



Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

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#1 - Overview of Revised Title II and Title III Regulations



The Department of Justice (DOJ) has amended its regulations implementing Title II and Title III of the Americans with Disabilities Act (ADA), which apply to public/state and local government entities and private businesses/places of public accommodation, respectively. These revised regulations took effect on March 15, 2011, with some exceptions. Fact Sheets in this series are available on each of these topics.

Summary of Changes:

Fact Sheet #2 - Effective Communication

- Companions with disabilities must be provided with effective communication.
- Video Remote Interpreting (VRI) services are now considered an auxiliary aid that may be used to provide effective communication.
- A covered entity shall not rely on an adult or minor child accompanying an individual with a disability to provide interpreting services except in an emergency or if the deaf individual wants the accompanying adult to interpret if appropriate.
- A qualified reader is an individual who is able to read effectively, accurately and impartially using any specialized vocabulary.

Fact Sheet #3 - Examinations and Courses

- If an entity requires documentation of disability before granting an accommodation request, then the documentation requirement needs to be reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
- Prior modifications received in similar situations should be granted considerable weight
- A covered entity must respond in a timely manner to requests for modifications.

Fact Sheet #4 - Places of Lodging

- Effective March 15, 2012, these regulations will impact the definition of place of lodging, reservation processes, information provided through reservation systems regarding accessible features, holding accessible guest rooms, third party reservation providers and scoping for accessible guest rooms.

Fact Sheet #5 - Service Animals

- Service Animal is now defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability.
- Other animals, whether wild or domestic, do not qualify as service animals.
- Reasonable modifications in policies must also be made to allow individuals with disabilities to use miniature horses, with some restrictions, if they have been individually trained to do work or perform tasks for individuals with disabilities.

Fact Sheet #6 - Ticketing

- Guidance is now provided on the sale of tickets for accessible seating, information covered entities must provide about accessible seating, ticket prices, options for purchasing multiple tickets, hold and release of tickets for accessible seating, ticket transfer, the secondary ticket market, and prevention of fraud.

Fact Sheet #7 - Wheelchairs and Other Power-Driven Mobility Devices (OPDMDs)

- Wheelchairs must be permitted in all areas open to pedestrian use.
- OPDMDs- any mobility device powered by batteries, fuel or other engines, used by individuals with disabilities as their mobility device of choice, whether designed primarily for use by individuals with disabilities or not (such as the Segway® PT)- must be permitted unless the covered entity can demonstrate that such use would fundamentally alter its business/operations, create a direct threat, or create a safety hazard.

Fact Sheet #8 - Detention and Correctional Facilities

- Qualified inmates or detainees with disabilities shall not be excluded from participation in, or be denied the benefits of, the services, programs or activities of a public entity in the most integrated setting appropriate.
- Requires three percent of newly constructed or altered cells to be accessible.

Fact Sheet #9 – Overview of the 2010 ADA Standards for Accessible Design

- DOJ has adopted revised ADA design standards as found in the U.S. Access Board's 2004 ADA/ABA Accessibility Guidelines.
- On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards or the 2010 Standards. *Note: Title II entities can also choose the Uniform Federal Accessibility Standards (UFAS).*
- "Safe Harbor": facilities that were built or altered in compliance with 1991 Standards or the UFAS do not have to be brought into compliance with 2010 Standards unless the facility undergoes an alteration on or after March 15, 2012.

Call your Regional ADA Center at 1.800.949.4232 for more information on the new Title II and Title III regulations and to get other Fact Sheets in our nine part series!



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#2 - Effective Communication



The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II and Title III regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities (state and local government entities) and Title III private businesses (a.k.a. places of public accommodation) to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. (§35.104, §35.160, §36.104, §36.303) This includes an obligation to provide effective

communication to companions who are individuals with disabilities. The term “companion” means a family member, friend, or associate with whom the public entity or private business would typically communicate.

Providing Auxiliary Aids and Services

Examples of common auxiliary aids and services include qualified sign language interpreters in person or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones or equally effective telecommunications devices; videotext displays; qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; and accessible electronic and information technology.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, complexity of the communication involved; and the context in which the communication is taking place. A private business should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the private business, provided that the method chosen results in effective communication. However, public entities must give primary consideration to the request of the individuals with disabilities.

- To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
- A public entity or private business is financially responsible for the cost of the auxiliary aid or service provided unless it can demonstrate that it would be an undue financial burden in light of the overall financial resources of the entire entity, including any parent corporation if applicable. It cannot impose a surcharge on an individual with a disability to cover the costs of the auxiliary aid or service provided. Even if it is determined that a particular auxiliary aid or service is an undue financial burden, the entity must still provide effective communication utilizing a different auxiliary aid or service.

Sign Language Interpreters

Public entities and private businesses cannot require an individual with a disability to bring another individual to interpret for him or her. A public entity or private business shall not rely on an adult accompanying an individual to interpret or facilitate communication, except:

- In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- When the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for assistance is appropriate under the circumstances.

A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

Telecommunications

When a public entity or private business uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and relay services, including Internet-based relay systems. A public entity or private business shall respond to telephone calls from a relay service in the same manner that it responds to other telephone calls. A public entity or private business may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

A public entity or private business that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using their equipment on more than an incidental convenience basis shall make available accessible public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

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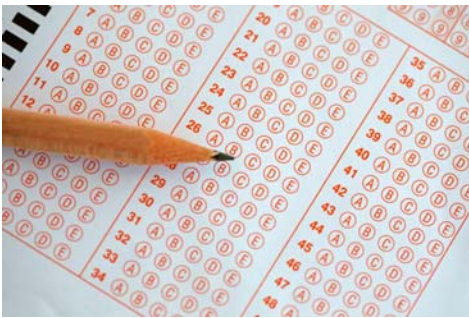
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#3 - Examinations and Courses



The Department of Justice (DOJ) has issued revised ADA Title III (private businesses, a.k.a. places of public accommodation) regulations regarding examinations and courses. (§36.309) These regulations took effect March 15, 2011 and affect exams and courses related to applications, licensing, certification or credentialing for secondary or postsecondary education or professional or trade purposes. The general rule has not changed from the original ADA:

covered entities must continue to offer exams and courses in a location and manner that is accessible to individuals with disabilities or offer alternative accessible arrangements, and examinations should be administered so that the results accurately reflect the individual's aptitude or achievement level, not the impairment. What DOJ has done is move some of the language from the original ADA preamble into the regulatory text. This change affects three areas in particular:

Requests for Documentation Must Be “Reasonable and Limited”

- If an entity requires documentation of disability before granting an accommodation request, then the documentation requirement needs to be reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
- In general, when testing entities receive documentation provided by a qualified professional who has made an individualized assessment of an applicant that supports the need for the modification, accommodation, or aid requested, the entity should accept that documentation and provide the accommodation.
- What is considered “acceptable” documentation will depend on the nature of the disability and the specific modification or aid being requested. Possible forms of acceptable documentation may include a recommendation from a qualified professional, a psycho-educational evaluation, history of a diagnosis, participation in a Special Education program, or a prior accommodation from another standardized testing agency.

- A “qualified professional” is one who is licensed or otherwise credentialed and who possesses expertise in the disability for which the modifications or accommodations are sought. Examples of a qualified professional may include a doctor, psychologist, nurse, physical, occupational or speech therapist, vocational rehabilitation specialist, school counselor, or licensed mental health professional. Testing entities should ask qualified professionals in the pertinent field to evaluate the request and materials presented by the individual requesting the accommodation.
- An “individualized assessment” means that a qualified professional has individually and personally evaluated the candidate rather than only reviewed documents about the candidate. Personal familiarity with the candidate will always outweigh not having personal knowledge of the candidate.

Prior Modifications Received in Similar Situations Should Be Granted “Considerable Weight”

- When considering requests for modifications, covered entities need to give considerable weight to documentation of past modifications that were received in similar testing situations (e.g., if an accommodation was granted when the individual took the SAT’s, then it should also be granted when that same individual takes GRE’s, if requested).
- Entities should also give considerable weight to documentation of modifications that were provided in response to an Individualized Education Plan (IEP) or a Section 504 Plan because the history of testing accommodations determined through the rigors of a process required by Federal law is useful and instructive.

Covered Entity Must Respond to Requests for Modifications in a “Timely Manner”

- Covered entities need to respond to requests for modifications, accommodations, or aids in a timely manner to ensure the same level of opportunity and access for individuals with disabilities that exists for persons without disabilities.
- If testing entities fail to act quickly and/or they seek unnecessary documentation, then it could result in an extended delay, thereby denying equal opportunity or equal treatment in an examination setting, creating possible grounds for disability discrimination.

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#4 - Places of Lodging



The Department of Justice (DOJ) has issued revised ADA Title III (private businesses, a.k.a. places of public accommodation) regulations regarding places of lodging. These regulations include several significant provisions designed to enable individuals with disabilities to make reservations at places of lodging as effectively as others. [§36.104, §36.302(e)] They also include new facility standards for places of lodging within the 2010 Standards for Accessible Design. [§36.406(c)] All of these provisions related to lodging take effect March 15, 2012.

Who Must Comply?

An entity that owns, leases, leases to, or operates a place of lodging must follow these new requirements. Places of lodging include traditional hotels, motels and inns, as well as facilities that provide guest rooms for sleeping for stays that are primarily short-term (generally 30 days or less), where occupants do not have the right to return to a specific room or unit after the conclusion of their stay, and which provide guest rooms under conditions and with amenities similar to a traditional hotel, motel, or inn. Such conditions and amenities include the following:

- On- or off-site management and reservations service;
- Rooms available on a walk-up or call-in basis;
- Availability of housekeeping or linen service;
- Acceptance of reservations for a room type without guaranteeing a particular room or unit until check-in, and without a prior lease or security deposit.

This does not include facilities that contain no more than five rooms for rent and that actually are occupied by the proprietor of the establishment as the residence of the proprietor.

Reservation Systems

- All of these provisions apply with respect to reservations made by telephone, in-person, or via a website.
- Individuals with disabilities must be able to make reservations for accessible guest rooms during the same hours and in the same manner as others.

- Places of lodging must identify and describe accessible features of the facility and the guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given facility or guest room meets his or her accessibility needs. Information, including photos or other images, may be posted on websites or included in brochures or other materials. Customer service staff should also be trained to respond to specific inquiries about the features of the facility, including accessible routes to and through the facility; details about the configuration of accessible guest rooms and bathrooms; the availability of accessibility equipment or features such as bath benches, or visual alarm and alert devices for guests who are deaf or hard of hearing; and the accessibility of common spaces such as meeting rooms, lounges, restaurants, swimming pools, or fitness centers.
- Accessible guest rooms must be held for use by individuals with disabilities until all other guest rooms of that type have been rented.
- When a reservation is made for an accessible guest room, the *specific* accessible guest room reserved must be held for the reserving customer and the room must be removed from the reservation system.
- Places of lodging that make rooms available for reservations through third parties (e.g., Expedia or Orbitz) must provide accessible rooms to at least some of the third parties and must provide information about the accessible features of the facility and the guest rooms.

New Requirements for Places of Lodging from the 2010 Standards

- In general, lodging built after March 15, 2012 will have to comply with the 2010 ADA Standards [Sections 224, 806 as well as §36.406(c)] which include a new section with standards for recreational spaces, including but not limited to swimming pools and spas (Sections 242, 1009), exercise equipment (Sections 206, 236, 1004), golf courses (Section 238, 1006), boating facilities (Sections 235, 1003), and playgrounds (Sections 240, 1008). The 2010 ADA Standards also include new scoping provisions for the number of guest rooms that must be provided with features for mobility access and for communication access.
- Existing lodging built before March 15, 2012 will need to remove architectural barriers, when readily achievable, to recreational facilities, which include but are not limited to swimming pools and spas, exercise equipment, golf courses, boating facilities, and playgrounds.

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#5 - Service Animals



The Department of Justice has issued revised ADA Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodation) regulations which took effect March 15, 2011. These regulations revise the definition of service animal and add additional provisions. (§35.104, §35.136, §36.104, §36.302)

Definition

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not considered to be service animals. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks and as such do not meet the definition of a service animal.

Miniature Horses

A public entity or private business shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse as a service animal by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability subject to an assessment of the type, size, and weight of the miniature horse and whether the facility can accommodate these features. The same provisions that apply to service dogs also apply to miniature horses.

Inquiries

To determine if an animal is a service animal, a public entity or a private business may ask two questions: 1) Is this animal required because of a disability? 2) What work or task has this animal been trained to perform? These inquiries may not be made if the need for the service

animal is obvious (e.g., the dog is guiding an individual who is blind or is pulling a person's wheelchair.) A public entity or private business may not ask about the nature or extent of an individual's disability. They also may not require documentation, such as proof that the animal has been certified, trained or licensed as a service animal, or require the animal to wear an identifying vest.

When and Where a Service Animal is Allowed Access

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of public facilities and private businesses where members of the public, program participants, clients, customers, patrons, or invitees are allowed to go. If a service animal's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation, they can be excluded from the facility (e.g., from a surgery or intensive care unit in a hospital in which a sterile field is required.)

A public entity or a private business may ask an individual with a disability to remove a service animal from the premises if the animal is not housebroken or if the animal is out of control and the handler does not take effective action to control it. A handler shall use a harness, leash or other tether with their service animal unless either the handler is unable to do so because of a disability or unless the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks. In these cases, the service animal must be under the handler's control through voice control, signals, or other effective means. If a service animal is excluded, the individual with a disability must still be offered the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.

Other Provisions

- A public entity or private business is not responsible for the care and supervision of a service animal.
- A public entity or private business shall not ask nor require an individual with a disability to pay a surcharge or deposit, even if people accompanied by pets are required to pay such fees.
- If a public entity or private business normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

Relationship to Other Laws

These provisions related to service animals apply only to entities covered by the ADA. The Fair Housing Act covers service animal provisions for residential housing situations and the Air Carrier Access Act covers service animal provisions for airline travel. The definition of a service animal under each of these laws is different than the definition under the ADA.

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#6 -Ticketing



Previously, ticketing had not been addressed specifically in the ADA or in its implementing regulations. Entities that sell tickets were always covered by the ADA, but there was no specific guidance for the myriad of situations related to ticketing. All that changed when the Department of Justice issued ticketing regulations which took effect on March 15, 2011. [§36.302(f), §35.138] These regulations apply to Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodations).

General Requirements

An entity that sells tickets for a single event or a series of events shall modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating:

- During the same hours as others;
- During the same stages of ticket sales, including but not limited to, pre-sales, promotions, lotteries, waitlists, and general sales;
- Through the same methods of distribution;
- In the same types and numbers of ticketing sales outlets, including telephone service, in-person ticket sales at the facility, or third-party ticketing services, as other patrons; and
- Under the same terms and conditions as other tickets sold for the same event or series of events.

If a ticketing entity is asked, it must:

- Inform individuals with disabilities, their companions, and third parties purchasing tickets for individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event at the facility;

- Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to decide independently whether a given accessible seating location meets his or her accessibility needs; and
- Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating with the same text or visual representations as other seats, if such materials are provided to the general public.

Ticket Prices

The price of tickets for accessible seating must not be higher than the price of other tickets in the same seating section for the same event. Tickets for accessible seating must be made available at all price levels for every event. If tickets for accessible seating at a particular price level cannot be provided because barrier removal in an existing facility is not readily achievable, then the percentage of tickets for accessible seating that should have been available at that price level if it weren't for the barriers must be offered for purchase, at that price level, in a nearby or similar accessible location. The percentage is determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area.

Purchasing Multiple Tickets

For each ticket for accessible seating purchased by or for an individual with a disability, an entity must make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that the seats are available at the time of purchase. Such seats may include wheelchair spaces. If patrons are allowed to purchase at least four tickets, and there are fewer than three additional contiguous seats available for purchase, an entity must offer the available contiguous seats and also must make up the difference by offering tickets for seats that are as close as possible to the accessible seats. If ticket sales for a particular event or venue are limited to fewer than four seats per patron, then entities must offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as would be offered to patrons without disabilities. If patrons are allowed to purchase more than four tickets, then patrons with disabilities must be allowed to purchase up to the same number of tickets, including the ticket for the wheelchair space. If a group includes one or more individuals who need to use accessible seating because of a mobility disability, or because the disability requires the use of the accessible features that are provided in accessible seating, the group must be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the people in the group who use wheelchairs are not isolated from the group.

Hold and Release of Tickets for Accessible Seating

Tickets for accessible seating may be released for sale to individuals without disabilities in certain limited circumstances. However, a facility is never required to release tickets for accessible seating to individuals without disabilities.

Unsold tickets for accessible seating may be released only under the following circumstances:

- When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
- When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
- When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

When series-of-events tickets are sold out and the entity releases and sells accessible seating to individuals without disabilities for a series of events, a process must be established that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series, so that individuals with disabilities who require the features of accessible seating, and who become newly eligible to purchase tickets when these series-of-events tickets are available for purchase, have an opportunity to do so.

When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to an entity, reasonable modifications in policies, practices, or procedures must be made in order to afford individuals with mobility disabilities, or individuals with disabilities that require the features of accessible seating, the chance to purchase such tickets in accessible seating areas.

Ticket Transfer

Individuals with disabilities who hold tickets for accessible seating must be permitted to transfer tickets to third parties under the same terms and conditions, and to the same extent, as other spectators holding the same type of tickets, whether they are for a single event or a series of events.

Secondary Ticket Market

Policies, practices, or procedures must be modified to ensure that individuals with disabilities may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who acquired their tickets through the secondary ticket market for the same event or series of events.

If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, the individual should be allowed to exchange his ticket for one to an accessible seat in a comparable location, if accessible seating is vacant at the time the individual presents the ticket to the public accommodation.

Prevention of Fraud

Individuals with disabilities may not be required to provide any proof of disability, such as a doctor's note. For the sale of single-event tickets, sellers can ask whether the individual purchasing the tickets for accessible seating has either a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating, or is purchasing the tickets for such a person. For series-of-events tickets, sellers can ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating. An investigation may take place regarding the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

New Requirements for Assembly Areas from the 2010 Standards

- In general, new construction or alterations on or after March 15, 2012 must comply with the 2010 ADA Standards. [Sections 221, 802 as well as §35.151(g) and §36.406(f)]
- Vague requirements for lines of sight and dispersion have been replaced with specific standards.
- Reduced scoping for large venues with more than 500 seats.
- New requirements for location of accessible seating in stadium-style movie theaters.
- Lawn seating will be required to be on an accessible route.

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#7 - Wheelchairs and Other Power-Driven Mobility Devices

The Department of Justice has issued revised ADA Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodation) regulations which took effect March 15, 2011. These regulations provide a definition of a wheelchair and other power-driven mobility devices and add additional provisions identifying where they can be used. (§35.104, §35.137, §36.104, §36.311)

Wheelchair

A wheelchair is a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor, locomotion. Individuals with mobility disabilities must be permitted to use wheelchairs and manually powered mobility aids, i.e., walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian traffic.

Other Power-Driven Mobility Device (OPDMD):

An OPDMD is any mobility device powered by batteries, fuel, or other engines that is used by individuals with mobility disabilities for the purpose of locomotion, whether or not it was designed primarily for use by individuals with mobility disabilities. OPDMDs may include golf cars, electronic personal assistance mobility devices, such as the Segway[®] Personal Transporter (PT), or any mobility device that is not a wheelchair, which is designed to operate in areas without defined pedestrian routes.



Covered entities must make reasonable modifications in their policies, practices, or procedures to permit individuals with mobility disabilities to use OPDMDs unless the entity can demonstrate that the class of OPDMDs cannot be operated in accordance with legitimate safety requirements adopted by the entity.

Covered entities must assess the following factors to determine whether a particular OPDMD can be allowed in a specific facility as a reasonable modification:

- The type, size, weight, dimensions, and speed of the device.
- The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year).
- The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user).
- Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific facility.
- Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

Inquiries

Covered entities shall not ask an individual using a wheelchair or OPDMD questions about the nature and extent of the individual's disability. Covered entities may ask a person using an OPDMD to provide a credible assurance that the mobility device is required because of the person's mobility disability. If the covered entity permits the use of a class of OPDMDs by individuals with mobility disabilities, they shall accept the following as credible assurance:

- Presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability. A valid disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of Issuance's requirements.
- A verbal statement, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.

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#8 – Detention & Correctional Facilities



The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities (state and local government entities) that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or part, including private correctional facilities. (§35.151(k) and §35.152)

Overarching Obligation

The revised regulations state that public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Integrated Setting

Inmates or detainees with disabilities must be housed in the most integrated setting appropriate to the needs of the individuals. This means there needs to be accessible housing in all security classifications and/or program levels of a facility. Also, qualified inmates or detainees with disabilities should have access to all programs to which they would otherwise be entitled, including educational, vocational, work release, employment, and religious programs, whether mandatory or voluntary. Unless it is appropriate to make an exception, public entities shall not place inmates with disabilities:

- In inappropriate security classifications because no accessible cells or beds are available;
- In medical areas unless they are actually receiving medical care or treatment;
- In facilities that do not offer the same programs as facilities where they otherwise would be housed; and
- In distant facilities where they would otherwise not be housed that would deprive them of visitation with family members.

Minimum Requirements from the 2010 Standards (§35.151(k))

New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards, effective March 12, 2012, except that public entities shall provide mobility features for at least 3%, but no fewer than one, of the total number of cells in such a facility. Cells with mobility features shall be provided in each classification level.

As required by the 2010 Standards, at least 2%, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features. Within this requirement, where audible emergency alarm systems are provided to service the occupants of cells, visible alarms shall be provided; however, visible alarms shall not be required where inmates or detainees are not allowed independent means of egress. Telephones, where provided within cells, shall have volume controls. (Sections 232 and 807, 2010 Standards)

Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards, effective March 12, 2012, except that public entities shall provide accessible mobility features for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in the facility provide mobility features. Altered cells with mobility features shall be provided in each classification level.

However, when alterations are made to specific cells, facilities may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that the substitute cell is located within the same prison site, is integrated with other cells to the maximum extent feasible, and has equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and other offered programs. If it is technically infeasible to locate a substitute cell within the same prison site, the substitute cell must be provided at another prison within the same system.

With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 ADA Standards technical and scoping requirements for those facilities whether those facilities are licensed or not.

Call your Regional ADA Center at 1.800.949.4232 for more information on Detention and Correctional Facilities and to get other Fact Sheets in our nine part series!



Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

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#9 - Overview of the 2010 Standards for Accessible Design



The Americans with Disabilities Act (ADA) requires the U.S. Department of Justice (DOJ) to publish ADA design standards that are consistent with the guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). The DOJ has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of the DOJ's revised rules implementing Title II and Title III of the ADA. To minimize compliance burdens on

entities subject to more than one legal standard, these design standards have been harmonized with the Federal standards implementing the Architectural Barriers Act and with the private sector model codes adopted by most states. The changes to the design guidelines were adopted by the Access Board as a series of separate rules that were combined in the 2004 ADA/ABA guidelines. These rules addressed a variety of facilities and the revision of the Access Board's 1991 guidelines. These changes have been adopted, with some modifications, as the 2010 Standards for Accessible Design.

On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards or the 2010 Standards. Note: Title II entities can also choose the Uniform Federal Accessibility Standards (UFAS). Under the "safe harbor" provision, facilities that were built or altered in compliance with the 1991 Standards or the UFAS do not have to be brought into compliance with 2010 Standards unless the facility undergoes an alteration on or after March 15, 2012. Elements for which there were no 1991 standards are not eligible for safe harbor.

Summary of Areas and Facilities Impacted by the Changes:

A. Recreation Facilities:

- Amusement rides (Sections 234, 1002)
- Recreational boating facilities (Sections 235, 1003)
- Exercise machines and equipment (Sections 206, 236, 1004)
- Fishing piers and platforms (Sections 237, 1005)

- Golf facilities (Sections 238, 1006)
 - Miniature golf (Sections 239, 1007)
 - Play areas (Sections 240, 1008)
 - Saunas and steam rooms (Sections 241, 612)
 - Swimming pools, wading pools, and spas (Sections 242, 1009)
- B. Public Facilities:
- Judicial facilities (Sections 231, 807, 808)
 - Detention and correctional facilities (Sections 232, 807)
 - Residential dwelling units (Sections 233, 809)
- C. Changes to the 1991 Standards: the 2010 ADA Standards for Accessible Design contain more than incremental changes. These changes are addressed in detail in Appendix B to the Title III regulations and in the DOJ's regulatory impact analysis. A few examples of areas impacted by these changes are:
- Children's standards (optional)
 - Slope of clear floor space and cross slopes maximum 1:48 (Sections 305, 403)
 - Standard knee and toe clearance used for all fixtures (Section 306)
 - Reach range requirements (Section 308)
 - Door surface (Section 404)
 - Maneuvering clearance required at automatic doors (Section 404)
 - Curb ramp level landings (Section 406)
 - Limited Use/Limited Application elevators instead of platform lifts (Section 408)
 - Van parking spaces (Section 502)
 - Passenger loading zones at the same level as the vehicle (Section 503)
 - Stair handrail extension no longer required (Sections 504, 505)
 - Drinking fountain knee clearance and spout height for those standing (Section 602)
 - Clustered single user toilet rooms (Sections 213, 603)
 - Single user toilet door swing (Section 603)
 - Water closet clearances and center lines (Section 604)
 - Ambulatory accessible toilet compartments (Section 604)
 - Urinals, reduced scoping (Sections 213, 605)
 - Lavatories and sinks (Section 606)
 - Bathtub seat height and width (Section 607)
 - Shower compartment thresholds and controls (Section 608)
 - Washing machines and clothes dryers (New – Section 611)
 - Detectable warnings (Section 705)
 - Automatic Teller Machines and fare machines (Section 707)
 - Assembly areas (Sections 221, 802)
 - Kitchens and kitchenettes (New – Section 804)
 - Common use circulation paths in employee work areas (Sections 203.9, 206.2.8)
 - Location of both accessible routes and accessible routes to stages (Section 206)
 - Transient lodging guest rooms (Sections 224, 806)
 - Benches, size and side transfer (Section 903)

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