State ADA Coordinator’s Office: 2023 Virtual ADA Conference for State & Local Governments Session 3B

Georgia Finance and Investment Commission

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JOHAN: Good afternoon everyone this is Johan Rempel from CIDI at Georgia Tech. We are on the final stretch the last day on the last afternoon. Thank you for attending we greatly appreciate it. As per usual I will go through some accessibility options available today. Then take care of some additional housekeeping items.

We do provide live captioning for this event. There are 2 ways to access it also known as C.A.R.T. services. One is through the Streamtext link which should be in the chat. You can access that and it opens a third-party application with additional options.

The second way to access Closed Captions is through the CC control on the zoom toolbar. There is a bright red arrow pointing to the CC that is fully keyboard accessible. You can tab – if you are screen reader user or not using a mouse to get to it. That is very keyboard friendly.

Today we are also providing American Sign Language interpretation. We have 2 ASL interpreters. They have both been spotlighted so you should be seeing one of the 2 ASL interpreters at all times. Spotlighting is available to the host or cohost and is a good feature if you are hosting a conference and you are using Zoom spotlighting works well to highlight a particular video stream such as an ASL interpreter.

Pinning is another option depending upon the specific version and format of the meeting itself or webinar. This is more of a feature for participants that they can customize on there and. To spotlight or pin depending on whether your host or participant in the specific version you have, you can hover over the participant you want to spotlight and select the… And from there you can spotlight for everyone or pin.

This is a new feature rolled out with the Zoom in recent months called sign language interpretation view. This works really well especially when you have 1 ASL interpreter in the room. It becomes a bit more challenging when you have 2 because you use different video channels. This is certainly an option for others moving forward, especially if you have 1 ASL interpreter it works very well.

In the meeting advanced section the host must select the sign language interpretation view and toggle to enable. Zoom desktop version must be used by the host to manage and initiate interpretation. Sign language interpreter shown in the dedicated video channels for participants. They can resize or relocate the video window as needed. Interpretation options are found on the Zoom toolbar when it is enabled. In this case, we are spotlighting people.

The ASL interpreters. This option you will not see on your screen but certainly if you are hosting or cohosting an event and you choose to use this feature after you have enabled it and assigned an ASL interpreter, which will show up on the toolbar.

A few other household items to cover. Zoom chat feature is disabled for participants. We ask you to submit your questions using the Q&A feature found on the Zoom toolbar. There will also be a brief Q&A session following the presentation. All questions submitted by registrants during the registration process have also been provided to the perspective in ahead of time.

The ADA Conference team will be monitoring the Q&A throughout the session and as time allows they will address as many questions as possible. If the team is unable to get to your questions during the session, they will make every effort to follow up after the conference. As a reminder, please avoid placing any private or confidential information in the Q&A.

All presentations are being recorded. They will be housed on the State ADA Coordinator office website in the weeks following the conference. For any technical issues experienced related to Zoom, you will have access to the Zoom support link in the chat.

We invite the presenters today to keep your camera on during the brief presentation by Barbara Tucker our moderator and then turn it off at that point while presenting.

If you are open to this, turn your camera back on for the Q&A. With that I will pass it over to Barbara Tucker our ADA administrative services coordinator and she will serve as moderator. She will also be introducing the next presenter. I will go ahead and record. With that, I will pass it to Barbara Tucker.

MODERATOR: Welcome to ADA Title II and Title III modification of policies procedures and practices. Your presenter is John Wodatch. He is a Disability Rights attorney who retired after 42 years of federal government service. He authored the federal government’s first comprehensive disabilities rights regulations which are the regulations implementing section 504 of the Rehabilitation Act.

He is one of the drafters of the Americans with Disabilities Act as he served at the Department of Justice chief technical expert during the writing and passage of the ADA. He was the chief author of the Department of Justice 1991 ADA Title III regulations.

He created the DOJ initial ADA technical assistance program and assembled the ADA enforcement staff. He is the past president and currently serves as the chairman of the national association of a. Board of Directors. You can read his complete bio in the registration email. We are honored to have John share his wealth of knowledge with us today. Welcome John.

JOHN: Thank you very much and I am delighted to be here with you all. It is an honor for those of us who work at the National Association of ADA Coordinators to join with the Georgia ADA Coordinator's Office. For this conference they have done for several years. It is such an important vehicle for getting information to people with disabilities to ADA Coordinators Office and other ADA professionals. I am delighted to be part of it.

I am going to talk today about modification of policies procedures and practice. I know a lot of you especially those who work mostly under Title II or the public entities thing, this may not really apply to me. This is something that really applies under Title III. But that is not true. I would say is a sleeper provision in the ADA. People get to understand communications issues and facilities issues. This is equally important to those concepts. I think it is worthwhile for us to spend some time today talking about it.

Reasonable modification. This is a general rule for the ADA. The ADA is written by lawyers and we have to deconstruct some of the language. We are talking about reasonable modification and policy, procedures, practices. There is an obligation under the ADA to modify existing policies procedures and practices that you have when it is necessary to avoid discrimination against someone with disability.

As with other parts of the ADA there is a limitation on the obligation. That limitation is you do not have to do something that would fundamentally alter the nature of the service program activity. I hope for a lot of you these concepts are familiar . We will go through those. The citations are here and they will be important for you. If you want to go and read them and read the materials about them.

On ADA.gov Department of Justice website or other sources. These are the sites. I put them here because you may have to tell the mayor or someone in charge like the HR department or somebody you need to do reasonable modification. They will say, where does it say that? This is where it says that. In the statutes. It is specifically in Title III regulations for the Department of Justice and the Title II regulation. This slide may be important for you just want somebody to say I want to see what it is that is making me do that.

The next few slides I put together a few examples. Just in case you are not sure how it is ever going to come up with what I do. I will go through them quickly and maybe at the end we will get to talk about how you might deal with this. If we were a small group in a classroom setting, I would then say what are you going to do in that situation but I will walk you through it.

First, the police chief calls and you are the ADA Coordinators Office. He says there is a man in the street in a wheelchair on the local road. The cops are behind him can he ticket him? Next, these by the way are true examples of what have happened.

We have not made them up. A mother with a child with asthma heard that the city was going to spray mosquitoes in her neighborhood. There was one scheduled so she called and said, I have a child with asthma at home. We cannot have this please stop it.

Next, it is a little different. Starbucks has a new building in your city. They want to put it in a ramp. Unfortunately, the city has an ordinance that does not allow this on the sidewalk because the city requires a 12-foot setback. They want to change that. What will you do about that?

Next the local ARC chapter called someone. They have called you and they want a simplified application for eligibility for 2 things, cash benefits. The city has an emergency sheltering program. It has some application aspects. It is pretty complicated and they want something simplified.

Next, you get a call because there is a minister going into the hospital. He has a service animal. He is visiting one of his churchgoers in the city's hospital emergency room. We do not let dogs into a hospital, do we? I want to tell them they cannot come in with the dog so you are called.

Next, a Segway user which is a mobility device that is designed not just for people with disabilities but often used. There is a person with a disability who is using one for mobility and they’re at the security desk in the town hall and want to go to the meeting. It is on the third floor what should you do?

This one comes up a lot. A person who uses crutches and maybe other people with disabilities who have difficulty standing in line, you have long lines at the voting booth. They just want a place to sit. They do not want to lose their place in line. What do you do? Do you have to do anything?

Next, public agency is having a conference. It does not allow food in the facility which is a pretty common rule. You have a request from someone who has diabetes and needs to eat frequently to control her glucose level. She wants to be able to bring certain kinds of food into the conference hall. What do you do?

Next, a deaf swimmer the big-league meeting and they want some kind of visual cue like a hand signal or a flash of light concurrently with the electronic beep to start the race. Most places use the electronic beep but in my day it was a gun. That has changed! This one is by itself because there are a lot of examples that come up in this area. The county emergency preparedness center.

The cross-disability center in the county has asked for a whole series of changes in the city shelters. They want some kind of bedding for people who cannot use cots. They want some separate area that is quiet for people with autism. And they say you have to have refrigeration facilities because some of our clients have medications. They need them over time and they need to be cool.

These are the examples to keep in your head and we will get to them later. But these are the kinds of ways this issue will come up for you. An important word in reasonable accommodation is necessary. It comes up and you really -- how do you know something is necessary? It is not something they want just because it is nice but it is necessary for them to participate in the program. That is how you look at it.

If not doing the reasonable modification, would keep the person from enjoying the benefits whatever they are or the program is or the service is, it meets the necessary standard. It does not have to be outright exclusion. Remember the ADA prohibits unequal participation as well as outright exclusion or difficulty in participation.

The key here as it is with a number of ADA provisions is does the person with a disability have an opportunity to participate in the program and in the services that is equal to that afforded to others? People who have disabilities.

This is not something specific to reasonable modification but it is a general provision I think you know from other parts of the ADA. The ADA does not require you to provide personal or individually prescribed devices such as wheelchairs, prescription eyeglasses or hearing aids .

Or services of a personal nature like a person needing help with getting dressed or toileting. These provisions apply to reasonable modification as well. Keep in mind there is an exception to the general rule. That is where the programming services you are offering and that are customarily provided really do provide personal services or personal devices.

If you think of a hospital or nursing home or a jail or prison where clearly, the entity providing those services is providing services in a personal nature. This exception is an exception to the exception so you need to keep that in mind.

This may sound daunting to you. I would say a lot of the things you come up with in terms of the modifications that people seek are minor in nature. However if they are not, remember when I read the words from the statute, it did say you did not have to do it if it would fundamentally alter the nature of the program or activity.

There is another general ADA limitation that applies to reasonable modification as well. That is direct threat. You would not have to do something if it would result in a direct threat. The next slide will tell us what direct threat is. These are all concepts and words that come from the statute and are in the justice regulations.

Direct threat is a significant risk and we are talking about something important here that cannot be eliminated or reduced to an acceptable level by modification of policies or provision of auxiliary aids. It cannot be based on generalizations or stereotypes about a particular disability. We will get into this generally. But it is a concept you would know.

The idea that direct threat really has to be something significant. I think the last three or four years with the pandemic, and the nature of the COVID crisis, you are probably more familiar with the element of direct threat analysis than we were before.

Has anyone ever really thought about this? What do the courts have to say about reasonable modification? A lot. There is a very important case from 2001, PGA Tour versus Martin. The Supreme Court considered reasonable modification. It dealt with the disabled golfer on the professional circuit.

He requested a waiver of the walking rule. He wanted to be able to use a golf cart. The District Court the Supreme Court looked at but the District Court ruled in his favor. They did based upon the factual situation. The factual situation they found was, Mr. Martin, even if he was using a golf cart, endured greater fatigue than his able-bodied competitors by walking.

The District Court also noted that the PDA allow the use of golf carts in several circumstances so it was not like they would have to go out and buy golf carts now. They already had them and use them for different parts like for example if a tournament was taking a long time and there was a long distance between holes, they would use it to speed up play by letting the players ride in the golf cart to the next hole.

The court looked at all of these facts. They were really looking at allowing a professional golfer to use a golf cart, is that giving him an unfair advantage? Is it fundamentally altering the rules of golf or the whole idea of the tournament? Is it not fair? They look at it from that perspective.

They basically said, it does not fundamentally offer the alter the golf tournament because and this is language from them, it added an exception to a peripheral tournament rule that did not impair purpose. The important part is the facts of the case although it is an interesting situation, it is important to say the Supreme Court has looked at the concept of reasonable modification. It basically said this is okay. It can be applied under the ADA.

This is the daunting list we will go through. Some may be at the speed of light. We will see how you all feel. The Department of Justice I think has 7 things here. Seven ways they have specifically applied the reasonable modification principle. Service animals . I hope you all know OPDMDs . I apologize for that phrase. Other Power-Driven Mobility Devices are big.

Miniature horses. We will talk about ticketing, checkout aisles, reservations at places of lodging and regarded as. For the next hour or so this is what we will discuss. These are the ways the regulations deal with and apply the gentle count concept of reasonable accommodation to specific things.

The one most people are familiar with is service animals. I will go through this and I know from years of talking about the ADA to people whenever I Ray service animals there are more questions than I ever imagined would be there. When we wrote the ADA regulations in 1990, I thought this would be a simple provision but it would really be accepted and not present a problem. That shows how little and you in 1990 and 1991.

Service animals. A covered entity has to modify its NOPAT's rule to modify its policies practices or procedures to permit the use of a service animal by an individual with a disability. Allowing a service animal to go anywhere members of the public go, if you think of that generally you will be on the right track.

The service animal definition in the ADA was put into the ADA in 2010. A lot of what I am talking about in the changes to the justice regulations were in 2010. A dog. The earlier definition was broader but from the Department of Justice the service animal is a dog. It is one that is individually trained. Trained to do work or perform a service or task for the benefit of a person with a disability.

It can be any type of person with a disability like physical, psychiatric, sensory, intellectual, or mental. The task is to be related to disability. For those who cannot see the slide, there is a picture of a woman with a cane and a service animal in an outside venue.

What does all the jargon mean? First, it is dogs to the ADA. Remember this is just the ADA we are discussing. The issue that has developed over the years is comfort and emotional-support animals. The way the definition functions, because the animal has to be trained to do work or perform a specific task.

Some animal that does provide comfort or emotional support is not covered by the ADA definition of service animal. That does not mean people with psychiatric or intellectual or other mental disabilities cannot use service dogs. Many do and we will go through some examples.

The dog has to be trained to do specific actions. I am providing a lot of examples here for you just because everybody has one view like a dog helps a blind person get around. But it is much broader . What we have learned is dogs have been trained to do any number of tasks.

A dog can be trained to alert a person with diabetes when the person's blood sugar reaches high or low levels. In case you wonder how that is it is often done on the basis of center. The dog can recognize the differences in the person's makeup and be trained to know and to associate the change in that smell with an elevated or lower level of blood sugar.

A dog can be trained to remind a person with depression to take medication. It is often based on training the person and the person start acting in a certain way to nudge them or get them to understand something needs to change. A dog can be trained to detect the onset of a seizure.

They can also be trained to stand over a person having a seizure to be saved during the course of it. If you wonder how this works it is the same thing. The dog can be trained to detect through the sense of smell a change in a person's that indicate the onset.

This is the usual. People who have blind or low vision you service animals for guiding. Alerting persons who are deaf to sounds. Think of a person at an ATM machine. Someone is approaching, the dog can let the person know. Pulling a wheelchair. Retrieving items for persons who use wheelchairs. Assisting during a seizure. There is a picture that is one of my pictures but my wife says why don’t we have a dog that does this.

The dog is assisting a person in a wheelchair taking the laundry out of the dryer. Dogs can be trained to retrieve medicine and other items. Similarly in keeping with the idea of people with psyche psychiatric or psychosocial issues, a dog can be trained to help a person with a dissociative identity disorder . They can detect the difference in behavior and will be trained to nuzzle or move the person.

These are other examples. There is a picture of a person with a disability with the service animal. The task includes preventing or interrupting impulsive or destructive behavior. Assisting with balance or stability. Sometimes the dog doing that is a larger dog. Providing nonviolent protection or rescue work. That is just to give you an idea that it is a much broader thing that dogs provide a lot of service for people with disabilities. This is something we have learned a lot about in the last several years.

Bringing home the point, we have a picture of a person who uses a bird as a comfort or support animal. It is clear to us that as we have come to understand, many people do get comfort and support emotionally just from having an animal with them. There is nothing wrong with that but the ADA does not recognize that as a service animal.

Now we know or have an idea what are some of the issues. I hope in situations where it is obvious where it is a service animal with a person with a disability you do not need to ask questions but the ADA date ADA allows you to ask questions. Whether the dog is required because of a disability and what work or task the dog is trained to perform.

You may ask those questions if it is unclear. But you cannot request documentation for the dog. You cannot ask for documentation. You cannot say how bad is your disability and what is your disability can you tell me? These are all off the table.

The person comes in -- and you might get calls about this -- the entity itself is not responsible for the care or supervision of the dog. It is the handler of the dog the person with the disability that does it. You can ask for service animal license. They might exist in some states or on the Internet but there is no central or reputable way to do that. It is not required. You cannot do it.

You cannot ask for deposits or pet fees. This happens if you deal with hotels or other areas or conferences. A more typical issue that has come up over the years is you cannot exclude service dogs because of the elegies or religious beliefs of others including employees. That does not in the inquiry if you have that. We can get that into more detail if you want.

A person with allergies may be a person with a disability as well and you may need to balance them. You may need to allow access to the person using the service animal but recognize the employee who would be at risk if the service dog is there. You may need to consider how you would provide access and how you protect your employee or others.

Finally, no exclusion of dogs. Based on breeds of dogs which is usually pit bulls. Also a number of other dogs. They might say they do not want pit bulls in their city but if a veteran visits your city and has this type of dog is their service animal you cannot say you cannot come into my city.

Many dogs do were vests and ID tags and specific harnesses but it is not required. A lot of these are questions that have come up and I want to give you the lay of the land. Some cities or counties may require dog registration or vaccination . Service animals are not exempt. This is something that is there for all dogs.

They will have to meet whatever the local public health requirements are with animal control elements. But a city cannot just operate special ones for service animals like mandatory registration . That is not allowed. An interesting one that has come up is that some people use more than one service animal. They have one that is trying to do one thing and another service animal but does another thing.

Generally a person with several dog should be allowed into public places. What can you exclude? When the animal is out of control and the handler does not take action to control it. If the animal is not housebroken. Both of those are specific exemptions that would allow you to exclude a service animal from a building. Usually handlers’ control is a harness or a lease or other tether.

Lots of people with disabilities do not work because they are not able to because of their disability. In those situations, the animal must be under control whether it is voice control or signals or other effective means. If it is not it is fair game for you as an ADA Coordinators Office to say that animal cannot come into our facility.

Life is complicated! The ADA is not the only law that applies to situations. You may have personal responsibility for some others. The Fair Housing Act for example allows emotional support to animals. Those of you out there dealing in the world of colleges and universities, there are very difficult issues involving emotional support animals and service animals on college campuses. Your state may have some different laws. Especially because of veterans who have been using comfort animals . You may have local ordinances you would have to follow.

The Air Carrier Access Act also allows the use of some emotional support animals but they have recently changed how they do it. It is important to know it is a law that is out there. I will go through this pretty quickly because we’re moving along. Healthcare providers. Are they covered? We cannot allow dogs in the hospitals.

This slide has many examples of hospitals, nursing homes, doctors’ offices, pharmacies, alcohol, and drug treatment centers. There are all places. Centers for Disease Control and Prevention has issued guidance on the subject. They worked with Justice to come up with. They want to control infection and ensure health and safety. The healthcare worker and the people in the hospital and other people.

One thing we learned is there is no evidence that animals pose a more significant risk of transmitting infection among people. In fact, we learned early on they provided less of a risk than the general public. Keep in mind, if your healthcare facility, anywhere where people from the general public are allowed to come in on is really a person using a service animal. They should be able to go in.

An example from early on remember the example of the minister who wanted to visit the emergency room? That would be that people are allowed in the emergency room so therefore the minister should be allowed into that area with the dog. This is a general principle. If people from the general public can go there, it is a rule of thumb. Usually service animals can go with their handlers. That will not always be the case. We will talk about that next.

There will be a lot of places in a hospital or healthcare facility where the general public cannot go. This is a list where generally yes and generally no. The emergency room is usually fair game. Regular patient rooms. Radiology. Treatment rooms. Allergy clinic may be or might not be . Cafeteria, waiting area, nursing homes generally yes.

Areas usually would not be the operating room, areas where you have concentrations of or any people who are immunocompromised. Some forms of I see you and burn units in isolation rooms. The focus is on what is the purpose of the room or the space and how it is being used.

I would suggest if you were working with a healthcare facility, work with them on developing a policy. Make the policy known and put it on their website and documentation so people know which parts of the hospital. The hospital staff will also know.

We have a whole new area called OPDMDs. Here we have a few pictures of Segway and other devices. There is a definition in the regulations. It is important. I think the important thing in the background of this is their use formal below mobility devices but they were not specifically designed for people with disabilities.

They are designed for the general public and people with disabilities have found it works for them. Here we are talking about devices powered by batteries or fuel or other kinds of engines. That is the important difference we are talking about.

Justice regulations divide the world into 2 parts: There are 2 separate approaches. The usual you have known are wheelchairs and manually powered, wheelchairs, walkers, crutches, canes, and braces though should be allowed in the area or program or service is open to pedestrian use.

Other Power-Driven Mobility Devices are different. The idea here is you may need to make reasonable modification to prevent use by people with disabilities . They are not necessarily designed for people with disabilities so you have a lot of considerations. Regulations go through a number of things. We talked about golf carts that are often used. Segway or other which is a form of electronic personal assistance mobility device.

Any device that is not a wheelchair is like a TV. The ideas reasonable modification applies but how do you deal with the issue? The Department of Justice set forth a way of examining and doing it that is fairly detailed. I hope you have dealt with this because it is a growing issue for a lot of people using these devices.

The way is to look at the class of device. Can it be operated in accordance with the legitimate safety requirements for the entity? When looking at this you must be looking at actual risk not based on stereotypes or speculation. Actually looking at the situation . Justice talks about specific excess assessment factors. There are 5. You must apply all five to make the determination about whether there is a legitimate thing to allow this category of device into

your program. Again I will refer to one of my favorite ADA because this is information it depends. How you apply these will be different in different situations for factor 1, the type size weight and dimensions and speed of the device is very important. The type of device what how big is it and what is it? How does it operate? Is it heavy?

Factor 2, what is the volume of traffic light it might be different during the week and on weekends it might be different during the day and during the evening. Factor 3 is the facility or the program where the program is. It might be outside. What is the square footage? Is it a small room? Is there storage facilities? How will it fit in with the program? Factor number four: Can you establish legitimate safety requirements for the device?

For example, it can go up to 10 miles per hour but you can say in my building it only goes 3 miles per hour would be an example. The last factor, what is the risk of the substantial risk of harm to the environment? Natural or cultural resources or even conflict with federal land management law and regulations? So that is how you approach whether it is reasonable modification.

We have the same issue. You see someone coming. You know the questions you could ask for service animals but what do you do here? This is an application of the same concept. Person should be able to give you a credible assurance that the device is required because of a disability. One thing we have said is credible assurance could be using a valid state disability parking placard.

They may not have to have it but they may have it and that would be an indication it is a person with a disability who might need the device. A verbal assurance not contradicted by observation is considered credible evidence. You don't want to go on an expedition of knowing what your disability is, how often do you need this? You do not get into that kind of conversation with people using these devices.

Keep in mind, the burden is on the entity to demonstrate a class of OPDMD cannot be operated in their building. There is a picture of a fair of a person using a Segway talking to -- that looks kind of like a Renaissance fair. The Department of Justice does not require that you have policies, but in all honesty you should. How could you not? You want to try to avoid it. You do not want to deal with this on case-by-case basis. Every other time.

If you can try to come up with a policy that you use for the programs or activities you are involved with, there are some. You can come up with a policy and you might have a different policy with the city Council meeting. You might have one for the County Fairgrounds. They would be different in terms of what kind of devices would be allowed to be used.

If you have small rooms for meetings it may not be possible to have a device in them so the idea is to come up with a policy and make it specific and tell people about the procedure for assessing and considering grouping things by type. Segway golf carts are things people generally use. Publish and distribute so people know. The website will be your friend. Your accessible website in ensuring that is there.

Some examples we have seen, government buildings. No gas driven devices . You cannot use your device on the escalators. We know your device goes to 10 mph but you can only do five miles per hour here. This is an idea of how to approach. Trails and other outdoor areas. You might allow them everywhere but you might have areas like in the example cross-country ski area on narrow trails it might name is them so you would not allow them there. Have a policy that deals with the program that you have.

New topic. Miniature horses. You cannot just say no miniature horses are allowed. You might have to have reasonable modification. Take a look at this. If you look at the next slide you will see what miniature horses are. They generally range in height their small from 23 to 34 inches. They are the size of some large dogs. They often weigh 70 to 80 pounds. They are not considered service animals.

The idea here is the people who use them in their often used more in rural areas than urban ones because they cannot spend the night inside a building. People tend to use them because they might be allergic to dogs. They also have longer lifespans. Therefore they can last a longer time for a person who might use them. That is why that is there.

In my experience, there have not been many examples of the use of miniature horses. The Department of Justice put out this regulation in 2010. It was considered maybe this is the new wave of the future. It has not really worked out that way.

Again, you are looking at assessment factors. This is another photo of a woman in a wheelchair with a miniature horse. Again you are looking at the type and size and weight and whether a facility can accommodate it. Handler’s control. Whether it is housebroken and legitimate safety requirements for the specific facility. That is enough on miniature horses.

Ticketing. You will see there are many slides on ticketing and you might wonder why all the slides are here for this? I would say and maybe all of you do not do ticketing but if you do have events with ticketing, please pay attention to these very specific rules. The reason they are here is because of the large number of complaints.

The Department of Justice receives about venues and people who used wheelchairs being denied access because the accessible seats were not there or they did not know about them or you could not get them. The event sold out before they even knew about it and they sold all the accessible seats. The numbers of complaints there was a steady stream. So the Department of Justice put out regulations covering 8 areas. Ticket sales, ticket prices, identification of available accessible seating?

How does anybody know you have it including the people who work for you at the venue? The ability to purchase multiple tickets . What does that mean? Whether you can ever sell accessible seating to other people that is hold and release of tickets. Ticket transfer, secondary ticket market and prevention of fraud in the purchase of tickets for accessible seating. I will go through this fairly quickly. But if we have questions about it, I think you should spend time with the regulations.

Ticket sales. It is a simple concept. You are selling tickets and the ticket sales for accessible seating must be in the same way they are done for other events. The reasons for the requirement is that is not often the case. Has to be the same hours under the same terms and conditions through the same methods of distribution. Sell tickets for accessibility.

If you give them to third-party vendors there better be some accessible seats for the third-party vendors. He has special fan clubs and promotions waitlist, there are all kinds of ways that people sell tickets. Maybe your college does not do it that way but you might have someone who is famous coming in to give a lecture at your college. Even though they may be first come first serve tickets, you should ensure that people who need accessible seating have the same ability and access to the seat as others.

Ticket prices. If you do have ticket prices, you should have accessible seating at all price levels for every event or series of events. You cannot charge more for the accessible seats than you would for the other seats in the same area. I am hoping for a lot of this is common sense. Here is the tickler.

If a venue cannot provide accessible seating at a particular price level because of architectural barriers, and this is true in a lot of older venues, then there -- I will go through it. The percentage of the tickets for accessible seating is that you should have had available at that price level but are not there because barriers must be offered for sale and put in another location in the venue.

There are a number of agreements in the Department of Justice with various events and various large venues in the United States that dealt with that issue because they did not have accessible seating in the upper balconies. In those situations, they had to provide seats, accessible seats on the main floor at the price of the upper balconies. Again, it is just a matter of fairness.

I am letting people know about or letting people know about accessible seating. Seating maps and brochures. People have seen this a lot more. Visual representations where people know where the accessible seats are in providing that information. Now we get into the difficulty.

One reason this comes up is often times the accessible seats are put in an area that if you allowed one person to have one person in a wheelchair that wants to go with their high school class, they want to take all the accessible seats but they are out. The regulation has put a cap on it and said a person with a disability or third party buying for that person should only be able to purchase 3 additional seats in the same row.

If the venue will only allow people to have 2, everybody can only ever buy 2. The same restriction applies to them. If the venue says you can buy as many as you want, what the regulation suggests is, in order to keep accessible seating for other people when they need them to give to the wheelchair user who bought the seats to have them as close as possible to the accessible seat but not necessarily in the same row where you would take out all the other accessible seats.

What you would want to know is if you are doing this yourself or you ask it a question of the entity doing it, people with disabilities are not going to come. Do I have to leave that seat open? This is a possibility of saying you can sell or provide to the public if it is not a sale or the accessible seats when the entire area is sold out or if the designated seating area or ticket pricing area has sold out, then you can sell that particular accessible seat or give it away in a lottery or however you want to do it.

This is to ensure that people with disabilities have the same opportunities to get it and if they are not fast enough people buy out all the seats in the price category, which is viewed as fair under regulations. The most difficult part of all this has been ticket transfer. It is pretty well-known people will not buy tickets they cannot go and they want to give them to a friend. We have 2 issues that happen. They bought accessible seating and gave it to a friend that does not need the accessible seat. Or you have a see that is a regular seat but you are giving it to or sold it to someone who is a wheelchair user.

The next few slides deal with how you deal with that. That is having away and venues have been pretty good at saving some accessible seats and some others to allow ticket exchange as people come forward to them and say look, I have an accessible seat but I do not need it can you give me another seat close by? These are processes for doing that.

The secondary ticket market. This is all part of this. You must allow people who bought accessible seats to sell them or get rid of them to their friends just like people without seats. It is just working this out. A number of venues are worried about fraud. What has started to happen is, some of the ticket selling company said those accessible seats if I can get a hold of them and hold onto them, I can sell them later. I can sell them to anyone so fraud was entering into this.

There are some ways of dealing with that but the regulation does not allow a ticket seller to require proof of disability like a doctor's note before selling a ticket for accessible seating. They can ask do you need this because of a mobility disability or a disability that requires the use of accessible features. They can ask that but that is as far as that can go.

With a number of entities that are ticket venues have done, they have actually like 1/2 hour before the event ask people how did you get your tickets? As a way to try to find out if fraud exists and see if they can get a hand on it. Another way is to write on the ticket itself and nowadays you often do not get that kind of ticket but it might say this is subject to revocation.

As you can see let me say about ticketing these are very detailed. If you do have events, you should be thinking about them. Looking at them and working with the venues or the professors or whomever. If you have a speaker coming in, a speaker who is a friend of the county commissioner and is an important person and seats are either being given out or sold, you need to be aware.

Checkout aisles. The idea here is not every checkout aisle has to be an accessible one. How you use the checkout aisle and this is common sense, how you use your checkout aisles has to be a matter of ensuring people with disabilities have access. If you close some of the checkout aisles, you should know there is a level of service for people that the accessible features at the checkout aisle.

If you only have 1 checkout aisle and you use it for express service, you must have some way of either providing equivalent service for wheelchair users were by and large purchases or allow them to use it there. It is a matter of really working out a process that works for your venue to ensure fairness. Reservations at places of lodging.

Most of you are probably not dealing with this issue but if you are, have in place a way for ensuring people with disabilities reserve in advance accessible guest rooms, that they have the same time in the same manner to do it as others. And there is identification of accessible features so they can assess independently whether the given guestroom meets their accessibility needs.

Here is the difficult part. You must make sure what somebody has reserved an accessible guestroom, you have a way to ensure that once it is reserved and the reservation is blocked and removed from other reservation systems so you guarantee the accessible room to the person or persons who rented it.

Your clients if you want to call them that will face the possibility for monetary damages if a family has made a reservation six months for something that is happening at the college campus regularly like a reunion and they have reserved it in the family shows up in their room has been given to someone else .

Because there was no way for the University to ensure the accessible guest rooms would not be given to someone else. That then is a problem which you will need to face. Not all of you will deal with that but it is important to know. If you are dealing with guestrooms, you may not be a hotel but you may be doing this. It would be part of your responsibilities.

In 2008, the definition of disability under the ADA was changed by Congress. I think you understand it. But there is a mention of a reasonable modification under regarded as. If somebody is regarded as disability they do not have a disability but regarded as disability, they are not entitled to reasonable modification.

That makes sense to you because they do not need reasonable modification if they do not have a disability. Discrimination against them is intent so they do not need reasonable modification. It was part of the congressional change so I thought we should mention it. The police chief in a wheelchair on the road. The things that you would have to is there a sidewalk? Why is the person on the road? You may want to take the issue to discuss with the wheelchair user to ensure his or her safety.

We have a few minutes to open up to questions . Let me go to a few early examples. Maybe I will do a few of them for you so you get an idea of how to consider them. I believe it is Flight 7. It is broad in scope.

That may be a way to balance the rights and needs of the other residents in the area that want to spray mosquitoes. It is also a health benefit to the general area and balancing those. The Starbucks example I think is just ensuring you have a way to get a variance where you have an entity that wants to ensure accessibility but you have roadblocks in your city policies. It may be that it is not possible .

The sidewalk may be so small that putting a ramp at the Starbucks will be an impediment to everyone using the sidewalk. Again it depends. We have seen examples in the city of Washington DC. There are a number of areas with fairly broad sidewalk. In those areas this kind of solution will work. Not in all. I will go for a few more minutes and then . We will talk about the minister and the service animal in the city hospital.

The Segway example at the security desk at the town hall you would hope there would be a policy in place already. You would know, okay we have an elevator that you would need to take. You can go back you must take the elevator and you cannot go up the escalator. You can only go at a certain speed when you are there you will have to be in a certain part so the Segway does not block people behind you.

There are a number of issues. Usually you can accommodate something in that kind of situation. The local ARC chapter the simplified application may work . It may be too difficult to do but there may be other ways to ensure people have assistance in applying so the difficulty of the forms is not a basis for excluding people with disabilities.

The voting one has come up a lot. There are a few things to keep in mind. It is certainly something that should be done, especially if you are dealing with claimant issues . In the South you deal with heat and in north may be no.

The important thing is, have a way of doing it so someone considered but not lose their place. But also, they do not have to go to the front of the line. They should have a place where they can sit and have a marker so that the entity knows when that person should move to the front of the line. So it is not affirmative action but just ensuring they have equal opportunity.

The food in the facility is requested. Again, it depends. Is it a long period of time? If it is half an hour interview, it may not be necessary for a person to have food with them in the facility. You must balance how that works. The deaf swimmer I think happens all the time now.

In the sporting world and in high school and college, the issue of legal rules that discriminate on the basis of disability that are not essential can be accommodated but again it is a matter of are you fundamentally altering the program? Are you giving somebody such an advantage it is unfair? That is how you would look at that.

This one is near and dear to my heart because it has come up a lot. I know county government and state government and city government has been dealing with this issue . It varies by different parts of the country. People with disabilities especially when talking about sheltering, you may be sheltering in place overnight but you may be sheltering in place for week.

There are specific issues that you would have to consider. I recommend that you go to some government websites regarding this. The ADA.gov has technical assistance that helps with this. There are people with disabilities who cannot use cots. Having some other form of bedding or a quiet place in refrigeration facilities.

All of these and many other kinds of issues will come up for people with disabilities, so you need to think about in terms of that is not so much reasonable modification but thinking in advance. Knowing you need these kinds of facilities . There are issues outside of reasonable modification that you have sign language interpreters or materials in print and have them available in advance or in some accessible format. There are many issues to think about in terms of emergency preparation.

I think I have gone on for a long time. I am hoping that you have some interesting questions or issues that you are facing that we can all talk about. See how we go from here.

MODERATOR: Thank you so much. What a wonderful session John. Yes there are a plethora of great questions. Our first question comes from Heidi. Can you talk about methods of administration and criteria other than elements that are not about physical access or AIDS but about methods and criteria.

JOHN: Heidi you are a good reader of regulations and that is great. The methods of administration provision of the regulations deals with where you have policies that you must have in place to avoid discrimination.

One of the ones that comes up a lot and governments tend to think about, the county government, the college whether public or private, the entity is doing something and they have contracts with other people. Those people are going to do things. They may contract out the food services for County fair. They may contract out the handling of a specific program to an entity.

The county would think we are giving that to somebody else so we do not have to worry about it but the answer is no. They do. They must have a method of administration and criteria in place that ensures people with disabilities can have access to the program and the contractor has that responsibility. The public entity and private entity that is putting out the contract has a responsibility to ensure they are doing it correctly.

I am not sure if that is what you mean by methods of administration but that is the one that comes to mind most frequently I have seen a lot. In terms of ensuring any number of programs and activities where the contract -- you cannot contract away your ADA responsibilities. In fact when you have a contract, you have obligations to ensure the contractor is carrying them out because they are part of the program. They are both liable. The public entity and the contractor. I hope that helps.

MODERATOR: Thank you so much. The question is does personal devices within public social services programs include individual computers with assistive microphones and headsets with assistive technology software for the blind? For example, the provision of these devices to be given to customers to keep in their homes.

JOHN: That is a cutting-edge question. You had me probably until keeping them in their homes. You must look at the program you are operating. In the new world, in the digital world people are going to be using devices. To the extent that the personal devices the language would operate against it but to the extent that you provide support for others in that area, you are talking about -- let us take the easy cases.

If we were talking about a nursing home that provided some of these for people with disabilities. I think this is uncharted territory. Maybe I can do partly pitch here. Several federal agencies over the next course of the next several months will issue regulations. The Department of Justice said it will issue a regulation under Title II of the ADA for web access and app access.

The Department of Health & Human Services is doing a comprehensive federal program if you are a reader of reginfo.gov where nobody in their right mind is, but if you went to it today you would see 2 days ago, a regulation on 504 comprehensive regulation went from HHS to and will be coming out pending review.

I think this is an issue to raise with federal agencies as they are looking at it. There is also a regulation and advance notice that has come out from HUD on 504 in the Fair Housing Act. You have another few months to provide comments.

What I am saying is this is a cutting-edge issue and there is not an answer I can give that is cut and dried. I do not know what federal agencies will do with this. But I doubt it is important for you to be aware of these issues and have your organizations raise these issues with the federal government as they are considering what it means to have accessible information and communication technology. What does it mean to have access to websites and apps? How does it work with personal services and devices? I think that is a tough issue but an interesting one.

MODERATOR: Thank you so much. The next question is from Bobby: Should service animals be allowed in public swimming areas?

JOHN: Yes of course. What Justice has said before, a blind person who uses a dog, which is the easiest example for wayfaring, would need the dog to come to the edge of the pool and lead them into the pool. No one has said the dog has to go into the pool but they could lead the person to the pool and sit at the edge of the pool or sit with them as they sign themselves next to the pool. Or if they are at the pool bar, the dog should be there with them. It is a place everyone goes. It is not a healthcare problem. The dog and the water is a different issue.

MODERATOR: Thank you. We had several questions. The next question is from been as it relates to miniature horses. It is not a miniature horse also considered under the ADA as a service animal? You answer this earlier but because there are so many questions about it, can you provide additional clarification?

JOHN: It is confusing. The answer is it is not a service animal. It is not covered by the service animal provisions. It is covered by a separate provision. This might be too technical but it is an important technical point. They are not automatically allowed everywhere the public is allowed to go in the way that a dog is.

You must look at those assessment factors and decide about the miniature horse. That is because of some of the natures of ahead. It is not a service animal. However you do have to make a reasonable modification of policy to allow it if it fits within the assessment factors. Is not automatic. You must go through some steps before you have access with a miniature horse. I hope that is understandable to you.

MODERATOR: Thank you that is a great answer. The next question is from Luke: Entity asked for proof of vaccination of service animals such as when a person wants to bring a service animal when they are hospitalized?

JOHN: No. The service animal is allowed to go wherever people go. If the city has a requirement that everybody has to be vaccinated with every dog but there is no requirement that a dog has to be vaccinated two into a hospital.

MODERATOR: Thank you the next question is just an. If a patient with a service animal is admitted to the hospital and does not have a person who can care for the animal and if they are unable, how long must you give them to try to arrange care before beginning the process of having an animal picked up or boarded?

JOHN: This is a great question because it raises an issue we have learned. What we have learned in the fat past 5 to 10 years emotional support animals really help people heal faster. There is a lot of evidence that shows that. There is a movement in a lot of places to allow animals and hospitals. Or in healthcare facilities because it increases the ability of the person to get better for a variety of reasons.

That being said, the regulation does not put the hospital in the position of having to care for the animal. I would say that if I was looking at the timing of it, it would look at -- first of all let me say, the regulation does not require the hospital to take care of the dog. That does not mean the hospital or the staff at the hospital could not choose to do it if they wanted to. There is nothing that says they cannot and that would be their own choice.

You might find someone willing to walk the dog a few times a day. So it can relieve itself etc. or bring in water . But there is no requirement for that. If we are talking straight requirements, I would say it would be as long a period of time that you have to have the dog there with you without support, is how long the dog will be able to exist without water or food and being able to relieve itself. That is a fairly short period of time.

MODERATOR: Thank you. The next question is from Ali: Please clarify whether undue financial and administrative burden applies to requests for modification of policies, practices, procedure . Does the answer change if the request is related to making a structural change to meet and individuals need?

JOHN: If you remember when I had the language from the statue, undue financial and administrative burdens is not there for reasonable modification. When Congress did the ADA, they were very careful about where they put undue burden. Undue burdens are not reasonable modification policies and procedures. Therefore, that is not -- fundamental alteration is a fundamental alteration.

I think some people would say it is reasonable accommodation so if you are talking about millions of dollars, maybe reasonable it is not reasonable modification but there is nothing there under burdens. I am a bit unclear about the question about if you are talking about a facility kind of change.

If the obligation, if we are talking about making a facility accessible, there are very specific rules for both existing and new construction that are different for Title II and Title III that would apply. If reasonable modification, if we are talking about removal of a barrier.

I think I would analyze that as program accessibility under Title III or barrier removal under Title III. I would not look at it is reasonable modification of policy or procedure. This is a good example that comes to mind. If we have time you can ask if you have another.

MODERATOR: The next question is for accessible seating to Deaf and Hard of Hearing individuals that may need to be close to the front for lip reading and watching an interpreter, do they do the venues provide that option?

JOHN: This is a great point. The regulations do not say that. The regulations only talk about accessible features of the seats and what is needed. I can tell you the Kennedy Center in Washington DC does do that. They do provide if you tell them if you have vision loss or hearing loss and you need to be close, they will accommodate that and give you seats that are close to that situation. I think that is good practice.

I think to me it makes sense in terms of reasonable modification. Again, there is no requirement that they hold seats for that purpose, which would help with making that work but there is something. I can tell you a number of the performance venues in Washington DC area also has special performances where they have sign language interpreters.

They provide seating for them close to where the interpreter is. Or they have open captioning in an area and provide seating close to the stage so the persons who need it can see the stage as well as the captions. I think the Kennedy Center has been a leader nationwide and has worked with the art community to ensure that happens but I would certainly hope venues would be doing that.

MODERATOR: Thank you for that answer. Here is a similar question. The question is from Charles. Individuals with low vision accessible seating when they need to be seated closer to the stage and the screen since the ticket seller cannot ask for documentation, can they legitimately answer yes when asked if they have a disability which meets the accessible seating?

JOHN: The accessible seats are in very different parts of the facility. Accessible seats may not be the way for them to get that. I think they should be able to say I need seats close to the stage because of my disability and that should be enough.

MODERATOR: Thank you.

JOHN: Please keep in mind they will have to pay the price of whatever expensive seats are next to the stage. But they are entitled to try to get to those.

MODERATOR: Thank you. The next question we have time for maybe one or two more. It is from Cassandra. Have you encountered any Title II reasonable modification requests from a member of the public regarding regulations of city codes on homelessness, specifically a homeless resident violating city code on homeless and then requesting reasonable modification due to disability?

JOHN: No. This is a new one for me. I am sure there is a story that goes with that question I do not understand. But I am not familiar with that issue coming up.

MODERATOR: Thank you. The next question is: A bicycle adapted electronic or standard be considered a mobility device?

JOHN: The definition if -- it meets the definition. I want to go back and check the language for gas driven -- hold on. It is not gas driven but electronic. I think it could. I think the idea behind OPDMDs is they are for a variety of devices that were designed for people or were not designed for people with disabilities.

They can often be modified by an individual or a company for them that makes them be able to transport themselves in the world . The idea for that I think is they can be included. Powered by battery, fuels, or other engine. So I think that is yes.

MODERATOR: Thank you so much and due to time restraints that will be the last question. If we are unable to address your questions today, they will be submitted to John to answer and then we will present those to the attendee as to what the answer is. John we would like to thank you so much for your knowledge and your experience and expertise that you have brought to the session of our conference.

Our final session for the conference is the panelist session entitled ask the expert. It will begin at 3 PM Eastern daylight Standard Time. John will also be one of the panelists and he can continue to answer those questions you presented. Thank you so much and we will see you back at 3 PM.

Session Ended.

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