

## Program Accommodations in Title III

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### About this module

**Goal:** To increase participants' understanding of the responsibility of Title III entities to provide accessible programs and services under the ADA.

**Format:** Presentation

**Time:** 20 minutes

**Potential audience:** Employers/business owners, educators, general audiences

**Materials needed:** PPT slides and facilitator's guide

## Facilitator's Notes for this Module

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ADA Trainer Network  
Module 6c

### Program Accommodations in Title III

Trainer's Name  
Trainer's Title

Phone  
Email/Website



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### Facilitators Notes (Slide 1)

Include your name and contact information on this slide.

This module focuses on understanding how the ADA applies to places of public accommodation.



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## Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.



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### Facilitator's Notes (Slide 2)

Change this slide to reflect your regional information.

Trainers, be sure to advise participants that this training is not intended as legal advice.



## Overarching Requirement

### Non-Discrimination

Individuals with disabilities may not be denied full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations offered by Title III entities



#### Facilitators Notes (Slide 3)

The overarching purpose of Title III is non-discrimination. It offers equality to people with disabilities in the same way that the Civil Rights Act offers equality to people of different races or ethnicities. It basically says that people with disabilities must be able to access all the types of goods or services that you offer to any client or customer.



## Broad Principles of Title III Requirements



1. Equal opportunity to participate;
2. Equal opportunity to benefit; and
3. Receipt of benefits in the most integrated setting appropriate.



### Facilitators Notes (Slide 4)

The ADA mandates an equal opportunity to participate in or benefit from the goods and services offered by a place of public accommodation, but does not guarantee that individuals with disabilities must achieve an identical result or level of achievement as persons without disabilities. Also, individuals with disabilities must be integrated to the maximum extent appropriate.

- Places of public accommodation cannot refuse to admit or serve someone because of a disability or because they associate with someone with a disability (a pre-school age child who has a brother with HIV cannot be denied admission to the preschool because of that association).
- While someone with a disability may not experience your goods or services in the same way as others – you cannot deny them access. i.e. you can't limit people with disabilities to certain performances at a theater or deny someone who uses a wheelchair access to an exercise class
- As much as possible, everyone should have the opportunity to be served together.
- Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual. The fact that a separate program is offered may be a factor in determining the extent of the entity's obligations, but only if the separate program is appropriate to the needs of a particular individual with a disability. Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits. For example, if a



museum provides a sign language interpreter for one of its regularly scheduled tours, the availability of the signed tour may be a factor in determining whether it would be an undue burden to provide an interpreter for a deaf person who wants to take the tour at a different time, BUT the museum must still provide an interpreter or other form of effective communication during a different tour if it is not an undue burden.

## Title III specifically requires that Public Accommodations avoid:

- Eligibility criteria that screen out people with disabilities without legitimate safety reasons
- Unnecessary inquiries into disability
- Surcharges associated with compliance with Title III



### Facilitators Notes (Slide 5)

Title III specifically requires that Title III entities avoid the following:

#### Eligibility Criteria

A public accommodation may not impose eligibility criteria that either screen out or tend to screen out persons with disabilities from fully and equally enjoying any goods, services, privileges, advantages, or accommodations offered to individuals without disabilities, unless it can show that such requirements are necessary for the provision of the goods, services, privileges, advantages, or accommodations or necessary for safe operation. However, the public accommodation must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities. For example, a wilderness tour company may require participants to meet a necessary level of swimming proficiency in order to participate in a rafting expedition, but it cannot have a blanket policy excluding people with physical disabilities since some may be able to meet the swimming skill level requirement.



### Unnecessary Inquiries

Example: retail store asks for medical history on a credit card application- this is not necessary information to determine credit worthiness and may be used to screen out people who have disabilities or significant medical expenses.

### Surcharges

A public accommodation cannot charge people with disabilities for providing them with ADA-mandated access to goods and services (i.e. bed shaker alarm clock and TTY service for hearing impaired guest at a hotel) because providing those is necessary to ensure them the same opportunity afforded to the general public to participate and benefit from goods and services.

## Special Considerations

- **Specialties:** can make appropriate referrals
- **Check out Aisles:** ensure accessible aisles available
- **Accessible Goods:** do not have to keep in stock but may have to special order in some circumstances
- **Personal Services and Devices:** not required to provide personal devices (e.g. hearing aid) or services (e.g. bathing) unless part of their standard protocol (e.g. nursing home)



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### Facilitators Notes (Slide 6)

Some special reasonable modification considerations and circumstances:

**Specialties:** It is not considered discriminatory for a public accommodation with a specialty in a particular area to refer an individual with a disability to a different public accommodation if —

1. The individual is seeking a service or treatment outside the referring public accommodation's area of expertise; and
2. The public accommodation would make a similar referral for an individual who does not have a disability.



**Accessible Goods:** A store is not required to alter its inventory to carry accessible or special products, such as Brailled books, closed-captioned video tapes, specially sized or designed clothing, and foods that meet special dietary needs, for customers with disabilities. On the other hand, a public accommodation may be required to special order accessible goods at the request of a customer with a disability if —

1. It makes special orders for un-stocked goods in its regular course of business, and
2. The accessible or special goods requested can be obtained from one of its regular suppliers.

**Personal Services:** “Personal services” do not include minor assistance provided to individuals with disabilities. For example, measures taken as alternatives to barrier removal, such as retrieving items from shelves or providing curb service or home delivery, or actions required as modifications in policies, practices, and procedures, such as a waiter removing the cover from a customer's straw, a cook in a restaurant cutting up food into smaller pieces, or a bank teller filling out a deposit slip, would not be considered "services of a personal nature.” Also, if a public accommodation such as a hospital or nursing home customarily provides its clients with what might otherwise be considered services of a personal nature, it must provide the same services for individuals with disabilities.



## Reasonable Modifications

A public accommodation must reasonably modify its policies, practices, or procedures to avoid discrimination.



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### Facilitators Notes (Slide 7)

Title III requires that places of public accommodation reasonably modify their policies, practices, or procedures to avoid discrimination. If the public accommodation can demonstrate, however, that a modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations it provides, it is not required to make the modification.

A good example of such a modification would be for a hotel with a “no pets” policy to allow a service animal to accompany someone with a disability in their facility. Another example of a reasonable modification would be for a store that has a policy in place to only take special orders for its merchandise in person, to allow someone with a disability to place an order over the phone if they are unable to visit the store.

A place of public accommodation **should offer minor assistance** to people with disabilities. For example, if someone who is blind asks a bank teller for assistance in filling out a deposit slip or someone with a physical disability asks for the kitchen staff at a restaurant to cut his food into small pieces.

The 2010 Title III regulations provided some clarification for entities that require documentation of disability before granting an accommodation request for an educational examination or a



course. The documentation requirement has to be reasonable and limited to the need for the modification or auxiliary aid or service requested.

Also note that public accommodations may impose legitimate safety requirements necessary for safe operation. However, the public accommodation must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.

ILLUSTRATION: A wilderness tour company may require participants to meet a necessary level of swimming proficiency in order to participate in a rafting expedition.

## Auxiliary Aids and Services

- Title III requires public accommodations provide auxiliary aids and services
- Auxiliary aids and services help to ensure equal access by offering alternatives to business as usual
- Appropriate aids and services will vary depending on the nature of the business and the person's disability



### Facilitators Notes (Slide 8)

Places of public accommodation are also required to **provide auxiliary aids and services for people with communication disabilities, when** those aids and services are necessary to ensure equal access to goods, services, facilities, privileges, or accommodations that are offered, unless an undue burden or fundamental alteration would result. Needed aids or services will vary depending on a number of factors related to both the individual and the nature of the communication that takes place. Here is an example: an individual who is blind needs assistance in locating and removing an item from a grocery store shelf. A store employee who locates the desired item and reads the label to the individual would be providing an "auxiliary aid or service. "



Here are some examples of auxiliary aids and services for people with different disabilities:

**Examples for people with hearing disabilities** — Qualified interpreters; written materials; assistive listening devices; closed captioning; transcription services; note-takers; video remote interpreting (VRI)

**Examples for people with visual disabilities** — Braille; audio descriptions and recordings; large print; qualified readers; physical guidance, item retrieval

## Effective Communication

- Title III requires that public accommodations ensure effective communication
- Things to consider:
  - How complex is the interaction?
  - How long is the conversation?
  - What is the person's preferred communication style?
  - What will work?

### Facilitators Notes (Slide 9)

In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to **ensure effective communication**. The type of auxiliary aid or service necessary to ensure effective communication will vary depending on the length and complexity of the communication involved. For example, a customer who is deaf stops by a new car showroom to look at the latest models. The car dealer would be able to effectively communicate general information about the models available by providing brochures and exchanging notes by pen and notepad, or perhaps by means of taking turns at a computer terminal keyboard. If the customer becomes serious about making a purchase, the services of a qualified interpreter may be necessary because of the complicated nature of the communication involved in buying a car. In determining how to provide effective accommodation, the public accommodation should consult with the individual with a disability.

In the end, it is the public accommodation who decides what auxiliary aid or service will be put into place, but it must be effective.

The newly released Title III regulations require public accommodations to provide effective communication to companions who are individuals with communication disabilities (e.g., at a doctor's office). The term companion means a family member, friend, or associate with whom the private business would typically communicate. The 2010 Title III regulations identify Video Remote Interpreting (VRI) as an auxiliary aid or service that may be used to provide effective communication. In the end, it is the public accommodation who decides what auxiliary aid or service will be put into place, but it must be effective.

## Access to Sites and Services

- Readily achievable barrier removal
- If removal of barriers is not readily achievable, must take alternate steps to make goods/services accessible



### Facilitators Notes (Slide 10)

The goal is to ensure that people with disabilities can access what you have to offer by removing architectural barriers and communication barriers that are structural in nature in existing facilities.

Readily achievable barrier removal generally refers to things like installing ramps, creating wider doorways, changing door knobs from twist to lever action, creating designated accessible parking spots, and repositioning tables and shelves facility so that someone can easily move around. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. DOJ offers a list of 21 examples of modifications that might be readily achievable.



- 1) Installing ramps;
- 2) Making curb cuts in sidewalks and entrances;
- 3) Repositioning shelves;
- 4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- 5) Repositioning telephones;
- 6) Adding raised markings on elevator control buttons;
- 7) Installing flashing alarm lights;
- 8) Widening doors;
- 9) Installing offset hinges to widen doorways;
- 10) Eliminating a turnstile or providing an alternative accessible path;
- 11) Installing accessible door hardware;
- 12) Installing grab bars in toilet stalls;
- 13) Rearranging toilet partitions to increase maneuvering space;
- 14) Insulating lavatory pipes under sinks to prevent burns;
- 15) Installing a raised toilet seat;
- 16) Installing a full-length bathroom mirror;
- 17) Repositioning the paper towel dispenser in a bathroom;
- 18) Creating designated accessible parking spaces;
- 19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- 20) Removing high pile, low density carpeting; or
- 21) Installing vehicle hand controls.

The list is intended to be illustrative. Each of these modifications will be readily achievable in many instances, but not in all. Whether or not any of these measures is readily achievable is to be determined on a case-by-case basis in light of the particular circumstances presented and the factors discussed above. For more information on what constitutes readily achievable barrier removal or how to prioritize barrier removal, contact the ADA National Network at 800.949.4232

Communication barriers that are structural refer to things like signs on elevators and creating audible and visual alarm systems.

In some cases, removal of barriers is not readily achievable. In that case, alternative steps should be made to make goods and services accessible. For example, curb service, home delivery, relocation of activities to accessible locations, retrieve merchandise from inaccessible shelves or locations within a store. A public accommodation cannot charge extra for these services.

Information about how to relate to people with disabilities, explanation of “undue hardship” and tax incentives for barrier removal are covered in other ADA TN Modules. Resources for these and other topics can be found in the Resources List in this Facilitator’s Guide.



## New Regulations Impact:

- Effective Communication
- Ticketing
- Examination and Courses
- Places of lodging
- Wheelchairs and other mobility devices
- Service animals



### Facilitators Notes (Slide 11)

The new Title III regulations released in 2010 impacted the obligations of Title III entities in many ways. This slide provides a brief overview of those changes. The ADA National Network offers a series of fact sheet that explain these changes. This series is available at: [adata.org](http://adata.org). Where appropriate, the information from the new regulations has been inserted into this presentation. Participants who require additional information should be referred to the ADA National Network at 800.949.4232.

**Effective communication:** Added the responsibility to provide effective communication to companions of PWD with who they would normally communicate. The new regs also clarified that covered entities could not rely on an adult or minor child who accompanied the person with a disability to provide interpreting services except in cases of emergency or where the individual who is deaf wants the accompanying adult to interpret if appropriate. The new regs included Video Remote Interpreting (VRI) as an optional auxiliary aid or service. Finally, they provided a definition of a qualified reader.

**Ticketing:** Guidance is now provided on the sale of tickets for accessible seating, covered entities must provide about accessible seating for people requiring accessibility features (such as wheelchair users or individuals with service animals who may require extra space), ticket prices, options for purchasing multiple tickets including companion seats, hold and release of



tickets for accessible seating, ticket transfer, the secondary ticket market and prevention of fraud.

**Examination and Courses:** The new regulations explained when it is appropriate to request documentation of disability prior to giving a modification or auxiliary aid or service. They stated that prior modification received in similar situations should be granted considerable weight and required covered entities to respond in a timely manner to requests for modifications.

**Places of lodging:** effective March 15, 2012, the new lodging regulations will impact the definition of place of lodging, reservation processes, information provided through reservation systems regarding accessible features, holding accessible guest rooms, third party reservation providers and scoping for accessible guest rooms.

**Wheelchairs and other mobility devices:** The new regulations state that wheelchairs must be permitted in all areas open to pedestrian use. They also defined Other Powered Mobility devices and clarified their appropriate use areas.

**Service animals:** The new regulations clarified the definition of a service animal and clarified the need for reasonable modifications in policies to allow the use of miniature horses as service animals and to allow service animals in all public areas of a business, except where legitimate safety concerns exist (i.e. the intensive care unit of a hospital)



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### Facilitators Notes (Slide 12)

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Conclude by reminding participants that the training materials were produced by the Northeast ADA Center in collaboration with the ADA National Network. Remind them of the free and confidential technical assistance and other services available from your local ADA Center and from the ADA Centers throughout the country. Mention the ADA TA line at 800-949-4232.

