an in-home instructional environment, where instruction is teaching through technology and will be the method provided for all students, the entity must also ensure that the alternative instruction affords a student with a disability an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

18.22 Common Issues

- Inequitable access to educational programming
- Continuity of programming

18.23 FAQs

Q. 18-28 My family has been displaced from our residence due to a disaster, however, I have no idea if or when we could return. Can my child attend the temporary district we have relocated to?

Yes. McKinney-Vento guarantees the right of homeless students to immediate enrollment. When displaced, the Texas Education Code allows a homeless student to remain in the district of origin or attend any school district in Texas where the youth is temporarily located. *See Chapter 14.*

Q. 18-29 I am in college and my classes are now online only. Will they be accessible?

Talk to the school’s disability services office and your professors to review your current accommodations and to make any adjustments that are necessary. Federal law requires that schools with online classes

communicate with students through one of several types of technology, which can include email. Teachers must also have substantive communication with students (either individually or collectively) on a regular basis. In addition, all media and documents must be accessible to those individuals with vision and hearing impairments. Accessibility and equal opportunity issues might range from captioning of a live lecture to adaption of methods for the student to demonstrate content knowledge.

Q. 18-30 My higher education institution is still holding classes, but I can't go because I am under quarantine or have a disability that puts me at higher risk. What now?

Talk to your professors and your school's disability services office to set up a distance-learning plan.

Start with contacting the school's disability services office because they should be the point of contact with the most information. It's suggested to talk to your professors and teachers also, so they are aware of the situation. If you have a vision or hearing disability, make sure to discuss how they can make any lectures or materials accessible to you. Schools have the flexibility to provide distance learning to students when they cannot attend, or when on-campus classes have been suspended. Even if your classes are not being disrupted now, it's a good idea to create a plan in advance.

Q. 18-31 My child has an IEP and receives educational supports, must the school still follow if implementing virtual learning?

Yes. Neither state nor federal law provides flexibility to the local education agency (schools, "LEA") in times of emergency regarding their obligation to provide Free and Appropriate Education ("FAPE") to students receiving special education services. However, if an LEA closes its schools because the functioning or delivery of educational services is disrupted and does not provide any educational services to the general student population, then an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's Individualized Education Program (IEP). In addition, the Annual Review and Dismissal (ARD) committee would be required to make an individualized determination as to whether compensatory services are needed to make up for any skills that may have been lost because of an extended school closure.

If schools are closed but the LEA continues to provide educational opportunities to the general student population during the closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. The LEA must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student's IEP.

If there are services, accommodations, and modifications required by the student's IEP that cannot be provided during this time, the student's ARD committee must determine which services it can provide to meet the student's needs (34 C.F.R. § 300.324(a)(4)). Please see the Texas Education Agency website for procedural steps. <https://tea.texas.gov/texas-schools/health-safety-discipline/covid/covid-19-support-special-education-0>.

Q. 18-32 *My child is on a 504 plan and receives accommodations, must a new school follow the established 504 plan, or if virtual learning is being offered will accommodations remain in place?*

Yes. Section 504 of the Rehabilitation Act also affords FAPE. Thus, a new receiving school must follow the current plan until the committee agrees to amend it, or in the event of a virtual learning environment, the school must ensure equitable access and a continuation of programming.