



CHOOSING AND NEGOTIATING AN ACCESSIBLE FACILITY LOCATION

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This brief is part of the *Accessible Health Care Series* available at:
www.cdihp.org/products.html#access_briefs

- Importance of Accessible Examination Tables, Chairs, and Weight Scales
- Review of Legal Research on Accessible Medical Equipment
- Health Care (Clinics / Outpatient) Facilities Access
- Providing Information in Alternative Formats
- Accessible Web-sites
- Improving Accessibility with Limited Resources
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1. INTRODUCTION

1. a. Complying with the ADA

The major pieces of federal legislation governing equal access to health care services for individuals with disabilities are the Rehabilitation Act (Rehab Act) and the Americans with Disabilities Act (ADA). These laws constitute a national mandate prohibiting discrimination based on disability in the provision of goods and services available to the public.

Section 504 of the Rehab Act prohibits any organization that receives federal financial assistance from denying individuals with disabilities equal access to the services. For example, hospitals, clinics, and other health care facilities that accept Medicaid, Medicare, or any other form of federal funding must comply with the Rehab Act. Section 504 states, “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” If the provider serves just one Medicare or Medicaid beneficiary, that provider’s entire operations must comply with the Rehab Act. Medicare and Medicaid managed care plans must provide programmatic access to all its enrollees with disabilitiesⁱ

ADA’s Title II extends the Rehab Act’s requirements to all state and local government activities. All health care providers who offer health care services, either directly or through contractual arrangements, to Medicare or Medicaid beneficiaries must comply with the Rehab Act because Medicare and Medicaid funding is considered federal financial assistance.

ADA’s Title III states: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”ⁱⁱ

All health care providers, including hospitals, nursing homes, psychiatric and psychological services, private physicians’ offices, diagnostic centers, physical therapy centers, and health clinics, are places of public accommodations and therefore must comply with Title III.ⁱⁱⁱ

1. a. Private Businesses that Serve the Public

If you own, operate, lease, or lease to a business that serves the public, then, you are covered by the ADA and have compliance obligations for:

- Existing facilities,
- Altered facilities, and
- When a new facility is constructed.

While it is not possible for many businesses, especially small businesses, to make their facilities fully accessible, much can be done without much difficulty or expense to improve accessibility. Therefore, the ADA requires that accessibility be improved without taking on excessive expenses that could harm the business. (See: **CDIHP Brief: Improving Accessibility with Limited Resources**), www.cdihp.org/products

*Existing facilities are not exempted by "grandfather provisions" that are often used by building code officials.

2. HOW TO MAKE THE RIGHT CHOICES IN EVALUATING NEW MEDICAL OFFICE SPACE^{iv}

Many facilities were built without features that accommodate people with disabilities, including people who use wheelchairs. This lack of accessibility makes it impossible for many people with disabilities to take part in everyday activities such as going to work, eating in a restaurant or shopping in a store. The ADA recognizes that for people with disabilities to participate in the everyday activities, they need to have access to the goods and services provided by businesses. It is important to know what to look when choosing new medical office space. The existence of an accessible parking space doesn't make a building ... accessible."

Here are some tips:

2. a. Leasing and ADA Compliance

2. a. i. Negotiability and Flexibility

Commercial leases are generally subject to a great deal of negotiation between owners and landlords, since businesses often need specific features in their spaces, and landlords are often eager for tenants and willing to extend special offers.^{iv}

2. a. ii. Responsibility

Both the proprietor who owns the building where the facility is located and the tenant who owns or operates the facility are responsible for compliance with Title III of the ADA. Allocations of responsibilities between landlord and tenant for removing barriers when readily achievable, and modifying policies, both in common areas as well as within places of public accommodations, may be determined by the lease or other contract between the parties.^v

Tenants are advised to review ADA obligations with their property owners. Alterations clauses in a lease often spell out what a tenant is allowed to do within leased space, while compliance clauses allocate responsibility to one party or another for compliance with federal, state, and local laws.^{vi}

Failure to determine, allocate, and execute ADA responsibility may result in either the tenant's or landlord's liability for non-compliance.^{vii}

2. a. iii. Costs

Leases should be reviewed to determine if the property owner or tenant is responsible for the cost of any ADA related changes.^{viii}

The existence of an accessible parking space doesn't make a building accessible.

The follow is a non-exhaustive list of disability access issues that should be evaluated in choosing a new business location:

- Adequate accessible parking,
- Accessible entrance,
- Doors at entrances,
- Accessible door hardware,
- Adequate wheelchair maneuvering space,
- Accessible fixed seating and tables, and
- Accessible sales and service counters.

3. RESOURCES

3. a. Access Guidance Documents

To conduct a thorough review of the access of your facility, it is recommended that you use an access checklist. There are many site survey tools available. Here are a few resources:

- **Checklist for Readily Achievable Barrier Removal**

Easy-to-use survey tool for identifying barriers in facilities. The complete checklists and worksheets are the kind of documentation that organizations should keep on file to demonstrate that they are making a good faith effort to comply with the requirements of the ADA.

www.usdoj.gov/crt/ada/checkweb.htm

- Kailes, J., **Americans with Disabilities Act Compliance Guide for Organizations**, 1995, (Hardcover)

Informal presentation on ADA compliance with chapters on: program access and nondiscrimination; physical access; communication access; and employment practices. Gives steps for completing an ADA compliance plan, contains checklists, planning sheets, samples of ADA compliance plans and lists many resources available for additional information and assistance. (Compliance with the transportation provisions of ADA is not covered).

www.jik.com/adacg.html

Contact June Isaacson Kailes, Disability Policy Consultant

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- **Removing Barriers to Health Care: A Guide for Health Professionals, 1998.**

This booklet provides guidelines and recommendations to help health care professionals ensure equal use of the facility and services by all their patients. This guide gives health care providers a better understanding of how to improve both the physical environment and personal interactions with patients with disabilities

www.fpg.unc.edu/~ncodh/rbar/

PDF (335KB): www.fpg.unc.edu/~ncodh/pdfs/rbhealthcare.pdf

3. b. Government Assistance

- **ADA BUSINESS CONNECTION**

- **U.S. Small Business Administration Office of Entrepreneurial Development, U.S. Department of Justice Civil Rights Division**

Americans with Disabilities Act (ADA) Guide for Small Businesses, October 15, 2002

www.sbaonline.sba.gov/ada/smbusgd.html

PDF (835 KB) www.sbaonline.sba.gov/ada/smbusgd.pdf

This 15-page illustrated guide presents an overview of some basic ADA requirements for small businesses that provide goods and services to the public. It provides guidance on how to make their services accessible and how tax credits and deductions may be used to offset specific costs.

- **[Reaching Out to Customers with Disabilities](#) An online ADA course for businesses**

A 10-lesson course divided it into individual lesson modules. Modules allow you and your staff to learn at their own pace. Topics include:

1. Policies & Procedures
2. Customer Communications
3. Accessible Design
4. Removing Barriers
5. Alternative Access
6. Maintaining Accessibility
7. Transporting Customer
8. Cost Issues
9. ADA Enforcement
10. Information Sources

- **[Ten Small Business Mistakes \(video\)](#)**

This thirteen-minute video identifies common mistakes that small businesses make when trying to comply with the ADA and addresses the importance and value of doing business with 50 million people with disabilities.

www.ada.gov/videogallery.htm#anchor10mistakes990

- **ACCESSIBLE PARKING**

These documents provide helpful information and diagrams on new construction requirements and restriping for accessible parking lot space requirements.

- **Van-Accessible Parking Spaces**

Technical Bulletin - Parking

www.access-board.gov/Adaag/about/bulletins/parking.htm

- **ADA Business Brief: Restriping Parking Lots (October 2001)**

Department of Justice (DOJ)

www.ada.gov/restribr.htm

PDF (192 KB) www.ada.gov/restribr.pdf

- **THE ACCESS BOARD**

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Washington, DC 20004-1111

Phone: 202.272.5434 (Voice) 202.272.5449 (TTY) 202.272.5447 (Fax)

Email: info@access-board.gov. www.access-board.gov

These resources provide information about the Americans with Disabilities Act Accessibility Guidelines (ADAAG):

- **ADAAG (Americans with Disabilities Act Accessibility Guidelines)**
www.access-board.gov/ada-aba
- **ADAAG Facility Access Surveys**
www.access-board.gov/adaag/checklist/a16.html
- **ADAAG Technical Assistance**
Email: ta@access-board.gov
Phone: (800) 872-2253 (v)
(800) 993-2822 (TTY)
Fax: (202) 272-0081

- **ADA Information Line (DOJ)**

800.514.0301 Voice/800.514.0383 TTY www.usdoj.gov/crt/ada/infoline.htm

Toll-free ADA Information Line provides information and free publications about the requirements of the ADA including the ADA Standards for Accessible Design.

Title II (State and Local Governments)

Title III (Public Accommodations)

Public Access Section, Civil Rights Division, U.S. Department of Justice

P.O. Box 66738 Washington, DC 20035-9998

1 (800) 514-0301; 1 (800) 514-0383 TTY

- **Disability and Business Technical Assistance Centers (DBTACs)**

Phone: 800.949.4232 (V/TTY) www.adata.org/dbtac.html

Regional centers provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the ADA.

ENDNOTES

ⁱ Title II applies to all public entities, defined as “any state or local government. 42 U.S.C. §12131 (2002). Section 504 applies to any entity that receives federal funding. 29 U.S.C. § 794. Federal financial assistance can be direct or indirect. *Jacobson v. Delta Airlines, Inc.*, 742 F.2d 1202, 1211 (ninth Cir. 1984).

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} [ADA Guidelines for Small Businesses](#), June 1999. US Small Business Administration, Office of Entrepreneurial Development, www.sba.gov/idc/groups/public/documents/sba_homepage/home_ada_smbusgd.pdf

^v *Decisions, Decisions – How to Make the Right Choices When It Comes to Evaluating New Space*. On-line newsletter (achieved 32). Reel Grobman & Associates, 96 N. Second Street, San Jose, California 95113. www.reelgrobman.com/html/main_news32.html

^{vi} Ibid.

^{vii} Ibid.

^{viii} [Negotiating the Best Commercial Lease Terms](#). 2008. Nolo, 950 Parker Street Berkeley CA 94710-2524. www.nolo.com

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