

## Americans with Disabilities Act – Communication Accommodation Project

### *A Resource for Voluntary Compliance with the ADA*

#### A JOINT PROGRAM OF

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## MEMORANDUM ON THE OBLIGATIONS OF HOTELS AND MOTELS UNDER THE AMERICANS WITH DISABILITIES ACT

Hotels and motels must be accessible to individuals with disabilities, pursuant to Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. The Justice Department has written a regulation to implement Title III. 28 C.F.R. Part 36.

The Americans with Disabilities Act was signed into law on July 26, 1990. The law and regulations became effective for hotels and motels on January 26, 1992. The implementation date of the law was carefully chosen to give places of public accommodation adequate notice of their new duties under the law.

The ADA defines a "place of public accommodation" to include:

[a]n inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor. 28 C.F.R. Section 36.104.

### Auxiliary Aids

Places of public accommodation have a duty to provide auxiliary aids and services to individuals with hearing impairments where necessary to ensure effective communication with individuals with disabilities. 28 C.F.R. Section 36.303(c). "Auxiliary aids and services" are defined to include:

Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments. 28 C.F.R. Section 36.303(b)(1).

For hotels and motels, this means that access to telephone and television service is required. The regulation specifies the following services to provide this access:

#### (d) Telecommunication devices for the deaf (TDDs)

(1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(e) Closed caption decoders. Places of lodging that provide televisions in five or more guest rooms and hospitals that provide television for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

28 C.F.R. Section 36.303 .

The analysis to the regulation explains that, unlike other places of public accommodation (which may not offer the opportunity to make outgoing calls on more than an incidental convenience basis), hotels and motels must have TDDs available so that deaf customers can make outgoing calls from the hotel. Additionally, the hotel's front desk must have a TDD to receive calls from the hotel's guests. In this way guests with hearing impairments can avail themselves of such hotel services as making inquiries of the front desk and ordering room service. 56 Fed. Reg. 35567 (July 26, 1991). Although the DOJ rule prohibits the assessment of a charge or "surcharge" for compliance with this section, 28 C.F.R. Section 36.301(c), the analysis does state that "reasonable, completely refundable deposits" are not considered surcharges prohibited by this section. "Requiring deposits is an important means of ensuring the availability of equipment necessary to ensure compliance with the ADA. 56 Fed. Reg. 35564 (July 26, 1991).

## **New and Altered Hotel Construction**

In addition to the requirement to provide auxiliary aids, hotels must also remove architectural barriers, including communications barriers, that are "structural in nature." New and newly renovated hotels must be built to comply with very explicit requirements in a document titled "Americans with Disabilities Act Architectural Guidelines (ADAAG).

ADAAG requires at least 4 per cent of the first 100 hotel rooms and approximately 2 percent of rooms in excess of 100 to be accessible to both mobility-impaired and deaf individuals, plus an identical percentage of additional rooms must be accessible to deaf individuals. Therefore, at least 8 percent of the first 100 rooms in new or renovated facilities must have built-in visual alarms, visual notification devices, volume control telephones, and an accessible electrical outlet for a TDD in proximity to the telephone. The accessible rooms must be dispersed among the various classes of sleeping accommodations (e.g., luxury to basic).

There are other "structural" requirements addressed by ADAAG, including the obligation to install pay TDDs and other accessible telephones where public telephones are available. ADAAG also addresses the obligation to make meeting rooms, assembly areas and conference rooms accessible by means of assistive listening systems.

You can get a copy of ADAAG (and the full Title III regulations) by contacting:

Office on the Americans with Disabilities Act  
Civil Rights Division  
US Department of Justice  
PO Box 66118  
Washington DC 20530  
(202) 514-0301, (202)514-0383 (TDD)

## **Existing Hotel Facilities**

Existing hotel facilities have obligations that are similar, but more limited, than the obligations of new or renovated facilities. They must also remove structural architectural barriers, including communications barriers that are structural in nature, but only where such removal is "readily achievable." 28 C.F.R. Section 36.304(a). The Justice Department regulation gives the example of

installing flashing alarm lights as removal of a barrier, so that deaf individuals will be alerted to fires and other emergencies. 28 C.F.R. Section 36.304(b)(7). In most cases, this change can be readily achieved, since portable units can be installed in a room without unduly expensive wiring and other structural changes. As with newly constructed hotels, a hotel is not obligated to make more than 8 per cent of its rooms barrier free for deaf individuals.

Note that the minimum percentages apply only to the requirement to remove "structural" architectural barriers. There are no such limits to the requirement to provide "auxiliary aids" such as TDDs and decoders. TDDs and decoders must be provided on request, as long as the requests to provide such services do not constitute an "undue burden" on the hotel facility.