

### III-3.0000 GENERAL REQUIREMENTS

Regulatory references: 28 CFR 36.201-36.213.

III-3.1000 General. A public accommodation may not discriminate against an individual with a disability in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase "goods, services, facilities, privileges, advantages, or accommodations" applies to whatever type of good or service a public accommodation provides to its customers or clients. In other words, a public accommodation must ensure equal opportunity for individuals with disabilities.

Several broad principles underlie the nondiscrimination requirements of title III. These include --

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

The specific requirements discussed below in III-4.0000 are all designed to effectuate the general requirements. The specific provisions furnish guidance on how a public accommodation can meet its obligations in particular situations and establish standards for determining when the general requirement has been violated. Where a specific requirement applies, it controls over the general requirement.

ILLUSTRATION: Public accommodations are only required to remove architectural barriers in existing facilities if removal is "readily achievable" (see III-4.4200). If making the main entrance to a place of public accommodation accessible is not readily achievable, the public accommodation can provide access to the facility through another entrance, even though use of the alternative entrance for individuals with disabilities would not be the most integrated setting appropriate.

III-3.2000 Denial of participation. The ADA prohibits discriminatory denial of services or benefits to individuals with disabilities. Just as under the Civil Rights Act of 1964 a restaurant cannot refuse to admit an individual because of his or her race under the ADA, it cannot refuse to admit an individual merely because he or she has a disability.

ILLUSTRATION: A theater cannot refuse to admit an individual with mental retardation to a performance merely because of the individual's mental disability.

III-3.3000 Equality in participation/benefits. 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 an individual with a disability must achieve an identical result or level of achievement as persons without disabilities.

ILLUSTRATION 1: Persons with disabilities must not be limited to certain performances at a theater.

ILLUSTRATION 2: An individual who uses a wheelchair may not be excluded from an exercise class at a health club because he or she cannot do all of the exercises and derive the same result from the class as persons without disabilities.

III-3.4000 Separate benefit/integrated setting. A primary goal of the ADA is the equal participation of individuals with disabilities in the "mainstream" of American society. The major principles of mainstreaming include the following:

- 1) Individuals with disabilities must be integrated to the maximum extent appropriate.
- 2) Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual.
- 3) Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits.

III-3.4100 Separate programs. A public accommodation may offer separate or special programs necessary to provide individuals with disabilities an equal opportunity to benefit from the programs. Such programs must, however, be specifically designed to meet the needs of the individuals with disabilities for whom they are provided.

ILLUSTRATION 1: Museums generally do not allow visitors to touch exhibits because handling can cause damage to the objects. A municipal museum may offer a special tour for individuals with vision impairments during which they are permitted to touch and handle specific objects on a limited basis. (It cannot, however, exclude a blind person from the standard museum tour.)

ILLUSTRATION 2: A private athletic facility may sponsor a separate basketball league for individuals who use wheelchairs.

III-3.4200 Right to participate in the regular program. Even if a separate or special program for individuals with disabilities is offered, a public accommodation cannot deny an individual with a disability participation in its regular program, unless some other limitation on the obligation to provide services applies. See, e.g., III-3.8000 (direct threat); III-4.1000 (eligibility criteria).

ILLUSTRATION: An individual who uses a wheelchair may be excluded from playing in a basketball league, if the recreation center can demonstrate that the exclusion is necessary for safe operation.

Individuals with disabilities are entitled to participate in regular programs, even if the public accommodation could reasonably believe that they cannot benefit from the regular program.

ILLUSTRATION: A museum cannot exclude a person who is blind from a tour because of assumptions about his or her inability to appreciate and benefit from the tour experience. Similarly, a deaf person may not be excluded from a museum concert because of a belief that deaf persons cannot enjoy the music.

The fact that a public accommodation offers special programs does not affect the right of an individual with a disability to participate in regular programs. The requirements for providing access to the regular program still apply.

ILLUSTRATION: A public accommodation cannot exclude a person who is blind from a standard museum tour, where touching objects is not permitted, if he or she prefers the standard tour.

Individuals with disabilities may not be required to accept special "benefits" if they choose not to do so.

ILLUSTRATION: ABC theater offers reduced rate tickets for individuals with disabilities and requires appropriate documentation for eligibility for the reduced rates. ABC cannot require an individual who qualifies for the reduced rate to present documentation or accept the reduced rate, if he or she chooses to pay the full price.

III-3.4300 Modifications in the regular program. When a public accommodation offers a special program for individuals with a particular disability, but an individual with that disability elects to participate in the regular program rather than in the separate program, the public accommodation may still have obligations to provide an opportunity for that individual to benefit from the regular program. The fact that a separate program is offered may be a factor in determining the extent of the obligations under the regular program, but only if the separate program is appropriate to the needs of the particular individual with a disability.

ILLUSTRATION: 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 availability of the signed tour would not affect the museum's obligation to provide an interpreter for a different tour, or the museum's obligation to provide a different auxiliary aid, such as an assistive listening device, for an individual with impaired hearing who does not use sign language.

III-3.5000 Discrimination on the basis of association. A public accommodation may not discriminate against individuals or entities because of their known relationship or association with persons who have disabilities.

ILLUSTRATION: A day care center cannot refuse to admit a child because his or her brother is infected with HIV, even though the child seeking admission does not have a disability.

This prohibition applies to cases where the public accommodation has knowledge of both the individual's disability and his or her relationship to another individual or entity. In addition to familial relationships, the prohibition covers any type of association between the individual or entity that is discriminated against and the individual or individuals with disabilities, if the discrimination is actually based on the disability.

ILLUSTRATION 1: The owner of a building may not refuse to lease space to a medical facility because the facility specializes in treatment of individuals with HIV disease.

ILLUSTRATION 2: If a theater refuses to admit K, an individual with cerebral palsy, as well as L (his brother) because K has cerebral palsy, the theater would be illegally discriminating against L on the basis of his association with K.

III-3.6000 Retaliation or coercion. Individuals who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. The prohibition against retaliation or coercion applies broadly to any individual or entity that seeks to prevent an individual from exercising his or her rights or to retaliate against him or her for having exercised those rights.

ILLUSTRATION: A restaurant may not refuse to serve a customer because he or she filed an ADA complaint against the restaurant or against another public accommodation.

Protection is extended to those who assist others in exercising their rights.

ILLUSTRATION: A dry cleaner may not refuse to serve an individual because he encouraged another individual to file a complaint, or because he testified for that individual in a proceeding to enforce the ADA.

Any form of retaliation or coercion, including threats, intimidation, or interference, is prohibited if it is intended to interfere with the exercise of rights under the ADA.

ILLUSTRATION: It would be a violation for a restaurant customer to harass or intimidate an individual with a disability in an effort to prevent that individual from patronizing the restaurant.

III-3.7000 Maintenance of accessible features. Public accommodations must maintain in working order equipment and features of facilities that are required to provide ready

access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.

Where a public accommodation must provide an accessible route, the route must remain accessible and not blocked by obstacles such as furniture, filing cabinets, or potted plants. Similarly, accessible doors must be unlocked when the place of public accommodation is open for business.

ILLUSTRATION 1: Placing a vending machine on the accessible route to an accessible restroom in a bowling alley would be a violation if it obstructed the accessible route.

ILLUSTRATION 2: Placing ornamental plants in an elevator lobby may be a violation if they block the approach to the elevator call buttons or obstruct access to the elevator cars.

ILLUSTRATION 3: Using an accessible route for storage of supplies would also be a violation, if it made the route inaccessible.

BUT: An isolated instance of placement of an object on an accessible route would not be a violation, if the object is promptly removed.

Although it is recognized that mechanical failures in equipment such as elevators or automatic doors will occur from time to time, the obligation to ensure that facilities are readily accessible to and usable by individuals with disabilities would be violated, if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures. Inoperable or "out of service" equipment does not meet the requirements for providing access to a place of public accommodation.

ILLUSTRATION 1: It would be a violation for a building manager of a three-story building to turn off an elevator during business hours in order to save energy.

ILLUSTRATION 2: Deactivating accessible automatic doors because of inclement weather would not be permitted.

III-3.8000 Direct threat. A public accommodation may exclude an individual with a disability from participation in an activity, if that individual's participation would result in a direct threat to the health or safety of others. The public accommodation must determine that there is a significant risk to others that cannot be eliminated or reduced to an acceptable level by reasonable modifications to the public accommodation's policies, practices, or procedures or by the provision of appropriate auxiliary aids or services. The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability; it must be based on an individual assessment that considers the particular activity and the actual abilities and disabilities of the individual.

The individual assessment must be based on reasonable judgment that relies on current medical evidence, or on the best available objective evidence, to determine --

- 1) The nature, duration, and severity of the risk;
- 2) The probability that the potential injury will actually occur; and
- 3) Whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

Such an inquiry is essential to protect individuals with disabilities from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

ILLUSTRATION: Refusal to admit an individual to a restaurant because he or she is infected with HIV would be a violation, because the HIV virus cannot be transmitted through casual contact, such as that among restaurant patrons.

III-3.9000 Illegal use of drugs. Discrimination based on an individual's current illegal use of drugs is not prohibited (see III-2.3000). Although individuals currently using illegal drugs are not protected from discrimination, the ADA does prohibit denial of health services, or services provided in connection with drug rehabilitation, to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

ILLUSTRATION 1: A hospital emergency room may not refuse to provide emergency services to an individual because the individual is illegally using drugs.

ILLUSTRATION 2: A medical facility that specializes in care of burn patients may not refuse to treat an individual's burns on the grounds that the individual is illegally using drugs.

Because abstention from the use of drugs is an essential condition for participation in some drug rehabilitation programs, and may be a necessary requirement in inpatient or residential settings, a drug rehabilitation or treatment program may deny participation to individuals who use drugs while they are in the program.

ILLUSTRATION: A residential drug and alcohol treatment program may expel an individual for using drugs in a treatment center.

III-3.10000 Smoking. A public accommodation may prohibit smoking, or may impose restrictions on smoking, in places of public accommodation.

III-3.11000 Insurance. Insurance offices are places of public accommodation and, as such, may not discriminate on the basis of disability in the sale of insurance contracts or

in the terms or conditions of the insurance contracts they offer. Because of the nature of the insurance business, however, consideration of disability in the sale of insurance contracts does not always constitute "discrimination." An insurer or other public accommodation may underwrite, classify, or administer risks that are based on or not inconsistent with State law, provided that such practices are not used to evade the purposes of the ADA.

Thus, a public accommodation may offer a plan that limits certain kinds of coverage based on classification of risk, but may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience. The ADA, therefore, does not prohibit use of legitimate actuarial considerations to justify differential treatment of individuals with disabilities in insurance.

**ILLUSTRATION:** A person who has cerebral palsy may not be denied coverage based on disability independent of actuarial risk classification.

Can a group health insurance policy have a pre-existing condition exclusion? Yes. An individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy. However, the individual cannot be denied coverage for illness or injuries unrelated to the pre-existing condition.

Can an insurance policy limit coverage for certain procedures or treatments? Yes, but it may not entirely deny coverage to a person with a disability.

Does the ADA require insurance companies to provide a copy of the actuarial data on which its actions are based at the request of the applicant? The ADA does not require it. Under some State regulatory schemes, however, insurers may have to file such actuarial information with the State regulatory agency, and this information may be obtainable at the State level.

Does the ADA apply only to life and health insurance? No. Although life and health insurance are the areas where the ADA will have its greatest application, the ADA applies equally to unjustified discrimination in all types of insurance, including property and casualty insurance, provided by public accommodations.

**ILLUSTRATION:** Differential treatment of individuals with disabilities, including individuals who have been treated for alcoholism, applying for automobile insurance would have to be justified by legitimate actuarial considerations.

**BUT:** An individual's driving record, including any alcohol-related violations, may be considered.

May a public accommodation refuse to serve an individual with a disability because of limitations on coverage or rates in its insurance policies? No. A public accommodation may not rely on such limitations to justify exclusion of individuals with disabilities. Any exclusion must be based on legitimate safety concerns (see III-4.1200), rather than on the terms of the insurance contract.

ILLUSTRATION: An amusement park requires individuals to meet a minimum height requirement that excludes some individuals with disabilities for certain rides because of a limitation in its liability insurance coverage. The limitation in insurance coverage is not a permissible basis for the exclusion.

BUT: The minimum height requirement would be a permissible safety criterion, if it is necessary for the safe operation of the ride.

III-3.12000 Places of public accommodation located in private residences.

When a place of public accommodation is located in a home, the portions of the home used as a place of public accommodation are covered by title III, even if those portions are also used for residential purposes.

Coverage extends not only to those portions but also includes an accessible route from the sidewalk, through the doorway, through the hallway and other portions of the home, such as restrooms, used by clients and customers of the public accommodation.

ILLUSTRATION: J, a family day care provider, is having a new home built. J intends to use two of the rooms as a family day care center. In addition, the children will be using the master bathroom. Even though the two rooms and bathroom will be used for residential purposes when the children are not present, all three rooms are covered by the title III new construction requirements, because the rooms are not being used exclusively as a residence. Moreover, J must assure that there is an accessible route to the day care rooms and bathroom.

*Americans with Disabilities Act*, U.S. Department of Justice,  
<http://www.usdoj.gov/crt/ada/taman3.html> 10 June 2003