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ASSISTIVE TECHNOLOGY AND TITLE II AND TITLE III OF THE AMERICANS WITH DISABILITIES ACT (ADA)

This fact sheet gives you information on when government and public accommodations must provide assistive technology under the Americans with Disabilities Act (ADA) so that persons with disabilities can use their programs and services. This brochure does not include Title I of the Americans with Disabilities Act (ADA), which covers employment. For information on employment and other rights you may have under the Americans with Disabilities Act (ADA), please go to the Disability Rights Network of Pennsylvania website at: www.drnpa.org/publications.

I. What Is Assistive Technology?

Assistive technology is a device or service that helps a person with a disability to function better in his or her daily life. Assistive technology can be “low tech” or “high tech.”

The Assistive Technology Act of 2004 defines an assistive technology device as “any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.” Examples of assistive technology devices are wheelchairs, augmentative communication devices, screen reading software, ramps, stair glides, lifts, and assistive listening systems.

An assistive technology service is “any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.” Examples of assistive technology services are repair of a device or training on the use of a device.

Assistive technology can be found in the home, workplace, school, community, and elsewhere. Assistive technology provides access to buildings and to programs and services. Assistive technology helps a person with a disability to become or remain independent.

Many things are assistive technology, but the Americans with Disabilities Act (ADA) deals with assistive technology in a more limited way. This is discussed below.

II. What Is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA) is a civil rights law for persons with disabilities. Title II of the Americans with Disabilities Act (ADA) states that state and local governments, and government programs and services, cannot discriminate against persons with disabilities. Title III of the Americans with Disabilities Act (ADA) states that public accommodations cannot discriminate against persons with disabilities.

Many things are assistive technology, but the Americans with Disabilities Act (ADA) deals with assistive technology in a more limited way. Under the Americans with Disabilities Act (ADA), governments and public accommodations do not have to provide you with your own personal device or service. Government entities and public accommodations, however, must provide certain devices and services when you need them for full and equal access to their programs, services, and goods.

III. What Does Title II of the Americans with Disabilities Act Say About Assistive Technology?

Title II of the Americans with Disabilities Act is for public entities. Public entities are state and local governments. Examples of public entities that are covered by Title II include a state, a department in the state government, a county, a county office, a city or township, and a local housing authority.

Title II says that public entities cannot discriminate against persons with disabilities. Government services, programs, and activities cannot exclude persons with disabilities. If you are a qualified person with a disability, you have the right to participate equally in and receive the benefits of a government program, service, or activity. Because you have the right to access everything that a person without a disability can access, a state or local government must do certain things:

1. The government must change its practices and procedures so that you can participate in its services, programs, and activities. For example, you cannot be denied Medical Assistance (Medicaid) if you cannot fill out the application for benefits because of your disability, and the County Assistance Office must help you fill out the application.

2. Government buildings that are built or changed after January 26, 1992 must be fully usable by people with disabilities. Builders and designers must make sure that people with disabilities can get in and out of the building. This can include the use of assistive technology. Examples are ramps, accessible entrances and doors, and Brailled signage. Signs must be used to let you know where the accessible entrance is. The government must also make sure that people with disabilities can get around inside of the building and use its facilities. This could include the use of assistive technology, such as ramped walkways and accessible sinks and hand dryers in restrooms. Everything must be kept in working condition.

There are different rules if the government building was built before January 26, 1992. Not every government building built before January 26, 1992 must be made accessible. However, the government must make sure that people with disabilities have access to its programs and services. The government can choose to have the service, program, or activity in a different place that is accessible.

3. The government must communicate with you in a way that is effective. The government must provide assistive technology so that you can use its

services, programs, and activities if you have a visual, hearing, or other disability. Examples are accessible websites, TTY, captioning, telephone handset amplifiers, assistive listening devices, audio texts, Brailled materials, and large-print materials. Everything must be kept in working condition. You have the right to ask for assistive technology so that you can participate equally with others. For example, if you are blind, you can ask for public housing brochures in Braille.

Note: Under the Americans with Disabilities Act (ADA), the government does not have to give you your own device for your personal use, such as a motorized wheelchair or eyeglasses. The government must only provide assistive technology devices or services so that you can use the government service, program, or activity equally and fully.

4. The Americans with Disabilities Act (ADA) states that the government must provide you with programs and services in the most integrated setting.

This means that you have the right to live in the community, when possible. Thus, the government may need to give you assistive technology so that you can be in programs and services with people who do not have disabilities. For example, if you are in a nursing facility but the doctor says

that you can live in the community with supports, the government must provide these supports. These supports can include many things, such as assistive technology to make a home accessible for you.

The government cannot make you pay for the assistive technology that it must provide under the Americans with Disabilities Act (ADA).

IV. What If I Cannot Access a Government Building or Program?

There are many steps that you may wish to take if you cannot access a government building or program because of your disability.

- **Send a letter to the government.** You can ask the government to provide assistive technology so that you can access its building, programs, or services. It is best to write a letter. Save a copy of the letter for yourself. Keep notes on who you asked, the date, and the response. If you are still denied access, there are other things that you can do.
- **Make a Department of Justice complaint under Title II of the Americans with Disabilities Act (ADA).** Information is below.

- **Also make a complaint with the Pennsylvania Human Relations Commission.** Information is below.
- **File a lawsuit.** People and groups can file lawsuits in federal court under the Americans with Disabilities Act (ADA). **There is a deadline to file a lawsuit, so contact a civil rights lawyer immediately after the discrimination occurs.**

V. What Does Title III of the Americans with Disabilities Act Say about Assistive Technology?

Title III of the Americans with Disabilities Act (ADA) is for public accommodations. Public accommodations are private entities that own, lease, or operate a place of public accommodation. Places of public accommodation include hotels, private apartments, restaurants, movie theaters, stores, banks, zoos, fitness clubs, hospitals, and doctors' offices. Public accommodations cannot discriminate against persons with disabilities in providing goods, services, and other benefits to the public. Both the owner of the building and the tenant that runs the public accommodation are covered by the Americans with Disabilities Act (ADA).

If you are a person with a disability, you have the right to get benefits from a public accommodation equally with persons who do not have disabilities.

Public accommodations must do the following:

1. You cannot be denied goods, services, and other benefits because you have a disability. You cannot be given different goods, services, and other benefits because you have a disability. The public accommodation must accommodate your needs. For example, you must be allowed to stay in a hotel with your service dog. You can only be denied goods or services if you would pose a direct threat to the health and safety of others.
2. Buildings that are built or changed after January 26, 1993 must be fully usable by people with disabilities. Builders and designers must make sure that people with disabilities can get in and out of the building, and can get around inside the building. This can include the use of assistive technology. Examples are ramps, accessible entrances and doors, accessible hand dryers in restrooms, accessible drinking fountains, and signs with Braille. Shelves and aisles must be usable by people with disabilities.

There are different rules if the building was built before January 26, 1993. In this case, if it does not cost too much and is not too difficult, the public accommodation must make sure that you can get in and out of the building. This could include ramps, stair glides, and other assistive technology. The public accommodation must also provide accessible shelves, aisles, bathrooms, and other facilities inside the building. This could include assistive technology. Everything must be kept in working condition. If it costs too much or is too difficult, the public accommodation must get you the goods or services in another way. One example of this is home delivery.

3. The public accommodation must communicate with you in a way that is effective. The public accommodation must also provide assistive technology so you can use its goods, services, and other benefits if you have a visual, hearing, or other disability. Examples are accessible websites, TTY, captioning, telephone handset amplifiers, assistive listening devices, audio texts, Brailled materials, and large-print materials. Everything must be kept in working condition. You have the right to ask for assistive technology so that you can use goods and services equally with

others. For example, if you are deaf and staying in a hospital, you can ask that the hospital provide captioned television in your room.

NOTE: Under the Americans with Disabilities Act (ADA), the public accommodation does not have to give you your own device or service for your daily use. The public accommodation only has to give you a device or service so that you can use its goods, services, and other benefits.

A public accommodation cannot make you pay for the assistive technology that it must provide under the Americans with Disabilities Act (ADA).

VI. What If I Cannot Access a Place of Public Accommodation or Use Its Goods and Services?

There are many steps that you may wish to take if you cannot get into a place of public accommodation or use its goods and services.

- **Send a letter to the public accommodation.** You can ask the public accommodation to provide assistive technology so that you can use the building, programs, goods, or services. It is best to write a letter. Save a copy of the letter for yourself. Keep notes on who you asked, the date, and

the response. If you are still denied access, there are other things that you can do.

- **Make a Department of Justice complaint under Title III of the Americans with Disabilities Act (ADA).** Information is below.
- **Also make a complaint with the Pennsylvania Human Relations Commission.** Information is below.
- **File a lawsuit.** People and groups can file lawsuits in federal court under the Americans with Disabilities Act (ADA). **There is a deadline to file a lawsuit, so contact a civil rights lawyer immediately after the discrimination occurs.**

VII. How to Make a Complaint

- **Make a complaint with the Department of Justice under Title II or Title III of the Americans with Disabilities Act (ADA).** Individuals and groups can make civil rights complaints with the federal Department of Justice. This is not a lawsuit but an administrative complaint made to a federal

government agency. **Complaints must be filed within 180 days of the alleged discriminatory act.**

Make your written complaint to:

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Civil Rights Division

Disability Rights – 1425 NYAV

Washington, D.C. 20530

Fax: 202-307-1197

Email: ADA.complaint@usdoj.gov

You may also contact the Department of Justice Americans with Disabilities Act (ADA) Information Hotline at 800-514-0301 (voice) or 800-514-0383 (TTY).

- **Also make a complaint under the Pennsylvania Human Relations Act, which is a different law than the Americans with Disabilities Act (ADA).** This is not a lawsuit but an administrative complaint made to a state government agency. **Complaints must be filed within 180 days of**

the alleged discriminatory act. You need to file your complaint with one of the Pennsylvania Human Relations Commission three regional offices. Go to the Pennsylvania Human Relations Commission website for more information:

http://www.phrc.state.pa.us/portal/server.pt/community/file_a_complaint/18976.

VIII. Contact Information

If you need more information or need help, please contact the intake unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@drnpa.org.

The mission of the Disability Rights Network is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, the Disability Rights Network cannot provide individual services to every person with advocacy and legal issues. The Disability Rights Network 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.

IMPORTANT: This publication is for general informational purposes only. This publication is not intended, nor should be construed, to create an attorney-client relationship between the Disability Rights Network and any person. Nothing in this publication should be considered to be legal advice.

PLEASE NOTE: For information in alternative formats or a language other than English, contact the Disability Rights Network at 800-692-7443 Ext. 400, TDD: 877-375-7139, or drnpa-hbg@drnpa.org.

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