
New ADA Regulations Update Standards and Broaden Requirements for Public Accommodations

by Christine Nicolaidis Kearns and Joanna Liberman

On July 23, just days before the 20th anniversary of the passage of the Americans with Disabilities Act (“ADA”), the U.S. Department of Justice announced a new final rule to revise substantially and expand its existing regulations implementing Title III of the ADA. Entities covered by Title III, which include virtually all businesses open to the public, must be aware of these changes to ensure that their facilities and practices do not violate the new requirements.

Title III of the Americans with Disabilities Act of 1990

Signed into law on July 26, 1990, and amended in 2008, the ADA is a comprehensive civil rights law that seeks to prevent discrimination based on disability by targeting barriers to employment, transportation, places of public accommodation, public services, and telecommunications for people with disabilities. Title III of the ADA requires that places of public accommodation and commercial facilities make themselves accessible to individuals with disabilities. Places of public accommodation include virtually all privately owned facilities that are open to the public, such as hotels, restaurants, bars, theaters, stadiums, retail stores, museums, libraries, parks, private schools, day care facilities, and recreation facilities.

Revisions to ADA Title III Regulations

The final rule is intended to make the Department’s regulations “consistent with current policies and published guidance, to reflect the Department’s experience since the regulation was first published in 1991, and to address and respond to comments received from the public in response to the Department’s 2008 Notice of Proposed Rulemaking.” It includes the following significant changes and additions:

- **Adoption of the 2010 ADA Standards for Accessible Design**

The final rule adopts revised ADA standards for accessible design in public accommodations. DOJ characterized the changes embodied in these new standards (the “2010 Standards”) as “more than incremental changes” to the previously applicable standards, which were issued in 1991 (the “1991 Standards”). True to that description, the final rule enacts substantive changes to the 1991 Standards and, in many cases, imposes heightened accessibility requirements. Among the items contained in the 1991 Standards that have been updated are: reach ranges; single user toilet rooms; assembly areas; common use circulation paths in employee work areas; location of accessible routes connecting site arrival points and accessible building entrances; direct access entrances from parking structures; and dispersion of guest rooms in transient lodging.

The 2010 Standards also address numerous new elements that were not covered by the 1991 Standards. These include requirements relating to amusement rides, playgrounds, golf facilities, miniature golf courses, recreational boating facilities, exercise machines and equipment, fishing piers, swimming pools, wading pools, spas, saunas, and steam rooms.

- **Service Animals**

The final rule updates the ADA regulations on service animals. It defines a “service animal” as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. Other animals (with the exception of miniature horses in certain circumstances) and dogs that are not trained to assist with a disability or who merely provide emotional support to their owners do not qualify as service animals. The rule also clarifies how a public accommodation must treat a person traveling with a service animal. For example, public accommodations may not require individuals with disabilities pay a surcharge for their service animal, even if individuals without disabilities are required to pay for their pets to visit.

- **Mobility Devices**

The final rule adopts a “two-tiered” approach to the requirements for mobility devices that distinguishes between manually powered devices like wheelchairs that are intended for use by people with disabilities as opposed to “other power-driven mobility devices,” such as golf carts or Segways, which are not designed primarily for use by disabled persons. Public accommodations must permit use of wheelchairs and manually powered mobility aids in all areas open to pedestrians. By contrast, public accommodations must only make reasonable modifications to their policies to permit persons with mobility disabilities to use other power-driven mobility devices. These other devices must be permitted unless the public accommodation can show that they cannot be operated in accordance with legitimate safety requirements.

- **Reservations for Places of Lodging**

The final rule includes heightened requirements to allow individuals with disabilities to make and utilize reservations for accessible rooms at places of lodging. Specifically, for reservations made by telephone, in-person, or through a third party, places of lodging must (1) allow individuals with disabilities to make reservations for accessible guest rooms during the same hours and in the same manner as other guests; and (2) identify and describe accessible features in the hotels and guest rooms offered by their reservations services.

The final rule contains additional requirements for entities that control places of lodging (though not for third-party operators of reservation systems) to ensure that accessible guest rooms that are reserved by disabled guests are actually available for those guests upon arrival. These requirements will apply to reservations made on or after the date 18 months after the publication of the rule.

- **Timeshare, condominium hotels, and other places of lodging**

The final rule states that timeshares, condominium properties, and other places of lodging that operate like hotels are subject to Title III and the 2010 Standards. All units designed and constructed for both residential and transient lodging purposes are covered by the ADA. Public use and common areas in facilities containing units subject to the ADA also must meet the 2010 Standards.

However, residential dwelling units that are designed and constructed for residential use exclusively are not subject to the transient lodging standards. Similarly, Title III does not apply to units designed and constructed to be rented or sold as exclusively residential units. Alterations to guest rooms in places of lodging where the rooms are not owned or substantially controlled by the entity that owns, leases, or operates the overall facility and the physical features of the guest room interiors are controlled by their individual owners are not required to comply with the obligations imposed by the ADA.

- **Effective communication**

The final rule provides guidance on how public accommodations must provide effective communication to guests with disabilities. In particular, it adds video remote interpreting (“VRI”) services as a type of auxiliary aid that may be used to provide the effective communication with disabled persons. VRI is an interpreting service that uses video conference or wireless technology to communicate via video images. A public accommodation that chooses to offer VRI must comply with performance standards specified in the final rule to ensure that VRI is effective in situations where it is the appropriate form of communication aid.

- **Ticketing**

The final rule includes requirements for public accommodations regarding the sale of tickets for accessible seating. It addresses the sale of season tickets; ticket prices; holding and release of accessible seating to customers who do not require accessible seating; the procedures for purchasing multiple tickets when buying accessible seating; and the prevention of fraudulent purchase of tickets for accessible seating.

Timing and Safe Harbor

The final rule has not yet been published in the Federal Register. It will take effect six months after its publication. Compliance with the 2010 Standards will be required beginning 18 months after the publication. During the period between the effective date of the rule and the compliance date, covered entities may choose whether to follow the 1991 or the 2010 Standards.

The final rule includes a “safe harbor” provision under which elements that were built or altered in compliance with the 1991 Standards will not be required to comply with the 2010 Standards until those particular elements are subject to future alterations. Existing facilities that are not in compliance with the 1991 Standards will not benefit from the safe harbor. Further, the safe harbor provision does not apply to those elements in existing facilities that are subject to new requirements that were not part of the 1991 Standards. These elements must be modified to the extent readily achievable to comply with the 2010 Standards.

Similarly, if a private entity constructed or altered required elements of a “path of travel” in accordance with the 1991 Standards, the entity will not be required to retrofit those elements to comply with the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

Recommendations for Businesses Covered by Title III

- Owners, managers, designers, and contractors of public accommodations and commercial facilities should consult with counsel to review their business policies and survey their physical facilities.
- While elements of existing facilities that were constructed in compliance with the 1991 Standards will likely be covered by the safe harbor provisions discussed above, the new requirements of the 2010 Standards are unavoidable. To the extent elements are not currently compliant, conformance with 2010 Standards will be required. And, future renovations and alterations must be done with the 2010 Standards as a guide.
- Covered entities will want to ensure that their policies are in accord with the revised regulations relating to service animals, mobility devices, reservation systems, ticketing systems, and the provision of effective communication to guests.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work or the authors below.

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