

Victims/Survivors Who Use Service Animals:

A Background Paper and Sample Program Policy for Domestic Violence and Sexual Assault Programs

Developed by Wisconsin's Violence Against Women with Disabilities Project:

Disability Rights Wisconsin

Wisconsin Coalition Against Domestic Violence

Wisconsin Coalition Against Sexual Assault

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- Wisconsin Coalition Against Domestic Violence (WCADV);
- Wisconsin Coalition Against Sexual Assault (WCASA).

Disclaimer

Although this *Background Paper* includes some legal citations, it is written for non-lawyers. **It is not intended to provide specific legal advice**, nor is it a comprehensive review of all aspects of the civil rights laws for people with disabilities who use service animals. Laws change and develop over time, so we have provided you with information about useful technical assistance and resource contacts through this Project. If you want more information, we suggest that you contact the resources we have provided, or that you consult with an attorney.

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Serving People with Disabilities who use Service Animals¹

Many domestic violence and sexual assault agencies have questions about addressing requests for service animals as a reasonable accommodation or modification for program participants with disabilities. As part of Wisconsin's Violence Against Women with Disabilities Project, Disability Rights Wisconsin (DRW), Wisconsin Coalition Against Sexual Assault (WCASA) and Wisconsin Coalition Against Domestic Violence (WCADV) worked together to create this fact sheet and sample policies. We hope that you will find our suggestions helpful and will use the sample policies provided as a template to develop your own best practices.²

What are service animals and who uses them?

Some people with disabilities require the assistance of an animal to provide support or perform tasks related to their disabilities. The assistance these animals provide can lessen symptoms or help remove day-to-day barriers people with disabilities experience. Under the federal laws that apply (see the section entitled, "What laws apply"), a person has a disability if he or she has a sensory, mental or physical impairment that substantially limits one or more major life activities (such as walking, seeing, working, thinking, living independently). Technical guidance from the U. S. Department of Justice about the Americans with Disabilities Act states that agencies cannot make inquiries about the person's disability.

Practice Tip: For your purposes, a program participant's self-identification as a person with a disability is sufficient information for addressing reasonable accommodations for use of a service animal. Since our work embraces the value of believing an individual when they seek our services and support, this same value should be extended to victims/survivors who identify as having a disability. In other words, we recommend that you accept that a person who self-identifies has a disability and is protected under the laws.

What do service animals do?

Service animals serve a variety of purposes and people with disabilities refer to these animals using a variety of terms, some of which may be interchangeable.

¹ Available in alternate formats upon request (such as audiocassette, Braille, large print or on CD). Contact Disability Rights Wisconsin (DRW) at (608) 267-0214 (voice) or (888) 758-6049 (tty) Copies (PDF, HTML and Text) can be downloaded at <http://www.disabilityrightswi.org> .

² This information does not constitute legal advice. These laws are subject to change. You may want to consult your own attorney for legal advice or contact the Violence Against Women with Disabilities Project for technical assistance: see page 16 for contact information.

Hearing animals alert a person who is Deaf or hard of hearing when a sound occurs. **Seeing eye or guide animals** assist people who are blind or have low vision. **Ssig (social signal) animals** assist a person with autism by helping eliminate repetitive movements, like hand flapping, and can help the person process sensory input. **Therapy, emotional support, companion or psychiatric assistance animals** can help a person manage symptoms of a psychiatric disability or mental illness.³ Sometimes the term **therapy animal** is used to describe animals that are trained to visit hospitals, schools, nursing homes and other facilities. A **diabetes animal** may be trained to help a person with diabetes by carrying medication and going for help in an emergency. These animals may even learn to predict and warn of low blood sugar. A **seizure animal** may help someone who has epilepsy or a seizure disorder by carrying medicine or going for help. Some even learn to predict and warn the person of an impending seizure.

Example: A support group participant uses a therapy cat to help her cope with the symptoms of post traumatic stress disorder, including social anxiety, avoidance behaviors and hyperventilation. Stroking the animal provides calming tactical stimulation, which helps her focus, discern hallucinations, and relax her hypervigilance. Without the **emotional support** provided by the animal, the program participant could not participate in the support group.

Example: A shelter resident who has a seizure disorder uses a dog to assist her. The dog carries her seizure medication in its collar, and it is trained to go for help if she has a seizure. The dog has learned to predict her seizures and will gently nudge her just prior to a seizure to warn her of the onset. Without the **seizure dog**, the woman would be unable to stay in the shelter.

Practice Tip: Because use of service animals by individuals with psychiatric disabilities is a newer practice, the legal rights of people with mental illness using service animals have not been clearly defined. The law continues to evolve in this area. As a best practice, we recommend that you treat all people with disabilities using service animals the same, regardless of their particular disability (e.g., psychiatric disability).

What's the difference between a service animal and a pet?

Service or support animals are not considered to be pets. A person with a disability uses a service animal as an auxiliary aid, similar to the use of a cane, crutches or wheelchair. For this reason, the laws require that you make modifications to any "No

³ Increasing numbers of people with mental illness are finding that emotional support animals help alleviate symptoms. Because this is a relatively new practice, the terminology is not settled. Some people use the term "service animal" to cover all disabilities. Some other terms you might hear are "emotional support animal," "companion animal," or "therapy animal."

Pet” or “No Animal” policies to permit the use of a service animal by an individual with a disability in your programs and services. Also, you cannot charge any additional fees because a program participant uses a service animal.

What do I do if I have another participant who is scared of dogs or has allergies?

A **best practice approach** would be to try different options to work out this dilemma without solely burdening the person with the service animal, so that both people can participate. This practice involves dialogue among the staff and the program participant using the service animal and the individual who is scared or has allergies. Think creatively. Are there options that allow both persons to fully participate but maintain some distance from each other (use common space at different times)? Are there options that might reduce exposure for allergies (single bedroom for a person with service animal)?

From a legal perspective, keep in mind that while some people might have fear of dogs or other animals, this is not generally a valid reason for excluding a person with a disability using a service animal. For most people with allergies, the presence of an animal causes only minor discomfort, such as sneezing or sniffing. Although it is understandably uncomfortable, this reaction does not constitute a “disability” as defined under the law; therefore, no accommodation is necessary for the allergic person. Rarely, another participant’s allergy is so severe that animal contact may cause acute respiratory distress. In these cases, the allergic participant also may request an accommodation.

Practice Tip: Under these circumstances, where there might be “competing accommodation requests,” we encourage you to talk, with permission⁴, with the parties involved. The Americans with Disabilities Act emphasizes that people with disabilities cannot be excluded from enjoying the same rights and benefits as people without disabilities. Promoting inclusion requires that your agency figure out how to make the situation work for both parties to the best extent possible. Take care not to place the burden for figuring out the best solution on the person with a disability. A practical tip would be to talk with both the people involved (not assuming the person with the service animal is the one who should leave the premises and go to a hotel), and together develop a plan that reduces and/or eliminates the conflict.

Example: A new shelter resident with diabetes brings her support dog. The dog carries medication and seeks help in emergencies. A current shelter resident’s child has severe allergies to dogs. Exposure results in hyperventilation and inability to breathe, requiring a trip to the emergency room. Both these individuals have disabilities and the agency needs to consider both their needs.

⁴ Non-disclosure provisions under the ADA prohibit you from disclosing a person’s disability. However, we recommend that you seek permission from the involved parties that allows you to disclose the situation so that you can resolve the problem and accommodate both parties.

The agency discusses the situation with the residents and offers alternatives, such as housing the individuals in separate parts of the building or in different buildings or putting one of the families in a hotel. The individuals involved agree that the best resolution is for the families to be assigned to live on different floors.

Example: A support group member with schizophrenia experiences social withdrawal and often feels overwhelmed in groups. She uses a small dog to alleviate these symptoms. The dog leans on her to ground her and acts as a buffer in social settings. This allows her to be part of the support group. Another member tells the group facilitator that she is allergic to dogs. The facilitator asks questions about the allergies and determines that they are mild and not a disability. Although the facilitator has no legal requirement to accommodate the person with allergies, she discusses ways to arrange the room to help lessen the allergic person's exposure to the dog.

What laws apply?⁵

1. **Title III of the Americans with Disabilities Act** applies to “public accommodations” and covers any programs operated by domestic violence and sexual assault agencies. As places of public accommodations, you make “reasonable modifications” (sometimes called reasonable accommodations by the public) to your policies and practices. This requirement includes modifying a “no animals” policy if it’s necessary to serve a person with a disability using a service animal. Although the law itself does not define a service animal, the regulations that implement the ADA say that a service animal is:

“... any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.” 28 C.F.R. §36.104.

Under the ADA, you may make only limited inquiry about the service animal. **The U.S. Department of Justice suggests that if you are not certain that an animal is a service animal or a pet, you can ask only two questions: *Is this a service animal? What tasks does the animal perform for the person?*** People with disabilities do not generally carry around proof of their disability and need for a service animal, and so

⁵ Agencies providing legal and medical advocacy should be aware that the places in which they provide the advocacy, such as courtrooms and hospitals, are also covered under the Americans with Disabilities Act. For example, a person using a wheelchair may need a hearing moved from the second to the first floor of the courthouse. The person you are supporting may need your help in advocating for this reasonable accommodation. If you need assistance or want more information, contact Disability Rights Wisconsin.

you may not require documentation prior to the person participating in your programs. You cannot refuse to admit a service animal on the basis of local health department regulations or any state or local laws. The ADA provides greater protection for people with disabilities and therefore it takes priority over local or state laws or regulations.

Because Wisconsin law requires rabies vaccination for dogs, you may ask to see the required tag on the dog. Local laws may also require that dogs and/or cats be licensed. If so, you may also ask to see the tag on the animal proving that the animal is licensed.

Best Practice: Remember that dynamics of abuse may have prevented the participant from licensing and vaccinating the animal. Although not required by law, your agency could help the participant by asking volunteers to assist with obtaining the vaccination and license.

2. Section 504 of the Rehabilitation Act covers any program operated by agencies using federal dollars to fund the program. If your agency receives federal dollars and uses them for a program, such as VOCA or VAWA funds (even if they pass through the state), your agency's program is covered under this law. The law simply states that:

"No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 29 U.S.C. §794(a).

Like the ADA, service animal is not defined by the law, but the law requires "reasonable modifications" be made for people with disabilities, which includes allowing service animals if it's necessary for the person with the disability to participate in the program.

3. Fair Housing Amendments Act applies to shelter and transitional living programs and, like the ADA, requires "reasonable modifications" and "reasonable accommodations" for people with disabilities. There is no definition of a service animal in the statute. Case law and the enforcement agency, Housing and Urban Development, however, have made it clear that any animal the person needs in order to have equal access to a dwelling is a service animal and must be permitted.

Under the fair housing law, you are not legally required to request proof of the need for a service animal from a person with a disability. However, as long as you are consistent, case law permits you to ask for written verification of the need for a service animal from a participant's health care or mental health professional (the provider need not be an M.D.).

You are permitted, but not required, to ask for proof that the person has a disability, but cannot require the person to disclose the specific disability. Because we all recognize that often participants have fled their homes without paperwork, your agency may help the participant obtain the necessary documentation. If you decide to require this documentation, the letter should verify that the person has a disability and the animal is needed for the person to participate in the housing program.

Practice Tip: Due to confidentiality concerns and the non-disclosure laws (non-disclosure law applies only to domestic violence programs), we recommend that advocates talk with the program participant about the need for written verification and offer support, but the advocate should refrain from securing it directly. The advocate may look up the phone number and help the person practice asking for the documentation, for example, or provide a confidential fax number or address to receive the documentation.

Practice Tip: We recommend that agencies providing short-term, emergency shelter refrain from requiring documentation of the need for the animal. Shelter residents often do not come with documentation, having fled their homes. However, we recommend that programs providing transitional housing, which is longer-term and creates a landlord-tenant relationship, ask the participant to obtain this documentation.

- 4. Wisconsin has a state law** about service animals, but it is more limited than the ADA and the federal housing law. Because the law that affords the person with a disability the most rights applies, we have covered the federal laws. If you comply with the federal laws, you will be in compliance with the state law on service animals.

Under all of these laws, the key issue is whether or not the person with a disability needs the service animal in order to participate in your program; if so, you must allow the service animal in your program.

What are the participant's responsibilities?

The program participant has the responsibility to ensure the care for and supervision of the animal. For program participants residing in domestic violence shelters or transitional housing, the participant is responsible for costs associated with food and care for the service animal. The program participant must ensure control of the animal at all times. This generally means that while the animal is in common areas, it is on leash, in a carrier, or otherwise in the direct control of the animal owner/handler or an assistant. When in the presence of others, the animal is expected to be well-behaved (not jumping on or barking at people).

The participant's responsibility includes ensuring the feeding, watering, exercising and clean-up from the animal. A participant's abuser may have been responsible for the care of the animal. Although not legally required, the agency may volunteer to help with the animal's care until more permanent arrangements can be made for service animal care. If the program participant has a need to leave the animal for a required appointment outside of the shelter, staff might try to work out some arrangement with a pet-sitting agency or volunteer -- even though the agency is under no legal requirement to do so.

Example: A shelter resident with multiple sclerosis uses a service dog to help open doors and stabilize her as she walks. Her abuser exercised, fed and cleaned up after the dog. The resident entered shelter without dog food or bowls. The shelter recognized her emergency situation and another resident volunteered to help care for the dog as part of her chores. The shelter used donated dog food and provided plastic food and water bowls. Although the law did not require these actions, the shelter recognized that it was necessary so that the woman could stay at the shelter.

What if the animal displays behavior problems?

Service animals are typically trained, often extensively, to deal with a variety of people and situations. This training usually includes early exposure to strangers and training on coping with anxiety-provoking or chaotic situations. Service animals are often chosen for their calm temperaments. When an animal is working, staff and program participants (including any children present), shouldn't pet, tease or distract the animal. The agency may need to explain this to staff and other participants.

If the service animal is disruptive (jumping up on people in a friendly but annoying way, barking) staff should talk with the participant, warning her/him that the animal is interfering with programming and that the animal may need to be removed if the participant does not have the animal under control. If the behavior continues disrupting the programming, the participant may be asked to remove the animal immediately and told the animal may not return, although it should be made clear that the person is welcome to participate without the animal.

Under the ADA, you don't have to make reasonable accommodations that result in the "**direct threat**" to the safety of others. In the very rare situation in which an animal is truly dangerous, you have the right to ask the participant to remove the animal, although the person should be made aware that he or she is welcome to participate without the animal. The "direct threat" must be based on actual evidence of danger and the agency must weigh and balance the severity of the risk and the probability that potential injury will actually occur. For example, an agency cannot exclude entire breeds of dogs, such as pit bulls, based on breed stereotypes, or set a weight requirement. Even if a "direct

threat” exists, the agency still has the obligation to make reasonable modifications in the program to allow the person to participate. This means that, for example, if an animal is aggressive, the accommodation might be to offer one-on-one support via phone.

Domestic violence and sexual assault programs are understandably concerned about potential liability issues. This concern might lead you to feel some trepidation or reluctance about allowing the presence of a service animal in your programs. As you process this concern, also recognize that your agency is equally liable for denying access to a person with a disability who uses a service animal. Remember that increasing access decreases your risk of liability. This service animal fact sheet and the sample policies are designed to inform you about the legal and practical expectations when service animals are present within your agency and its programs. Learning about the legal requirements, developing your own service animal policy, and training staff to apply it consistently helps to alleviate potential liability issues -- for both illegal discrimination and presence of an animal on site.

Example: A support group participant uses an emotional support dog to assist with social phobia. The dog jumps up on group members upon greeting, barks when new people come in the door, and pulls on the leash, constantly roaming, sniffing and trying to get the attention of other group members. After class, the facilitator warns the participant that the dog is disrupting the group and that if the behavior continues, she will be asked to return without the dog. The participant works on training the dog to remain on a rug at her right side during the meeting, and moves her chair so that the dog is not near any other participant. She comes to the meeting early so that she is already seated when others enter and her dog cannot jump on them. She asks the other members to completely ignore the dog, not even glancing in its direction, which helps the dog calm down. She is able to control the dog’s barking and behaviors and the problem is resolved.

SUMMARY OF KEY POINTS

1. A person has a disability if he or she has a sensory, mental or physical impairment that substantially limits one or more major life activities (such as walking, seeing, working, thinking, living independently). A program participant’s self-identification as a person with a disability is sufficient information for addressing reasonable accommodations for use of a service animal.
2. Some people with disabilities use service animals to provide support or perform tasks related to their disabilities. The assistance these animals provide can lessen symptoms or help remove day-to-day barriers people with disabilities experience.

3. If a person with a disability needs the service animal in order to participate in your program, you must allow the service animal.
4. Service or support animals are not considered to be pets. A person with a disability uses a service animal as an auxiliary aid, similar to the use of a wheelchair. When an animal is working, staff and program participants (including any children present), shouldn't pet, tease or distract the animal. Your agency may need to explain this to other participants and staff.
5. The Americans with Disabilities Act (ADA) applies to programs operated by domestic violence and sexual assault agencies. This law requires you to permit the use of a service animal by an individual with a disability. You cannot charge any fee or deposit because a program participant uses a service animal.
6. Under the ADA, you may make only limited inquiry about the service animal, asking: ***Is this a service animal? What tasks does the animal perform for the person?*** People with disabilities do not generally carry around proof of their disability and need for a service animal, and so **you may not require documentation prior to the person participating in your programs.**
7. You cannot refuse to admit a service animal on the basis of local health department regulations or any state or local laws.
8. Because Wisconsin law requires rabies vaccination for dogs, you may ask to see the required tag on a service dog. Local laws may also require that dogs and/or cats be licensed. If so, you may also ask to see the tag on the animal proving that the animal is licensed. Although not required by law, your agency might want to assist in obtaining vaccination and/or licensure to assist the participant.
9. The Fair Housing Amendments Act applies to shelter and transitional living programs and requires that your agency permit service animals. You are not legally required to request proof of the need for a service animal. However, as long as you are consistent, you may to ask for written verification of the need for a service animal from a participant's health care or mental health professional (the provider need not be an M.D.). We recommend that you take this action for transitional housing participants, but not emergency shelter participants. You are permitted, but not required, to ask for proof that the person has a disability, but cannot require the person to disclose the specific disability.
10. Due to confidentiality concerns and the non-disclosure laws (non-disclosure law applies only to domestic violence programs), we recommend that advocates talk with the program participant about the need for written verification and offer support, but the advocate should refrain from securing it directly. The agency may help look up the phone number and help the person practice asking for the documentation, for example, or provide a confidential fax number or address to receive the documentation.

- 11.** The program participant has the responsibility to ensure the care for and supervision of the animal. The program participant must ensure control of the animal at all times. When in the presence of others, the animal is expected to be well-behaved (not jumping on or barking at people).
- 12.** The participant's responsibility includes ensuring the feeding, watering, exercising and clean-up from the animal. Although not legally required, the agency may volunteer to help with the animal's care until more permanent arrangements can be made for service animal care.
- 13.** Service animals are typically trained, often extensively, to deal with a variety of people and situations. This training usually includes early exposure to strangers and training on coping with anxiety-provoking or chaotic situations. Service animals are often chosen for their calm temperaments. However, if a service animal is disruptive (jumping up on people in a friendly but annoying way, barking) staff should talk with the participant, warning her/him that the animal is interfering with programming and that the animal may need to be removed if the participant does not have the animal under control. If the behavior continues disrupting the programming or in the rare event in which the animal is truly dangerous, the participant may be asked to remove the animal immediately and told the animal may not return, although it should be made clear that the person is welcome to participate without the animal.

IMPORANT NOTICE FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAM DIRECTORS

The Violence Against Women with Disabilities Project, a federally funded project through the Office on Violence Against Women, U.S. Department of Justice, is committed to working collaboratively to ensure women victims with disabilities receive the anti-violence services and support they need without experiencing additional barriers to these services. The following paragraphs describe how this approach impacts the sample service animal accommodation request form that follows.

Attached is a form that a program participant **may** complete when requesting an accommodation for a service animal. **Please note that a program participant is not required to complete this form or to put their accommodation request in writing.** Instead, this form provides a program participant who uses a service animal with an opportunity to document that they are making an accommodation request to prevent any confusion about the service animal's presence and the right of the program participant to have the service animal present while receiving services. **The form is designed for the benefit of the program participant to have documentation of the accommodation request and is not intended to be used by programs as a required form participants must complete.**

Because of the amount of documentation and forms that domestic violence and sexual assault programs need program participants to complete, it is the program participant's decision whether to use this form. We would like to discourage programs from requiring program participants with disabilities additional forms to complete that give the appearance that a person's request is somehow more onerous.

Sample Policy on Service Animals:

1. As part of welcoming people with disabilities, we make reasonable accommodations and modifications so that they can participate in programs, including allowing service animals. “No pets” or “no animals” policies do not apply to service animals. A service animal is not a pet. We do not charge people with disabilities any deposit or fee related to a service animal. All staff and volunteers are required to review this fact sheet and become familiar with this policy.
2. The *[Designated staff member]* reviews all requests for reasonable accommodations, including requests by a program participant for a service animal accommodation.
3. *[Agencies with transitional living programs only]* We require written verification of the need for the animal from a participant’s health care or mental health provider (the provider need not be a M.D.). Because participants may not have immediate access to this documentation, we will accept the participant and service animal and give the person time to obtain the documentation. We will offer to help the participant obtain it. The letter should verify that the person has a disability and the animal is necessary for the person to participate in the transitional housing program.
4. Wisconsin law requires that owners of dogs wear a tag indicating current rabies vaccination. The agency requires that owners of service dogs show us this tag. *[For agencies in areas where dogs and/or cats must be licensed]* Local law requires that dogs and/or cats wear a tag indicating current license. The agency requires that owners of service animals show us this tag. If an animal is not licensed or vaccinated, the agency will assist the participant in obtaining this documentation.
5. The program participant has the responsibility to ensure the care for and supervision of the animal. The program participant must ensure the animal is under control at all times. This control generally means that while the animal is in common areas, it is on leash, in a carrier, or otherwise in the direct control of the animal owner/handler.
6. If a service animal is disruptive (such as continually jumping on people or barking) the agency may talk with the participant, warning her/him that the animal is interfering with programming and that the animal may need to be removed if the participant does not have the animal under control. If the behavior continues or if the behavior is dangerous (growling, threatening to bite) the participant may be asked to remove the animal immediately and told the animal may not return.
7. If the participant is asked to remove the animal, staff should make it clear that the participant is welcome to continue with the program without the animal. Participants who are asked to remove their animal may appeal this decision to *[Designated person]*.

SAMPLE FORM (OPTIONAL, FORM NOT REQUIRED):

REQUEST FOR REASONABLE ACCOMMODATION

This is a sample form which program participants or prospective participants may use when requesting a service animal as a reasonable accommodation.

Name: _____

Phone: _____

Address: _____

I have a disability as defined by the Americans with Disabilities Act, fair housing laws and/or the Rehabilitation Act. I use a service animal to assist me related to my disability.

Type of service animal (dog, cat, etc.):

As an accommodation for my disability/disabilities, I request that you waive any “no animal” or “no pet” policy.

Signed: _____

Date: _____

The Violence Against Women with Disabilities Project seeks to elevate collaboration among state and local sexual assault, domestic violence and disability programs while enhancing their collective capacity to respond effectively and appropriately to women victims with disabilities. For more information, technical assistance, training, education or consultation, please contact:

Disability Rights Wisconsin

131 W. Wilson Street, Suite 700
Madison, WI 53703
608-267-0214 Voice
888-758-6049 TTY
800-928-8778 (Toll-free for family members & consumers)
www.disabilityrightswi.org

Contact: *Amy Judy, Project Coordinator*
Email: amyj@drwi.org

Wisconsin Coalition Against Domestic Violence

307 S. Paterson Street, Suite 1
Madison, WI 53703
(608) 255-0539 Voice
(608) 255-3560 FAX/TTY
www.wcadv.org

Contact: *A.J. Moore-Hammonds, Aging & Disabilities Program Coordinator*
Email: ajmoore@wcadv.org

Wisconsin Coalition Against Sexual Assault

600 Williamson Street, Suite N-2
Madison, WI 53703
(608) 257-1516 Voice
(608) 257-2537 TTY
www.wcasa.org

Contact: *Tiffany Lodholz, Disabilities & Aging Program Coordinator*
Email: tiffanyl@wcasa.org