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ADA Center

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**Public Transportation
and the ADA:
What Do You Need to Know**

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Laws to be Discussed

- Americans with Disabilities Act (ADA)
- Rehabilitation Act (Section 504)

ADA Overview

- **Title I** - Employment
- **Title II** - State & Local Government
- **Title III** - Public Accommodations
- **Title IV** - Telecommunications
- **Title V** - Miscellaneous

Purpose of ADA



- Eliminate discrimination
 - Employment
 - Public Services
 - Transportation
 - Public Accommodations
 - and more
- Expand integration

The ADA does not cover:



- Federal Government
- Religious entities
- Housing
- Indian tribal properties
- Private clubs

Americans with Disabilities Act (ADA)

- Department of Justice revised regulations effective March 15, 2011
 - Title II Section 35.136
 - Title III Section 36.302



Selected Changes to Nondiscrimination Requirements:

Wheelchairs and Other Power-Driven Mobility Devices Service Animals

New Definitions

- Service Animal
- Wheelchair
- Other Power-Driven Mobility Device
- Direct threat in title II (mirrors title III)

Wheelchairs and Other Power-Driven Mobility Devices

Overview of changes

- Two tiered approach
 - Definition for “wheelchair”
 - Provisions for use: allowed everywhere
 - Definition for “other power-driven mobility device”
 - Provisions for use: assessment factors determine use
- Added to Title II and Title III
- Compliance date: **March 15, 2011**

Definition of “Wheelchair”

- “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.”
- Includes mobility scooters
- No size or weight maximum
- § 35.104 and § 36.104

Definition of “Wheelchair” (continued)

- “Mobility disability” includes a wide range of disabilities, including, circulatory and respiratory disabilities that make walking difficult or impossible.
- Does not apply to Federal wilderness areas

Use of Wheelchairs and Manually Powered Mobility Aids

- 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 in areas open to pedestrian use.
 - Manually-powered mobility aids include walkers, crutches, canes, braces, or other similar devices.
- § 35.137 (a) and § 36.311 (a)

Other Power-Driven Mobility Device (OPDMD)

- “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.”
- § 35.104 and § 36. 104

Definition of “OPDMD” - continued

- Includes
 - Golf cars
 - Electronic personal assistance mobility devices (e.g. Segway® PT)
 - Any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.
 - 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.
- § 35.137 (b)(1) and §36.311(b)(1).

Legitimate Safety Requirements

- Described in § 35.130 (h) and § 36.301 (b)
- Legitimate safety requirements necessary for the safe operation are permissible.
 - Speed limits
 - No fuel driven engines indoors - fumes
- Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Reasonable Modifications Regarding OPDMDs

- Burden on entity to show not reasonable
- Assessment is made regarding class of devices, instead of an individual's use of the device
 - This does not mean that an entity cannot look at an individual's use of a device, it is just not the assessment under § 35.137(b)(1) and §36.311(b)(1).
- Fundamental alteration, direct threat, and undue burden still apply

OPDMD Assessment Factors

- Sections § 35.137(b)(2) and §36.311(b)(2) set forth specific assessment factors that covered entities must consider to determine whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification.

OPDMD Assessment Factor 1

- The type, size, weight, dimensions, and speed of the device.

Legitimate Safety Requirements

- Described in § 35.130, new for Title II entities.
 - ❖ Legitimate safety requirements necessary for safe operation are permissible.
 - ❖ Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

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.

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.



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Credible Assurance

- A valid, disability parking placard or card, or other State-issued proof of disability: one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements.
- In lieu of valid placard, card, or other State-issued proof of disability, verbal representation, not contradicted by observable fact, that the OPDMD is being used because of a mobility disability.



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Development of OPDMD Policies

- Not included in the regs, but suggested in the interpretive guidance: entities that determine reasonable modifications can be made to allow the use of OPDMDs should consider developing a policy that clearly states the circumstances under which the use of OPDMDs by individuals with disabilities will be permitted.
 - Types and sizes permitted
 - Places, times and circumstances permitted
 - Speed limits and other safety rules
 - Storage availability
 - Policy related to credible assurance
- Provide advance notice of policy



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Development of OPDMD Policies (continued)

- The U.S. General Services Administration (GSA) has developed a policy allowing the use of Segways® in Federal buildings
 - Details devices covered by the policy
 - Sets out requirements for safe operation
 - Speed limit
 - Prohibits use on escalators
 - Provides guidance regarding security screening of these devices and their operators



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Tank Chair



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Tank Chair Specs

- Custom off-road wheelchair that can go anywhere outdoors- through streams, mud, snow, sand, gravel
- Can climb up and down stairs
- 24v, 2hp, 127rpm variable speed motor powered by four Optima Deep Cycle batteries
- 22:1 gear ratio and it can handle a 10% incline with no problems.
- Top speed is 5 mph
- Designed mainly for outdoor use, but marketed as suitable for both indoor and outdoor use.

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Questions?



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Service Animals



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Service Animals

- Revises “service animal” definition in title III;
- Adds “service animal” definition and service animal provisions to title II; and
- Codifies a variety of the Department’s longstanding policies and interpretations regarding service animals.

Definition of Service Animal

(§ 35.104 in Title II and § 36.104 in Title III)

- “Service animal means 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... The work or tasks performed by a service animal must be *directly related* to the individual's disability...”

What does this mean?

- Limits the species of service animals to dogs;
- Makes clear that comfort or emotional support animals are not covered; and
- Makes clear that individuals with physical, sensory, psychiatric or other mental disabilities can use service animals.

Definition: Species Limitation

- Service animals are now limited to one species — dogs.
- The definition provides that other animals besides dogs, whether wild or domestic, do not qualify as service animals.
- The Department's rules do not affect coverage of other animals under other laws, like the Fair Housing Act or Air Carrier Access Act.

Definition: Do Work or Perform Tasks

- Requires that the dog be *individually trained to do work or perform tasks*.
- The work or tasks performed by a service animal must be *directly related* to the individual's disability.

Definition: Do Work or Perform Tasks Continued

- Includes a non-exhaustive list of examples of work and tasks, such as retrieving items, e.g., medicine or telephone.
- Covers individuals with psychiatric, intellectual, or other mental disability that use service animals.

Example: Helping persons with psychiatric and neurological disabilities by reminding to take medication, preventing or interrupting impulsive or destructive behaviors.

Emotional Support Animals

- Because service animals must do work or perform tasks, emotional support and comfort animals *are not included* in the definition of service animal.
- The provision of emotional support, well-being, comfort, or companionship *do not constitute work or tasks* for the purposes of the service animal definition.

Revisions to the General Service Animal Provisions

- Service animal provisions located in:
§ 35.136 in Title II and § 36.302 in Title III.
- Overview of changes:
 - ❖ Provides when a service animal can be excluded.
 - ❖ Requires animal to be under handler's control.
 - ❖ Provides guidance on inquiries.
 - ❖ Care and supervision.
 - ❖ 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.

“Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control (i.e., voice control, signals, or other effective means.)

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.



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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.



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Beyond Service Animals

Miniature Horses



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Miniature Horse Requirements

- 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.



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Miniature Horses

- Miniature horses range in weight from 70 to 100 pounds.
- Miniature horses can range in height from 24 to 34 inches.

Assessment Factors

- The type, size, and weight of the horse and whether the facility can accommodate those features.
- Handler has sufficient control of the horse.
- Horse must be housebroken.
- Whether the horse's presence in a specific facility compromises legitimate safety requirements.

Other Requirements for Miniature Horses

- Sections 35.136(c)-(h)'s and § 36.302(c)(3)-(8)'s service animal requirements also apply to miniature horses.
- ❖ Admit person with a disability even if animal is properly excluded.
- ❖ Care and supervision.
- ❖ Inquiries.
- ❖ Access to all public areas.
- ❖ Surcharges.



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Federal Transit Administration – Service Animals

- No changes to U.S. Department of Transportation (DOT) ADA regulations regarding service animals in light of revised Title II and III regulations
- DOT ADA regulations cover both public and private transportation providers
- DOT would announce any changes in their rules and provide for a public comment period



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DOT Definition of Service Animal

- Service animal means:
 - Any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to:
 - guiding individuals with impaired vision
 - alerting individuals with impaired hearing to intruders or sounds,
 - providing minimal protection or rescue work,
 - pulling a wheelchair,
 - or fetching dropped items

Future Rule Making

- Public Rights-of-Way Guidelines
- <http://www.access-board.gov/prowac/index.htm>
- Revised Guidelines for Busses and Vans
- <http://www.access-board.gov/transit/index.htm>

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Resources

Department of Justice (DOJ)

Regulations, appendices, standards are available at DOJ's ADA web site at **www.ada.gov**.

DOJ Information Line:

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