

April 6, 2020

Ms. Blane Workie
Assistant General Counsel, Office of Aviation Enforcement and Proceedings
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: DOT-OST-2018-0068

Dear Ms. Workie,

The undersigned organizations submit the following comments in response to the notice of proposed rulemaking (NPRM) published by the Department of Transportation (Department) concerning traveling by air with service animals under the Air Carrier Access Act (ACAA). The notice was officially published for comment on February 5, 2020.

The Department has been actively reviewing its existing service animal regulations since at least 2016. That year, the Department's Accessible Air Transportation (ACCESS) Advisory Committee conducted a negotiated rulemaking that included whether to amend the ACAA's definition of a service animal. The negotiation did not result in a consensus proposed rule. Thus, in 2018, the Department released an advance notice of proposed rulemaking (ANPRM) that presented numerous questions for discussion, including many of the same questions previously considered by the members of the ACCESS Advisory Committee.

The Department's NPRM is the latest iteration of those efforts. We will respond to the Department's specific questions and proposed regulatory language by issue raised. Our responses referencing "service animals" will mean an animal trained to perform work or tasks to mitigate a disability. The term "emotional support animal" will refer to an animal whose mere presence assists a person with a disability.

Service Animal Species

Although we do not object to the Department's decision to impose more specific limitations on the types of species that may be used as service animals, we oppose limiting the definition of a service animal to a dog. Instead, all species and sizes of dogs, cats, and miniature horses must have access as service animals. It is important to preserve access for non-canine species to account for the health, cultural, and other factors that preclude people with disabilities from using a dog as a service animal.

The decision to eliminate access for miniature horses is particularly concerning because these animals have access to public accommodations as a reasonable accommodation under the Department of Justice's Americans with Disabilities Act (ADA) Title III regulations. The Department's decision to eliminate access for miniature horses is focused on size limitations on aircraft. The April commercial air travel landscape is vastly different than that of February. It is

uncertain what space constraints will be like on commercial aircraft in coming months and years. However, subject to available space on an aircraft, including the handler's willingness to purchase an additional seat, carriers should be required to make reasonable accommodations for miniature horses.

In response to the Department's request for comment on access for closed-colony capuchin monkeys, we support access as long as the animal is confined to a carrier. Such a requirement would ensure that someone who depends upon the service of a capuchin monkey at his or her home and destination will be able to travel by air. We also support allowing these animals to be transported by a qualified trainer.

Breed or Type Restrictions

Although not explicitly addressed in the Department's ANPRM, the decision of certain air carriers to exclude specific breeds or types of service dogs, particularly pit-bull-type dogs, forced the Department to reiterate in its Final Statement of Enforcement Priorities Regarding Service Animals that such exclusions would be enforced as an ACAA violation. We support the Department's proposal to allow carriers to exclude a service animal only following an individualized assessment of the animal's behavior. Such an assessment is the best way to determine whether a particular service animal is safe to travel. Even if the Department determined that breed or type restrictions were allowed under the ACAA, it remains to be seen how an airline would be able to accurately determine an animal's breed to ensure even application of such a preclusion.

Emotional Support Animals

Passengers with disabilities who use emotional support animals must continue to have access for their animals under the ACAA. We believe that the Department should recognize emotional support animals as an accommodation. Emotional support animals are different from service animals in that they are not trained to perform work or tasks to mitigate a disability. Instead, the mere presence of an emotional support animal accommodates the person's disability, and may be crucial to allowing a person with a disability to travel by air. Emotional support animals should be limited to dogs, cats, and rabbits.

Although the Department would allow an air carrier to decide whether or not to charge individuals to fly with an emotional support animal, it is highly likely that air carriers would treat emotional support animals as pets and charge fees for their passage. Even if the animal is able to travel as a pet, these fees can cost upwards of \$175 one-way. People with disabilities are disproportionately low income and these fees would likely make it very difficult for emotional support animal users to travel for family emergencies or health care needs.

In response to the Department's request for comment, we do not believe that it is possible to convert all emotional support animals into service animals. For example, the opportunity to interact with a rabbit's fur may provide emotional support to a person with a disability without the rabbit having being trained to perform disability mitigation. Ending access for emotional support animals will mean these individuals with disabilities would be subject to pet fees, or if

the carrier refuses to transport rabbits, forced to choose between flying and missed opportunities as other modes of transportation are not always an option depending on the urgency of the travel need.

The difference between a legitimate emotional support animal and a service animal is the disability mitigation training. Otherwise, the animals should be trained to behave appropriately or in the case of rabbits, exhibit no aggressive tendencies. Although much scorn has been heaped on emotional support animals and their users, we are underwhelmed with the evidence presented to show that legitimate emotional support animals are a danger to the traveling public and air carrier employees. To determine the true extent of the problem, carriers should be required to provide data to the Department regarding the number of emotional support animals enplaned and any incidents directly attributable to them. This information should be reported monthly to ensure that the public has accurate information regarding the impact of emotional support animals on carriers and passengers. Carrier reported data will also help the Department to more easily respond to trends.

We believe that access for emotional support animals must be preserved, but would support a requirement for passengers with disabilities who use emotional support animals to attest that their animal has the needed behavioral training. This form should be an official federal government form and alert the passenger that knowingly making false statements is a federal crime. Any such attestation must use language that is easily understood by people who have cognitive or intellectual disabilities. However, we do not support allowing health certificate requirements for these animals. The type of health information requested on the sample certificate would provide little to no evidence on the animal's behavioral training.

Furthermore, we do not support a requirement for emotional support animals to be contained in pet carriers. First, the requirement to contain an emotional support animal, which are overwhelmingly dogs, in a pet carrier will limit the size of the animal allowed. Second, it would limit the use of the animal during the flight to provide for the well-being of the passenger. We would support, however, limiting travelers with disabilities to one emotional support animal.

Psychiatric Service Animals

We appreciate the Department's proposal to treat psychiatric service animals equal to all other service animals. The current rules not only promote stigma and impose tremendous unnecessary burdens on people with psychiatric disabilities, but the Department's enforcement of them may well violate Section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The Department cannot lawfully treat individuals with mental disabilities differently from similarly situated individuals with physical disabilities. The Department's proposal recognizes that there is no legitimate reason to subject psychiatric service animal users to more stringent access requirements than users of other types of service animals. Requiring such documentation only serves to single out individuals with mental health disabilities, and perpetuates the myth that psychiatric service animals are more likely to be dangerous or fraudulent than service animals used to mitigate other types of disabilities.

We are concerned about the Department's statement that it "would consider revisiting whether it is reasonable and appropriate to allow additional requirements for the use of such animals if there is a demonstrated need" for such action. The Department notes that such a revisiting might be warranted upon "a notable increase in instances of passengers falsely representing pets as mental-health related service animals." However, the Department provides no information about why suspicion should be cast on psychiatric service animals versus animals that assist passengers with other non-apparent disabilities. The Department must stop treating psychiatric service animals with suspicion as there is simply no justification for such unequal treatment. Furthermore, it is unclear how such increases would be determined or be made publicly available to ensure that reports are based on accurate data.

Large Service Animals

We are opposed to the Department's proposal to limit the size of service animals to those that are able to fit within the passenger's foot space or a passenger's lap. Although today's passenger travel conditions would mean that travelers with larger service animals could be accommodated with ease, that likely will not be the case in future months when travelers return to the air. We support the requirement for air carriers to reseat passengers next to an empty seat or other location where the animal can be accommodated. However, we believe that the Department must go farther to support access for people with disabilities. Specifically, why should passengers' access be diminished because of decisions made by air carriers to limit personal space in aircraft?

Instead of limiting the size of service animals, the Department should amend its seating accommodation regulations to ensure improved access to seats with additional leg room for those individuals who use these animals. In a time when our nation's taxpayer money is being used to support airlines, accommodation of passengers with disabilities should be of urgent consideration. The solution must not be to place the burden on passengers with disabilities who use larger service animals by requiring them to purchase an extra seat if they want to guarantee that they will be able to travel as scheduled.

Number of Service Animals Per Passenger

We support the Department's proposal to limit passengers with disabilities to two service animals in the cabin of an aircraft. Some passengers with disabilities require the use of more than one service animal to effectively accommodate multiple disabilities or to mitigate a single disability. We believe that the overwhelming number of service animal users will be sufficiently accommodated under this proposal.

We believe, however, that if a passenger with a disability requires more than two service animals he or she should be able to request an exception to the limitation. In such cases, the carrier should be able to request sufficient justification for an additional animal. Such justification could include advance notice and documentation, including from the individual, about the need for an additional animal.

Service Animal Restraints

Service animals must be under the control of their handler at all times. We support the Department's proposal to require that all service animals be harnessed, leashed, or tethered unless the device interferes with the animal's work or the individual with a disability is unable to hold a tether due to his or her disability. In those cases, the individual must be allowed to control his or her service animal using voice, signal, or other effective means to control the animal.

We oppose, however, the Department's proposal to allow air carriers to determine that an animal that is not properly restrained is not a service animal. If the Department is seeking harmony with the Department of Justice's ADA Title III regulations, then it should not pick and choose among provisions, particularly when no valid reason has been offered for doing so. Furthermore, the Department's own proposed definition of a service animal does not include any information about the handler's control of the animal. A service animal is a service animal if it was trained to do work or tasks for a person with a disability. The actions of the handler may not be indicative of the animal's individualized disability mitigation training. Like under the ADA, passengers with disabilities should be given the opportunity to get their animal under control. If they cannot, then they should be given the opportunity to fly without the animal on that or another flight, or be rebooked on a later flight with the animal as appropriate.

Proposed Section 382.74 provides guidance regarding how an air carrier can evaluate whether a service animal is a service animal. We believe that (b) and (c) should not be characterized as determination of whether or not an animal is a service animal but instead be incorporated into proposed Section 382.79, which addresses when an animal may be refused passage. The information in Section 382.74(a) is sufficient for a determination that an animal is a service animal.

We also believe that the term "service animal handler" should recognize third-party handlers. Again, it promotes harmony with the Department of Justice's ADA Title III regulations. Furthermore, the Department's own example of a child who would not require a safety assistant but who might need assistance with a service animal is the very reason why third-party handlers should be recognized.

Service Animal Documentation

For many people with disabilities, a service animal provides the critical assistance and support that allows them to be independent, active participants in their communities. The civil rights of people with disabilities in air travel that are guaranteed under the ACAA are vital and should not be unduly burdened. Decades of access without documentation have been provided for the vast majority of service animal users. Allowing air carriers to require all passengers with disabilities who use service animals to attest to their animal's behavior and training and provide a health form to gain any access, burdens an individual's civil rights without any justification that such burden is needed. People with disabilities who use service animals must have the ability to travel without additional barriers such as paperwork requirements, regardless of whether or not they possess such documentation.

Allowing airlines to require that passengers traveling with service animals complete an attestation form and an animal health form also does not harmonize the service animal requirements for the ACAA with the ADA. Instead the Department of Justice's Title III ADA regulations forbid hospitals, doctor's offices, pharmacies, and grocery stores from asking for such documentation as a matter of entry, even during a pandemic. There is simply no credible evidence showing that such a burden would mitigate any concern not present in other critical access areas, that would warrant such a burden being placed on each air travel passenger who uses a service animal. If the close proximity of passengers in air travel that has been the recent trend is the problem, then air carriers should address that problem themselves and not burden the civil rights of passengers with disabilities.

Furthermore, introducing such documentation requirements for all service animal users would create additional confusion and would not guarantee safety or security for airline employees and passengers. For example, a service animal user seeking to fly would be subject to the documentation requirements. Would such requirements also be in place for a parent who uses a service animal who receives a pass to go to the gate to meet his or her unaccompanied minor child? The airport would be governed by Title II or Title III of the ADA as appropriate. The airport would not be able to require documentation as a matter of entry to the airport. In this scenario, the parent would not be boarding a flight but would otherwise be in the gate area, in close proximity to passengers and air carrier contractors and staff. Gates in some of the busiest airports are typically very crowded and certainly a service animal could bite someone. In this scenario, however, documentation would not be allowed. However, a passenger flying with a service animal on a nearly empty plane would need to provide documentation.

Instead, the Department should explicitly prohibit air carriers from requiring all passengers who use service animals to complete behavior and training attestation and animal health forms prior to travel as a blanket access requirement for their animals. The health form requirement would create significant burden for passengers with disabilities due to the cost associated with asking a veterinarian to provide such attestations, potential time constraints when travel is immediate, or even the reluctance of a veterinarian to certify an animal's behavior since he or she would likely have no concrete basis on which to make such a judgment.

Animal health information is not necessary to determine whether a service animal would pose a direct threat or a fundamental alteration of passenger service. While evidence of veterinary health might be helpful in the event a passenger is bitten or otherwise harmed by an animal, it does not indicate whether or not an animal would be a direct threat or whether its presence would result in a fundamental alteration of the carrier's operations. Instead, concerns with direct threat should be individualized and based on observable actions. Thus, carriers should not be able to refuse access to a service animal based solely on the information on the animal health form.

No documentation requirement is going to fully absolve air carriers from evaluating animal behavior at ticketing and the gate area. In the final rule, the Department should require recurrent training for all air carrier staff and contractors who interact with passengers regarding service animals. Such training should include how to interact with passengers who use service animals and how to observe animal behavior and to respond to any problems either observed or reported by passengers.

In the event that the Department decides to disregard these concerns and moves forward with documentation requirements, we believe that the forms should be uniform. Thus, we would support standardized Department forms. This will ensure that passengers will not need to worry about completing a specific airline's form. It will also remove any confusion that could result from word choice or phrasing differences between airlines. Furthermore, the forms must use language that is easily understood by people who have cognitive or intellectual disabilities.

If air carriers wish to exercise their right to use the forms, then they should be required to have systems that would allow the forms to be attached to the passenger's frequent flier or other appropriate records so that they will not need to be completed more than once per year. Instead, the air carriers choosing to use this system should be required to develop a system that would allow the passenger at check-in to simply affirm that their forms are still correct during that year. Additionally, airlines should not be allowed to require passengers who travel with a service animal to show a photo identification of the service animal as individuals with self-trained service animals may not have the same types of identification as those who have program-trained animals. Such information could be voluntarily accepted, however, in lieu of the behavioral or animal health forms.

We also support prohibiting carriers from requiring that the forms be provided prior to the date of travel to minimize additional burden on passengers with disabilities who use service animals. However, we oppose allowing carriers to require that these passengers arrive one hour prior to check-in to process the documentation. If the training and behavior attestation and health forms are required, then the only processing that should be required is a quick review to ensure that the forms are properly completed. Observing the animal should not take additional time. The airline could ensure that the forms get matched to the passenger's record for future travel at a later time. There is simply no justification for further burdening passengers with disabilities simply because they use a service animal. If the Department elects to allow a one-hour check-in requirement, then we support the Department's proposal to require airlines to provide an employee who is fully trained and able to promptly receive the paperwork and complete all other check-in functions. This individual should also ensure that the passenger has any needed assistance in navigating the airport.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Heather Ansley, Associate Executive Director of Government Relations with Paralyzed Veterans of America, at 202-416-7794 or by email at heathera@pva.org.

Sincerely,
Access Living of Metropolitan Chicago
American Association of People with Disabilities
Bazelon Center for Mental Health Law
Christopher & Dana Reeve Foundation
The National Council on Independent Living
National Disability Rights Network
National Multiple Sclerosis Society
Paralyzed Veterans of America