

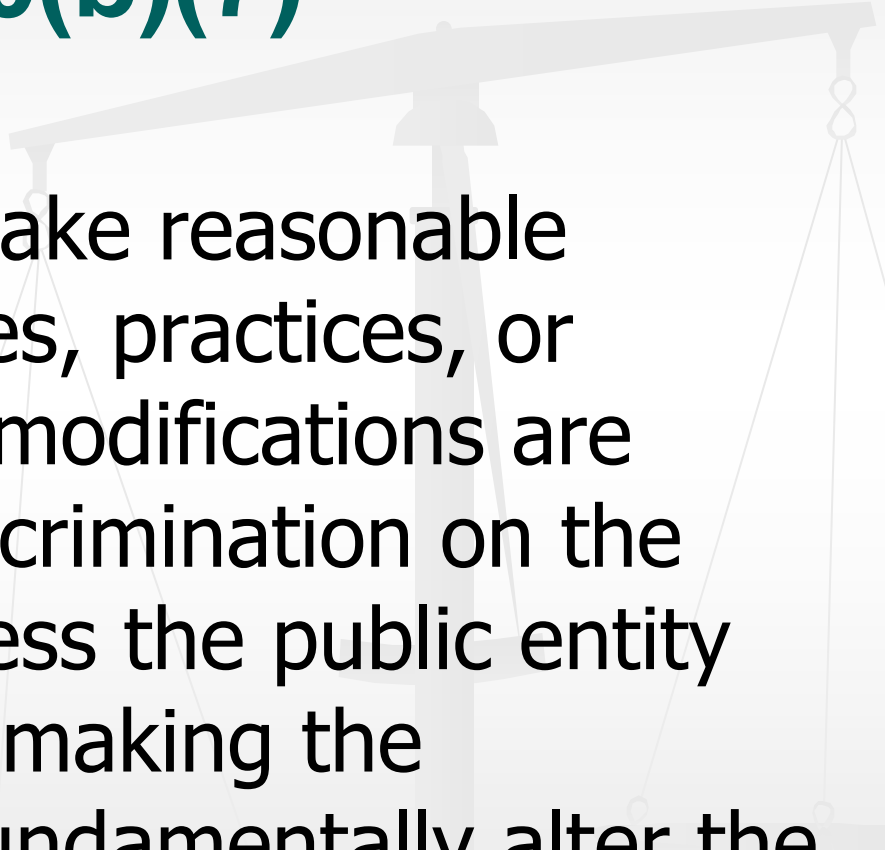
# **Reasonable Modifications: Policies, Practices, and Procedures**



**GSFIC and State ADA  
Coordinator's Office  
2010 Revised ADA Regulations  
Atlanta, Georgia  
March 14, 2012**

# Reasonable Modifications

## § 35.130(b)(7)



A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

**So.....**

**How Does This Apply To:**

**Service Animals**

**Communication and Auxiliary Aids**

**Wheelchairs and Other Power-Driven  
Mobility Devices**

# **Service Animals**





# Service Animals

- Adds “service animal” definition and service animal provisions to title II; and
- Codifies a variety of the Department’s longstanding policies and interpretations regarding service animals.

# Definition of Service Animal

(§ 35.104 in Title II and § 36.104 in Title III)

“Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability... The work or tasks performed by a service animal must be *directly related* to the individual's disability...”

# What does this mean?

- Limits the species of service animals to dogs;
- Makes clear that comfort or emotional support animals are not covered; and
- Makes clear that individuals with physical, sensory, psychiatric or other mental disabilities can use service animals.

# Definition: Do Work or Perform Tasks



- Requires that the dog be *individually trained to do work or perform tasks*.
- The work or tasks performed by a service animal must be *directly related* to the individual's disability.

# Definition: Do Work or Perform Tasks ..... Continued

- Includes a non-exhaustive list of examples of work and tasks, such as retrieving items, e.g., medicine or telephone.
- Covers individuals with psychiatric, intellectual, or other mental disability that use service animals.

Example: Helping persons with psychiatric and neurological disabilities by reminding to take medication, preventing or interrupting impulsive or destructive behaviors.

# Emotional Support Animals

- Because service animals must do work or perform tasks, emotional support and comfort animals *are not included* in the definition of service animal.
- The provision of emotional support, well-being, comfort, or companionship *do not constitute work or tasks* for the purposes of the service animal definition.

# Revisions to the General Service Animal Provisions

- Service animal provisions: § 35.136 in Title II
- Overview of changes:
  - ❖ Provides when a service animal can be excluded.
  - ❖ Requires animal to be under handler's control.
  - ❖ Provides guidance on inquiries.
  - ❖ Care and supervision.
  - ❖ Access to all areas open to public.
  - ❖ Surcharges.

# Exclusion of Service Animals

- General rule is that covered entities must permit service animals. The revised rules, however, add two specific exceptions for when service animals can be excluded:
  - ❖ The animal is out of control and the handler does not take effective action to control it; or
  - ❖ The animal is not housebroken.
- The handler should be given the opportunity to participate without the animal.



# “Under Handler’s Control”

- Must have harness, leash, or other tether.
- If handler is unable to use these because of his or her disability or because use would interfere with the safe and effective performance of work or tasks, then the animal must otherwise be under the handler’s control ( i.e., voice control, signals, or other effective means.)

# Permissible Inquiries

- Only *two* inquiries may be made by covered entities:
  - ❖ Whether the animal is required because of a disability; and
  - ❖ What work or task the animal has been trained to perform.
  - ❖ Generally, inquiries may not be made when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

# Miscellaneous Provisions

- Covered entities are not responsible for the care or supervision of a service animal.
- Service animals may accompany their handlers to areas of a public accommodation or public entity.
- Covered entities may not require people with disabilities to pay pet fees or surcharges that are not applicable to individuals without pets.



# **Beyond Service Animals**

## **Miniature Horses**

# Miniature Horse Requirements

- Rules require reasonable modifications to permit a miniature horse that has been individually trained to do work or perform tasks.
- Rules provide assessment factors to assist entities in determining whether reasonable modifications can be made.

# Miniature Horses

- Miniature horses range in weight from 70 to 100 pounds.
- Miniature horses can range in height from 24 to 34 inches.

# Other Requirements for Miniature Horses

- ❖ Sections 35.136(c)-(h)'s and § 36.302(c)(3)-(8)'s service animal requirements also apply to miniature horses.

- ❖ Admit person with a disability even if animal is properly excluded.
- ❖ Care and supervision.
- ❖ Inquiries.
- ❖ Access to all public areas.
- ❖ Surcharges.



# **Communications and Auxiliary Aids and Services**



# General Rule: Title II

“A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.”

# Revisions to Effective Communication Requirements

- Companions with disabilities.
- Discussion of types of auxiliary aids and services that are necessary to ensure effective communication.
- Limitations on use of individual accompanying person with a disability as an interpreter.
- Performance standards for video remote interpreting services.

# Individuals with Disabilities

- Individuals who are deaf or hard of hearing;
- Individuals who are blind or have low vision; and
- Individuals who have speech-related disabilities.

# Effective Communication

- § 35.160 Title II (“Communications”)
- Definition of auxiliary aids revised to include additional examples such as:
  - ❖ Accessible electronic and information technology.
  - ❖ Qualified interpreters *on-site or through video remote interpreting services.*

# Other Examples. . .

Other examples of auxiliary aids and services:

- ❖ Voice, text, and video-based telecommunications products and systems.
- ❖ Real-time computer-aided transcription services.
- ❖ Accessible electronic and information technology.
- ❖ Braille or tactile displays.
- ❖ Large print materials.
- ❖ Screen reader software.

# Qualified Reader

“Qualified reader” defined as “a person who is able to read effectively, accurately, and impartially, using any necessary specialized vocabulary.”

# Qualified Interpreter

“Qualified interpreter” defined as “An interpreter who, via video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Includes sign language interpreters, oral transliterators and cued-language transliterators.”

# Companions

- Covered entities must communicate effectively with companions with disabilities, as appropriate.
- Companion defined as “family member, friend, or associate of an individual seeking access to a service, program or activity of a public entity, who along with such individual is an appropriate person with whom the public entity should communicate.”



# Types of Auxiliary Aids or Services: Factors to Consider

- Type of auxiliary aid or service will vary in accordance with:
  - ❖ Method of communication used by individual;
  - ❖ Nature, length, and complexity of communication involved; and
  - ❖ The context in which communication is taking place.
- Provide auxiliary aids in accessible formats, in timely manner, and in manner that protects privacy and independence of individual.

# Video Remote Interpreting

Definition:

“An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images...”

# Video Remote Interpreting: Standards

DOJ standards require:

- Quality of video and audio that is high quality, clear, real-time, with clear uninterrupted images;
- Dedicated high-speed connection;
- Picture: Clear, sufficiently large, and sharply delineated, showing face, arms, hands and fingers;
- Voices: clear and easily understood transmission; and
- Quick set-up and training of users.

# Use of Adults Accompanying Individual With a Disability

- Public entities shall not require individual to bring own interpreter.
- Public entities shall not require adults accompanying individual to interpret except:
  - ❖ In emergency involving imminent threat to safety or welfare of individual or public and no interpreter available, or
  - ❖ Where specific request by person with disability, accompanying adult agrees, and reliance on that person is appropriate under circumstances.

# Use of Children as Interpreters

Only permissible in emergency involving imminent threat to safety or welfare of an individual or the public where there is no interpreter available.

# **BONUS ROUND:**

## **Wheelchairs and Other Power-Driven Mobility Devices**

# Mobility Devices: Overview of Changes

- Adds a definition of “wheelchair.”
- Adds a definition of “other power-driven mobility device.”
- Provides a number of general provisions regarding these two categories of mobility devices.

# Definition of Wheelchair

“A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.”



# Use of Wheelchairs

- Covered entities must permit individuals with mobility disabilities to use wheelchairs in any area open to pedestrian use.
- Must also allow individuals with mobility disabilities to use manually-powered mobility aids (includes include walkers, crutches, canes, braces, or other similar devices) in areas open to pedestrian use.

# Other Power-Driven Mobility Device (OPDMD) Defined

“[A]ny mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion.”

# Definition of “OPDMD,” Continued

Includes:

- ❖ Golf cars;
- ❖ Electronic personal assistance mobility devices (e.g., Segway®); or
- ❖ Any mobility device that is not a wheelchair that is designed to operate in areas without defined pedestrian routes.

# Use of OPDMDs

- Covered entities must make reasonable modifications to permit individuals with mobility disabilities to use OPDMDs, unless. . .
  - ❖ *the entity* can demonstrate that the *class* of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity.

# Reasonable Modifications Regarding OPDMDs

- Burden on entity to show it is not reasonable to allow OPDMD on premises or portion of premises.
- Assessment is made regarding the *class* of devices, instead of an *individual's use* of the device.

# OPDMD Assessment Factors

- Covered entities must consider specific assessment factors to determine whether a reasonable modification can be made.
  - ❖ Type, size, weight, dimensions and speed of device;
  - ❖ Facility's volume of pedestrian traffic;
  - ❖ Facility's design and operational characteristics;

# OPDMD Assessment Factors

- ❖ Whether legitimate safety requirements can be established to permit safe operation of the OPDMD in the specific facility; and
- ❖ Whether there is a substantial risk of substantial harm to immediate environment or natural or cultural resources; conflicts with Federal land management laws and regulations.

# Legitimate Safety Requirements

- Described in § 35.130, new for Title II entities.
  - ❖ Legitimate safety requirements necessary for safe operation are permissible.
  - ❖ Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.



# Impermissible Questions

Entities may *not* ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

# Permissible Questions

The rules allow covered entities to ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person’s disability.

# Credible Assurance

- A valid, disability parking placard or card, or other State-issued proof of disability: one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements.
- In lieu of valid placard, card, or other State-issued proof of disability, verbal representation, not contradicted by observable fact, that the OPDMD is being used because of a mobility disability.