



Your technical assistance & training resource

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Highlights of Specific ADA Revisions for Lodging

Prevalence of Disability

According to the U.S. Census Bureau,
American FactFinder –

- 21% of the population 15 years of age and older has a disability
- 11.9 % of the population 15 years of age and older have an ambulatory disability, or about 35 million people
- 52% of the population 65 years of age and older has a disability

Revisions to ADA Regulations

- **Published in the Federal Register - September 15, 2010**
- **Effective Date – March 15, 2011**
- Exception – **Rules governing** Lodging effective March 15, 2012
- **First major updates/revisions in 19 years**
 - Update of nondiscrimination policies
 - Adoption of updated accessibility standards
- **Two regulations**
 - Title II: State and local governments
 - Title III: Public accommodations and commercial facilities

Specific ADA Revisions

- Lodging – New Reservation Practices
- Safe Harbor
- Readily Achievable Barrier Removal
- Service Animal
- Wheelchair/Other Power-Driven Mobility Devices (OPDMD)

Lodging – New Reservation Practices

Effective Date: March 15, 2012

- Requirements cover a public accommodation that owns, leases (or leases to), or operates a place of lodging
- Requirements related to third-party reservation services that are not directly covered by the rule

Reservation Practices (con't)

Five basic requirements:

- Individuals with disabilities must be able to make reservations for accessible rooms in the same manner and during the same times as others
 - Telephone
 - In person
 - Third party

Reservation Practices (con't)

- Entities must identify and describe accessible features of the hotel and the guest rooms in enough detail that an individual with a disability can independently assess whether the facility will meet his/her needs
- Hold back accessible guest rooms until all other rooms of that type have been rented

Reservation Practices (con't)

- Reserve accessible guest rooms and remove them from the reservation system
- Guarantee and hold the specific rooms reserved by individuals with disabilities, regardless of whether specific rooms are held for others

Reservation Practices – Third Party Services

Third party reservation services

- Covered entities must make reasonable efforts to make accessible rooms available to at least some of these third party services
- Covered entities must provide information about accessible features to third party services

Third Party Services (con't)

Limited Liability

- If covered entities make accessible rooms available to third party services and provide information about accessible features, but the third-party fails to provide the rooms or information appropriately, the covered entity will not be held responsible

SAFE HARBOR

If your business facility was built or altered in the past 20 years in compliance with the 1991 Standards, or you removed barriers to specific elements in compliance with those Standards, you do not have to make further modifications to those elements –even if the new standards have different requirements for them – to comply with the 2010 Standards.

SAFE HARBOR, con'd.

This provision is applied on an element – by – element basis and is referred to as the “Safe Harbor”. The following examples illustrate how the safe harbor applies:

- Light switches/thermostats 48” to 54”
- Van accessible spaces 1 in 8 to 1 in 6

Until you alter elements and then you bring them up to current requirements.

New Requirements in the 2010 Standards – Not Subject to the Safe Harbor

- **Amusement rides**
- **Recreational boating facilities**
- **Exercise room – adequate space next to one of each type of exercise machines**
- **Fishing piers and platforms**
- **Golf facilities and miniature golf facilities**
- **Play areas**
- **Saunas and steam rooms**
- **Swimming pools, wading pools and spas**
- **Shooting facilities with firing positions**
- **Residential facilities and dwelling units**
- **Miscellaneous**

What's Required?

- New construction must be accessible to 2010 Standard after March 15, 2012;
- Structural alterations/remodeling must meet same standard after that date; and
- The clock starts ticking for readily achievable barrier removal in areas not covered by safe harbor -
 - Review your facility;
 - Develop a plan;
 - Do the analysis, cost vs. resources; and
 - Implement your plan

Readily Achievable Barrier Removal

- The ADA requires that businesses remove architectural barriers in existing facilities when it is “readily achievable” to do so.
Readily achievable means “easily accomplishable without much difficulty and expense.”

Readily Achievable Barrier Removal, con'd.

This requirement is based on the size and resources of a business. So, businesses with more resource are expected to remove more barriers than businesses with fewer resources. Examples include:

- Providing accessible route from parking lot
- Constructing an entrance ramp
- Installing a pool lift

Determining What is Readily Achievable

- This will vary from business to business and sometimes from one year to the next.
- Changing economic conditions can be taken into consideration in determining what is a readily achievable.
- Economic downturns may force many businesses to postpone removing some barriers.

Determining What is Readily Achievable, con'd.

- **The barrier removal obligation is a continuing one and it is expected that a business will move forward with its barrier removal efforts when it rebounds from such downturns.**
- **When resources become available, barrier removal efforts are required!**

Definition of “Service Animal”

The definition:

- Limits the species of service animals to **dogs**;
 - **Miniature Horse Exception**
- Makes clear that comfort or emotional support animals are **not** covered; and
- **Continue to be covered under Fair Housing and Air Carrier Access Act**
- Makes clear that individuals with physical, sensory, psychiatric, or other mental disabilities can use service animals.

Revisions to the General Service Animal Provisions

- Overview of changes:
 - Provides when a service animal can be excluded.
 - Requires animal to be under handler's control.
 - Care and supervision.
 - Provides guidance on inquiries.
 - Access to all areas open to public
 - Surcharges.

Exclusion of Service Animals

- **General rule is that covered entities must permit service animals.**

The revised rules, however, add two specific exceptions for when service animals can be excluded:

- The animal is out of control and the handler does not take effective action to control it; or
- The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.

Permissible Inquiries

- Only two inquiries may be made by covered entities:
 - Whether the animal is required because of a disability; and
 - What work or task the animal has been trained to perform.
 - Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.

Miniature Horse Exception

- Rules require reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- Rules provide assessment factors to assist entities in determining whether reasonable modifications can be made.



What is a Wheelchair?

- **Definition:** “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.”

Use of Wheelchairs

- Covered entities must permit individuals with mobility disabilities to use wheelchairs in any area open to pedestrian use.
- Must also allow individuals with mobility disabilities to use manually-powered mobility aids (includes include walkers crutches canes walkers, crutches, canes, braces, or other similar devices) in areas open to pedestrian use.

Other Power-Driven Mobility Device (OPDMD)

- **Definition:** “Any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion”.

Definition of “OPDMD,” (con’t)

- Includes:
 - Golf cars;
 - Electronic personal assistance mobility devices (e.g., Segway®); or
- Any mobility device that is not a wheelchair that is designed to operate in areas without defined pedestrian routes.
- Does not apply to federal wilderness areas



Use of OPDMDs

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

Reasonable Modifications Regarding OPDMDs

- Burden on entity to show it is not reasonable to allow OPDMD on premises or portion of premises.
 - Assessment is made regarding the *class* of devices, instead of an *individual's use* of the device.

OPDMD Assessment Factors

- Covered entities must consider specific assessment factors to determine whether a reasonable modification can be made.
 - Type, size, weight, dimensions and speed of device
 - Facility's volume of pedestrian traffic
 - Facility's design and operational characteristics
 - Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility

Impermissible Questions

Entities may not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

OPDMD - Permissible Questions

The rules allow covered entities to ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person’s disability.

OPDMD - Credible Assurance

- A valid, 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

Resources

- **Minnesota State Council on Disability (MSCOD)**
651-361-7800
800-945-8913
www.disability.state.mn.us
- **ADA Minnesota**
651-603-2015
www.adaminnesota.org
- **Great Lakes ADA Center**
800-949-4232
www.adagreatlakes.org

More Resources

- **US Department of Justice**

800-514-0301 (V)

800-514-0383 (TTY)

<http://www.ada.gov>

State and Local Government Tool Kit

<http://www.ada.gov/pcatoolkit/toolkitmain.htm>

- **US Access Board**

800-872-2253 (V)

800-993-2822 (TTY)

<http://www.access-board.gov>