

NEW YORK STATE OFFICE FOR THE AGING

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Andrew M. Cuomo, Governor

An Equal Opportunity Employer

Greg Olsen, Acting Director

PROGRAM INSTRUCTION

Number: 17-PI-21

Supersedes:
92-PI-12, 92-TAM-2, 92-PI-32

Expiration Date: N/A

DATE: August 4, 2017

TO: Area Agencies on Aging Directors

SUBJECT: ADA Guidelines

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ACTION REQUESTED: Area Agencies on Aging (AAAs) must ensure nondiscrimination and equal access to services in all programmatic activities as required by law. Each AAA is responsible for understanding and complying with the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 as included in NYSOFA's standard assurances. AAAs should establish a relationship with the identified individual(s) in your organization or county responsible for coordinating activities under the ADA and section 504 of the Rehabilitation Act; this individual is often called the ADA Coordinator.

PURPOSE: This Program Instruction serves to clarify responsibilities and legal obligations of the AAAs and their contractors under the ADA, the Rehabilitation Act of 1973 and the related federal regulations regarding equal access to services and nondiscrimination in serving individuals with disabilities.

Since many amendments were made to regulations implementing the ADA, we are superseding the above noted issuances and providing updated resources.

BACKGROUND:

Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the ADA prohibit

covered entities from discriminating against persons with disabilities in the provision of benefits or services or the conduct of programs or activities. The specific requirements contained in Title II, Title III of the ADA, and the Rehabilitation Act may vary. AAAs and their contractors, depending on their specific circumstances, may be covered under various aspects of both of these laws.

Section 504 of the Rehabilitation Act applies to programs or activities that receive any federal financial assistance, directly or indirectly (i.e., AAAs and their contractors). In addition, the United States Department of Health and Human Services (HHS) has promulgated regulations to supplement the Rehabilitation Act which apply to recipients of HHS funding (including funds made available under the Older Americans Act). Title II of the ADA applies to all of the services, programs, and activities conducted by public entities, which includes all state and local governments, and all departments and agencies of a state or local government. Title III of the ADA applies to private entities (including non-profits) that are considered places of public accommodation. This would include, but is not limited to, senior centers. Titles II and III of the ADA are further supplemented by regulations issued by the United States Department of Justice.

Important items to note for AAAs and their contractors regarding Titles II and III of the ADA and Section 504 of the Rehabilitation Act:

- Disability is defined as a physical or mental impairment that substantially limits one or more major life activities of an individual; OR a record of such impairment, OR being regarded as having such impairment.
- Covered entities must eliminate unnecessary eligibility standards or rules that deny persons with disabilities an equal opportunity to enjoy services, programs, or activities (e.g., requiring a driver's license as the only acceptable form of identity or requiring an escort for an individual with a disability).
- Covered entities are required to make reasonable modifications in policies, practices, and procedures that deny equal access to an individual with a disability (e.g., a county building which prohibits animals must generally allow a guide dog assisting an individual with a disability).
- A surcharge may not be imposed on an individual with a disability for costs of measures necessary to ensure nondiscrimination (e.g., provision of a sign language interpreter).
- A covered entity may not provide services or benefits to individuals that are separate or different unless the separate program is necessary to ensure that benefits are equally effective AND even when separate benefits are offered, the person still has the right to choose to participate in the regular program.
- Covered entities must ensure effective communication with persons with hearing,

vision, or speech impairments with appropriate auxiliary aids which may include but are not limited to braille, large print, use of relay or TDD, etc.

- The ADA and the Rehabilitation Act both contain provisions that require public covered entities to have conducted self-evaluations of policies and practices, provide notice to applicants and participants, have a grievance procedure, and have a designated employee responsible for coordinating efforts under these laws.

Examples of effect on network:

- Transportation: A county sponsored AAA owns and operates its own vehicles. The AAA is engaged in transporting older adults to medical appointments and senior centers, on a demand responsive system. The AAA's system, when viewed in its entirety, must allow for equal access to older individuals with disabilities (e.g., motorized wheelchair user).
- Meetings: Public hearings must assure an opportunity for broad public input. The AAA should hold public hearings in an ADA compliant location.
- Communication: If a person who is deaf/and or hearing impaired is attending a public hearing, effective communication would likely require a sign language interpreter or real time captioning, depending upon whether the person's primary language is sign language or English. Because these services must be scheduled in advance, it is recommended that language be used in notices which allows individuals to make their accommodation requests known in advance to allow them to fully participate.
- Communication: An individual is receiving case management from an AAA. Due to their disability (e.g., deafness) they request that all contact be made in person or in writing. This is an example of a reasonable request for policy modification pertaining to communications to accommodate a need based on disability.
- Modification of policy: At a congregate meal program, staff are not obliged to feed a person with a disability who needs assistance in eating, if it does not provide this service for others. However, the person should be allowed to bring an attendant to assist them. If he or she can feed him or herself but cannot cut large pieces of food into bite-sized pieces, it is reasonable to ask staff to cut up the food.

APPLICABLE LAWS:

- Americans with Disabilities Act
<https://www.ada.gov/pubs/adastatute08.htm>

• The Rehabilitation Act of 1973
[http://uscode.house.gov/view.xhtml?req=\(title:29%20section:794%20edition:prelim](http://uscode.house.gov/view.xhtml?req=(title:29%20section:794%20edition:prelim)

• The Rehabilitation Act of 1973 (regulations and fact sheets)
<https://www.hhs.gov/civil-rights/for-individuals/disability/>

RESOURCES:

• The Americans with Disabilities Act (ADA) and Older People (attached)

• A short guide to how the ADA applies to state and county governments can be found at: ADA Update: A Primer for State and Local Governments
https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html

• The agency providing oversight and compliance regarding the ADA is Department of Justice
<https://www.justice.gov/crt>

• Frequently asked questions regarding the ADA can be found at: Americans with Disabilities Act-Questions and Answers
<https://www.ada.gov/qandaeng.htm>

• A regional resource which provides training and technical assistance is available at: <https://www.northeastada.org> and by Phone: 1-800-949-4232

• A short guide to how the ADA applies to small towns can be found at: Small towns' resource
<https://www.ada.gov/smtown.htm>

• Some additional technical assistance with examples can be found at:
<https://www.ada.gov/taman2.html>

TRAINING

• A FREE training for staff, providers, etc. is available at: ADA Basic Building Blocks Course
<http://www.adabasics.org/>

PROGRAMS AFFECTED:

<input checked="" type="checkbox"/> Title III-B	<input checked="" type="checkbox"/> Title III-C-1	<input checked="" type="checkbox"/> Title III-C-2
<input checked="" type="checkbox"/> Title III-D	<input checked="" type="checkbox"/> Title III-E	<input checked="" type="checkbox"/> CSE
<input checked="" type="checkbox"/> WIN	<input checked="" type="checkbox"/> Energy	
<input checked="" type="checkbox"/> EISEP	<input checked="" type="checkbox"/> NSIP	<input checked="" type="checkbox"/> Title V
<input checked="" type="checkbox"/> HIICAP	<input checked="" type="checkbox"/> LTCOP	
<input checked="" type="checkbox"/> NY Connects	<input type="checkbox"/> Other:	

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The Americans with Disabilities Act (ADA) & Older People

Why is the ADA Important for older people?

The lives of older people offer both opportunities and challenges. Many have free time they haven't had in quite some time. Unfortunately, many also experience physical changes that impact the way we interact with the world. The ADA can be used as a tool to ensure you can continue to be a vital part of your community. For older people who continue to work, the ADA can help to ensure you get what you need from your employer to be successful.

How does the ADA help?

Accessible parking means that you can reserve your energy for the fun stuff once you get to where you are going.

Clear, wide paths without stairs ensures that no matter how you get around these days (a cane, a walker, or a wheelchair), you can easily get where you want to go without wearing yourself out.

No more heavy doors mean they are more easily opened by people who have arthritis or use a cane for extra balance.

Going to a Show? If you can no longer hear as well as you used to, theatres offer assisted listening devices to help! A percentage of these devices must be hearing-aid compatible so you can still enjoy the show.

Entrances and aisles have to be wide enough so that you are less likely to run into stuff due to overcrowding in stores when you can't see as well as you used to.

Precise directional and informational signage in high-contrast colors with clear, large type and good lighting is easier to navigate in today's giant stores.

Accessible printed materials that use large, clear type, in high contrast colors on solid backgrounds means that you'll be able to read them even if you don't see as well as you used to.

Websites designed to be visually accessible and easy to understand means enhanced comfort level and improved online shopping experience for web users.



Older people represent 14.5% of the U.S. population, or about 1 in every 7 Americans. By 2040, this age group is expected to increase to 21.7%.

Administration on Aging, 2016

"Accessibility allows us to tap into everyone's potential"

*Debra Ruh, CEO
Ruh Global Communication*