



**RLS**  
Associates, Inc.

Moving Public Transportation  
Into the Future

**Integrated Mobility Division**  
N.C. DEPARTMENT OF TRANSPORTATION

**NCDOT-IMD Strategic Training**  
**ADA Requirements for Public Transit**  
Presenter: Julie Schafer

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## Training Session Content Day One



**ADA Overview & Definitions**



**General Nondiscrimination and Provision of Service**

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Americans with Disabilities Act

## OVERVIEW & DEFINITIONS



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### ADA Overview

- ◆ The Americans With Disabilities Act (ADA) of 1990
  - Originally signed into law on July 26, 1990
  - Five titles, modeled, in part, after the Civil Rights Act of 1964
  - Substantial impact on public transportation
  - Oversight split between multiple federal agencies: US DOJ, US DOT, EEOC, FCC



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### Goals of the ADA

- ◆ Equal Opportunity
- ◆ Full Participation
- ◆ Independent Living
- ◆ Economic Self-sufficiency for People With Disabilities



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## Organization of the Act

- ◆ Title I: Employment
- ◆ Title II: Public Services (Transportation)
- ◆ Title III: Public Accommodations and Services Operated by Private Entities
- ◆ Title IV: Telecommunications
- ◆ Title V: Miscellaneous Provisions

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## Title II

- ◆ Subtitle B - Applies To Transportation Services Provided By Public Entities
  - Implementing Agency is the USDOT
  - 49 CFR Parts 27, 37, and 38
    - Part 27 – Section 504 Rule
    - Part 37 – Key ADA Rule for Transit
    - Part 38 – Accessible Vehicle Rule

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## Amendments to the ADA

- ◆ The ADA Amendments Act of 2008 (ADAAA)
  - Recent U.S Supreme Court decisions limited the impact of the ADA
    - *Sutton v. United Airlines* held that impairments must be considered in their mitigated state
    - *Toyota v. Williams* held that the standard for determining whether an individual was eligible for ADA protection must be demanding

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## Amendments to the ADA

- ◆ The ADA Amendments Act of 2008 (ADAAA)
  - Members of Congress viewed those decisions as limiting the rights of persons with disabilities
  - The ADAAA effectively reversed those decisions by changing the law
  - The ADAAA expressly rejected the Supreme Court's notion that a disability can be mitigated and thus not subject to ADA coverage
  - Amendment now states determination is made without regard to the ameliorative effects of mitigating measures

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## USDOT Regulations

- ◆ Govern the Following Areas
  - Applicability
  - Nondiscrimination
  - Accessible facilities
  - Acquisition of vehicles
  - Complementary paratransit
  - Provision of service

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## Definitions

- ◆ Disability
  - A physical or mental impairment that substantially limits one or more Major Life Activities of an individual, or
  - A record of such an impairment, or
  - Being regarded as having such an impairment

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## Definitions (cont'd)

- ◆ Physical or Mental Impairment
  - Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems
    - Neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine
    - Any mental or psychological disorder, such as mental retardation, emotional or mental illness, and specific learning disabilities

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## Definitions (cont'd)

- ◆ Physical or Mental Impairment
  - The term physical or mental impairment includes, but is not limited to, such contagious or non-contagious diseases and conditions as
    - Orthopedic, visual, speech, and hearing impairments; Cerebral Palsy, Epilepsy, Muscular Dystrophy, Multiple Sclerosis, Cancer, Heart Disease, Diabetes, Mental Retardation, Emotional Illness, Specific Learning Disabilities, HIV Disease, Tuberculosis, Drug Addiction and Alcoholism

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## Definitions (cont'd)

- ◆ Major Life Activities
  - Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and work

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Americans with Disabilities Act

## GENERAL NONDISCRIMINATION & PROVISION OF SERVICE

### Nondiscrimination

- ◆ “No Entity Shall Discriminate Against an Individual With a Disability in Connection With the Provision of Transportation Service.”  
49 CFR 37.5(a)

### Nondiscrimination (cont'd)

- ◆ Examples of Common Discriminatory Practices
  - Refusing to provide service because of a person’s disability
  - Requiring individuals with disabilities to use seat belts or shoulder harnesses when other riders on the same vehicle are not also required to do the same

## Nondiscrimination (cont'd)

- ◆ Examples of Common Discriminatory Practices
  - Requiring wheelchairs users to wear a special body belt as a condition of using lifts
  - Requiring riders who board a vehicle with a service animal to first disclose the nature of their disability to receive transportation

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## Nondiscrimination (cont'd)

- ◆ Examples of Common Discriminatory Practices
  - Requiring adults to accompany children under a certain age in order to use complementary paratransit service without having the same age requirement to ride the fixed route system
  - Prohibiting an individual with a disability from serving as a personal care attendant (PCA) for another rider with a disability

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## Nondiscrimination (cont'd)

- ◆ Examples of Common Discriminatory Practices
  - Imposing special charges for providing required services to individuals with disabilities
  - Refusing service due to insurance company conditions or insurance rates predicated on the absence of individuals with disabilities

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## Nondiscrimination (cont'd)

- ◆ Service Denial Due to Rider Conduct
  - It is not discrimination for an entity to refuse to provide service to an individual with disabilities because that individual engages in:
    - Violent
    - Seriously disruptive
    - Illegal conduct
    - Represents a direct threat to health or safety of others

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## Nondiscrimination (cont'd)

- ◆ Service Denial Due to Rider Conduct
  - Seriously disruptive, illegal, violent behavior
    - Meant to be a high standard
    - Appearance or involuntary behavior that offends or inconveniences other passengers does not meet this threshold
    - To be “seriously disruptive” the condition must disrupt the provision of service
    - Most common scenario - passengers with hygiene issues

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## Nondiscrimination (cont'd)

- ◆ Service Denial Due to Rider Conduct
  - Determining a direct threat to others
    - Individual assessment, based on reasonable judgment
    - Determine probability that potential injury will occur
    - Do not presume certain conduct will occur based on a specific disability

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## Nondiscrimination (cont'd)

- ◆ Service Denial Best Practices
  - Provide written notice before imposing denials
  - Allow for periodic reconsideration for changed conditions or circumstances

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## Provision of Service

- ◆ Keeping Accessibility Equipment in Good Working Order
  - Lifts should be repaired promptly
  - Must make alternative means to accommodate individuals with disabilities in event of equipment failure
  - Requirement extends beyond lifts
    - Any equipment that facilitates use/access of the transit service

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## Provision of Service (cont'd)

- ◆ Keeping Accessibility Equipment in Good Working Order
  - Vehicles must be removed from revenue service before the beginning of the next service day and it must be repaired before the vehicle is returned to service

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## Provision of Service (cont'd)

- ◆ Keeping Accessibility Equipment in Good Working Order
  - What if the agency does not have a spare accessible vehicle?
    - If the agency would otherwise be forced to reduce service, it may keep the vehicle in service:
      - For up to five days in rural areas (less than or equal to 50k population)
      - For up to three days in urban areas (greater than 50k population)

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## Provision of Service (cont'd)

- ◆ Accommodating Passengers Using Wheelchairs
  - Wheelchair definition:
    - A mobility aid belonging to any class of three- or more wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered
  - Must transport any wheelchair that the vehicle can accommodate consistent with legitimate safety requirements

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## Provision of Service (cont'd)

- ◆ Legitimate Safety Requirements
  - The combined weight of chair and passenger does not exceed lift specifications
  - The wheelchair is of a size that would block an aisle or interfere with safe evacuation of passengers in an emergency

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### Provision of Service (cont'd)

- ◆ Cannot Understate a Lift's Weight Capacity
- ◆ Any Transit Agency Policy Requiring Wheelchairs To Be Equipped With Specific Features (i.e. Brakes) or Be in a Specific State of Repair Is Not Permitted

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### Provision of Service (cont'd)

- ◆ Securement of Wheelchairs
  - Wheelchairs must be secured
  - However, an agency cannot refuse to transport a rider only because the wheelchair cannot be secured to the satisfaction of the transit agency

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### Provision of Service (cont'd)

- ◆ Dwell Time
  - The transit agency must ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle

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## Provision of Service (cont'd)

- ◆ Deployment of Lifts
  - Transit agency cannot refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless
    - The lift cannot be deployed
    - The lift will be damaged if it is deployed
    - Temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by passengers

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## Provision of Service (cont'd)

- ◆ Deployment of Lifts
  - Standees have the right to use lifts
  - Cannot seek waivers from standees or wheelchair users who require use of the lift
  - May have a policy that wheelchair users face a certain direction while using the lift, but it is ultimately the rider's decision which direction they choose to face

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## Provision of Service (cont'd)

- ◆ Respirators and Portable Oxygen
  - Must be allowed to use while riding
  - Cannot require that they be secured in a particular spot on vehicle

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## Provision of Service (cont'd)

- ◆ Service Animals
  - Definition: An animal that is individually trained to work or perform tasks
  - DOT rules apply (not DOJ)
  - Permissible to ask 2 questions:
    - Is this animal a service animal required because of a disability?
    - What work or task has it been trained to perform?

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## Provision of Service (cont'd)

- ◆ Service Animals
  - Refusal to transport is warranted if the animal:
    - Poses a direct threat to the health or safety of others
    - Creates a seriously disruptive atmosphere, or
    - Is otherwise not under the rider's control

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## Reasonable Modifications

- ◆ Reasonable Modifications to Policies, Practices, and Procedures Where Necessary To Avoid Discrimination, Unless They Can Demonstrate That Doing So Would Fundamentally Alter the Nature of the Service, Program, or Activity

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## Reasonable Modifications (cont'd)

- ◆ Applies to
  - Policies
  - Practices
  - Procedures
- ◆ Applies When a Change in Policy, Practice, or Procedures Would Avoid Discrimination on the Basis of Disability (e.g., Refusal of Service)

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## Reasonable Modifications (cont'd)

- ◆ Exceptions
  - Accommodation would
    - Be a fundamental alteration the nature of the service
    - Create a direct threat to the health or safety of others
    - Passenger is able to fully use the transportation entity's service without accommodation

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## Reasonable Modifications (cont'd)

- ◆ If an Exception Applies, the Entity May Deny Request
- ◆ If Denial, Additional Obligations Apply
  - Take other actions to ensure the disabled person receives transit service (49 CFR part 37.169(e))
    - Denial of service should be the transit agency's last option

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## Reasonable Modifications (cont'd)

- ◆ Individuals Making a Request
  - Must be a qualified individual with a disability (per ADA definition)
  - Should describe the requested modification
  - Need not identify the request or use the term “reasonable modification” in order to be considered
  - Should be requested in advance, if possible

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## Reasonable Modifications (cont'd)

- ◆ Individuals Making a Request
  - Where a request for modification cannot practicably be made and determined in advance:
    - Operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request
    - Operating personnel may consult with the entity's management before making a determination to grant or deny the request

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## Monitoring Provision of Service

- ◆ Agency Should Have a Process To Monitor Employees for Compliance With Service Provisions
  - Field Observation
  - “Secret Shoppers”
  - Camera footage

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## Training Session Content Day Two



Common Issues



Review of ADA  
Requirements, by Mode



Resources

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Americans with Disabilities Act

### COMMON ISSUES

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### Complaints

- ◆ Agency Required to Establish a Complaint Policy
  - Designation of responsible employee responsible for implementing all aspects of ADA compliance
  - Name, address, telephone number, and email
  - Sufficiently advertised—web/other
  - Complaints apply to all aspects of ADA, not just complementary paratransit
  - Policy must be available in alternative formats (don't confuse with Title VI)

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## Complaints (cont'd)

- ◆ No Regulatory Training Requirements
  - Designated employee is responsible for ensuring the agency's compliance with ADA
    - Should be trained on ADA/Reasonable Accommodation rule
    - Should have authority to make key operational decisions

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## Complaints/Website

- ◆ Must Sufficiently Advertise to the Public the Process To File an ADA-related Complaint
- ◆ Complaint Process Must Be Included on Agency Website and Be Easy to Find
- ◆ Section 508 Compliance
  - FTA Circular 4710.1, Section 2.8.2 – Accessible Websites

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## Complaints (cont'd)

- ◆ The Process Should Enable the “Prompt and Equitable” Resolution of Complaints
  - “Prompt” is not defined but indicates a time period in which complaints will be resolved
  - “Equitable” means due process
- ◆ Response to Complaint Must Be Promptly Communicated, Including Specific Reasons for the Determination

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## Complaints (cont'd)

- ◆ Due Process
  - Must have a process by which a dissatisfied complainant can appeal
  - Separation of authority: the individuals hearing the appeal must be different than those who made original determination

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## Complaints (cont'd)

- ◆ Elements of the Response
  - Response decision
  - Reasons for the response
  - Appeals procedures
- ◆ Documentation
  - Notification does not have to be in writing
  - Copies of internal documentation maintained for one year
  - Summary of all complaints must be maintained for five years

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Americans with Disabilities Act

## MODE SPECIFIC REQUIREMENTS

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## Fixed Route Operations

- ◆ Modes of Transit Service
  - Fixed Route Service
    - System of transporting individuals... "on which a vehicle operating along a prescribed route according to a fixed schedule"
  - Fixed Route Includes
    - Non-commuter fixed route
    - Commuter fixed route
    - Intercity bus
    - Route/point deviation when deviations are limited

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## Fixed Route Operations (cont'd)

- ◆ Priority Seating
  - Designed for elderly and individuals with disabilities
  - Must be properly designated
  - Agency may have policy stating that passengers occupying these seats must move
  - However, the driver may not force a passenger to move

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## Fixed Route Operations (cont'd)

- ◆ Stop Announcements
  - Must announce at:
    - Transfer points with other fixed routes
    - Major intersections and destinations
    - Sufficient intervals along a route to permit individuals with visual impairments to be able to orient themselves to their location
    - Upon request
  - Can use annunciators or perform manually
  - Not necessary to use a p.a. system if vehicle is small enough and the driver can be heard

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## Fixed Route Operations (cont'd)

- ◆ Inoperable Lift or Ramp on Route With Headways Greater Than 30 Minutes
  - Must immediately report to dispatch
  - Must provide alternative transportation within 30 minutes
  - Follow previously discussed requirements to remove vehicle from service and repair before returning to service

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## Demand Response Operations

- ◆ Modes of Transit Service
  - Demand Response Service
    - System of transporting individuals...which is not a fixed route system
    - Characterized by request by prospective user
  - Demand Response Categories
    - Route/point deviation open to all
    - Traditional demand response (subscription and casual DR)
    - ADA complementary paratransit

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## Demand Response Operations (cont'd)

- ◆ Types of Demand Response Service
  - Dial-a-Ride Service
  - Taxi Subsidy Service
  - Vanpool Service
  - Route Deviation Service

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## Demand Response Operations (cont'd)

- ◆ ADA Service Requirement for Demand Response Services
  - Equivalent service

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## Demand Response Operations (cont'd)

- ◆ Equivalent Service
  - Seven (7) criteria
    - Response time
    - Fares
    - Geographic area of service
    - Hours and days of service
    - Restrictions or priorities based on trip purpose
    - Availability of information and reservations capability
    - Any constraints in capacity or service availability

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## Demand Response Operations (cont'd)

- ◆ Equivalent Service
  - Unlike complementary paratransit, there are no service standards associated with these criteria
  - Obligation is only to provide equivalent service – good or bad
- ◆ While Acquisition of Accessible Vehicles Is Recommended, if Service Is Equivalent, Non-Accessible Vehicles May Be Purchased As Long as a Certificate of Equivalent Service Is Submitted to NCDOT

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## Demand Response Operations (cont'd)

- ◆ Equivalent Service
  - When a demand response fleet is 100 percent accessible, FTA states the equivalent service standard applicable to demand response system do not apply
  - There is presumptive equivalency

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## Demand Response Operations (cont'd)

- ◆ Route Deviation
  - A fixed-route system that performs route deviation becomes demand response and negates the agency's obligation to perform complementary paratransit
  - Must accept deviation requests from all riders to be considered demand response
  - Must advertise the availability of route deviations in schedules and other public information

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## Demand Response Operations (cont'd)

- ◆ Route Deviation
  - Avoid restrictive practices
    - No excessive fares for deviations (more than 2x base fare)
    - Limiting the areas where deviations can occur (at least ¼ mile)
    - Limiting deviations to specific trip purposes
    - Capping the number of deviations an individual can request
    - Limiting number of deviations per run

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## Demand Response Operations (cont'd)

- ◆ Monitoring for Equivalency
  - Recommended Procedures
    - Periodically review
      - Trip Denials
      - On-time performance
      - Trip lengths
      - Wait times and scheduling
      - Fares
      - Service area

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## Microtransit

- ◆ Microtransit Is a Form of Bus Demand Responsive Transport
- ◆ Microtransit Fits Somewhere Between Private Individual Transportation (Cars, Taxis or TNCs) and Public Mass Transit

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## Microtransit (cont'd)

- ◆ Microtransit Allows Agencies To Offer Riders an On-demand Option
  - More flexibility than designated fixed routes and appointment-like paratransit
- ◆ Efficiently Adapts the Path With Each New Passenger, Rather Than Follow a Fixed-Route As With Public Transport

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## Complementary Paratransit

- ◆ Meant as a Safety Net to Those Individuals With Disabilities Who Cannot Otherwise Navigate or Use an Accessible Fixed Route Bus System
- ◆ All Public Entities Operating Fixed Route Service Must Provide Complementary Paratransit
- ◆ Unless Route Deviations Are Provided to All Riders (Not Just Certain Groups of Individuals)

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## Paratransit Eligibility

- ◆ Eligibility Process
  - Transit systems subject to the requirement to provide complementary paratransit must also institute an eligibility process
    - Three categories
      - Unconditionally eligible
      - Conditionally eligible
      - Ineligible

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## Paratransit Eligibility (cont'd)

- ◆ Unconditional Eligibility
  - Any individual with a disability who is unable, as the result of a physical or mental impairment, and without the assistance of another individual (except the operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities

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## Paratransit Eligibility (cont'd)

### ◆ Unconditional Eligibility

- Note that some individuals may be able to use/navigate system if travel training is provided
- However:
  - Transit agency cannot require an individual to participate in such training
  - Transit agency cannot condition eligibility on such training

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## Paratransit Eligibility (cont'd)

### ◆ Conditional Eligibility

- Any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to/from a boarding location on the fixed route system
- The specific impairment-related condition must prevent the person from using the fixed-route system

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## Paratransit Eligibility (cont'd)

### ◆ Conditional Eligibility

- Note that environmental conditions and architectural barriers not under the control of the public entity **do not**, when considered alone, confer eligibility
- However, if these factors combined with a person's specific impairment-related conditions prevent travel to/from a boarding location, paratransit service must be provided

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## Paratransit Eligibility (cont'd)

- ◆ Key Concept
  - Functionally-based determinations, not condition-based determinations (i.e. can the rider use fixed route system)
  - Specific diseases or medical conditions alone do not trigger paratransit eligibility
  - ADA paratransit is not an “all or nothing” type service
  - Concept of trip-by-trip eligibility come into play

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## Paratransit Eligibility (cont'd)

- ◆ Many Smaller Systems, Due to Staffing Considerations, Do Not Embrace Conditional Eligibility Concepts and Use an All or Nothing Approach
  - Understandable, but:
    - Likely to lead to determination of eligibility when the person does not meet the requirements of the rule
    - Complementary paratransit trips are expensive

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## Eligibility Process

- ◆ Basic Requirements
  - All application/eligibility materials must be available in alternative formats
  - Eligibility determinations must be in writing
  - Written determinations must detail specific information
  - Applications must be processed in 21 days
    - Otherwise, presumptive eligibility is granted

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## Eligibility Process (cont'd)

- ◆ **Written Determinations Must**
  - Contain name of eligible individual (typically on ID card)
  - Name of transit provider
  - Telephone number of the entity's paratransit coordinator
  - An expiration date for eligibility
  - Any conditions or limitations on the individual's eligibility, including the use of a personal care attendant

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## Eligibility Process (cont'd)

- ◆ **Denials of Eligibility Must**
  - List the specific reasons why eligibility was denied or conditioned
  - Provide information on the opportunity for the applicant to appeal the eligibility determination
    - Due process must be provided in any instance in which anything less than unconditional eligibility is granted

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## Eligibility Process (cont'd)

- ◆ **Eligibility Approaches:**
  - Self-certification
  - Professional verification
  - In-person interviews
  - In-person assessment
    - Functional assessment
    - Cognitive assessment
    - Visual ability assessment

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## Eligibility Process (cont'd)

- ◆ Re-certification
  - The transit agency, at its discretion, may require periodic re-certification
  - Typical re-certification period is three years
  - As functional abilities may change over time, adoption of re-certification procedures can be regarded as a best practice
  - May not be necessary to re-certify all riders
    - Some unconditional eligible individuals may only need “administrative recertification”

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## Eligibility Process (cont'd)

- ◆ Appeals Process
  - The transit agency must create an administrative appeals process to hear appeals of the eligibility determination
    - Denials
    - Temporary/conditional determinations

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## Complementary Paratransit

- ◆ Origin-to-Destination Service
  - Definition
    - Origin-to-destination service means providing service from a passenger’s origin to the passenger’s destination
  - Modes
    - Door-to-door (threshold)
    - Curb-to-curb
      - » When an ADA paratransit operator chooses curb-to-curb, it must provide assistance to those passengers who need assistance beyond the curb

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## Complementary Paratransit (cont'd)

- ◆ Service Criteria
  - Hours and days of service
  - Service area
  - Response time (trip reservations)
  - Fares (not more than 2x)
  - Operating without regard to trip purpose
  - Absence of capacity constraints

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Americans with Disabilities Act

## RESOURCES

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## Resources

- ◆ NCDOT-IMD Business Guide
- ◆ [National RTAP ADA Toolkit](#)
- ◆ Sample ADA Policy Template
- ◆ Checklist for ADA Policies
- ◆ ADA Website Policy

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## Conclusion

- ◆ Thank You All for Attending!
- ◆ Questions/Comments
- ◆ Contact Information
  - Julie Schafer, Director of State Initiatives
  - [jschafer@rlsandassoc.com](mailto:jschafer@rlsandassoc.com)

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