

## **SUMMARY OF 2010 AMENDMENTS TO ADA REGULATIONS**

### **Prepared by the Disability Rights Network of Pennsylvania**

In September 2010, the United States Department of Justice (DOJ) issued important amendments to its regulations that implement Title II of the Americans with Disabilities Act (ADA) (applicable to state and local government entities) and Title III of the ADA (applicable to public accommodations, such as hotels, museums, restaurants, stores, and similar privately-owned businesses that are open to the public). Except as noted below, the new regulations will take effect on March 15, 2011.

This Summary will briefly describe some of the more significant changes. More information about these amendments, including the full text of the changes, is available in an accessible electronic format at <http://www.ada.gov/regs2010/ADAregs2010.htm> or by calling DOJ's ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY).

### **Revised Accessibility Standards**

Adoption of 2010 ADA/ABA Access Guidelines -- DOJ adopted the Americans with Disabilities Act/Architectural Barriers Act Accessibility Guidelines (2010 Guidelines) developed by the U.S. Architectural and Transportation Barriers Compliance Board (the Access Board). The 2010 Guidelines will effectively replace the 1991 ADA Accessibility Guidelines (ADAAG) and the Uniform Federal Accessibility Standards (UFAS).

- The purpose of the 2010 Guidelines is to minimize compliance burdens on entities that were previously subject to different accessibility standards by harmonizing the ADA's accessibility standards with those that implement the Architectural Barriers Act and with model codes that had been adopted by many states.
- The 2010 Guidelines also include important new or revised accessibility standards for certain types of facilities, including: amusement parks, swimming pools, prisons, judicial facilities, and residential dwelling units created by public entities.

Impact of the 2010 ADA/ABA Guidelines on New Construction and Alterations -- Under Titles II and III of the ADA, all "new construction" and "alterations" generally were required to be made fully accessible. For government entities subject to Title II, this required them to comply with either ADAAG or UFAS. For public accommodations subject to Title III, this required them to comply with ADAAG. Beginning on March 15, 2012, public entities and public accommodations subject to Titles II and III of the ADA will be required to comply with the 2010 Guidelines for all new construction and

alterations. Prior to March 15, 2012, public entities engaged in new construction and alterations can choose to follow the 2010 Guidelines, ADAAG, or UFAS. Prior to March 15, 2012, public accommodations engaged in new construction and alterations can choose to follow either the 2010 Guidelines or ADAAG.

*Impact of the 2010 ADA/ABA Guidelines on Previously-Built, Altered, or Existing Facilities* -- Unlike new construction and alterations, the ADA did not necessarily require governments and public accommodations to make "existing facilities" that were not altered accessible. However, the ADA requires governments to assure that their "programs" as a whole were accessible (known as "program accessibility"), which might require that they make some of their existing facilities accessible. With respect to public accommodations, the ADA requires them to remove architectural barriers in existing facilities when it is "readily achievable" to do so. As a result of these provisions, many public and private facilities were made accessible using ADAAG or UFAS standards. DOJ's 2010 regulations provide a "safe harbor" to those facilities that were built or altered in compliance with the then-applicable standards. In other words, elements of facilities that were built or altered in compliance with the previous standards are not required to be brought into compliance with the 2010 Guidelines until the elements are subject to a planned alteration. However, this safe harbor does not apply to those provisions of the 2010 ADA/ABA Guidelines for which there were no prior accessibility standards. For example:

- In 1996, a restaurant made its restroom accessible in accordance with ADAAG. The restaurant has no obligation to further modify the restroom to meet the 2010 Guidelines unless and until it undertakes an alteration to the restaurant.
- A gym built in 1998 complied with ADAAG. The gym has a pool, but it has no means of access because there were no accessibility standards for pools in ADAAG. The gym will have to remove barriers to make the pool accessible, in accordance with the 2010 Guidelines, if it is readily achievable to do so because the 2010 Guidelines include new standards for pool accessibility.

### **Mobility Aids and Devices**

DOJ's new regulations adopt standards for when governments and public accommodations must allow the use of wheelchairs and manual mobility devices, on the one hand, and other types of power-driven mobility devices, on the other hand.

*Wheelchairs and Manually-Powered Mobility Aids* -- Governments and public accommodations must allow individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids designed for use primarily by individuals with mobility disabilities (such as walkers, crutches, or canes) in any area that is open to pedestrian use.

Other Power-Driven Mobility Devices -- These are mobility devices that can be used by persons with mobility disabilities, but are not exclusively used by them, for purposes of locomotion, such as golf carts and the Segway® PT. With respect to these devices, governments and public accommodations must make reasonable modifications in their policies, practices, and procedures to allow their use unless they can demonstrate that they cannot be operated in accordance with legitimate safety standards. The regulations identify certain factors that can be considered in determining whether allowing these devices is a reasonable accommodation.

## **Service Animals**

DOJ's new regulations define "service animal" as a dog that has been specially trained to do work or perform tasks for the benefit of a person with a disability, such as: assisting individuals with visual disabilities with navigation; pulling a wheelchair; retrieving items; providing physical support or assistance with balance or stability; and preventing or interrupting impulsive or destructive behaviors of persons with psychiatric or neurological disabilities. Dogs that are not trained to perform these or similar tasks, but that provide only emotional support, are *not* service animals.

Other than dogs, the only type of animal that can be considered a service animal under the ADA is a miniature horse, though miniature horses may be subject to somewhat greater restrictions than service dogs.

Generally, service animals must be permitted to accompany the person with a disability in any areas of government facilities and public accommodations where other members of the public may go. They may be excluded, however, if they are out of control and the handler does not or cannot take effective action to control them or if they are not housebroken. The only inquiries permitted when a person uses a service animal are: (1) whether the animal is required because of a disability, and (2) what work or task the animal has been trained to perform.

## **Ticketing**

DOJ's new regulations include detailed provisions that govern tickets for accessible seating at events held at government facilities or public accommodations. Some of the new provisions include the following:

- Ticket sales for accessible seats must be made available through the same means and methods as tickets for non-accessible seats, including: during the same hours; during the same stages of ticket sales (such as pre-sales, promotions, lotteries, and general sales), in the same sales outlets (such as telephone sales, in-person sales, or third-party ticketing services).
- Ticket prices for accessible seats may not be higher than the price for non-accessible seats in the same section for the same event.
- Tickets for accessible seats must generally be made available at all price levels for each event.

- A person with a mobility disability who purchases a ticket for an accessible seat must be permitted to purchase three additional seats, if available, in the same row that are contiguous with the wheelchair space if such seats are available unless public sales are limited to fewer than four seats per person.
- Tickets for accessible seats can be released and sold to persons without mobility disabilities only in limited circumstances.
- If a person with a mobility disability acquires a ticket for an inaccessible seat on the secondary market, the facility must allow the person to exchange it for an accessible seat in a comparable location if accessible seating is vacant when the individual presents the ticket to the facility.

### **Effective Communication**

DOJ's new regulations include several important revisions and additions that are designed to assure effective communication with individuals with disabilities, such as those who are deaf or blind, including:

- The new regulations make clear that effective communication must be provided not only to participants, clients, or others with disabilities who use the government's or public accommodations' services, but also to any participants' or clients' "companions" (family, friends, or associates) if they have disabilities and are appropriate people with whom the government entities or public accommodations should be communicating. The ADA's obligation to provide appropriate auxiliary aids and services also applies to "companions." For example, if a man is accompanied to a doctor's office by his wife who is deaf, the doctor also has an obligation to assure effective communication with the wife.
- The new regulations clarify that government entities and public accommodations cannot require individuals with disabilities to bring another person to interpret for him or her and cannot rely on individuals who accompany individuals with disabilities to interpret for them except in emergencies when no interpreter is available. This does not prevent an adult who accompanies a person with a disability from interpreting for him or her if they choose to do so and if it is appropriate under the circumstances.
- The regulations set forth standards that govern the use of video remote interpreting (VRI) services to provide interpretation.

### **Reservations in Hotels and Other Places of Public Lodging**

DOJ's new regulations include rules that govern reservations for places of public lodging operated by private entities (such as hotels and motels as well as timeshares or similar facilities if they are operated similarly to hotels and motels). The new rules, which go into effect on March 15, 2012, require, among other things, that:

- people with disabilities must be allowed to make reservations for accessible guest rooms during the same hours and in the same manner as other guests;
- places of public lodging must hold back accessible guest rooms for people with disabilities until all other guest rooms of that type have been rented;
- places of public lodging must ensure that reserved accessible guest rooms are removed from the reservation system so that they are not inadvertently released.

These rules do not apply to third-parties who make reservations for the places of public lodging but who do not own and operate them.

### **Prisons and Other Correctional Facilities**

The new DOJ regulations include provisions that govern disability-discrimination against individuals in prisons or other types of correctional facilities, whether operated by government entities or by private entities under contract with government entities. In addition to including specific accessibility standards for newly constructed or altered prisons and correctional facilities, the new regulations provide that:

- prisons and correctional facilities cannot exclude qualified inmates or detainees with disabilities from participations in programs, activities, or services offered by those facilities;
- inmates and detainees with disabilities must be housed in the most integrated setting appropriate to the needs of the individuals with disabilities so that, unless an exception is appropriate, a prison or correctional facility cannot: (1) place inmates or detainees with disabilities in inappropriate security classifications because no accessible beds or cells are available; (2) place inmates or detainees with disabilities in designated medical areas unless they are receiving medical care; (3) place inmates or detainees with disabilities in facilities that do not offer the same programs as facilities where they would otherwise be housed; or (4) deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.

### **Accessibility Requirements for Specific Types of Facilities**

The new DOJ regulations add specific accessibility requirements for certain types of facilities, including: places of lodging (such as hotels); social service center establishments (such as halfway houses and shelters) that provide temporary sleeping arrangements or residential housing; housing in places of public education; assembly areas (such as movie theaters, stadiums, and arenas); medical care facilities; housing built or altered by government entities and offered for sale; and detention and correctional facilities.

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DRN's mission is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, DRN cannot provide individual services to every person with advocacy and legal issues. DRN prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

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**PLEASE NOTE: For information in alternative formats or a language other than English, contact the Disability Rights Network of Pennsylvania at 800-692-7443 ext. 400 (voice) or 877-375-7139 (TDD) or [drnpa-hbg@drnpa.org](mailto:drnpa-hbg@drnpa.org).**

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