

Commonwealth of Massachusetts



Community Access Monitor Program Training





Massachusetts Office on Disability



- M.G.L. Chapter 6 Section 185
- State ADA Coordinator

Primary Mission:

Ensure full and equal participation of all people with disabilities in all aspects of life by working to advance legal rights, maximum opportunities, supportive services, accommodations and accessibility in a manner that fosters dignity and self determination.



Functional Organization



- **Government Services Program:**
 - To ensure that Massachusetts policies & practices are consistent with state and federal laws by working with all facets of government to resolve problems before they turn into crisis.
- **Client Services Program:**
 - Civil rights.
 - General disability related information.
 - Individual advocacy referral.
 - Federally mandated Client Assistance Program
- **Community Services Program:**
 - Training & technical assistance on state & federal disability legislation and regulations.
 - Developed & runs the nationally acclaimed Community Access Monitor Program.



The ADA is a Civil Rights Law



**Its Origins are in the Civil Rights
and
Disability Rights Movements**



The History of Disability Rights Nationally



- ↪ Civil Rights Act of 1964
- ↪ Activism and the emergence of the IL Movements – 1970's
- ↪ The Rehabilitation Act of 1973 – Section 504
- ↪ Education for all Handicapped Children Act – 1975
- ↪ HEW's Section 504 Regulations – 1977
- ↪ Air Carriers Access Act of 1986
- ↪ Civil Rights Restoration Act of 1988
- ↪ Fair Housing Amendments Act of 1988
- ↪ Americans with Disabilities Act of 1990
- ↪ **ADA Amendments Act of 2008**

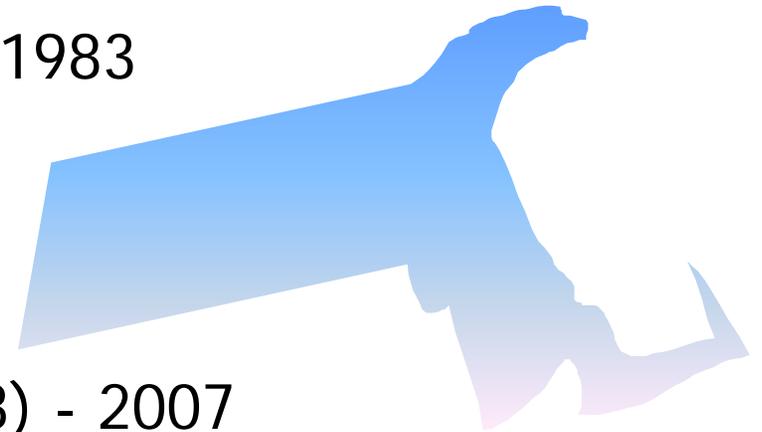




The History of Disability Rights in Massachusetts



-  Massachusetts Architectural Board - 1967
-  Public Education Law - Chapter 766 - 1972
-  Public Accommodations Law - 1979
-  Constitutional Amendment - Article 114 - 1980
-  Employment Discrimination Law - 1983
-  Executive Order 246 - 1984
-  Housing Bill of Rights - 1989
-  Executive Order 526 (formerly 478) - 2007

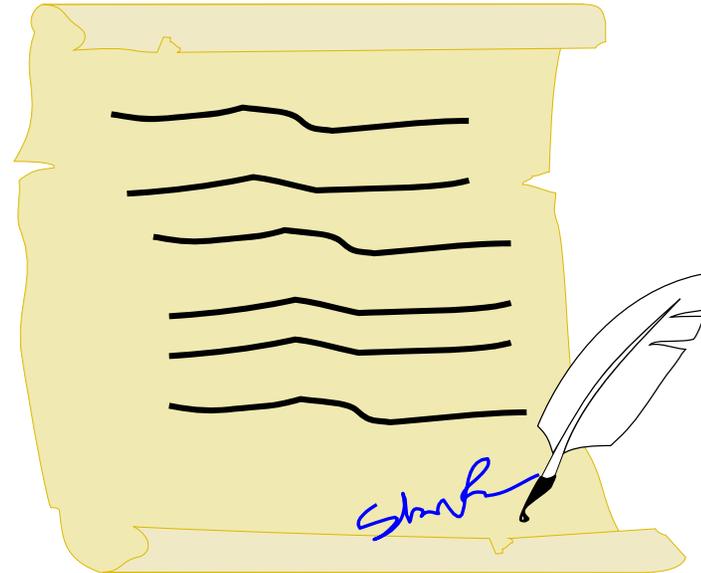




Americans With Disabilities Act



- Purpose:



- **“To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities...”**



Americans With Disabilities Act



- ☑ Title I: Employment
- ☑ Title II: State and Local Government
- ☑ Title III: Private Entities
- ☑ Title IV: Telecommunications
- ☑ Title V: Miscellaneous





ADA's General Non-Discrimination Requirements



✗ Entities May Not:

- ✗ Deny participation
- ✗ Provide unequal benefit
- ✗ Provide separate or different
- ✗ Establish eligibility criteria that screen out



Entities Must:

- ✓ Ensure programmatic access
- ✓ Ensure the most integrated setting
- ✓ Modify policies or procedures



Examples of How the General Non-Discrimination Requirements Applies



■ Denial of Participation:





Examples of How the General Non-Discrimination Requirements Applies



≠ Unequal Benefit:

- ≠ Bathroom with only small stalls
- ≠ No assistive listening device
- ≠ Inaccessible websites





Examples of How the General Non-Discrimination Requirements Applies



- Provide separate or different:

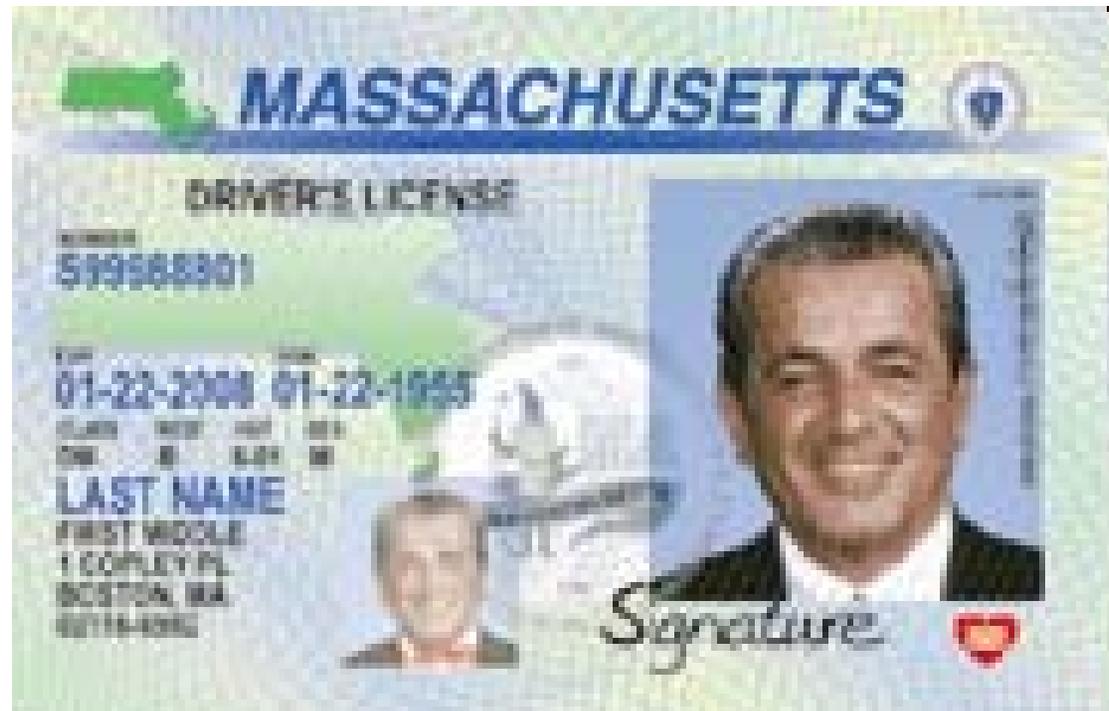




Examples of How the General Non-Discrimination Requirements Applies

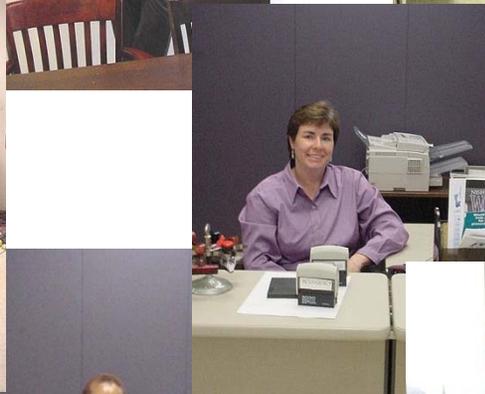


- Establish eligibility criteria that screen out





Can YOU Tell Which Person *HAS* a Disability?

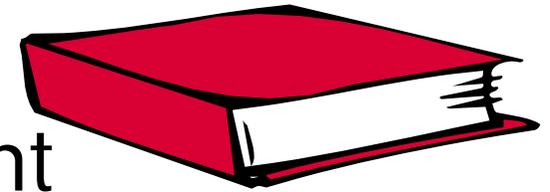




Definition of a Disability



- A Physical or Mental Impairment that Substantially Limits One or More Major Life Activities
- A Record of Such an Impairment
- Being Regarded as Having Such an Impairment



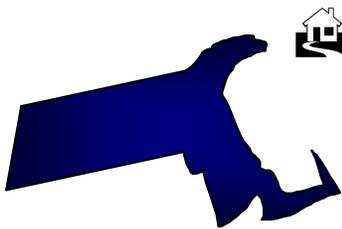
The ADA Amendments Act clarifies the definition; however, the 3 prongs did not change.



State vs. Federal Definition of Disability



MCAD Standard:



 The existence of an impairment is generally determined without regard to whether its effect can be mitigated by measures such as auxiliary aids or prosthetic devices

Federal Standard:



 1990 ADA Standard: Must take into account whether the person is substantially limited in a major life activity when using a mitigating measure, such as medication, a prosthesis, or a hearing aid.

 **2008 ADA Standard: Mitigating measures *are not considered*. The new standard matches the Massachusetts standard.**



Definition of a Disability



Physical Impairment:

- A physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems

Mental Impairment:

- Any mental or psychological disorder such as:

- Developmental Disabilities
- Organic Brain Syndrome
- Emotional or Mental Illness
- Specific Learning Disabilities





Substantially Limits:

- 1990 ADA:
 - Unable to perform, or be significantly limited in the ability to perform, a major life activity that the average person in the general population can perform
- **2008 ADA:**
 - **"Substantially Limits" standards clarified in regulations by EEOC in 2011.**



Definition of a Disability



Major Life Activities:

- Walking
- Seeing
- Hearing
- Speaking
- Performing Manual Tasks
- Breathing
- Learning
- Working
- Caring for Oneself

ADAAA Expanded the Definition to Include Major Bodily Functions:

- Immune System
- Digestive
- Neurological
- Respiratory
- Normal Cell Growth
- Bladder
- Brain
- Reproduction

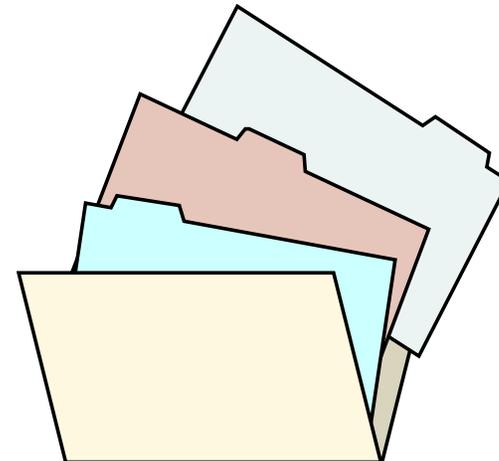


Definition of a Disability



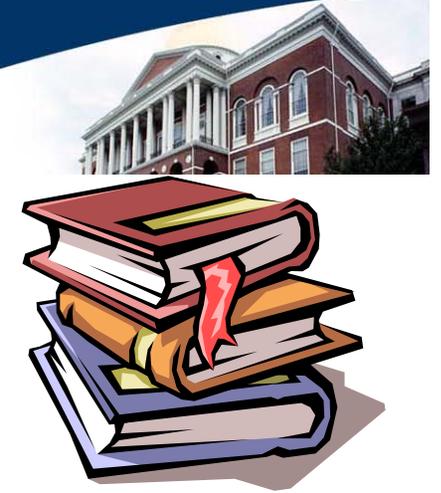
☀ Record of Such an Impairment:

- ☀ A history of a disability, whether or not they currently are substantially limited in a major life activity
 - ☀ **ADAAA expanded to include conditions that are episodic or in remission.**
- ☀ People who may have been misclassified or misdiagnosed as having a disability





Definition of a Disability



Regarded as Having an Impairment:

- Impairment is not substantially limiting, but is perceived to be
- Impairment is only limiting because of the attitudes of others
- Individual has no impairment, but is regarded as having one

The ADAAA clarifies that "Regarded as" is meant to be very broad.



Definition of Disability Does Not Include



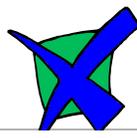
 Simple physical characteristics

 Common personality traits

 Environmental, cultural or economic disadvantages

 Those engaged in the illegal use of prescription or other drugs

 Certain sexual disorders and sexual preferences

 Compulsive gambling, kleptomania and pyromania



Nondiscrimination Overview



- ✓ Equal opportunity
- ✓ Eligibility criteria
- ✓ Integration
- ✓ Reasonable modifications
- ✗ Surcharges and additional requirements



Americans with Disabilities Act



- Title I: Employment
- Effective July 26, 1994





Qualified Individual with a Disability



An individual with a disability who is able to perform the essential job functions with or without reasonable accommodation.



- ★ Skills
- ★ Experience
- ★ Education
- ★ Certification
- ★ Training



Discrimination prohibited against a qualified person with a disability in:



Applying

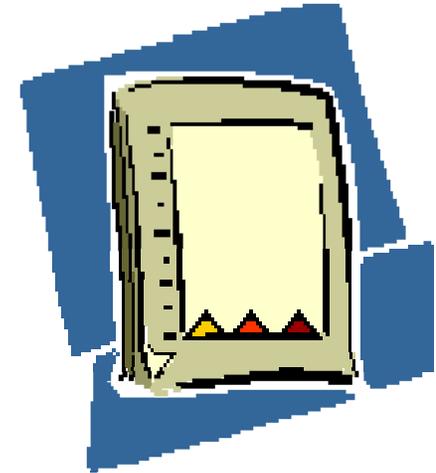
Hiring

Discipline and Termination

Benefits, Compensation, Advancement

Trainings and Events

Any terms, conditions, or privileges of employment





Reasonable Accommodations



- **Auxiliary (communication) Aids or Services**
 - **Removal of Barriers**
 - **Reasonable Modifications**

The ADAAA did not change the definition of "Reasonable Accommodation".



Reasonable Accommodations



Examples:

- ≡ Qualified Readers
- ≡ Qualified Interpreters
- ≡ Clerical Assistance
- ≡ Computer Programs
- ≡ Job Restructuring
- ≡ Reassignment to Vacant Position
 - ≡ Modified Work Schedule
 - ≡ Equipment
 - ≡ Facility Access
 - ≡ Office Modifications



When is an Accommodation not Reasonable?



- If it is an undue financial or administrative burden, for example, unduly costly, extensive, substantial or disruptive
- Would fundamentally alter the nature or operation of the organization
- Results in a direct threat to the health or safety of the employee or others



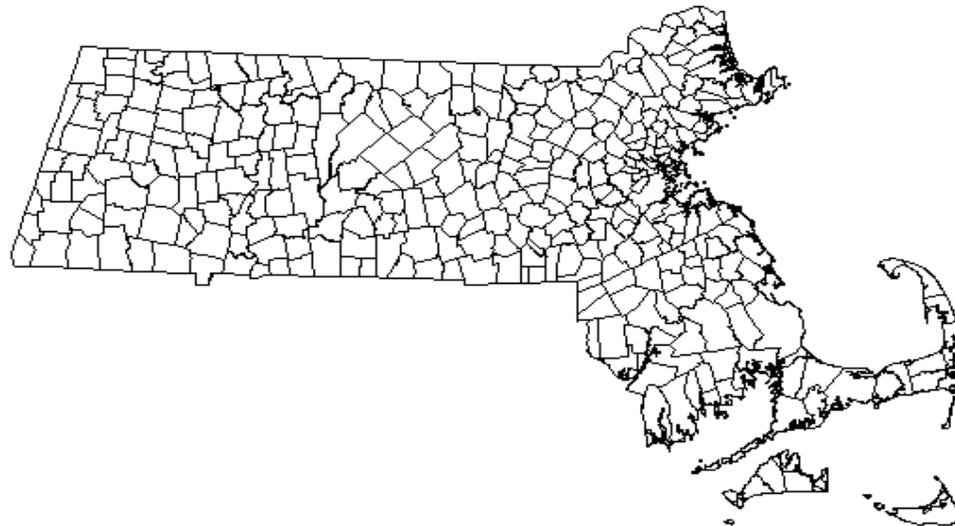
Americans with Disabilities Act



❖ Title II - Subpart A

❖ Effective January 26, 1992

❖ State and Local Government Services





Americans with Disabilities Act



- September 15, 2010 – DOJ publishes the implementing changes to Title II.
 - Became effective on March 15, 2011.
- Changes include:
 - the adoption of the 2010 ADA Standards for Accessible Design,
 - the definition of service animal,
 - ticketing policies for stadiums and theaters, and
 - policies concerning Segways and other non-wheelchair devices used by people with disabilities for mobility.



What Are The Obligations Of A Title II Entity?

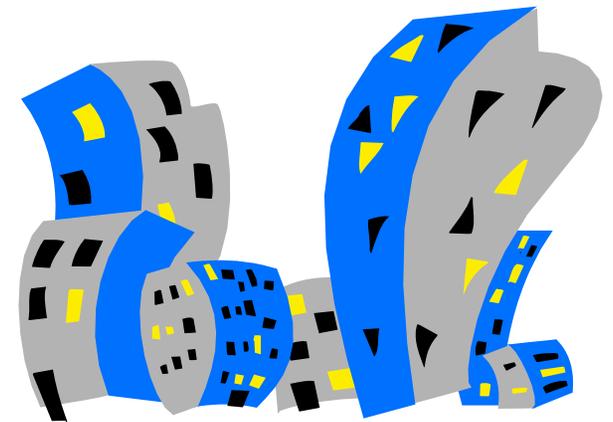


→ Create Program Access

- Ensure all people have equal opportunity to participate in programs, activities and services.

→ Ensure Effective Communication

- Visual Alarms if there are auditory alarms
- Proper signage
- TTY's (if the facility has public telephones)
- Assistive Listening Devices



→ Modify Policies and Practices

- Move Designated parking spaces to ensure proper location of HP parking space



What Are The Requirements For Small Towns? (With Less Than 50 Employees)



All Municipalities:

- ✓ Self-Evaluation (1/26/93)
- ✓ Structural Changes (1/26/95)
- ✓ Notification (1/26/92)



Municipalities With 50 Or More Employees



- ▶ Designate Responsible Employee (ADA Coordinator) 1/26/92
- ▶ Adopt A Grievance Procedure 1/26/92
- ▶ Keep Self-Evaluation on File for 3 Years
- ▶ Develop Transition Plan By 7/26/92



Americans with Disabilities Act



Title III

- ❖ Public Accommodations
- ❖ Commercial Facilities
- ❖ Exams and Courses Related to Professions and Trades

Effective:

January 26, 1993



Americans with Disabilities Act



- September 15, 2010 – DOJ publishes the implementing changes to Title III.
- Became effective on March 15, 2011.
- Changes Include:
 - the adoption of the 2010 ADA Standards for Accessible Design,
 - the definition of service animal,
 - ticketing policies for stadiums and theaters, and
 - policies concerning Segways and other non-wheelchair devices used by people with disabilities for mobility.



What is a Public Accommodation?



A Private Entity that:

- ➔ Owns
- ➔ Leases
- ➔ Leases to
- ➔ Or Operates



A Place of Public Accommodation:

✚ Landlords and Tenants have Responsibility



Places of Public Accommodation



12 Broad Categories:

1. Places of Lodging
2. Establishments Serving Food or Drink
3. Places of Exhibition or Entertainment
4. Places of Public Gathering
5. Sales or Rental Establishments
6. Service Establishments
7. Transportation Stations
8. Places of Public Display or Collection
9. Places of Recreation
10. Places of Education
11. Social Service Centers
12. Places of Recreation or Exercise



EXCLUDES: Private Clubs and Religious Organizations



Existing Facilities:

- Remove Barriers if “**Readily Achievable***”



- * *Easily Accomplishable and Able to be Carried Out Without Much Difficulty or Expense*



Exams and Courses for Licensing, Certification or Accreditation



- ❑ Measure What's Supposed to Be Measured
- ❑ Modify Format if Necessary (More Time)
- ❑ Provide Auxiliary Aids and Services
- ❑ Accessible Facility or Alternative Arrangement (at Home)





What is Effective Communication?



- **Title II and III entities shall take appropriate steps to ensure that communication with individuals with disabilities is as effective as with others.**



- **Under the ADAAA, companions are now specifically included as someone who must be provided with appropriate auxiliary aids and services if this is an appropriate person with whom to communicate.**





Communication Access



Ensure Effective Communication Through the Provision of Auxiliary Aids & Services Such As:



• Large Print

• Braille

• Video Remote Interpreting (VRI)

• Readers

• Computer Programs

• Sign Language Interpreters

• TTY

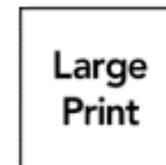
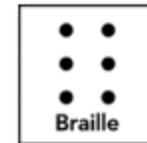
• CART

• Assistive Listening Devices

• Telephones Compatible with Hearing Aids

• Note Taker

• Audio Recordings





Auxiliary Aids and Service



What Needs to be Considered?

- ✧ The Needs of the Person.
- ✧ The Duration and Complexity of the Communication.
- ✧ The Context of the Communication.
- ✧ The Number of People Involved.
- ✧ Importance and Potential Impact.

NO SURCHARGES ALLOWED



Who Decides?



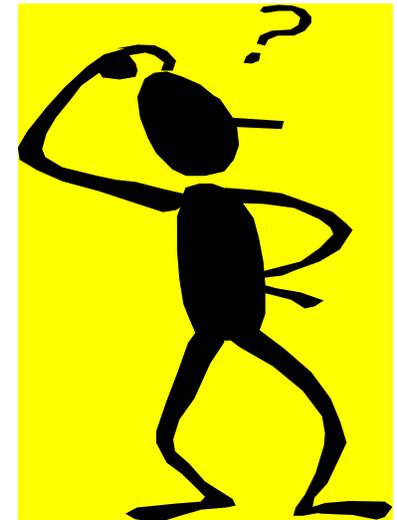
- ✓ Title II entities, in determining what type of auxiliary aids and services are necessary, a public entity shall give the primary consideration to the requests of the individual with a disability.
- ✓ A Title III entity is not required to give primary consideration to the specific auxiliary aid requested, but shall provide such auxiliary aid determined by the Title III entity to ensure effective communication.

Unless

- ✓ Proof of Another Effective Means
- ✓ Fundamental Alteration

or

- ✓ Undue Burden





Existing Facilities What are the Priorities?



- ✓ **Getting In**
- ✓ **Getting to the Goods or Services**
- ✓ **The Restroom**
- ✓ **Everything Else**





Getting In



Examples:



- Install HP Parking
- Install Ramp
- Widen Doorways
- Lower Thresholds
- Put on Lever Door Hardware



Getting to Goods and Services



Examples:



- Install Interior Ramp



- Add Flashing Light to Emergency Alarms

- Add Braille in Elevators



- Rearrange Display Racks

- Rearrange Tables





The Restroom (if it's open to the public)



Examples:

- Move Obstructing Furniture and Equipment
- Widen Doorway
- Lower Threshold
- Change Hardware
- Install Grab Bars



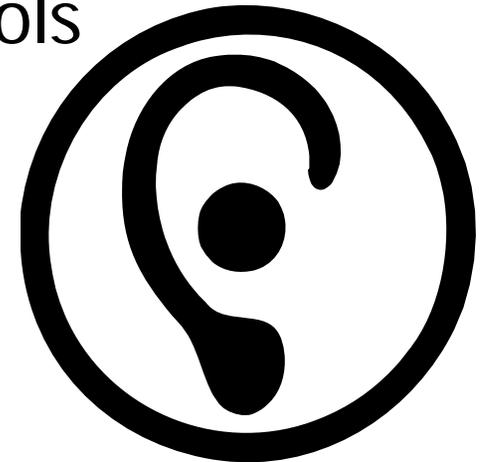


Everything Else



Examples:

- ✚ Put Paper Cups by Drinking Fountains
- ✚ Replace Difficult to Reach Controls
- ✚ Lower Public Telephones
- ✚ Install Volume Control Device on Telephone





Alternatives to Barrier Removal



☐ Home Delivery

☐ Curb, Door or Sidewalk Service

☐ Relocate Activities to Accessible Locations

☐ Retrieve Merchandise from Inaccessible Shelves and Racks

☐ Rotate Service (multi-screen cinemas)

**** If Readily Achievable ****



Recommendations



- Make a Plan
- Survey the Facility
- Review Policies, Practices
- Ensure Effective Communication
 - Good Faith Effort
 - On-Going Assessment



WHICH ONE APPLIES?

HOW DO THEY INTERACT?



ADA

ADAAG/2010 Standards

AAB



**Civil Rights
Legislation**

**Federal Civil Rights
Regulations that
Addresses Access in
the Built Environment**

State Building Code

**Covers all aspects of
peoples' lives and may
require renovations in a
building even though no
work is planned**

**Covers all areas of
the building
(including employees
areas)**

**Covers areas open
to the public**

No Variances

Allows for variances if:
**1) technologically
infeasible**
**2) excessive cost
without substantial
benefit to people with
disabilities**

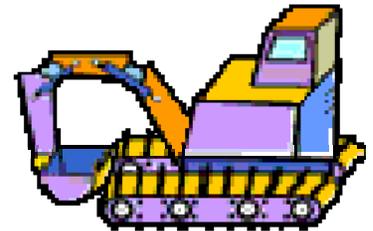


New Construction and Alterations



Americans with Disabilities Architectural Guidelines:

- ❁ January 26, 1992
 - State and Local Governments (Title II)
- ❁ January 26, 1993
 - Places of Public Accommodation and Commercial Facilities (Title III)
- ❁ March 15, 2012
 - Federal Buildings, Title II and Title III Entities undergoing new construction or alterations.



(Public and Employee Areas)



Program Accessibility, New Construction and Alterations: Title II



- Between September 15, 2010 and March 15, 2012, Title II entities must comply with:
 - 1991 Standards (ADAAG), UFAS, or the 2010 ADA Standards for barrier removal necessary to achieve their program access requirements.
 - They must follow the selected standard for all elements within a single facility. No picking and choosing between standards for individual elements.



Program Accessibility, New Construction and Alterations: Title II



- Beginning on or after March 15, 2012, Title II entities must comply with:
 - 2010 Standards for architectural barrier removal to meet program access
 - Compliance with 2010 Standards is subject to the date when the last application for building permit or permit extension is certified.
 - Title II entities must use supplemental requirements in the 2010 standards for which there is no scoping or technical requirements in 1991 standards to meet program access requirements (i.e. swimming pools, children's play areas, fishing piers)





Readily Achievable Barrier Removal: Title III



- Between September 15, 2010 and March 15, 2012, Title III entities must comply with:
 - Readily Achievable Barrier Removal continues to be required and entities may use either the 1991 standards or the 2010 standards.
 - They must follow the selected standard for all elements within a single facility. No picking and choosing between standards for individual elements.



Readily Achievable Barrier Removal: Title III



- Beginning on or after March 15, 2012, Title III entities must comply with:

- 2010 standards to meet their readily achievable barrier removal obligations.



- Title III entities must use supplemental requirements in the 2010 standards for which there is no scoping or technical requirements in 1991 standards to meet their readily achievable barrier removal obligations (i.e. swimming pools, children's play areas, fishing piers)



Safe Harbor – Existing Facilities for Title II and Title III Entities



- ✓ Elements that were constructed compliant with the regulations in effect at the time of construction need not be modified to comply with the 2010 standards unless they are altered on or after March 15, 2012.
- ✗ Safe Harbor does not apply to elements in existing facilities that were not covered by specific requirements in the 1991 standards or UFAS.



Elements in the 2010 Standards That Are NOT Subject to Safe Harbor



- Residential facilities and dwelling units
 - Amusement rides
- Recreational boating facilities
- Fishing piers and platforms
- Golf facilities
- Miniature golf facilities
- Play areas
- Saunas and steam rooms
- Swimming pools, wading pools and spas
- Shooting facilities with firing positions
- Miscellaneous:
 - Team or player seating
 - Accessible route to bowling lanes
 - Accessible route in court sport facilities



Massachusetts Architectural Access Board Regulations (MAAB 521-CMR)



(Part of the Massachusetts Building Code [triggered by work])



1968 (Publicly Funded Only)



1975



1977



1982



1987



1996



1998



2002



2006

(Does not cover "employee only" areas)

Facility Should Comply with Regulations at Date of Building Permit



Alterations



AAB

June 10, 1975 - September 1, 1996

Portions Altered Must Comply

Alterations More than \$50,000 in a 2 Year Period:



-Portions Altered Must Comply

Plus

-Accessible Entrance

-Accessible Restroom (If Public)

Alterations More than 25% of Assessed Value in a 2 Year Period:

-Full Compliance Entire Facility



Alterations



AAB

September 1, 1996 to Current

Portions Altered Must Comply

Alterations More than \$100,000 in a 3 Year Period:



-Portions Altered Must Comply

Plus

-Accessible Entrance

-Accessible Restroom, Telephone,
Drinking Fountain (if public)

Alterations More than 30% of Assessed Value in a 3 Year Period:

-Full Compliance of Entire Facility



Variations



AAB

- Historic, May Allow Alternate Access
- Technologically Infeasible
- Cost is Excessive Without any Substantial Benefit to Persons with Disabilities



NO VARIANCE FOR ADA



ADA and Historic Preservation



- To the greatest extent possible must be as accessible as non-historic properties
- If alterations would “threaten or destroy the historic significance of the property”, alternative minimum requirements may be used
- If alternative minimum requirements would “threaten or destroy the historic significance of the property”, alternative methods of access may be used ... such as home delivery, curbside service or audio-visual methods





ADA and Historic Preservation



Before Using Alternative Minimum Requirements Consult with:

- ~ State Historic Preservation Officer (SHPO)
- ~ Local Commission on Disability
- ~ Disability Organizations
- ~ Massachusetts Architectural Access Board





Title III Places of Public Accommodation



↪ Remove Architectural Barriers if Readily Achievable

↪ Ensure Effective Communication

↪ Modify Policies and Practices



↪ Most new Construction and Renovations Since July 1975 Must Comply With AAB

↪ Renovations as of Jan. 26, 1992 and New Construction for the First Occupancy After Jan. 26, 1993 Must Comply With ADAAG

↪ Renovation and New Construction after March 15, 2012 Must Comply with the 2010 ADA Standards for Accessible Design



Title III Enforcement



Private Lawsuits:

Attorney's Fees

Injunction Relief

Restraining Orders



Complaint to Department Of Justice:

Lawsuits if Pattern or Practice of Discrimination or Issue of Public Importance

Civil Penalty:

\$55,000 First Offense

\$110,000 Subsequent Offense

Monetary Damages to Individual



Investigate



1) Attempt Informal Resolution

If that Fails:

2) Investigate and Issue a Letter of Finding

3) Negotiate for Voluntary Compliance (signed agreement)

If that Fails:

4) Refer the Matter to Attorney General

Private Lawsuits Always Possible



AAB



File Complaint:

- Investigate
- Hold Hearing (Complainant Needs to Attend, Give Evidence)



- Issue Order
- Fine Up To \$1000/Day Non-Compliance Order