Americans with Disabilities Act ADA

For New (Rural System) Directors

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Session Goals

- Provide a basic understanding of the ADA transportation requirements for community transportation systems (general public demand response and human services transportation)
- Provide sources of information and assistance on ADA transportation requirements
- Answer questions about ADA requirements and operational issues related to requirements
Americans with Disabilities Act of 1990

- Civil Rights Protection for Over 43 Million Americans
- “Amendments” to the Civil Rights Act of 1964
- Access and Equivalent Service is a Civil Right
Goals of the ADA

- Equality of Opportunity
- Independence
- Integration
- Self-Sufficiency

As a Director, create an environment within your agency through training and coaching that fosters understanding and equal treatment, not special treatment or paternalistic attitudes.
Scope of the ADA

- Covers Public and Private Entities
- Applies Regardless of the Type of Funding Received or Used
- Is About Your Relationship to Customers with Disabilities

As a Director, develop relationships with disability organizations and advocates to better understand how your agency is perceived and meeting needs.
Applicable Regulations and Guidance

- 49 CFR Parts 27, 37 and 38 – DOT ADA regulations

- FTA Circular (FTA C 4710.1), in particular:
  - Chapter 2, General Requirements
  - Chapter 4, Vehicle Acquisition and Specifications
  - Chapter 7, Demand Responsive Service
  - Chapter 12, Oversight, Complaints and Monitoring

Online at [www.transit.dot.gov](http://www.transit.dot.gov) (Civil Rights/ADA)
Types of Entities and Services

**Types of Entities**
- Transportation provided by **public** entities (“designated transportation”) ➔
- Transportation provided by **private** entities
  - Those **primarily engaged** in the provision of transportation
  - Those **not primarily engaged** in the provision of transportation

**Types of Services**
- Fixed route (commuter and non-commuter)
  - Complementary paratransit
- Demand responsive ➔

**All Entities and Services Have Requirements Related to:**

- **Facilities**
- **Vehicles**
- **Service Provision**
Transportation Facilities (Circular Ch. 3)

- **New Construction and Alterations Accessible**
  - Transit centers; Public service locations; Bus stops

- **Programs and Services Operated in Exiting Facilities Must be Readily Accessible to and Usable by Persons with Disabilities**
  - Can provide alternatives; do alterations if no other option
Transportation Facilities (Circular Ch. 3)

- Checklist for New Construction and Alterations Provided as an Attachment to Chapter 3

- Resource:

  Access Board: 1-800-USA-ABLE
  www.access-board.gov
Vehicles – Public Demand Responsive Services

- All New Vehicles (Purchased or Leased) Must Be Accessible, Unless “the system, when viewed in its entirety, provides a level of service to individuals with disabilities... equivalent to the level of service to individuals without disabilities”
- Purchase or Lease of Inaccessible Vehicles Requires Certification of Equivalent Service to NCDOT
- 49 CFR Part 38 – Standards for Accessible Vehicles
  - Bus and van specification provided as an Attachment to Chapter 4 of FTA Circular
Equivalent Service (C 7.4)

- **Service Provided in the Most Integrated Setting Appropriate for the Individual**
  - FTA discourages agencies from purchasing vehicles that segregate ambulatory riders from those that use wheelchairs

- **Service Is the Same in Terms of 7 Criteria:**
  - Response time (elapsed time from request to receiving service)
  - Fares
  - Geographic area of service
  - Hours and days of service
  - Restrictions or priorities based on trip purpose
  - Availability of information and reservation capability
  - Constraints on capacity or service availability

- **Must Consider Next Potential Rider (not just current riders)**
Equivalent Service Monitoring

- **Consider Policies and Practices in Terms of:**
  - Response time (elapsed time from request to receiving service)
  - Fares
  - Geographic area of service
  - Hours and days of service
  - Restrictions or priorities based on trip purpose
  - Trip caps and waiting lists
  - Availability of information and reservation capability

- **Track and Monitor Outcomes and Performance for Ambulatory Versus Non-Ambulatory Riders By Program**
  - Trip denials
  - On-time performance
  - On-board ride times
Dial-a-Ride Service Considerations (C. 7.5.1)

- Ongoing group trips (senior meals transportation) in an accessible vehicle rather than an inaccessible minibus and then a separate service for riders who use wheelchairs.
- If separate providers with accessible and inaccessible vehicles, make sure provider with accessible vehicles operates throughout area and during all days and hours.
- Fares can’t be different for accessible vehicles even though service might cost more.
Taxi Subsidy Program Considerations (C. 7.5.2)

- Taxi subsidy programs administered by public entities are subject to the equivalency requirement.
- A program that has only inaccessible taxicabs is not equivalent.
- Fares must be the same even if cost for accessible service is higher (a challenge in capped dollar subsidy programs).
- Make sure response time is the same (a challenge if only a small number of taxis are accessible).
Vanpool Program Considerations (C. 7.5.3)

Vanpool programs operated by public entities (vehicles purchased or leased by public entity) are subject to equivalency requirement.

Must be prepared to accommodate requests to join vanpool by a person who uses a wheelchair; must be able to arrange and have them join in same time that others can join and begin using the service.

Ensure that rider contributions in accessible vanpools are not higher when capacity of vehicle is reduced with addition of accessibility features; consider subsidizing accessible vanpools.
Route Deviation Service Considerations (C. 7.5.4)

Must deviate for all riders (not just riders with disabilities) to be considered demand responsive; if deviate only in some areas or only at some times, then complementary paratransit needed at times and in areas where there are no deviations.
Policies and practices related to deviations cannot discriminate against persons with disabilities. Examples of unacceptable policies and practices:

- Designating service as route deviation in plans, but not adequately advertising the option for deviations
- Overly restrictive areas (allow deviations up to $\frac{3}{4}$ mile from route)
- Excessive surcharges for deviations (more than twice base fare)
- Limiting deviations to only certain trip purposes
- Unreasonable caps on the number of deviations permitted per run
Nondiscrimination (C. 2.2)

- Broad prohibition against discrimination on the basis of disability
  - e.g., refusing to provide service because of a disability; requiring use of seat belts when others don’t have to use them; requiring wheelchair users to use special “body belts”

- Right to use general public service
  - e.g., requiring use of a “client-based” human service program instead of general public dial-a-ride when people have dual or multiple eligibility
Prohibition against special charges
- e.g., charging more for lift service than non-lift service
- Can charge more for premium service as long as all riders, regardless of disability have access to the basic level of service and premium service does not discriminate based on disability.

Prohibition against requiring attendants
- e.g., requiring based on concerns for rider’s safety
- But, drivers do not have to provide “attendant services”
- If riders need attendant services to use the service, they may need to bring an attendant
General Requirements (Circular Ch. 2)

- Prohibition against refusing service due to insurance issues
  - e.g., insurance doesn’t cover driver assisting riders with manual wheelchairs up and down ramps
  - e.g., insurance company refuses coverage if portable oxygen is transported
  - Cannot require riders to sign waivers in order to ride
Service denial due to rider conduct

- Can refuse service only if rider engages in conduct that is:
  - violent
  - seriously disruptive
  - Illegal
- Can refuse service if rider represents a direct threat to the health or safety of others
- High standard for determining “seriously disruptive” (more than offensive or annoying)
- Determination of “direct threat” requires consideration of approaches to mitigate the risk
- Must make reasonable attempts to resolve; when appropriate provide written warning; loss of service cannot be permanent; right to appeal
Equipment Requirements (C. 2.3)

- Maintain access-related equipment in operating condition
  - Lifts and ramps
  - Securement systems
  - Seat belts
  - Signage
  - Lighting
- Repair promptly
- Take reasonable steps to accommodate riders if equipment out-of-order
General Requirements (Circular Ch. 2)

- Keeping Lifts/Ramps in Operative Condition
  - Public entities and their contractors
  - Regular and frequent checks
  - Drivers must report outages immediately
  - Take out of service ASAP and before next day of service
  - Can keep in service if no accessible spares, but not longer than:
    - 3 days if serve an urban area (> 50,000)
    - 5 days if serve a rural area (≤ 50,000)
General Requirements (Circular Ch.2)

Lift and Securement Use (C. 2.4)

- Must accommodate all “wheelchairs” unless lift or vehicle cannot accommodate or there are legitimate safety issues
  - e.g., Exceeds lift/ramp capacity
  - e.g., Wheelchair so large it blocks the aisle
  - Inventory fleet and equipment to properly set limits
  - Allow riders to board separately
- Can require travel in designated securement areas
- Allow for boarding of lift in either direction
- Accommodate other devices (walkers, crutches, canes) used by riders with disabilities for mobility
  - Does not include shopping carts, bicycles, skateboards
  - Do not have to allow devices to be used in ways other than intended (e.g., sitting on walker during transport)
General Requirements (Circular Ch.2)

- Can require that wheelchairs be secured
- Cannot refuse on the grounds that wheelchair “cannot be secured”
- Seat belts and shoulder harnesses:
  - Must be on vehicles at each securement area
  - Do not use in lieu of mobility aid securements
  - Must offer and assist with use
  - Can only require if others also required to use
- Can recommend transfer to seat, but can’t require this
- Must allow persons with disabilities who do not use wheelchairs to use the lift as “standees”
General Requirements (Circular Ch.2)

Assistance by Transit Agency Personnel (C. 2.5)

- Must assist with use of lifts, ramps and securement (and seat belts)
  - Includes pushing manual wheelchairs up/down ramps if needed
- Other expected assistance:
  - Paying the fare
- Not required to:
  - Provide “attendant services”
  - Lift or carry a rider
- Package assistance is a local policy decision
General Requirements (Circular Ch.2)

Service Animals (C. 2.6)

- Must permit service animals to accompany individuals with disabilities in vehicles and facilities
- Service animals must be “individually trained to work or perform tasks”
- Can ask: (1) If it is a service animal, and; (2) What work or task the animal has been trained to perform
- “Comfort animals” and “emotional support animals” not considered service animals by DOT
Can refuse if animal poses a direct threat to others, “creates a seriously disruptive atmosphere,” or is not in rider’s control
Drivers do not have to take charge of animal
Riders can use more than one service animal
Can require riders to let you know when making reservations
Driver or other rider allergies not grounds for denying a service animal
General Requirements (Circular Ch.2)

**Oxygen Supplies (C. 2.7)**

- Must allow travel with a respirator or personal oxygen supply, consistent with applicable USDOT rules regarding transport of hazardous materials.

49 CFR S. 177.870(e) : “The gross weight of any given class of hazardous material other than Class 1 (explosive) materials shall not exceed 45 kg (99 pounds)…A cylinder secured against shifting while in transit and not exceeding 113 kg (250 pounds) gross weight may be transported.”

- Portable oxygen concentrators not considered hazardous materials. Cannot require securement in particular spaces. Must allow use as needed in transport.
General Requirements (Circular Ch. 2)

Accessible Information (C. 2.8)

- Provide upon request
- Large print, braille, audiotape, electronic files
- Usable to individual; Appropriate for the intended use
- Providing information over the phone is not considered a substitute for written information
- Make websites accessible
General Requirements (Circular Ch. 2)

Accessible Communications (C. 2.8.3)
- TTYs (TDDs); Relay services
- Where telephone communications are a critical part of service, agencies encouraged to permit direct communications (TTYs)
- Also encouraged to advertise relay services for those without TTYs
General Requirements (Circular Ch. 2)

- Personnel Training (C. 2.9)
  - \textit{TRAINING TO PROFICIENCY}
    - Safe operation of vehicles and equipment
    - Respectful and courteous customer service
    - Appropriate passenger assistance
    - Disability awareness
  - Appropriate to duties (drivers as well as other staff)
  - Consider involving people with disabilities in the training
  - Re-training required if needed to insure proficiency; General refresher training recommended
Reasonable Modification of Policies

- Must accept and consider requests for modifications of policies
- Must make information about how to request modifications readily available to the public
- Must modify policy/practice unless:
  - Change would “fundamentally alter the nature of the service”
  - Create a direct threat to the health or safety of others
  - Without the requested modification, the person is able to fully utilize the service
- If request is denied, must take other actions, to the “maximum extent possible” without creating a direct threat or fundamentally altering the service to allow person to use the service
- Examples and guidance in Appendix E of Circular
General Requirements (Circular Ch.2)

**Written Policies and Procedures**
- Recommended by FTA; Often requested in triennial reviews
- Can help ensure consistency in operations
- Can help personnel to make objective decisions and avoid unintentional discrimination
- Personnel training should include understanding of policies and procedures
- Agencies encouraged to involve individuals with disabilities in developing policies and procedures.
Complaints and Service Monitoring (Circ. Ch. 12)

Required Complaint Process (C. 12.7)
- Must Designate at Least One Person to Coordinate Process
- Must provide for the prompt and equitable resolution of complaints alleging any action prohibited by the ADA or Section 504
- Must “sufficiently” advertise to the public (such as on the agency website) the process for filing a complaint including the name, address, telephone number of person designated
- Must be accessible and usable by people with disabilities
- Must promptly communicate response, including the reasons for the response, to the complainant
- Must document the response
Can combine Title VI and ADA processes (e.g., “Nondiscrimination Policy”), but must make it clear the process is for both laws; must keep distinct records for each program.

Recordkeeping: Must keep full files for at least one year; must maintain a summary of complaints for at least five years.

Recommended elements of a process provided in Section 12.7.4 of the Circular.

Sample comment form provided as Attachment 12-1 of the Circular.
Complaints and Service Monitoring (Circ. Ch. 12)

**Required Monitoring of Services (C. 12.8)**

- Must monitor in-house services and/or contracted services sufficient to ensure compliance with ADA requirements
  - Facility design reviews
  - Facility construction oversight
  - Pre- and post-delivery vehicle inspections
  - Determining equivalency
  - Ensuring service provided in compliance with all general requirements (in-service observations; complaint investigations)