

24 AMERICANS WITH DISABILITIES ACT

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REFERENCES: 28 CFR Part 35 (Title II) Nondiscrimination on the Basis of Disability in State and Local Government Services; A.R.S. § 41-1492.06(B); A.R.S. § 11-1024.

PURPOSE

The purpose of this Provider Manual chapter is to provide Qualified Vendors with information to ensure that they are aware of specific requirements they are required to meet in performance of their Qualified Vendor Agreement (contract). Qualified Vendors are required by contract to comply with all applicable laws, including the ADA and, as non-governmental entities, they may also have independent obligations under Title III of the ADA. The Qualified Vendor should seek advice from its own legal counsel if it has any concerns about the scope of its duties under titles of the ADA other than Title II or under any other law.

DEFINITIONS

1. "Americans with Disabilities Act" or "ADA" means the federal civil rights law that prohibits discrimination on the basis of disability and ensures equal opportunity for individuals with disabilities in

employment, State and local government programs and activities, public accommodations, and commercial facilities transportation, as specified in the Americans with Disabilities Act of 1990, as amended, in 42 U.S.C. ch. 126.

2. "Auxiliary Aids and Services" means the ways to communicate with people who have communication disabilities to include:
 - a. For individuals who are deaf or hard of hearing:
Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and

- information technology; or other effective methods of making aurally delivered information available;
- b. For individuals who are blind or have low vision:
Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available;
 - c. Acquisition or modification of equipment or devices; and
 - d. Other similar services and actions.
3. “Community Residential Setting” means a residential setting in which individuals with intellectual/developmental disabilities live and are provided with appropriate supervision by the service provider responsible for the operation of the residential setting. Community Residential Setting includes a child developmental home or an adult developmental home contracted by Division of Developmental Disabilities (Division) or a Qualified Vendor or a group home, behavioral-supported group home, or nursing

supported group home operated or contracted by the Department, through the Division.

4. "Disability" means, with respect to an individual:
 - a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - b. A record of such an impairment; or
 - c. Being regarded as having such an impairment as described in 28 CFR§ 35.108(f).
5. "Member" means the same as "Client" as defined in A.R.S. § 36-551.
6. "Other Power-Driven Mobility Device" means 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, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

7. "Planning Document" means a written plan developed through an assessment of functional needs that reflects the services and supports, paid and unpaid, that are important for and important to the Member in meeting the identified needs and preferences for the delivery of such services and supports.
8. "Planning Team" means a defined group of individuals comprised of the Member, the Responsible Person if other than the Member, and, with the Responsible Person's consent, any individuals important in the member's life, including extended family members, friends, service providers, community resource providers, representatives from religious/spiritual organizations, and agents from other service systems.
9. "Qualified Interpreter" means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language or certified deaf interpreters, oral transliterators, and cued-language transliterators, as outlined in 28 C.F.R. § 35.104.

10. “Qualified Vendor” means a provider of community developmental disability services that has applied for Qualified Vendor status, meets the criteria for Qualified Vendor status, and has entered into a Qualified Vendor Agreement with the Department.
11. “Responsible Person” means the parent or guardian of a minor with a developmental disability, the guardian of an adult with a developmental disability or an adult with a developmental disability who is a member or an applicant for whom no guardian has been appointed.

POLICY

A. REASONABLE MODIFICATIONS

1. Qualified Vendors shall develop policies for the processes to notify Responsible Persons on how to request modifications under the ADA, and on evaluating requests.
2. Qualified Vendors shall provide a written determination in response to requests for modifications and keep determinations on file.

3. Qualified Vendors shall maintain a record of requests received for reasonable modifications that outlines efforts the vendor makes to reach a reasonable modification.
4. Qualified Vendors shall provide Member(s) with reasonable modifications, when needed in order to have an equal and meaningful opportunity to participate in Division services, programs, and activities.
5. Qualified Vendors shall make reasonable modifications to policies, practices, or procedures of a program, service, or activity at no cost to the Member when the modifications are necessary in order to give members an equal opportunity to benefit from all of their programs, services, and activities.
6. Qualified Vendors shall elevate requests for modifications to the Division's Title II ADA Unit when the requested modification would fundamentally alter the nature of the program, service, or activity, or create an undue administrative or financial burden.
7. Qualified Vendors employing 50 or more employees shall designate at least one employee to coordinate ADA compliance.

B. COMMUNICATION SUPPORT

1. Qualified Vendors shall make communication Auxiliary Aids and Services available when needed to communicate effectively with the Responsible Person who has communication disabilities, beginning with the point of initial contact, and throughout the provision of service delivery.
2. The Qualified Vendor shall consider the type of communication aide or service requested by the Responsible Person who has a communication disability, before considering other types of communication Auxiliary Aids and Services unless:
 - a. The vendor can demonstrate that another equally effective means of communication is available; or
 - b. Use of the type of Auxiliary Aid or Service chosen by the Responsible Person would result in a fundamental alteration in the service or good provided by the Qualified Vendor, at which point, the Qualified Vendor still has an obligation to provide an alternative aid or service that provides effective communication.
3. The Qualified Vendor shall consult with the Responsible Person to discuss what communication Auxiliary Aid or Service is appropriate in an effort to identify an Auxiliary Aid or Service

that will be effective, given the nature of what is being communicated and the person's method of communicating.

4. Qualified Vendors:
 - a. May require advance notice from Responsible Persons requesting communication Auxiliary Aids and Services, based on the length of time needed to acquire the aid or service;
 - b. Shall not impose excessive advance notice requirements;
 - c. Shall honor walk-in requests for communication Auxiliary Aids and Services to the extent possible.

C. ACCESSIBILITY OF PROGRAMS AND SERVICES

1. Qualified Vendors shall provide access in accordance with 28 CFR 35.149 to ensure Division Members are not excluded from any program, service, or activity because existing buildings and facilities are inaccessible.
2. Qualified Vendors shall review their programs, services, and activities to ensure that they are accessible to Division Members.

D. MOBILITY

1. Qualified Vendors shall permit Members with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by Members with mobility disabilities in any areas open to pedestrian use.
2. Qualified Vendors shall make reasonable modifications to its policies, practices, or procedures to permit the use of Other Power-Driven Mobility Devices by Members with mobility devices, unless the Qualified Vendor can demonstrate that the class of Other Power-Driven Mobility Devices cannot be operated in accordance with 42 CFR §35-130(h).
3. Qualified Vendors shall consider the following when determining whether a specific Other Power-Driven Mobility Device can be allowed in a service setting as a reasonable modification:
 - a. Device features including type, size, weight, dimensions, and speed of the device;
 - b. The facility's volume of pedestrian traffic;
 - c. The facility's design and operational characteristics;

- d. Whether safety requirements can be established to permit the safe operation of the Other Power-Driven Mobility Device in the specific facility; and
 - e. Whether the use of Other Power-Driven Mobility Devices create a substantial risk of serious harm to the facility, or poses a conflict with other existing laws or regulations.
4. Qualified Vendors shall review the Member's Planning Document to ensure that they can meet the needs identified for Members who use wheelchairs or Other Power-Driven Mobility Devices.

E. NEW CONSTRUCTION AND ALTERATIONS OF EXISTING FACILITIES

- 1. Qualified Vendors shall require new facilities to be accessible and usable for Members and, if other than the Member, Responsible Persons when the new facilities are:
 - a. Built by the Qualified Vendor; and
 - b. Intended for use of the Qualified Vendor to provide Division contracted services.
- 2. Qualified Vendors shall require alterations to existing facilities used to provide Division contracted services be made accessible

for Members and, if other than the Member, Responsible Persons in accordance with ADA Standards for Accessible Design.

F. STAFF TRAINING

Qualified Vendors shall train and affirm staff understanding of ADA requirements for supporting Members and other individuals with disabilities who live with communication, mobility, and accessibility needs.

SUPPLEMENTAL INFORMATION

1. Americans with Disabilities Act Title III Relationship to Title II (III-1.7000)

Public entities, by definition, can never be subject to title III of the ADA, which covers only private entities. Conversely, private entities cannot be covered by title II. There are many situations, however, in which public entities stand in very close relation to private entities that are covered by title III, with the result that certain activities may be affected, at least indirectly, by both titles.

Example: 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. Where public and private entities act jointly, the public entity must ensure that the relevant requirements of title II are met; and the private entity must ensure compliance with title III.

2. ADDITIONAL INFORMATION

- a. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities. The Department of Justice ADA Information Line can provide local contact information for these organizations.
- b. The purpose of the effective communication rules is to ensure that the person with a communication disability can receive information from, and convey information to, the Division.
- c. Many deaf-blind individuals use support service providers (SSPs) to assist them in accessing the world around them. SSPs provide mobility, orientation, and informal communication services for deaf-blind individuals and are a critically important link enabling them to independently access the community at large.

d. The Division shall require all contracted vendors and subcontractors to uphold Title VI of the Civil Rights Act of 1964.

3. The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in employment, public services, public accommodations, and telecommunications. Providers contracted with the Division shall comply with the Americans with Disabilities Act (ADA) and Title VI of the Civil Rights Act of 1964.

4. ADDITIONAL RESOURCES

a. ADA

For more information about the ADA, please visit ADA.gov or call the ADA Information line toll-free at 800-514-0301 (Voice) and 1-833-610-1264 (TTY) M-W, F 9:30 a.m. – 12:00 p.m. and 3:00 p.m. - 5:30 p.m., Th 2:30 p.m. – 5:30 p.m. Eastern Time to speak with an ADA Specialist. Calls are confidential.

b. U.S. Department of Justice

For more information about the revised ADA regulations and 2010 ADA Standards, please visit the Department of Justice's ADA Website or call the toll-free number.

ADA Information Line 800-514-0301 (Voice) and 1-833-610-1264 (TTY) M-W, F 9:30 a.m. – 12:00 p.m. and 3:00

p.m. - 5:30 p.m., Th 2:30 p.m. – 5:30 p.m. (Eastern Time) to speak with an ADA Specialist. Calls are confidential.

c. ADA National Network (DBTAC)

Ten regional centers are funded by the U.S. Department of Education to provide ADA technical assistance to businesses, States and localities, and persons with disabilities. One toll-free number connects you to the center in your region:

800-949-4232 (Voice and TTY) <http://www.adata.org/>

d. Access Board

For technical assistance on the ADA/ABA Accessibility Guidelines:

800-872-2253 (Voice) 800-992 -2822 (TTY)

<https://www.access-board.gov>

e. Internal Revenue Service

For information on the Disabled Access Tax Credit (Form 8826) and the Section 190 tax deduction (Publication 535 Business Expenses):

800-829-3676 (Voice) or 800-829-4059 (TTY)

<http://www.irs.gov>.