



The Americans with Disabilities Act

Title III Technical Assistance Manual

Foreword

The Americans with Disabilities Act is a landmark civil rights law that denies individuals with disabilities an equal opportunity to participate in all aspects of American life. The ADA means access to jobs, public accommodations, government services, public transportation, and telecommunications -- in other words, full participation in, and access to, all aspects of society.

Through the provision of technical assistance, such as this manual, we hope to achieve our goal of making the ADA's promise of equal opportunity for individuals with disabilities a reality while holding costly litigation to a minimum. We anticipate that many of the barriers facing individuals with disabilities will disappear through the zealous, informed efforts of Americans to voluntarily comply with the ADA.

We in the Civil Rights Division wholeheartedly share the goals of the ADA and have committed ourselves to implementing and enforcing this landmark civil rights legislation in the fairest, most effective manner possible.

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Americans with Disabilities Act Title III Technical Assistance Manual January 1993 Supplement

The following pages contain material to be added to the Americans with Disabilities Act Title III Technical Assistance Manual. These supplements are to be inserted, as appropriate, at the end of each chapter of the Manual.

III-1.0000 COVERAGE

III-1.2000 Public accommodations.

A. [Insert the following text before the question, "*Can a place of public accommodation be covered by both the ADA and the Fair Housing Act?*", p. 3]

Is a bank that acquires ownership of a place of public accommodation through foreclosure subject to title III? Yes. Any owner of a place of public accommodation is covered as a public accommodation regardless of the intended or actual duration of its ownership.

B. [Substitute the following text for the answer and Illustration following the question, "*Can a place of public accommodation be covered by both title III of the ADA and the Fair Housing Act?*", p. 3.]

Yes. The analysis for determining whether a facility is covered by title III is entirely separate and independent from the analysis used to determine coverage under the FHA. A facility can be a residential dwelling under the FHA and still fall in whole or in part under at least one of the 12 categories of places of public accommodation.

ILLUSTRATION: LM, Inc., a private, nonsectarian, nonprofit organization operates a homeless shelter permitting stays ranging from overnight to those of sufficient length to result in coverage as a dwelling under the FHA. Because it permits short-term, overnight stays, the shelter may also be considered a place of public accommodation as a "place of lodging," and covered by title III of the ADA. In addition, if the shelter provides a significant enough level of social services, such as medical care, meals, counseling, transportation, or training, it may also be covered under title III as a "social service center establishment."

Does title III apply to common areas within residential facilities? Although title III does not apply to strictly residential facilities, it covers places of public accommodation within residential facilities. Thus, areas within multifamily residential facilities that qualify as places of public accommodation are covered by the ADA if use of the areas is not limited exclusively to owners, residents, and their guests.

ILLUSTRATION 1: A private residential apartment complex includes a swimming pool for use by apartment tenants and their guests. The complex also sells pool "memberships" generally to the public. The pool qualifies as a place of public accommodation.

ILLUSTRATION 2: A residential condominium association maintains a longstanding policy of restricting use of its party room to owners, residents, and their guests. Consistent with that policy, it refuses to rent the room to local businesses and community organizations as a meeting place for educational seminars. The party room is not a place of public accommodation.

ILLUSTRATION 3: A private residential apartment complex contains a rental office. The rental office is a place of public accommodation.

C. [Insert the following text at the end of this section, p. 4.]

Can a vacation timeshare property be a place of public accommodation? Yes. Whether a particular timeshare property is a place of public accommodation depends upon how much the timeshare operation resembles that of a hotel or other typical place of lodging. Among the factors to be considered in this determination are --

- 1) Whether the timeshare offers short-term ownership interests (for instance, stays of one week or less are considered short term);
- 2) The nature of the ownership interest conveyed (e.g., fee simple);
- 3) The degree of restrictions placed on the ownership (e.g., whether the timeshare owner has the right to occupy, alter, or exercise control over a particular unit over a period of time);
- 4) The extent to which the operations resemble those of a hotel, motel, or inn (e.g., reservations, central registration, meals, laundry service).

If a public accommodation operating two geographically separate facilities serves clients or customers at one location and has only administrative offices at another, are both sites places of public accommodation? No. Only the facility in which clients or customers are served is covered as a place of public accommodation. The geographically separate, employees-only facility is a commercial facility, but any activities undertaken in that facility that affect the operations of the place of public accommodation are subject to the title III requirements for public accommodations.

ILLUSTRATION: A medical care provider owns one building in which patients are seen, and another building in a different location that contains only administrative offices. At the building housing the administrative offices, no services are provided (no patients go there, only employees). The building where patients are treated is a place of public accommodation. The geographically separate administrative offices are a commercial facility, not a place of public accommodation. However, any policies or decisions made in the administrative offices that affect the treatment of patients would be subject to the requirements for public accommodations. For example, a protocol for the provision of auxiliary aids that is issued as a directive to medical staff by the administrative office must comply with the effective communication requirements for public accommodations.

BUT: If patients receive medical services in the same building where the administrative offices are located, the entire building is a place of public accommodation, even if one or more floors are reserved for the exclusive use of employees.

III-1.7000 Relationship to title II.

[Insert the following text after Illustration 2, p. 6.]

ILLUSTRATION 3: A private, nonprofit corporation operates a number of group homes under contract with a State agency for the benefit of individuals with mental disabilities. These particular homes provide a significant enough level of social services to be considered places of public accommodation under title III. The State agency must ensure that its contracts are carried out in accordance with title II, and the private entity must ensure that the homes comply with title III.

III-4.0000 SPECIFIC REQUIREMENTS

III-4.1000 Eligibility criteria.

III-4.1100 General.

[Insert the following text after Illustration 3, p. 21.]

ILLUSTRATION 4: A committee reviews applications from physicians seeking "admitting privileges" at a privately owned hospital. The hospital requires all applicants, no matter their specialty, to meet certain physical and mental health qualifications, because the hospital believes they will promote the safe and efficient delivery of medical care. The hospital must be able to show that the specific qualifications imposed are necessary.

III-4.1400 Surcharges.

[Insert the following text after Illustration, p. 22.]

ILLUSTRATION 2: In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. The cost of the interpreter's services must be absorbed by the doctor.

ILLUSTRATION 3: A community civic association arranges to provide interpreting services for a deaf individual wishing to attend a business seminar sponsored by the organization in rented space at a local motel. The interpreting service requires the organization to provide payment in full prior to the seminar. Due to a business emergency, the individual is unable to attend. The organization may not charge the deaf individual for the cost of the unused interpreting services.

III-4.2000 Reasonable modifications.

III-4.2100 General.

[Insert the following text after Illustration 2, p. 22.]

ILLUSTRATION 3: A retail store has a policy of not taking special orders for out-of-stock merchandise unless the customer appears personally to sign the order. The store would be required to reasonably modify its procedures to allow the taking of special orders by phone from persons with disabilities who cannot visit the store. If the store's concern is obtaining a guarantee of payment that a signed order would provide, the store could, for example, take orders by mail or take credit card orders by telephone from persons with disabilities.

III-4.2300 Service animals.

[Insert the following text after Illustration, p. 23.]

A number of States have programs to certify service animals. A private entity, however, may not insist on proof of State certification before permitting the entry of a service animal to a place of public accommodation.

III-4.3000 Auxiliary aids.

III-4.3200 Effective communication.

A. [Insert the following text after Illustration 3, p. 26.]

ILLUSTRATION 4: S also has tickets to a play. When S arrives at the theater, the usher notices that S is an individual who is blind and guides S to her seat. An usher is also available to guide S to her seat following intermission. With the provision of these services, a Brailled ticket is not necessary for effective communication in seating S.

ILLUSTRATION 5: The same theater provides S with a tape-recorded version of its printed program for the evening's performance. A Brailled program is not necessary to effectively communicate the contents of the program to S, if an audio cassette and tape player are provided.

B. [Insert the following text after the answer to the question, "*Who decides what type of auxiliary aid should be provided?*", p. 26.]

ILLUSTRATION: A patient who is deaf brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter. The physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication. If the patient believes that the physician's decision will not lead to effective communication, then the patient may challenge that decision under title III by initiating litigation or filing a complaint with the Department of Justice (see III-8.0000).

III-5.0000 NEW CONSTRUCTION

III-5.4000 Elevator exemption.

III-5.4200 Professional office of a health care provider.

A. [Insert the following text after the paragraph beginning "*BUT: If the second floor . . .*", p. 47.]

ILLUSTRATION 2: A newly constructed two-story building houses a business that provides home health care services. No health care services are actually provided at the company's offices. While the building must meet all other requirements for new construction, no elevator is required.

B. [Insert the following new section after this section, p. 47.]

III-5.4300 Transportation terminals.

The ADA's elevator exemption also does not apply to bus or train terminals or depots, or to airport passenger terminals. If, however, all passenger services in a two-story facility – including boarding, debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public – are located on the same floor level and on an accessible route from an accessible entrance, an elevator is not required.

**III-7.0000 THE AMERICANS WITH DISABILITIES ACT ACCESSIBILITY
GUIDELINES (ADAAG)**

III-7.4000 Sites and exterior facilities.

III-7.4300 Parking.

A. [Delete the first paragraph of this section and insert the following text, p. 57.]

ADAAG provides a table with the number of accessible parking spaces required dependent on the size of the lot. For example, only four percent of the spaces in a 100-space lot must be accessible. Certain facilities, however, are subject to higher requirements.

Outpatient units are subject to a higher requirement if they are part of medical care facilities where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. For such facilities, ten percent of the total parking attributable to the outpatient unit or facility must be accessible.

In addition, any unit or facility providing medical care or other services, including occupational or physical therapy, or vocational rehabilitation, is subject to a higher accessible parking requirement, if it specializes in treatment or services for persons with mobility impairments. Twenty percent of the total number of parking spaces serving each such unit or facility must be accessible.

B. [Insert the following text at the end of this section, p. 57.]

If a lot is limited to the exclusive use of employees, and none of the employees are individuals with disabilities requiring accessible parking, accessible spaces may be assigned to employees without disabilities.

III-7.5000 Buildings: New construction.

III-7.5100 General.

[Insert the following new section after section "III-7.5160 Alarms," p. 59.]

III-7.5161 Detectable warnings (ADAAG 4.1.3(15)).

The requirement for detectable warnings at certain locations is under review by the Architectural and Transportation Barriers Compliance Board, and will be the subject of future rulemaking.

III-7.5165 Signage.

[Insert the following text at the end of this section, p. 59.]

- 5) When pictograms (pictorial symbols) are used as a sign to designate a permanent room or space (e.g., a men's or women's room), they must be accompanied by an equivalent verbal description placed directly below the pictogram. The field used for the pictogram must be at least six inches in height (not counting the space used for the verbal description), and the verbal description must employ Braille and raised characters.

III-7.5180 Assembly areas.

[Insert the following text at the end of paragraph 1 of this section, p. 60.]

Finally, wheelchair seating must adjoin an accessible route that serves a means of egress from the assembly area. Under circumstances where wheelchair seating will be located adjacent to a portion of an aisle that serves as an accessible means of egress, then other portions of that aisle and other aisles that do not serve the accessible wheelchair locations are not required to comply with the requirements for ramps. ADAAG does not specify the location of the accessible means of egress. Therefore, the accessible means of egress from wheelchair locations can be through the rear, the side, or the front of the theater. (The general requirements for accessible routes are discussed above in III-7.4200.)

III-7.5185 Automated teller machines.

[Insert the following text at the end of this section, p. 60.]

The ADAAG standard now in effect provides that ATM's must meet the requirements for both a forward and a side approach. That standard, however, is under review by the Architectural and Transportation Barriers Compliance Board, and is the subject of current rulemaking.

ADAAG permits departures from particular technical requirements by use of other designs and technologies where the alternative designs and technologies will provide substantially equivalent or greater access to and usability of the facility. It may be possible to show that meeting only one of the reach ranges with respect to a particular ATM, as installed, provides equivalent facilitation in compliance with ADAAG.

III-7.6000 Additions.

[Insert the following text at the end of this section, p. 61.]

ILLUSTRATION: A new multistory parking structure is planned as an addition to an existing shopping mall that is served by an elevator. Each floor of the parking garage will be connected by an accessible route to the shopping mall. As an addition, the parking structure is subject to both the new construction and alterations requirements of

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ADAAG. If the parking structure functions as a separate building and may be used independently of the shopping mall -- for instance, when the shopping mall is not open for business -- then it would not be sufficient to provide vertical access only through the shopping center. In that case, an elevator or accessible ramp would be required in the parking structure to serve each level of the garage. If, on the other hand, vertical access to each level of the garage may be achieved through the shopping mall at all times that the garage is open, an elevator or accessible ramp would not be required in the parking structure.