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2 **24 AMERICANS WITH DISABILITIES ACT**

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

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10 **PURPOSE**

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

20 **DEFINITIONS**

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

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

28 2. "Auxiliary Aids and Services" means the ways to communicate  
29 with people who have communication disabilities to include:

30 a. For individuals who are deaf or hard of hearing:  
31 Qualified interpreters on-site or through video remote  
32 interpreting (VRI) services; notetakers; real-time  
33 computer-aided transcription services; written materials;  
34 exchange of written notes; telephone handset amplifiers;  
35 assistive listening devices; assistive listening systems;  
36 telephones compatible with hearing aids; closed caption  
37 decoders; open and closed captioning, including real-time  
38 captioning; voice, text, and video-based  
39 telecommunications products and systems, including text  
40 telephones (TTYs), videophones, and captioned  
41 telephones, or equally effective telecommunications  
42 devices; videotext displays; accessible electronic and

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

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

64 4. "Disability" means, with respect to an individual:

65 a. A physical or mental impairment that substantially limits  
66 one or more of the major life activities of such individual;

67 b. A record of such an impairment; or

68 c. Being regarded as having such an impairment as described  
69 in 28 CFR§ 35.108(f).

70 5. "Member" means the same as "Client" as defined in A.R.S. § 36-  
71 551.

72 6. "Other Power-Driven Mobility Device" means any mobility device  
73 powered by batteries, fuel, or other engines—whether or not  
74 designed primarily for use by individuals with mobility  
75 disabilities—that is used by individuals with mobility disabilities  
76 for the purpose of locomotion, including golf cars, electronic  
77 personal assistance mobility devices (EPAMDs), such as the  
78 Segway PT, or any mobility device designed to operate in areas  
79 without defined pedestrian routes, but that is not a wheelchair.

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

- 99            10. "Qualified Vendor" means a provider of community  
100            developmental disability services that has applied for Qualified  
101            Vendor status, meets the criteria for Qualified Vendor status,  
102            and has entered into a Qualified Vendor Agreement with the  
103            Department.
- 104            11. "Responsible Person" means the parent or guardian of a minor  
105            with a developmental disability, the guardian of an adult with a  
106            developmental disability or an adult with a developmental  
107            disability who is a member or an applicant for whom no guardian  
108            has been appointed.

109    **POLICY**

110    ~~Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of~~  
111    ~~race, color, and national origin in programs receiving federal financial~~  
112    ~~assistance. The Americans with Disabilities Act (ADA) prohibits discrimination~~  
113    ~~against people with disabilities in employment, public services, public~~  
114    ~~accommodations, and telecommunications. Providers contracted with the~~  
115    ~~Division shall comply with the Americans with Disabilities Act (ADA) and Title~~  
116    ~~VI of the Civil Rights Act of 1964.~~

117    **A. REASONABLE MODIFICATIONS**

- 118        1. Qualified Vendors shall develop policies for the processes to  
119        notify Responsible Persons on how to request modifications  
120        under the ADA, and on evaluating requests.
- 121        2. Qualified Vendors shall provide a written determination in  
122        response to requests for modifications and keep determinations  
123        on file.
- 124        3. Qualified Vendors shall maintain a record of requests received  
125        for reasonable modifications that outlines efforts the vendor  
126        makes to reach a reasonable modification.
- 127        4. Qualified Vendors shall provide Member(s) with reasonable  
128        modifications, when needed in order to have an equal and  
129        meaningful opportunity to participate in Division services,  
130        programs, and activities.
- 131        5. Qualified Vendors shall make reasonable modifications to  
132        policies, practices, or procedures of a program, service, or  
133        activity at no cost to the Member when the modifications are  
134        necessary in order to give members an equal opportunity to  
135        benefit from all of their programs, services, and activities.
- 136        6. Qualified Vendors shall elevate requests for modifications to the  
137        Division's Title II ADA Unit when the requested modification

138 would fundamentally alter the nature of the program, service, or  
139 activity, or create an undue administrative or financial burden.

140 7. Qualified Vendors employing 50 or more employees shall  
141 designate at least one employee to coordinate ADA compliance.

142 **B. COMMUNICATION SUPPORT**

143 1. Qualified Vendors shall make communication Auxiliary Aids and  
144 Services available when needed to communicate effectively with  
145 the Responsible Person who has communication disabilities,  
146 beginning with the point of initial contact, and throughout the  
147 provision of service delivery.

148 2. The Qualified Vendor shall consider the type of communication  
149 aide or service requested by the Responsible Person who has a  
150 communication disability, before considering other types of  
151 communication Auxiliary Aids and Services unless:

152 a. The vendor can demonstrate that another equally effective  
153 means of communication is available; or

154 b. Use of the type of Auxiliary Aid or Service chosen by the  
155 Responsible Person would result in a fundamental  
156 alteration in the service or good provided by the Qualified  
157 Vendor, at which point, the Qualified Vendor still has an



158 obligation to provide an alternative aid or service that  
159 provides effective communication.

160 3. The Qualified Vendor shall consult with the Responsible Person to  
161 discuss what communication Auxiliary Aid or Service is  
162 appropriate in an effort to identify an Auxiliary Aid or Service  
163 that will be effective, given the nature of what is being  
164 communicated and the person's method of communicating.

165 4. Qualified Vendors:

166 a. May require advance notice from Responsible Persons  
167 requesting communication Auxiliary Aids and Services,  
168 based on the length of time needed to acquire the aid or  
169 service;

170 b. Shall not impose excessive advance notice requirements;

171 c. Shall honor walk-in requests for communication Auxiliary  
172 Aids and Services to the extent possible.

173 **C. ACCESSIBILITY OF PROGRAMS AND SERVICES**

174 1. Qualified Vendors shall provide access in accordance with 28 CFR  
175 35.149 to ensure Division Members are not excluded from any  
176 program, service, or activity because existing buildings and  
177 facilities are inaccessible.

178           2. Qualified Vendors shall review their programs, services, and  
179           activities to ensure that they are accessible to Division Members.

180 **D. MOBILITY**

181           1. Qualified Vendors shall permit Members with mobility disabilities  
182           to use wheelchairs and manually-powered mobility aids, such as  
183           walkers, crutches, canes, braces, or other similar devices  
184           designed for use by Members with mobility disabilities in any  
185           areas open to pedestrian use.

186           2. Qualified Vendors shall make reasonable modifications to its  
187           policies, practices, or procedures to permit the use of Other  
188           Power-Driven Mobility Devices by Members with mobility  
189           devices, unless the Qualified Vendor can demonstrate that the  
190           class of Other Power-Driven Mobility Devices cannot be operated  
191           in accordance with 42 CFR §35-130(h).

192           3. Qualified Vendors shall consider the following when determining  
193           whether a specific Other Power-Driven Mobility Device can be  
194           allowed in a service setting as a reasonable modification:

195           a. Device features including type, size, weight, dimensions,  
196           and speed of the device;

197           b. The facility's volume of pedestrian traffic;

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

208    **E. NEW CONSTRUCTION AND ALTERATIONS OF EXISTING**  
209    **FACILITIES**

- 210        1. Qualified Vendors shall require new facilities to be accessible and  
211           usable for Members and, if other than the Member, Responsible  
212           Persons when the new facilities are:  
213           a. Built by the Qualified Vendor; and  
214           b. Intended for use of the Qualified Vendor to provide  
215           Division contracted services.

216           2.     Qualified Vendors shall require alterations to existing facilities  
217                     used to provide Division contracted services be made accessible  
218                     for Members and, if other than the Member, Responsible Persons  
219                     in accordance with ADA Standards for Accessible Design.

220 **F. STAFF TRAINING**

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

225 **SUPPLEMENTAL INFORMATION**

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

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

234           Example: A private, nonprofit corporation operates a number of group  
235                     homes under contract with a State agency for the benefit of individuals

236 with mental disabilities. These particular homes provide a significant  
237 enough level of social services to be considered places of public  
238 accommodation under title III. The State agency must ensure that its  
239 contracts are carried out in accordance with title II, and the private  
240 entity must ensure that the homes comply with title III. Where public  
241 and private entities act jointly, the public entity must ensure that the  
242 relevant requirements of title II are met; and the private entity must  
243 ensure compliance with title III.

## 244 **2. Additional Information**

245 a. Many local disability organizations, including Centers for  
246 Independent Living, conduct ADA trainings in their communities.  
247 The Department of Justice ADA Information Line can provide  
248 local contact information for these organizations.

249 b. The purpose of the effective communication rules is to ensure  
250 that the person with a communication disability can receive  
251 information from, and convey information to, the Division.

252 c. Many deaf-blind individuals use support service providers (SSPs)  
253 to assist them in accessing the world around them. SSPs provide  
254 mobility, orientation, and informal communication services for  
255 deaf-blind individuals and are a critically important link enabling  
256 them to independently access the community at large.

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

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

264 **4. ADDITIONAL RESOURCES**

265 a. ADA  
266 For more information about the ADA, please visit ADA.gov or call  
267 the ADA Information line toll-free at 800-514-0301 (Voice) and  
268 1-833-610-1264 (TTY) M-W, F 9:30 a.m. – 12:00 p.m. and 3:00  
269 p.m. – 5:30 p.m., Th 2:30 p.m. – 5:30 p.m. Eastern Time to  
270 speak with an ADA Specialist. Calls are confidential.

271 b. U.S. Department of Justice  
272 For more information about the revised ADA regulations and  
273 2010 ADA Standards, please visit the Department of Justice’s  
274 ADA Website or call the toll-free number.  
275 ADA Information Line 800-514-0301 (Voice) and 1-833-610-  
276 1264 (TTY) M-W, F 9:30 a.m. – 12:00 p.m. and 3:00 p.m. -

277 5:30 p.m., Th 2:30 p.m. – 5:30 p.m. (Eastern Time) to speak  
278 with an ADA Specialist. Calls are confidential.

279 c. ADA National Network (DBTAC)

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

284 800-949-4232 (Voice and TTY) <http://www.adata.org/>

285 d. Access Board

286 For technical assistance on the ADA/ABA Accessibility Guidelines:  
287 800-872-2253 (Voice) 800-992 -2822 (TTY)  
288 <https://www.access-board.gov>

289 e. Internal Revenue Service

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

293 800-829-3676 (Voice) or 800-829-4059 (TTY)

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