

Clinical Update

Client Requests for Emotional Support Animal (ESA) Letters

Federal laws on Emotional Support Animals (ESA) have changed since *The Advocate Magazine* published its article on ESA letters four years ago. (See “Read the original article” box on this page.) Since 2018, state regulatory bodies have also clamped down harder on the practice of writing ESA letters. In this article, I’ll discuss some of these important updates.

ESAs No Longer Protected for Air Travel (But Still Protected for Housing)

In my previous article, I explained that federal law protected ESAs in only two contexts—air travel and housing. In other words, no one was required to accommodate the presence of an ESA outside of those two contexts. That’s no longer the case.

On 12/10/2020, the U.S. Department of Transportation (DOT) amended 14 CFR, Part 38 to clarify that only service animals—not ESAs—would be required to be accommodated for air travel.

As explained in my previous article, ESAs are different from service animals. Service animals are trained to perform specific duties on the behalf of an individual with a disability, and those duties are necessary for the individual to enjoy access to myriad community services. Conversely, ESAs are not necessarily trained to perform specific duties—their mere presence alleviates emotional or psychological distress.

A service animal, according to the DOT, [bit.ly/3SY6NK2](https://www.dhs.gov/sites/default/files/2020/12/10/20201210DOT-14CFR-38-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000), is a “a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability.” Gone are the days of travelers arguing with airline staff about whether their emotional support peacocks, tarantulas, ferrets, iguanas, pigs, ducks, guinea pigs, rats, and snakes should be permitted to travel with them on the plane at no additional cost.

Though federal law no longer requires airlines to offer protections for ESAs, a small number of them choose to do so, according to an article on DoNotPay.com (i.e., [bit.ly/3epvK1S](https://www.dhs.gov/sites/default/files/2020/12/10/20201210DOT-14CFR-38-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000)): Latam Airlines, Volaris, Westjet, Air France, Asiana Airlines (to/from the United States only), China Airlines (dogs only), KLM (dogs only), Luthsana (to/from U.S. only), and Singapore Air (dogs only). Not surprisingly, most of the major airlines that Americans commonly use for both domestic and international flights are not included on this short list. This doesn’t necessarily mean that passengers

Dr. Aaron Norton is the executive director of the National Board of Forensic Evaluators, a visiting instructor at the University of South Florida’s Department of Mental Health Law and Policy, Southern Region director for AMHCA, board liaison for AMHCA’s Ethics Committee, and chair of the Florida Mental Health Counselors Association’s Government Relations Committee.



Read the original article on ESA letters in *The Advocate Magazine* “Regulations Related to Responding to Client Requests for Emotional Support Animal Letters—Four Facts,” pages 22–26 of the Fall 2018 issue at bit.ly/3Mqy8BX.



cannot bring some ESAs on flights for those other airlines; it just means that they have to follow the policies those airlines have for bringing pets onto planes, including fees for those privileges.

The removal of federal protections for ESAs in air travel has no impact on protections related to housing. Currently, therefore, housing should now be the primary focus of ESA letters written by Clinical Mental Health Counselors (CMHCs).

Complaints of Misuse of ESA Letters

Interestingly, disability rights groups were among those who pushed for the removal of air travel protections for ESAs in the federal code, arguing that:

1. Poorly behaved pets masquerading as accommodations for disabilities interfere with the abilities of trained service animals to perform their duties (e.g., service animals are sometimes attacked by ESAs), and
2. The abuse of the ESA designation by individuals who do not truly have a disability and/or who do not truly require the presence of the ESA in order to access air travel caused undue hardship on individuals with disabilities who legitimately required the use of a service animal.

I think there’s validity in their arguments. Several months before the DOT amended its rule, *The Guardian* reported in 2019,

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Florida Sen. Sam Killebrew managed to get a mental health professional to write an ESA letter for his stuffed baboon, Ophelia. (By “stuffed,” I mean that this baboon is literally a dead baboon, prepped by a taxidermist.)

I talked with him about this letter a few years ago, and he told me that the process was very quick and easy—too quick and easy. All he had to do was complete a brief online questionnaire in which he attested that “I get anxious sometimes” (as all humans do), and suddenly he possessed a document attesting that he had a disability and that he needed his ESA in order to function. Sen. Killebrew then made it his mission to write legislation aimed at preventing improper practices involving ESA letters.

In the 2022 book “Avoiding Faux Paws & Pitfalls With Emotional Support Animals,” author and Licensed Professional Counselor Bill E. Owenby, LPC-S, ACS, DCMHS, described a California case (*BBSs v. Black*, 2019) in which California’s licensure board concluded that a licensed mental health professional erred by writing an ESA letter based on an online evaluation and a payment. No clinical interview was conducted, and “what

the exact assessment is was not determined.” Legislatures in California then passed a new law, effective in January 2022, that required counselors to have a professional relationship for at least 30 days with a client and to conduct a thorough evaluation prior to writing an ESA letter.

In May 2022, Florida’s composite licensure board for mental health professionals disciplined two mental health professionals (case numbers 2018-28005 and 2018-22106) for failure to adhere to professional standards by writing ESA letters without sufficient assessment. The board also created a new administrative rule [Rule 64B4-5.001(1)(pp)], which permits the board to discipline mental health professionals for “providing information, including written documentation, indicating that a person has a disability or supporting a person’s need for an emotional support animal without personal knowledge of the person’s disability or disability-related need.”

Ohio’s composite licensure board for mental health professionals published a document in September 2019 offering guidance to its licensees with respect to ESA letters, bit.ly/3TeMuHP.

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The board clarified that counselors (and other mental health professionals) should not write ESA letters unless they have appropriate training, education, and experience in assessing the need for ESAs; have considered potential risks and liabilities for use of an ESA; and have provided in-person assessment and diagnosis.

Ethical Codes, Practice Standards, and ESA Letters

AMHCA's Code of Ethics www.amhca.org/ethics requires that counselors "advocate at the individual, institutional, professional, and societal level to foster sociopolitical change that advances client and community welfare" (I.F.2). On one hand, if a client has a legitimate psychiatric disability and the use of an ESA would alleviate the effects of that disability, then writing an ESA letter might be considered a form of advocacy. On the other hand, our code requires that we remain objective (I.A.1); maintain high standards of competence (I.C.1); uphold our responsibilities for the welfare of both the client and the general public (I.C.1); limit our actions to those areas in which we are competent to practice (I.C.1.a, I.C.1.b); base our diagnoses and recommendations on multiple sources of data (I.D.2.a); remain familiar with state and federal laws and how they impact our work (preamble); and limit our treatment plans to interventions that "offer reasonable promise of success and are consistent with the abilities; ethnic, social, cultural, and values backgrounds; and circumstances of the clients" (I.B.1.a).

How might we balance these ethical prerogatives? In my opinion, it would be wise to avoid writing an ESA letter if *any* of the five following conditions apply:

- 1. You are not trained in and competent with disability determination.** When writing an ESA letter, you are attesting that a person has one or more disabilities and that without an ESA, the client will not be able to function. If you cannot articulate what your client's



disability is, the specific functional limitations posed by those disabilities, and how the presence of a specific animal would somehow compensate for those functional limitations, then you should not write a letter.

- 2. Your only source of data is the client's self-report.** Counselors should use additional data sources (e.g., tests with validity scales, records reviews, collateral interviews, etc.) to rule out whether a client is exaggerating or even feigning symptoms in order to obtain a letter.
- 3. You are not intimately familiar with federal law as it pertains to ESAs and housing.** I would recommend that you obtain, read, and become intimately familiar with the U.S. Department of Housing and Urban Development's published guidance on assessing the need for ESA letters, bit.ly/3rOjWJC.

- 4. You have not thoroughly examined with your client the potential benefits and drawbacks of an ESA letter, or in your best clinical judgment, it would not be in the client's best interest for you to write a letter.** The Human Animal Interventions in Counseling Interest Network of the American Counseling Association issued a position statement on ESA letters in 2019, bit.ly/3Co3413, that includes several potential benefits and drawbacks of ESA letters and can serve as a helpful reference. Also, in my 2018 article (see box on page 8), I discussed the importance of formulating a goal of no longer needing an ESA to function (i.e., maximizing client autonomy).
- 5. You do not have evidence that an ESA will be an effective intervention.** Though multiple studies document psychological benefits associated with pet ownership and interactions with animals, to date I have not found a single well-designed study demonstrating that ESA

letters improve client outcomes (*hint*: Sounds like the kind of gap in the professional research that would make for a good dissertation). Given the absence of empirical support for this intervention, I think it is important that CMHCs be able to articulate the evidence that an ESA letter will improve outcomes for a client before writing a letter. ♦

Additional Resource

The National Board of Forensic Evaluators' (NBFE) on-demand webinar, "2021 Update: The Mental Health Professional's Role in Evaluating the Need for Emotional Support Animals," has been approved for three CE's by NBCC. nbfe.net/event-4698668