Americans with Disabilities Act
Discrimination, Barriers and Accessibility

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Americans with Disabilities Act
The Americans with Disabilities Act

- **Law was signed on July 26, 1990**

- **Purpose of the ADA:**
  - Establish national mandate to **eliminate discrimination** against people with disabilities
  - Enforce **nondiscrimination** in all aspects of American life, both public and private
  - Provide enforceable standards
  - **Remove barriers to accessibility** for people with disabilities
Titles II and III of the ADA

- Regulations apply to the following entities:
  - Public entity providing fixed route and demand response public transportation
  - Private entity providing transportation to the general public
  - Private entity not primarily engaged in transporting people, but operates a demand response or fixed route system
Discrimination

Barriers to Accessibility = Discrimination
ADA Title II Nondiscrimination

- ADA requirement for nondiscrimination
  49 CFR Part 37, 37.5(a)(b)

  "No entity shall discriminate against an individual with a disability in connection with the provision of transportation service"

  "An entity shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service"
No entity will, in the provision of service to people with disabilities: (49 CFR Part 37, 37.5)

- Impose special charges
- Require a Personal Care Attendant (PCA)
- Deny service because of insurance concerns
- Require a person in a mobility device to move to a bus seat
- Require use of occupant restraints when general public not required to do so
Examples
FTA Circular 4710.1

• Discriminatory policies:
  - Requiring body belts when using lifts
  - Requiring standees requesting lift to describe disability
  - Child accompaniment policy on ADA Paratransit with no comparable policy on fixed route
  - Prohibiting person with disability from serving as PCA for a rider with a disability
  - Requiring signed liability waivers to receive service
  - Refusing service to passengers with offensive odors
  - Requiring wheelchairs to have certain features
ADA Title II Nondiscrimination

- Direct Threat (49 CFR part 37)
  - A public transit entity is not required to provide services if the individual poses:
    - Significant risk to the health or safety of others
    - Cannot be eliminated by a modification of polices, practices or procedures
    - Cannot be presumed – there must be objective evidence
Barriers to Accessibility
Congress requested Government Accounting Office (GAO) review the provision of ADA paratransit service and address the following questions:

- What is known about the **extent of compliance** with ADA paratransit requirements?

- GAO surveyed 145 transit agencies and 112 agencies responded (77% response)
Complementary Paratransit Service

**Requirement:**

- Public entities operating a fixed-route system shall provide complementary paratransit services for riders who cannot independently use fixed route service, due to disability
- *Does not apply to commuter bus, commuter rail, or intercity rail systems*
Complementary Paratransit Service

• Definition:

- A complement to fixed route service
- Not a separate service for people with disabilities
- A safety net for those with disabilities who:
  - cannot use fixed route or
  - are limited in the full use of fixed route
Conclusions

- Transit agencies find it challenging to comply with ADA paratransit service criteria.
- Transit agencies find it challenging to avoid capacity constraints.
- Transit agencies are not embracing best practices for ADA eligibility.
- Overall, demand and trip costs are increasing.
Conclusions

- FTA conducted only 10 ADA Paratransit compliance reviews from 2008 to 2011 or 2 to 3 reviews per year.

- The report analyzed 15 compliance reviews from 2005 to 2011
  - 14 out of 15 agencies had findings of capacity constraints
  - All 15 agencies had findings related to their ADA eligibility process
## ADA Paratransit Service with No Capacity Constraints
### GAO 2012 Report

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<tr>
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<th>Challenging</th>
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<tr>
<td>Zero Trip Denial</td>
<td>22%</td>
<td>67%</td>
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<tr>
<td>Timely Pick-Ups</td>
<td>19%</td>
<td>71%</td>
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<tr>
<td>Timely Drop Offs</td>
<td>22%</td>
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<td>No Missed Trips</td>
<td>36%</td>
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<tr>
<td>No Excessive Trip Lengths</td>
<td>23%</td>
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<td>Timely Telephone/Reservation Access</td>
<td>40%</td>
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Transportation Update: “Where We’ve Gone and What We’ve Learned”

• Report issued **May 2015** by the National Council on Disability
  
  ➢ Comprehensive assessment on **all surface transportation** for people with disabilities

  ➢ Assesses progress in the past 10 years

  ➢ Provides **best practices** in ADA Paratransit Reservations, Scheduling and ADA Eligibility
“Transportation Update: Where We’ve Gone and What We’ve Learned”

• Conclusions
  
- More people with disabilities are riding public transit than ever before
- Transportation access has changed for people with disabilities
  - Impact of new regulations and court decisions
  - Innovations and new technologies
  - Best practices in improved accessibility
- But, transportation problems persist for people with disabilities
- FTA has identified areas in Paratransit that still require significant reform
Survey of 15 ADA Paratransit providers

Measured the extent to which providers were adopting best practices recommended by NCD in reservations, scheduling and ADA Eligibility

Results:

- Reservations and Scheduling – 77 out of possible 100 points
- ADA Eligibility – 46 out of possible 100 points
Communication Can Create Barriers Too!

- Don’t Make **Assumptions**
  - Can result in barriers to accessibility
  - \textit{Assumptions} = \textit{Barriers} = \textit{Discrimination}

- **Examples:**
  - Race/Ethnicity
  - Appearance
  - Clothing
  - Language
  - Disability
Removing Barriers to Accessibility
Preamble to 49 CFR part 37, September 6, 1991:

“Several comments asked for clarification on whether such service was meant to be door-to-door or curb-to-curb, and some of them recommended one or the other, or a combination of the two. The Department declines to characterize the service as either. The main point, we think, is that the service must go from the user's point of origin to his or her destination point. It is reasonable to think that service for some individuals or locations might be better if it is door-to-door, while curb-to-curb might be better in other circumstances. This is exactly the sort of detailed operational decision best left to the development of paratransit plans at the local level.”
Barriers to Accessibility and Discrimination

- Definition of discrimination in Subtitle A of ADA Title II (DOJ regulations – 28 CFR, Part 35)
  - Prohibits exclusion of any “qualified individual with a disability” from the services, programs or activities of a public entity
  - Requires entities to modify rules, policies or practices if they create barriers to the participation of people with disabilities in a public entity’s programs

- Same requirement exists in 28 CFR, Part 36 for public services provided by private entities
DOT Requirements for Reasonable Modifications

- 49 CFR part 37 (DOT) made no specific reference to reasonable modifications to preclude barriers to accessibility and discrimination.

- DOT assumed that the reference in 37.21 would incorporate the requirement for reasonable modifications:

  “Entities to which this part applies also may be subject to ADA regulations of the Department of Justice (28 CFR parts 35 or 36). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable Department of Justice regulations.”
 DOT Proposed Rule

• **Reasonable modifications to policies and practices** (February 27, 2006)
  
  ➢ An entity shall make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination or to provide program accessibility

  ➢ Modification not required if:
    
    • Results in fundamental alteration of service
    • Results in undue financial or administrative burdens
    • Results in “direct threat” to the safety of others
“Public entities that provide designated public transportation (fixed route, demand responsive and complementary paratransit services) shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services.”

49 CFR part 37, 37.5 (i)(1)
Origin to Destination Service
New Definition (37.3)

Origin-to-destination service means providing service from a passenger's \textit{origin to the passenger's destination}. A provider may provide ADA complementary paratransit in a curb-to-curb or door-to-door mode. When an ADA paratransit operator chooses \textit{curb-to-curb} as its primary means of providing service, it must \textit{provide assistance} to those \textit{passengers who need assistance beyond the curb} in order to use the service unless such assistance would result in a \textit{fundamental alteration or direct threat}.”
Door to Door Service
Reasons for denial of reasonable modification requests:

- Fundamental alteration of the service
- Direct threat to the health and safety of others
- Without the modification, individual still has full accessibility to services
- Creates an undue financial or administrative burden (only recipients of federal financial assistance)
Exercise
Decisions on Reasonable Modification Requests
Scenario # 1

A passenger wants to use a two wheeled battery powered scooter at his destination. Since he is going to a huge one floor hospital with multiple clinics, he thought it would be a good idea to use the scooter to get from one clinic to another. He has asked the paratransit provider to allow the scooter on the vehicle. He has permission from the hospital to use the scooter inside the building.
Scenario # 2

A passenger needs to receive regular treatment at an Alzheimer’s treatment clinic. The family has requested that the operator escort the passenger to the door of the clinic. However, escorting the passenger to the front door will result in the van being out of line of sight for about five minutes. The clinic staff will not exit the building to provide assistance.
Scenario # 3

A passenger is newly certified for ADA paratransit service. She works at a store in the local shopping mall that is on the opposite end of the drop off location designated by the mall for all lift equipped paratransit vehicles. She walks only short distances with a cane and the distance from her employment to the vehicle drop off point is several hundred yards. She has requested that the paratransit provider drop her off and pick her up at an entrance that is very close to the mall location where she works.
Scenario # 4

A young man with a learning disability wants to use ADA paratransit to travel to a job training center. He lives three miles from the bus route and is certified to use ADA paratransit on an unconditional basis. The paratransit provider adheres rigorously to a three quarter mile corridor on either side of the fixed route as their service area. The young man does not need a PCA to travel. The parents were planning to drop him off at a point of origin located within the three quarter mile corridor, but now are unable to do so. They have requested that the paratransit provider cross the three quarter mile corridor to pick up their son at their home.
Scenario # 5

A passenger wants to use a paratransit service that operates curb to curb. However she lives in a home located at the top of a long steep driveway. The nature of her disability will not allow her to walk the driveway to the curb and during the winter there is frequently snow and ice on the streets and driveways. She has requested door to door service for her trips.
THANK YOU!

- QUESTIONS?
- COMMENTS?