Overview of the Americans with Disabilities Act (ADA)
Agenda

- What is the ADA?
- Title I
- Title II
- Title III
- 2010 Revisions
- Title IV
- Title V
- Resources
Your Knowledge of the ADA

Quick Quiz – 3 Questions
Multiple Choice?

If you live to the age of 70, the chance of you having a disability is:

A. 12%
B. 28%
C. 55%
D. 82%
Answer

C. 55%
Next Question

Over 50% of accommodations for employees with disabilities will cost:

A. Nothing
B. Between $500 and $1,000
C. Over $1,000
D. More than the employer can afford
Answer

B. NOTHING
The ADA is an affirmative action law for individuals with disabilities.
Answer

False
ADA = Civil Rights
What is the ADA?

• Americans with Disabilities Act, passed in 1990.
• Federal CIVIL RIGHTS legislation that says it is illegal to discriminate against people with disabilities in employment, state and local government services, private businesses, telecommunications and transportation.

• **Goal:** The full inclusion of people with disabilities in all aspects of American society.
Five Titles of the ADA

Title 1. Employment
Prohibits disability discrimination in all employment processes

Title 2. Accessibility in public entities
Physical and program accessibility in state/local govt. entities

Title 3. Accessibility in businesses
Physical and program accessibility in restaurants, hotels, stores, places of business

Title 4. Telecommunications
Telephone and communications systems for the public

Title 5. Miscellaneous
Why was the ADA needed?

Think back to before 1990...

• There were fewer curb cuts.
• Many businesses were not accessible.
• People with disabilities were rarely seen in advertisements and TV shows.
• Interpreters were rarely used at public events.
• People with disabilities were excluded from many activities due to barriers.
In summary: Legislative timeline

1964—Civil Rights Act (did not include disability)
1968—Architectural Barriers Act (ABA)
1973—Rehabilitation Act (amended 1998—Section 508)
1975—Individuals with Disabilities in Education Act (IDEA)
1976—Higher Education Act Amendment (to include students with disabilities)
1986—Air Carrier Access Act
1988—Fair Housing Amendments Act
1990—Americans with Disabilities Act (ADA)
2008—ADA Amendments Act signed into law
Who is “covered” (must comply with) the ADA

Entities with 15 or more employees.

Public (government) agencies regardless of whether they receive federal assistance.

Privately operated commercial entities (for example, private schools and colleges, banks, restaurants, theaters, hotels, private transportation, supermarkets, shopping malls, museums, recreational facilities, sports arenas, medical, legal and insurance offices).

Exempt: Private clubs and religious organizations.
The ADA (1990)

ADA disability definition based on the 1973 Rehabilitation Act

1. An individual **who has** a physical or mental impairment that substantially limits one or more major life activities.

2. An individual **who has a record of** such an impairment.

3. An individual **who is regarded as** having such an impairment.
What is the ADAAA?

• Americans with Disabilities Act Amendments Act (ADAAA) 2008
• Overall purpose -- “To restore the intent and protections of the Americans with Disabilities Act of 1990”
• Effective January 1, 2009
• Regulations effective as of May 24, 2011
So why was the ADAAA passed?

U. S. Supreme Court rulings narrowed the definition of disability such that:

- Focus of attention more on whether the individual has a disability instead of on the alleged discrimination event.

- The Supreme Court’s decisions construed the term “disability” too narrowly resulting in fewer individuals included under its protections.

- The EEOC’s current regulation defining “substantially limits” as “significantly restricted” expresses too high a standard and is inconsistent with Congressional intent.
How did the ADAAA change the definition of disability?

- Restored the definition (and protection) to the original intent of Congress in 1990.
- Definition itself did not change.
- Interpretation of the phrases in definition changed.
  - Mitigating measures
  - Episodic conditions
  - Some impairments considered disability without extensive analysis
  - Broadened protections under “Regarded as”
The ADA Amendments Act of 2008

• Signed into law by President George W. Bush on September 25, 2008.
• Went into effect on January 1, 2009.
• The final regulations were published in the Federal Register on March 25, 2011.
• Standards also apply under the Rehabilitation Act.
ADA disability definition based on the 1973 Rehabilitation Act

1. An individual who has a physical or mental impairment that substantially limits one or more major life activities.

2. An individual who has a record of such an impairment.

3. An individual who is regarded as having such an impairment.
Major Goals of New Legislation

• To restore the ADA’s broad protections as intended by Congress.

• To reject the Supreme Court’s view that “disability” should be determined taking into consideration the effects of mitigating measures.

• To reject the Supreme Court’s holding that the ADA requires a “demanding standard” for establishing coverage and requires that an impairment “severely restrict” major life activities.
ADA Amendments Act

• The Amendments Act makes it easier to meet the definition of “disability.”

• The Act states the definition of “disability” in the ADA “shall be construed in favor of broad coverage” and “should not demand extensive analysis.”
Statutory Changes to Definition of “Disability”

• “Substantially limited” redefined.

• Major life activities include “major bodily functions.”

• Effects of mitigating measures (other than ordinary eyeglasses or contact lenses) cannot be considered in determining “disability.”

• Impairment that is episodic or in remission is a disability if it would be “substantially limiting” when active.
Impairments That Will “Consistently Meet the Definition of Disability”

Due to lower substantially limits standard, new mitigating measures rule, inclusion of major bodily functions as major life activities, and new episodic/in remission rule for some types of impairments, “the individualized assessment of the limitations on a person can be conducted quickly and easily” and they will “consistently meet the definition of disability.”
Examples of Impairments

Examples include:

• Deafness
• Blindness
• Intellectual disability
• Partially or completely missing limbs
• Mobility impairments requiring use of a wheelchair
• Obsessive-compulsive disorder
• Schizophrenia
Examples of Impairments continued

• Multiple sclerosis
• Muscular dystrophy
• Major depression
• Bipolar disorder
• Post-traumatic stress disorder

• Autism
• Cancer
• Cerebral palsy
• Diabetes, epilepsy
• HIV/AIDS
Examples of Impairments that May Be Disabling for Some Individuals But Not For Others

• Impairments such as asthma, back and leg impairments, carpal tunnel syndrome, and learning disabilities.

• May require somewhat more analysis to determine whether they are substantially limiting for a particular individual.

• Level of analysis still should not be extensive.
Examples of Impairments that Usually Will Not Be Disabilities

• Temporary, non-chronic impairments of short duration with little or no residual effects are usually not disabilities:

• The common cold, seasonal or common influenza, a sprained joint, minor and non-chronic gastrointestinal disorders, or a broken bone that is expected to heal completely.
What are Major Life Activities?

Think of 5 different activities that you did this morning that involve a major life activity.

hint : seeing and hearing are major life activities.
Major Life Activities

These are basic activities that the average person in the general population can perform with little or no difficulty.

- Caring for Oneself
- Performing Manual Tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
Major Life Activities continued

- Thinking
- Communicating
- Sitting
- Reaching
- Interacting with Others
- Working

- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Speaking
Under the ADAAA, 'major life activities' is expanded to include "major bodily functions."

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder

- Brain
- Circulatory
- Cardiovascular systems
- Neurological
Major Bodily Functions continued

- Respiratory
- Endocrine
- Lymphatic
- Musculoskeletal

- Special sense organs and skin
- Genitourinary
- Reproductive functions
New Standard

Episodic Disabilities:

- Epilepsy
- Hypertension
- Multiple sclerosis
- Asthma
- Diabetes
- Major depression
- Bipolar disorder
- Schizophrenia
- Cancer

Considered a disability even in remission, if when active would be substantially limiting.
Mitigating Measure

Any device, measure, or medication that reduces the effects of the disability.
Mitigating Measures cont...

Positive effects of mitigating measures (except for ordinary eyeglasses and contact lenses) are ignored in determining whether an impairment is substantially limiting.
Five Titles...

Now that you understand the definition of the ADA and the importance of the ADAAA lets talk more specifically about the five titles of the ADA that we introduced earlier.
The Americans with Disabilities Act

Title I: Employment
Title II: State and Local Gov’t
Title III: Private Business
Title IV: Telecommunications
Title V: Miscellaneous
An employer may not discriminate against an employee on the basis of disability in any aspect of the employment relationship.
ADA Title I – Employment continued

• The activities covered include:
  • Outreach, Application Process, Testing
  • Interviewing, Hiring, Assignments
  • Evaluation, Discipline, Medical Examinations
  • Compensation, Promotion, On-the-Job Training
  • Layoff/Recall, Termination, Leave
  • Benefits of employment e.g., health insurance
Title I ensures that qualified individuals with disabilities:

• Have comparable access to the employment process.

• Are afforded an interactive process to determine reasonable accommodation.

• Are provided access to all benefits of employment including access to related services (e.g., gym, transportation).
Qualified Individual with a Disability

A qualified individual with a disability means one who satisfies the requisite skill, experience, education, and other job-related requirements of the position such individual holds or desires, and who:

*with or without reasonable accommodation can perform the essential functions of such position.*
Essential Job Functions

What makes a job task essential?

• If the position exists to perform the function.
• If there are a limited number of employees among whom the task can be distributed.
• If the function is highly specialized.
Evidence of Essential Functions

• Employer's judgment as to which functions are essential.

• Written job descriptions prepared before advertising or interviewing applicants.

• Amount of time spent performing the function.
Evidence of Essential Functions continued

• Consequences of not performing the function.
• The terms of a collective bargaining agreement.
• Work experience of past incumbents on the job.
• Current work experience of incumbents in similar jobs.
Disability Related Inquiries

Stages of Employment

• Pre-offer
• Post-offer
• On the job
Pre-Offer Stage

Before a job is offered, the employer may not ask questions about an applicant’s disability and can only discuss the person’s ability to perform specific tasks.
Pre-Offer Stage continued

If the applicant has a visible disability, the employer may ask the applicant to describe or demonstrate how he or she would perform a specific task that the employer has concerns about.
Disability Related Inquiries

Interviewer May NOT Ask About:

- The nature or extent of the applicant’s disability.
- If the applicant or anyone in his/her family has a disability.
- The applicant’s health.
- If the applicant has a history of emotional illness.
- If the applicant has ever had an injury or disease.
- If the applicant has ever seen a psychiatrist.
- If the applicant has ever had a drug or drinking problem.
Pre-offer Inquiries

• The ADA prohibits a prospective employer from inquiring verbally or in writing about an applicant’s health or disability before offering a position to that applicant.

• Employer may not require a medical exam at this stage.
Post-Offer

• After an individual is offered the position, it is then appropriate to discuss reasonable accommodation needs, if the applicant requests an accommodation.

• This process should be interactive with the potential employee providing documentation describing specific accommodation needs and discussing options with the employer.
Reasonable accommodation: The ten things you need to know

1. What is an accommodation?
2. What are some examples?
3. How much does it really cost?
4. Who can get accommodations?
5. Can Accommodation requests be denied?
6. How is an accommodation request triggered?
7. How is an accommodation decided upon?
8. Can medical documentation be collected?
9. Who else can be told?
10. How can we make it work?
Reasonable Accommodation

• Modification to the job application process.

• Modification to the work environment or the manner under which the position held is customarily performed.

• Modification that enables an employee with a disability to enjoy equal benefits and privileges of employment.
Accommodations are dependent upon:

• The specific requirements of the job.
• The particular need(s) of the employee or applicant.
• The extent to which modifications or aids are available without causing an undue hardship on the employing organization.
The Accommodation Process

• Employee must let the employer know that he or she needs an adjustment or change at work because of a disability.

• The employer may verify the employee’s disability.

• The employer identifies the essential job functions that require accommodations.
The Accommodation Process
continued

• The employer consults with the employee to identify a variety of accommodations to reduce or remove barriers and to increase productivity.

• The employer implements the most appropriate accommodations, taking into account the preferences of the individual with disabilities.
What are some examples?

- Using assistive technologies: Screen readers, JAWS, Audio-text software
- Change in schedule
- Changes in break times
- Work from home
- Change in work location
- Change in work environment
- Modify or Change in equipment
- Elimination or exchange of marginal job tasks
- Leave
- Re-assignment - (always should be the last option)
How much does it really cost?

A study of accommodation costs across workplaces and sectors*

- About half (56%) of accommodations cost **nothing**.
- When accommodation did cost, average was $500.
- Appears that accommodation costs are decreasing.

Employer is responsible for providing accommodation, tax incentives are available.

*Job Accommodation Network (Updated 2011). *Workplace accommodations: Low cost, high impact.*
http://AskJAN.org/media/LowCostHighImpact.doc
Who can get accommodations?

• Applicants, full and part-time employees, seasonal and temporary workers:
  • With disabilities covered by the ADA and
  • Who can perform the essential functions of the job with or without reasonable accommodations.
How is the Reasonable Accommodations process triggered?

Process starts when a worker says, “I am having trouble performing my job because of a medical condition or disability.” *(This can also come from a third party on individual’s behalf)*

- Employee can make the request in plain language.
- Employer can have a formal accommodation process that the employee must follow.
- Employer must respond to an accommodation request in a timely manner.
Can accommodation requests be denied?

Undue hardship

- No set dollar amount
- Relative to the overall funds of the organization.
- The nature and net cost of the accommodation.
- The financial resources of the facility/facilities.
- The overall financial resources of the entity.
- The type of operations of the entity.
How is an accommodation decided upon?

- The interactive process
- The person him/herself is the best source of information, but employer ultimately decides
- Most expensive accommodation is not always the best
- Consider:
  - The disability
  - The job
  - The environment where the job occurs
Can medical documentation be collected?

Employer only has the right to documentation about the disclosed disability.

Documentation must be job related and consistent with business necessity.

All medical information must be kept confidential and separate from the employee’s work file.
Who else can be told?

All medical information must be kept confidential.

Only co-workers directly impacted by the accommodation can be told that there will be a change, but not why.

Communicate that the accommodation is provided according to law – without saying which law – as it would be for any qualified employee and that the company has a strict privacy policy and values the privacy of all its employees.
Reasonable Accommodation

- Define the Situation
- Perform Needs Assessment
- Explore Alternative Placement Options
- Redefine the situation
- Monitor Accommodations
Step 1: Define the Situation

1. What are the symptoms and functional limitations?
2. Is the condition progressive, stable, or unpredictable?
3. Is documentation needed?
4. What are the problematic job tasks, environments, equipment, or policies?
Step 2: Perform Needs Assessment

• Job Modification – schedule change to accommodate doctors appointments.
• Policy Change – Modified dress code to eliminate fragrance.
• Facility Modification – ramp & door handles installed.
Step 3: Explore Alternative Placement Options

• Is reassignment a possibility?
• Is the employee qualified for reassignment?
• Are there any vacant positions with similar pay and benefits?
Step 4: Redefine the Situation

• Was a step overlooked?
• Has an accommodation team been assembled?
• Has there been an attempt to make a good faith efforts?
• Has the employee been notified?
Step 5: Monitor Accommodations

• Who will monitor accommodations?
• Does the employee know about the process?
• Have any changes occurred in ability, environment or job duties?
• Have job modification been effective?
Can you think of some accommodation options?

Arthritis

**Joe**
A 38 year old customer support representative has difficulty walking long distances or sitting for more than 3 hours at a time due to arthritis.

**A resource:**
The Job Accommodation Network
http://askjan.org/soar/disabilities.html

- Adjusting chair (ergonomic chair, stand/lean stool)
- Adjust desk (standing/sitting desk)
- Work from home (full- or part-time)
- More frequent small breaks
- Be sure work environment temperature is appropriate
Can you think of some accommodation options?

Major Depression

Ellen

Three weeks ago, Ellen took leave from her job as a nurse because she was diagnosed with depression. She now will be returning to work, but has requested an accommodation for her return. While working, she will continue her treatment.

A resource:
The Job Accommodation Network
http://askjan.org/soar/disabilities.html

- Flexible hours to continue treatment
- Longer work breaks
- Job coach
- Employee Assistance Program
- Maintain open channels of communication
- Clarity of expectations
Can you think of some accommodation options?

Diabetes

Mike

Mike is a 28 year old high school science teacher. Two months ago, he was diagnosed with diabetes. He believes he has now learned to manage his condition. But he needs to check his blood once every three hours, needs short breaks to take his medication and needs to eat on a regular schedule.

A resource:

The Job Accommodation Network
http://askjan.org/soar/disabilities.htm

- Schedule adjustments to include short breaks
- Private location to check blood
- Possible need to occasionally make unexpected exits to deal with low blood sugar
- Keep diabetes supplies nearby
Accommodation Brainstorm

• Employee with brain-injury has trouble staying organized.
• Employee who is deaf.
• Employee who has low vision.
Examples of Accommodations that are NOT REASONABLE

• Placing an applicant with a disability in a job for which he/she did not specifically apply.

• Placing an individual with a disability into a job if doing so would create a direct threat to the health or safety of the individual or others.

• Maintaining the salary of an employee reassigned from a higher-paying job to a lower-paying job, if the employer does not do so for other employees.
Examples of Accommodations that are NOT REASONABLE continued

• Eliminating essential functions of the job.
• Lowering production standards.
• Providing personal use items (i.e. hearing aids, wheelchair).
• Creating a job.
• Promoting an employee.
• Bumping another employee from his/her job.
Let’s Talk
Disclosure

Under the ADA, an employer must provide reasonable accommodations to the KNOWN physical or mental limitations of a qualified applicant or employee with a disability.
Safety reasons: Direct Threat

• The ADA creates an exception for employers who fire or refuse to hire an employee who poses a direct threat.

• A direct threat is defined as a significant risk of substantial harm to the health or safety of that employee or others, which cannot be eliminated or reduced by a reasonable accommodation.
In deciding whether a direct threat exists, an employer should consider:

• The duration of the risk.
• The nature and severity of the potential harm.
• How likely it is that the potential harm will occur.
• How imminent the potential harm is.
Example of Direct Threat

- Employee’s disability creates the possibility of loss of consciousness or motor control and the employee’s position involves operating machinery or heavy equipment.
Title I Enforcement

• File a complaint with the EEOC

• Other Options:
  • File a complaint with the state or local Human Relations Agency
  • Alternative Dispute Resolution
Title II

State and Local Governments
Who is Covered by Title II?

Every type of state and local government entity, including:

- all types of state agencies
- counties
- municipalities and cities
- executive, legislative, and judicial branches of state and local government
General Requirements

A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination.
Designation of responsible employee and adoption of grievance procedures

A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with, and carry out its responsibilities under, the ADA, including any investigation of any complaints.
Complaint Procedure

A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints.
Program Access

State and local government must provide full program access to people with disabilities.
Title II: Program Access

• Programs accessible “when viewed in their entirety.”

• ADA does NOT give special privileges or entitlements for people with disabilities – it’s about equality!

• Each state program should insure everyone can access all facets of the program.

• Reasonable Modifications to insure programs accessible.
The “Holistic” Approach

• Programs must be accessible when “viewed in their entirety.”
  – Look at the program as a whole; many programs are offered in more than one location.
  – A variety of methods can be used to help achieve program access.
Priority: Integration

• Whatever methods are used should enable people with disabilities, whenever possible, to participate in programs and receive services in the same locations and in the same ways as other people.
How to Achieve Program Access

• Acquire or redesign of equipment.
• Relocate to alternate, accessible location.
• Assign aides.
• Make structural, architectural changes.
Specialized Facilities

• Programs and activities may still be relocated to other, accessible facilities (though options may be more limited).
Alternate Sites

• Programs at alternate sites must be comparable to what is available at inaccessible sites.
Example 1: Alternate Sites, Comparable Programs

• “M” County has 45 public playgrounds. Only 25 of them are fully accessible, with accessible parking, routes, and playground equipment. The accessible playgrounds are scattered throughout the County, so it is relatively convenient for people to get to them. The accessible playgrounds are open the same hours and days, and have the same types of equipment as the inaccessible locations. “M” County’s playground program may be considered accessible as a whole – when “viewed in its entirety.”

on the other hand ...
Example 2: Alternate Sites, Comparable Programs

“X” County has 45 playgrounds; 3 of them are accessible. The accessible playgrounds themselves are comparable to the inaccessible playgrounds (they offer the same types of equipment), but people who want to go to them may have to travel up to 35 miles (while the average distance from any home in the County to the nearest playground is 5 miles). “X” County’s playground program, even though it offers some accessibility, would probably not be considered accessible as a whole – when “viewed in its entirety.”
Effective Communication

Public entities must ensure effective communication with individuals with disabilities.
Effective Communication continued

Public entities must provide appropriate auxiliary aids and services where necessary to make sure that individuals with speech, hearing and vision disabilities understand what is said or written and can communicate effectively.
More Effective Communication

They must also provide effective communication to companions who are individuals with disabilities. (Relative, friend or someone else with whom the agency would usually communicate.)
Auxiliary Aids and Services for People Who Are Blind or Have Low Vision

• *Examples:*
  
  – Accessible format materials (large print, Braille, electronic), qualified readers, audio recordings, use of secondary auditory programs (SAP) to provide descriptive information during televised broadcasts.
Auxiliary Aids and Services for People Who Are Deaf or Hard of Hearing

• Examples:
  – Written notes, printed materials, assistive listening systems and devices, qualified interpreters (on-site or through video remote interpreting (VRI) services), computer-aided real-time transcription (CART) services, open and closed captioning.

Let’s talk about what some of these things are, and how and when you might use them ...
Interpreters

- Interpreters use sign language or other manual systems (hand codes or cues).
- Oral interpreters silently move their mouths, repeating a speaker’s words for the benefit of a speech-reader (lip reader).
A Word about Language

• American Sign Language (ASL) is a true language; it evolved naturally over time, just like spoken languages do.
  – ASL is distinct from English, with different syntax, vocabulary, etc.

• Other systems are not languages, but systems invented or designed to convey English “word-for-word.”
Qualified

• A qualified interpreter conveys information effectively, accurately, and impartially, receptively and expressively (both ways).

  – Example: a qualified American Sign Language (ASL) interpreter must be able to translate what a hearing instructor says into sign language for a student who is deaf, and also translate what the student signs into speech for the instructor.
Video Remote Interpreting

Video Remote Interpreting (VRI) uses technology (Internet connection, webcams, etc.) to enable an interpreter to work from a remote location.
CART and Captioning

• CART (computer-aided real-time transcription) and captioning are similar because they use technology to display a typed record (word-for-word) of spoken communication and sounds.

  – Similar to traditional court reporting
Using CART

• CART
  – Meetings or other in-person activities, with a screen provided to display the text.
Using Captions

• Captioning
  – Audio-visual material (DVDs, etc.); typically pre-recorded.
  – Television broadcasts; captions may be pre-recorded or done in “real time” (for example, a televised weather alert).
What Are Assistive Listening Systems and Devices?

- Assistive Listening Systems (ALS) and Assistive Listening Devices (ALDs) use equipment to amplify and transmit sound directly to individuals with receivers.
  - Some types of systems enable individuals to use their own personal hearing aids as receivers.
ALS/ALDs

• Assistive Listening Systems/Assistive Listening Devices are required to be available on-site in many assembly areas, such as theaters, arenas, courtrooms, or meeting rooms.

• They may also be needed in more individualized situations (for example, a parent-teacher meeting.)
Which Aid or Service to Use?

- The aids or services needed will depend on a variety of factors;
  - The individual’s language and usual way of communicating.
  - The nature, length, and complexity of the communication taking place.
Same Person, Different Day

• A person will not always need the same aid or service in every situation.
  – *Example:* John is deaf and uses American Sign Language (ASL) as his usual way of communicating, but he also understands written English pretty well. To participate in an all-day seminar with multiple speakers and group discussions, he will probably need an ASL interpreter, but to *register* for the seminar, exchanging notes may work fine.
Same Day, Different Person

• People with similar disabilities in the same situation will not necessarily need the same aid or service, either.
  – *Example:* John (remember him?) and Marla are both deaf and both are attending the all-day seminar. John uses ASL, but Marla, who lost her hearing later in life, never learned it, and her primary language is English. She may need CART (computer-aided real-time transcription) services to participate effectively in the seminar.
Primary Consideration

Primary consideration of the individual’s preferred accommodation must be given.
Personal devices and services

A public entity is not required to provide to individuals with disabilities personal devices, such as:

- Wheelchairs,
- individually prescribed devices, such as prescription eyeglasses or hearing aids;
- or services of a personal nature including assistance in eating, toileting, or dressing.
Undue Burden

A public entity 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.
Undue Burden continued

Even if a particular auxiliary aid or service is found to be an undue financial burden, the entity must still provide effective communication using a different auxiliary aid or service.
Integrated Settings

Services and programs must be delivered in the most integrated setting appropriate to the person’s level of need even if separate programs exist.

– Integration of persons with disabilities is one of the goals or values of the ADA.
General Requirements

A public entity may not impose eligibility criteria for participation in its programs that screen out persons with disabilities unless the requirements are necessary for the provision of the service.
Title III
Public Accommodations and Commercial Facilities
Commercial Facilities

• Private factories, warehouses, and similar facilities, that are not open to the general public
  – Subject to Standards or Accessible Design in newly constructed or altered facilities
Public Accommodations

• Public accommodations are private entities that own, lease, lease to, or operate a *place* of public accommodation.

• A *place of public accommodation* falls within at least one of twelve categories.
Places of Public Accommodation

1) An inn, hotel, motel, or other place of lodging;

2) A restaurant, bar, or other establishment serving food or drink;
Places page 2

3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
Places page 3

4) An auditorium, convention center, lecture hall, or other place of public gathering;

5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, gas station, professional offices, hospital, or other service establishment;
Places page 5

7) A terminal, depot, or other station used for specified public transportation;
Places page 6

8) A museum, library, gallery, or other place of public display or collection;
9) A park, zoo, amusement park, or other place of recreation;
10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment;
Places page 9

12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.
at your service
Exemption: Religious Entities

• Churches, mosques, synagogues and other religious organizations and all of their activities, even if they are open to the general public, do not have obligations under Title III.
Reasonable Modifications

• Reasonable modification of policies, practices, and procedures
  • “Fundamental alteration”—a change in the essential nature of the business—is not required
Effective Communication

• Businesses must provide “auxiliary aids or services” (exchange written notes, provide sign language interpreter services, Braille materials, etc.) when necessary to communicate effectively with customers with vision, hearing, and speech disabilities.
  – Businesses should consult with individuals whenever possible to determine appropriate aids/services.

• If a specific communication aid or service would be an undue burden or fundamental alteration, a business must provide an effective alternative, if possible.
Architectural Access

• **New facilities** built after March 15, 2012 must meet the 2010 ADA Standards for Accessible Design

• **Alterations/additions** must meet Standards to the maximum extent technically feasible

• **Existing facilities**
  • Readily achievable barrier removal
Barrier Removal Priorities

1) Getting in (parking, exterior routes from public sidewalks or transportation stops, building entrance, etc.)
2) Accessing goods/services (sales or service areas)
3) Restroom facilities (if there are any)
4) Other
Alternatives to Barrier Removal

• If barrier removal is not readily achievable, public accommodations must make goods and services available through readily achievable alternative methods.
Examples: Alternatives

• Service at other accessible locations
• Home delivery
• Door bell to request service
• Moveable chairs to provide access where fixed seating is not accessible
• Suggestion: Post signs and/or advertise availability of alternatives
IRS Tax Credit

• The Disabled Access Tax Credit is available to *small* businesses (those that have total revenues of $1,000,000 or less in the previous tax year OR 30 or fewer full-time employees).

• The credit can cover 50% of the eligible access expenditures up to $10,250 (maximum credit of $5000).

• Examples of eligible expenses:
  – barrier removal to improve accessibility in existing buildings;
  – providing accessible formats such as Braille or large print;
  – providing a sign language interpreter or a reader for customers or employees;
  – and for purchasing certain adaptive equipment.
IRS Tax Deduction

- Businesses of any size can take a tax deduction of up to $15,000 for expenses of removing architectural or transportation barriers in existing buildings or vehicles.
Title II & III Enforcement

- Complaints filed with the Department of Justice (DOJ) or Department of Transportation (DOT)
- Private lawsuits
- Alternative Dispute Resolution including mediation
2010 ADA Regulations
• Adoption of revised design Standards
  – Element by element safe harbor
Ticketing for accessible seating in assembly areas
Places of lodging

– Timeshares, corporate hotels, etc.

– Reservation systems
Accessible Parking
Accessible Parking

• Number of accessible spaces required is based on total number in lot or garage

• At least 1 out of every 6 accessible spaces must be “van-accessible”
Accessible Parking Spaces

• Features:
  – At least 8 feet wide for car spaces, at least 11 feet wide for van-accessible spaces
  – Adjacent access aisle at least 5 feet wide (two spaces may share an aisle between them)
  – Firm, stable, level surface
  – Signage (including “van-accessible” sign to designate van spaces)
  – Vertical clearance at least 98 inches high at van-accessible spaces and access aisles, as well as vehicular routes serving them
  – Connection to accessible route that leads to facility entrance/destination served by parking
Temporary Accessible Parking
Parking: Alterations

• When a state or local government agency or a business alters (including restriping) a parking facility, it must provide accessible parking spaces to the maximum extent feasible.
Service Animals
Service Animals: New Rules

- Definition: A dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability
  - Other animals, whether wild or domestic, do not qualify as service animals
- The rule permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations
ADA : Miniature Horses
Active Animals

• Service dogs or miniature horses must be trained to perform specific actions, tasks, or work

  – Many animals, simply by being present, provide comfort, companionship, emotional support, or other benefits, but they are not trained to do anything specific – they are not service animals under Title II or Title III of the ADA (they may be covered under other laws, such as the FHA, the ACAA, or state laws)
Example:

Service dog

• Marge has a psychiatric disability; her dog Bumper can tell when Marge’s anxiety level rises, and Bumper is **trained to respond** by moving himself in front of Marge and nudging her away from her current location.

Pet or emotional support dog

• Aaron has a psychiatric disability, too; his dog Floppy is good-natured and sometimes he can even tell that Aaron is becoming anxious, but Floppy **isn’t trained to do anything** to help Aaron.
Examples of Animals’ Work

• Providing physical support and help with balance and stability for people with mobility disabilities
• Guiding individuals who are blind or have low vision
• Providing non-violent protection or rescue work
• Pulling wheelchairs
More Examples of Animals’ Work

- Retrieving items
- Alerting individuals who are deaf or hard of hearing to sounds
- Helping people with psychiatric or neurological disabilities by preventing or interrupting impulsive or destructive behaviors
- Alerting individuals to oncoming seizures
Service Animal?

- Covered entities can ask only two questions when a person is accompanied by a dog:
  - Is this a service animal required because of a disability?
  - What work or task has the animal been trained to provide?
Expectations

- Care and supervision of a service animal is the responsibility of the owner/handler.
- Service animals must be under control, housebroken, and well-behaved.
- Service animals may be excluded if they are out of control or pose a direct threat to health or safety.
Interacting with... A Person Who Has a Service Animal

• Service animals are working animals, so it’s important not to pet or distract them.

• Interact with the person; never interact with the animal without permission.
Wheelchairs, Mobility Aids, and Other Power-Driven Mobility Devices
Traditional Mobility Devices

• Covered entities must allow people with disabilities who use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, into all areas where members of the public are allowed to go.
Advances in Technology

• Advances in technology have given rise to new devices, such as Segways®, that some people with disabilities, including many veterans injured while serving in the military, use as mobility devices.

• More advanced devices will inevitably be invented, providing more mobility options for people with disabilities.
OPDMDs

• Covered entities must allow people with disabilities who use various types of Other Power-Driven Mobility Devices (OPDMDs) into their facilities, unless a particular class of devices cannot be accommodated.
  – Where a type of device cannot be accommodated, the covered entity must provide the service it offers in alternate ways if possible.
OPDMD Factors to Consider

- Type, size, weight, dimensions, and speed of device
- Facility’s volume of pedestrian traffic (may vary at different times of day, week, month, or year)
- Facility’s design and operational characteristics (square footage, space/room configurations, availability of storage for device, if needed)
- Whether legitimate safety requirements can be established to permit safe operation
- Whether the use of the OPDMD creates a substantial risk of serious harm
• Covered entities may find it useful to develop and publicize policies for people with disabilities using these devices. Such policies may include:
  – Requiring the user to operate the device at the speed of pedestrian traffic;
  – Identifying specific locations or circumstances (if any) where the device cannot be used;
  – Instructions for going through security screening machines if the device contains technology that could be harmed by the machine; and
  – Specifying whether or not storage is available for the device when it is not being used.
Title IV: Telecommunications

• Requires that all telecommunications companies in the U.S. take steps to ensure functionally equivalent services for consumers with disabilities.
Closed Captioning

• All televisions over 13 inches screen size must have closed captioning capability

• All government sponsored video programming must be closed captioned
Enforcement

• Federal Communications Commission is the enforcement agency for Title IV
Title V - Miscellaneous

• If state or local codes are more stringent than the ADA, those codes will apply.

• The ADA does not cover the executive branch of the federal government (covered by Section 504).

• ADA does cover Congress and the legislative branch.

• ADA does not cover private apartments and homes.

• Air transportation is covered by the Air Carriers Act.
Title V – Miscellaneous continued

• It outlines reimbursement guidelines for attorneys
• Prohibition of coercing, threatening or retaliating
• Requirements for historic properties
• The role of federal agencies enforcing the ADA and providing technical assistance
Resources
U.S. Department of Justice

http://www.ada.gov
State Assistive Technology Programs

• Learn about Assistive Technology
• See and Try Assistive Technology
• Buy, Sell & Recycle Assistive Technology

List of state programs and contact information:
http://www.resnaprojects.org/allcontacts/statewidecontacts.html
United States Access Board

http://www.access-board.gov

Rights-of-Way Guidelines  The Board plans to release for comment proposed guidelines for public rights-of-way later this summer. (June 16)

Board Members  President Obama names new members to the Board. (May 24)

New Staff  Rex Pace joins the Board as its new technical assistance coordinator. (April 18)

Board Chair  Nancy Starnes is elected Chair of the Access Board. (March 31)

Shared Use Paths  The Board seeks public comment on new guidelines to be developed for shared use paths. (March 28)

Research Report  The results are in from a major study of people who use wheeled mobility aids sponsored by the Access Board and the Department of Education. (February 23)

Surface Tolerances  A report from a Board project on dimensional tolerances for accessible surfaces is now available. (February 23)

Board Members  President Obama appoints new members to the Access Board. (September 14)

New Meeting Space  The Board opens its new conference space. (August 3)

Classroom Acoustics  The Board votes to undertake rulemaking on classroom acoustics. (July 30)

Medical Equipment  The Board holds a public meeting on new access standards to be developed for medical diagnostic equipment. (July 20)
ADA National Network
www.adata.org
Toll-free phone number: 800-949-4232 V/TTY
The Mid Atlantic ADA Center is 1 of 10 Regional Centers Providing:

- Information
- Guidance
- Materials
- Newsletter/E-Bulletin
- Training
- Toll-free phone number: 800-949-4232 V/TTY
- Website: www.ADAinfo.org
Twitter

expand opportunities and
PLEDGE ON!

Mid-Atlantic ADA Ctr
@ADAnfo
Funded by the U.S. Dept of Education, we provide information, guidance & training on the Americans with Disabilities Act.

Tweets: 3,546
Following: 729
Followers: 2,127
Favorites: 63
Lists: 7

New to Twitter?
Sign up now to get your own personalized timeline!
Pinterest

Mid-Atlantic ADA Center

8 Boards
83 Pins
0 Likes
8 Followers
19 Following

Accessibility Fail
Accessible Design
ADA Anniversary
Service Animals
Disability History

Follow
Follow
Follow
Follow
Follow
Accessible Meeting Guide

http://www.adahospitality.org/accessible-meetings-events-conferences-guide
Networks

Mid-Atlantic Leadership Network

Mid-Atlantic Title II Network

Mid-Atlantic Community Partners Network
Trainers:

Stacey Kernisan  
Training Specialist

Marian Vessels  
Director

Nancy Horton  
Information Specialist

Mid-Atlantic ADA Center
adainfo@transcen.org
301-217-0124 v/tty
Questions?