

DISABILITY PROTECTIONS IN GOVERNMENT SERVICES, PROGRAMS, AND ACTIVITIES (ADA TITLE II)

INTRODUCTION

The United States Americans with Disabilities Act of 1990, Title II states that public agencies may not discriminate against qualified individuals with disabilities. It also requires public agencies to provide accessible facilities, services, activities, and communications consistent with the requirements established in the Rehabilitation Act of 1973, Section 504.

The intent of Title II is to further eliminate barriers that prevent disabled people from participating fully in community life. It mandates that new government buildings, including transportation facilities, be readily accessible to individuals with disabilities, including wheelchair users. New buses and rail vehicles and all existing facilities must also be accessible to disabled individuals. There are limited exceptions for buildings and transportation systems included on the National Register of Historic Places.

Title II applies to all public agencies, regardless of size or whether they receive federal assistance. It applies to and has a significant impact on almost every aspect of municipal operations, entertainment venues, auxiliary aides and services, and the use of service animals.

The United States Department of Justice is responsible for enforcing the requirements of Title II.

WHO IS PROTECTED?

Title II protects “qualified individuals with disabilities.”

- An “individual with a disability” is a person who has a physical or mental impairment that substantially limits a major life activity, has a record of such impairment, or is regarded as having such impairment.
 - “major life activities” include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;
 - “major life activities” also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;
- A “qualified individual with a disability” is a person with a disability who meets the essential eligibility requirements for the program or activity that the public agency is offering. The essential eligibility requirements will vary according to the type of service, program, or activity.

BASIC REQUIREMENTS

Title II prohibits public agencies from discriminating against individuals with disabilities. To meet this standard, public agencies must actively avoid discrimination by modifying policies, procedures, and practices where necessary and by administering all services, programs, activities, benefits, or aids in the most integrated setting possible.

When providing public services, public agencies must:

- assure that each public service, when viewed in its entirety, is accessible and usable by individuals with disabilities;
- provide public services in an integrated setting whenever possible. Agencies may offer public services that are different from those offered to the general population only when doing so is necessary to assure that individuals with disabilities will receive equally effective services and equal opportunity;
- eliminate eligibility standards or rules that effectively deny equal opportunity to individuals with disabilities, unless the standards or rules are necessary for the provision of the public service;
- make modifications, within reason, to policies, practices and procedures that effectively deny access to individuals with disabilities unless the modifications would make a fundamental alteration in the public service.
- Public agencies may achieve accessibility by redesigning equipment, moving public services to accessible buildings or assigning aides to individuals with disabilities. However, they need not make structural changes to facilities if other means of assuring accessibility are available.

PROHIBITED PUBLIC AGENCY ACTIONS

Public agencies MAY NOT:

- deny individuals with disabilities the right to participate in a public service, or in any way limit their participation, simply because the person has a disability;
- limit the opportunity to enjoy any right, privilege or advantage;
- insist that individuals with disabilities participate in a different version of a public service rather than the standard public service offered to non-disabled members of the community;
- discriminate against individuals with disabilities through contracts or other arrangements. This means that public agencies must scrutinize the practices of their suppliers and others with whom they do business in order to provide services;
- charge individuals with disabilities for auxiliary aids, accessibility, or adaptive supports or services provided to the individual;

- use criteria or methods of administration that effectively create discrimination. For example, they may not charge an additional entry fee to admit a service animal;
- choose locations for public services that exclude individuals with disabilities and thus defeat the purpose of the public service. However, there is a limited exclusion for leased facilities;
- create requirements or standards that effectively prevent a qualified individual with disability from participation in a public service. For example, they may not require an individual with a disability to have an attendant. However, they may require that an individual be able to attend to their personal needs including eating, toileting, or dressing if these activities are needed for participation;
- conduct licensing or certification programs in a discriminatory manner;
- deny or limit public services to an individual who has a relationship with an individual with a disability;
- carry a disabled person to achieve accessibility, other than in exceptional cases. For example, carrying an individual to provide access to a public service that take place on an oceanographic vessel.
 - Individuals who participate in carrying an individual with a disability must receive formal instruction on the safest and least humiliating means of carrying.

Exclusions

- Public agencies are not required to provide personal items such as, but not limited to: wheelchairs, prescription eyeglasses, and electronic or magnification readers for personal use.
- Public agencies do not have to fundamentally alter a public service or take an action that would impose undue financial or administrative burden. However, to qualify for this exclusion, they must follow specific guidelines in a thoughtful, complete, and well-documented decision-making process. The head of the public entity or their designee must:
 - explore and consider all resources for funding and operating the public service;
 - prepare a written explanation of how and why the decision was reached;
 - undertake alternative methods of providing the public service.

BUILDING CONSTRUCTION AND ALTERATIONS

Title II establishes a high standard of accessibility for new buildings, requiring public agencies to assure that newly constructed buildings and facilities are free of architectural and communications barriers that restrict access or use by individuals with disabilities. However, Title II does not require public agencies to retrofit existing buildings to eliminate barriers unless renovation or additional constructions are commenced.

Alterations to historic properties must comply with accessibility standards to the maximum extent feasible.

Public agencies may choose to conform to one of the following technical standards:

- The Uniform Federal Accessibility Standards (UFAS) Appendix A to 41 CFR Part 101-19.6; online at <https://www.access-board.gov/aba/ufas.html>
- The Americans with Disabilities Act Accessibility Guidelines (ADAAG), 36 CFR Part 1191; online at <https://www.ada.gov/law-and-regs/design-standards/>; or
- American National Standards Institute (ANSI) A117; online at <https://codes.iccsafe.org/content/icca117-12017/american-national-standard>.

COMMUNICATIONS

Title II requires public agencies to assure accessible and effective communications with applicants, participants, members of the public, and companions with disabilities. Public agencies must:

- communicate effectively about public services to applicants, participants and members of the public;
- provide appropriate auxiliary aids and services so that disabled persons may fully participate in public services. The public agency may not charge the individual for the use of such auxiliary aids;
 - auxiliary aids may include: qualified interpreters or readers, assistive listening headsets, television captioning and decoders, text telephones, taped texts, Braille materials and large print materials;
- provide a means by which the individual with disability can request an auxiliary aid so they can participate in a public service, taking the individual's choice of aid into consideration;
- provide specialized hearing aids or devices for the deaf, such as Telecommunications Devices for the Deaf (TDD) units and similar devices, systems or services if the agency communicates by telephone with recipients of a public service;
- when using an automated-attendant communication system, including voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, the system must provide effective real-time communication with individuals using auxiliary aids and services, including Text Telephones (TTY) and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems;
- telephone emergency services, including 911 services, must provide direct access to individuals with speech and hearing impairments.

WEBSITES AND MOBILE APPLICATIONS

In June 2024, the Department of Justice established requirements for making accessible the services, programs, and activities offered by state and local government entities to the public through the web and mobile applications.

- The technical standards adopted are known as Web Content Accessibility Guidelines 2.1 Level AA (“WCAG 2.1 AA”).
- The standards are internationally developed and accepted and based on four main principles known by the acronym “POUR.” The principles are focused on making sure websites and mobile apps are Perceivable, Operable, and Understandable, including by people with disabilities, and Robust (meaning the content is compatible with and can be interpreted reliably by assistive technologies such as screen readers).
- *Public entities, other than special district governments, with a total population of 50,000 or more must comply with this rule by April 26, 2027.*
- *Public entities with a total population of less than 50,000 or public entities that are special district governments must comply with this rule by April 26, 2028.*

SERVICE ANIMALS

Generally, a public agency must modify its policies, practices, or procedures to permit the use of service animals by individuals with disabilities.

- A public agency may ask an individual with a disability to remove a service animal from the premises if the animal is out of control and the handler does not take effective action to control it, or if the animal is not housebroken.
- If a service animal is properly excluded from the premises, the agency must give the individual with a disability the opportunity to participate in the public service without having the animal on the premises.
- A public agency is not responsible for the care or supervision of a service animal.
- In situations where it is not obvious that an animal is a service animal, only two specific questions may be asked: (1) is the animal a service animal required because of a disability; and (2) what work or task has the animal been individually trained to perform?

OTHER REQUIREMENTS

- A public entity with fifty or more employees must assign an individual to coordinate its efforts to comply with and implement Title II, including the investigation of complaints. This individual's name, office address and telephone number must be made available to the public.
- The entity must establish and publish a grievance procedure for prompt and fair resolution of complaints concerning Title II.
- All public agencies must provide applicants, participants, beneficiaries, and interested members of the public with information about the rights and protections that Title II offers. They may do this by:
 - Publishing pamphlets and manuals describing their programs and activities.

INFORMATION RESOURCES

US Department of Justice ADA website:

<https://www.ada.gov/>

Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services
(as amended by the final rule published on September 15, 2010):

<https://www.ada.gov/law-and-regs/regulations/title-ii-2010-regulations/>

The ADA standards for accessible design can be found online at

<https://www.ada.gov/law-and-regs/design-standards/>

US Department of Justice Fact Sheet: New Rule on the Accessibility of Web Content and Mobile Apps
Provided by State and Local Governments:

<https://www.ada.gov/resources/2024-03-08-web-rule/>

Michigan Municipal League Risk Control Solution *Disability Protections in Employment*, available at:

<https://mml.org/programs-services/risk-management/risk-management-resources/risk-control-solutions/>

***Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.***



Important Phone Numbers

MML Risk Management Services	800.653.2483
Loss Control Services	800.482.2726
Michigan Department of Labor	517.373.1820
Michigan Department of Civil Rights	313.456.3700
Equal Employment Opportunity Commission	800.669.4000

Note:

This document is not intended to be legal advice.

It only identifies some of the issues surrounding this topic.

***Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***

DISABILITY PROTECTIONS IN GOVERNMENT SERVICES, PROGRAMS AND ACTIVITIES (ADA TITLE II)

Title II of the Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities in government services, programs and activities.

This self-assessment guide presents key elements of related laws, regulations, and standards. Evaluate your operations against best practices by asking the questions below. A response of "No" to any question indicates an area that may require further evaluation and an action plan for improvement or correction.

Organization Name		Completed by	Date
Yes	No		
		1. Does your organization provide services, programs and activities to qualified individuals with disabilities on an equal opportunity basis? This includes contracted services.	
		2. Are facilities at which you provide services inclusive of individuals with disabilities?	
		3. Do eligibility requirements for participation not discriminate against individuals with disabilities?	
		4. Do your policies and procedures allow for reasonable accommodation when an individual with a disability requests one?	
		5. Do you provide services in a manner that allows an individual with disability to obtain them as readily as other members of your community can?	
		6. Are the services you provide to individuals with disabilities at least as effective as those for other patrons?	
		7. Are your existing facilities in compliance with the ADA?	
		8. Are buildings and equipment accessible to individuals with qualified disabilities through restructuring or other means of accessibility?	
		9. Do you provide barrier free accessibility for all new construction?	
		10. Does your communication of services comply with the ADA?	
		11. Is your communication of services accessible and effective to individuals with hearing, speech or visual impairments?	
		12. Are you prepared to provide auxiliary aids free of charge to persons who request readers, Braille formats, audio players or other alternative communication techniques?	
		13. Do you have a clearly publicized means for qualified individuals to request such assistance?	
		14. Have you provided TDD access to qualified individuals for emergency service and for services that normally require communication by telephone?	
		If you have fifty or more employees:	
		15. Have you designated an individual to coordinate Title II and to handle complaints?	
		16. Have you made this individual's name and phone number available to the public?	
		17. Have you established a written grievance procedure and communicated it to the public?	
		18. Have you completed and retained for at least three years a self-evaluation of your compliance with ADA Title II?	
		19. Do you maintain all equipment in good working order?	

CONCLUSIONS



If you can honestly answer “yes” to all applicable questions, your risk management program for Disability Protections in Government Services, Programs and Activities is on solid footing – congratulations! Following the recommended practices reduces your organization’s exposure to future claims in this area. Remain vigilant for new or changing risks and address them promptly.



If you answered “no” to one or more questions, your organization faces increased exposure to disability discrimination claims and the associated direct and indirect costs. Each “no” response indicates a possible deficiency in your risk management program. You should consider these carefully and take one or more of the actions below:

- Correct any deficiency that may exist;
- Contact your attorney for advice;
- Contact a specialist in ADA and disability services;
- Contact MML Risk Management Services at the numbers below;
- Contact MML Loss Control Services at the number below.

***Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.***



Important Phone Numbers

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