About Non-Obvious Disabilities: Legal, Practical, and Human Considerations

About this module

Goal: To increase participants’ understanding and knowledge of non-obvious disabilities.
Format: PowerPoint Presentation
Time: 30 Minutes
Potential audience: General audiences, businesses, educators
Materials needed: PPT slides and facilitator’s guide

Facilitator’s Notes for this Module

The intent of this module is to increase participants’ knowledge and understanding of non-obvious disabilities. These types of disabilities are not readily apparent and are sometimes referred to as “hidden”.

There is a great deal of confusion about non-obvious disabilities. Are they “real”? Are they covered by the ADA?, etc. This module helps to clarify the answers to some of these questions, including questions about disability disclosure. Direct any difficult questions to the ADA TA line: 800-949-4232.
Facilitator’s Notes (Slide 1)

The intent of this module is to increase participants’ understanding and knowledge of non-obvious disabilities. These kinds of disabilities are not readily apparent and are sometimes referred to as “hidden” or “invisible.” However, today, they are more commonly referred to as non-obvious or nonvisible disabilities.
Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

Facilitator’s Notes (Slide 2)

Change this slide to reflect your regional information.

Trainers, be sure to advise participants that this training is not intended as legal advice.
Facilitator’s Notes (Slide 3)

In a world where disability did not matter, disclosure would not be a dilemma. Sorting through the views, values and attitudes we bring to disability starts with an understanding of how disability has been viewed over time. Disclosing a “hidden” or nonvisible disability can be a real dilemma in a society that has historically held a negative view toward people with disabilities. What are the myths, automatic assumptions and beliefs about disability that affect how individuals with nonvisible disabilities feel about themselves?
Facilitator’s Notes (Slide 4)

Our views of disability have shifted throughout history. In the mid-1700’s, young men and women who wanted to enter the clergy were inspected from head to foot to ensure that their bodies were not “flawed.” A flawed body, it was felt, indicated a flawed soul and was seen as an indication that God was “displeased.”

The medical model is probably the one most people are familiar with. It emphasizes disability as a flaw within the person, something that needs to be fixed.

The Rehabilitation Model also considers disability to be within the person; the emphasis in this model is to help people use “what they have left”. During WWI, many returned from the battlefield with a range of disabilities: chemical burns, amputations, disease-based disabilities and psychiatric disorders. Seeing their own family members and neighbors returning from the war with disabilities, it was now difficult to view people with disabilities generally as being “genetically unfit” or “polluting the human gene pool”- views that had led to the warehousing of people with disabilities in the past. With the end of WWI came the start of the Rehabilitation Movement as we tried to help soldiers with disabilities return to society and to a normal work life. For example, the federal Vocational Rehabilitation program originally only served returning war veterans with physical disabilities- with a goal of helping them to become as “normal” as possible.

The Social Model, influenced by the Independent Living movement, views disability as being socially constructed. People have impairments but these impairments are not disabilities until
they encounter a space (e.g., building with no stair-less entry) or a practice (e.g., having to complete a job application in a timed kiosk) that they cannot navigate because of the space or practice is not accessible to them.

### Some Types of Non-obvious Disabilities

- Learning disabilities
- Psychiatric disabilities
- Brain injuries
- Asperger’s
- Conditions such as fibromyalgia, multiple sclerosis, arthritis, diabetes, asthma

**Facilitator’s Notes (Slide 5)**

There are many types of non-obvious disabilities. Sometimes you may interact with a person and sense that they may have a disability of some kind. Other times, the presence of disability is not at all evident.
Facilitator’s Notes (Slide 6)

Disability can be defined in different ways. This is a key question because if a disability does not meet the definition given by the ADA, the person with the disability is not given the protections of this law.

Many non-obvious disabilities are defined as disabilities by the ADA. Any disability whether obvious or not, must meet the functional definition of disability put forth by the ADA, in order for the individual to be covered by the law.
Facilitator’s Notes (Slide 7)

The ADA does not use a medical definition of disability. Rather, the ADA is based on a functional definition of disability.
Facilitator’s Notes (Slide 8)

This wording is the cornerstone of how the ADA defines a disability. In the next slides, we will take a closer look at the elements of this definition.

PLEASE NOTE: The ADA Amendments Act (ADAAA) changes the definition of a disability by looking at the person’s condition without mitigating measures (e.g., medication or devices). Also, the ADAAA includes individuals with episodic or remitting conditions, such as multiple sclerosis and some psychiatric disabilities.
Facilitator’s Notes (Slide 9)

This slide shows examples of major life activities under the ADA; this is not an exhaustive list. Note that the ADAAA expanded this list to include impairments of major bodily functions. Here is the wording from the law:

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Source: http://www.access-board.gov/about/laws/ada-amendments.htm
What is “Substantially Limiting”?  

- Unable to perform a major life activity compared to most people  
- Significantly restricted as to the condition, manner or duration activity can be performed in comparison to most people

Facilitator’s Notes (Slide 10)

This slide continues the closer examination of the ADA’s definition of disability by looking at “substantially limiting.” This is a difficult concept for many people to grasp because there is no “general cut-off” about how long one must be impaired in order to have a disability as defined by the ADA.

A key point here is to understand that the ADA takes a “case by case” approach to each claim of disability and does not give black and white or clear cut diagnostic boundaries to determine whether or not a disability is present.
Possible Limitations of Non-obvious Disabilities

- Learning in one or more areas (reading, writing, mathematics)
- Processing information/Memory
- Communication
- Interpersonal relations
- Decision-making
- Physical/mental stamina

Facilitator’s Notes (Slide 11)

Non-obvious disabilities can affect people in a variety of ways. This slide lists types of limitations some people with non-obvious disabilities might experience.
Anyone with a disability, whether obvious to others or not, who fits this definition of disability is given the protections of the ADA.

Facilitator’s Notes (Slide 12)

Whether or not a disability is obvious is NOT considered a factor in this definition.
The ADA and Disclosure

Disclosure is a legally-protected choice. You only need to disclose if you are requesting reasonable accommodation:

- To participate in a service, such as training
- To take part in a job interview
- To do a job after you have been hired

Facilitator’s Notes (Slide 13)

Decisions about disability disclosure can be difficult, especially for those with non-obvious disabilities. A person must disclose if they request an accommodation in order to participate in the job interview or in order to successfully participate in a training program or other service. During a job interview, it is legally permissible for the employer to ask “can you perform the essential functions of this job with or without a reasonable accommodation?” This is a “yes” or “no” question. At this point, the person does not need to disclose any information about their disability or accommodations they may need if offered the job.

If hired, the individual would only have to disclose that they have a disability if/when they request a reasonable accommodation to perform essential job functions.
Accommodating Non-obvious Disabilities

- [http://www.ilr.cornell.edu/eqi/hr_tips/article.cfm?group_id=4](http://www.ilr.cornell.edu/eqi/hr_tips/article.cfm?group_id=4)
  Employment & Disability Institute’s HR tips series on accommodating specific disabilities

- [www.eeoc.gov/policy/docs/psych.html](http://www.eeoc.gov/policy/docs/psych.html)
  The EEOC article on Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities 39

  US Dept. of Labor brief on maximizing the workplace performance of workers with psychiatric disabilities

Facilitator’s Notes (Slide 14)

There are many resources available to help employers and people with non-obvious disabilities to determine possible workplace accommodations.
Accommodating Non-obvious Disabilities

- [http://www.ldanatl.org/](http://www.ldanatl.org/)
  Learning Disability Association of America provides information about learning disabilities and school and workplace accommodations for people with learning disabilities.

- [http://askian.org/](http://askian.org/)
  The job accommodation network offers suggestions for accommodating workers with all types of disabilities.

- State Vocational Rehabilitation and Developmental Disabilities Agencies
  These organizations can provide suggestions and may be able to provide support for employers and/or workers with disabilities.

Facilitator’s Notes (Slide 15)

Organizations such as the Learning Disability Association of America (listed here) as well as the MS Society, and the Lupus Foundation and others not only provide information about working with these disabilities. They also provide information and support for family members and guidance on managing both on and off of the job.

Finally, the Job Accommodation Network (JAN) and the public VR system can be very helpful to jobseekers and employees with obvious and non-obvious disabilities.
Facilitator’s Notes (Slide 16)

National Network: Please insert your center’s contact information on this slide.

Conclude by reminding participants that the training materials were produced by the Northeast ADA Center in collaboration with the National ADA Network. Remind them of the free and confidential technical assistance and other services available from your local ADA Center and from the ADA Centers throughout the country. Mention the ADA TA line: 800-949-4232.