

This Time We Mean Next Spring!
The New ADA Accessibility Standards
+ Additional US Department of Justice Regulations Update
for the Hospitality Industry

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The DBTAC Southwest ADA Center is the Southwest's leading resource on the Americans with Disabilities Act and related disability rights laws. The Center is one of the DBTAC National Network of Centers funded by the National Institute on Disability and Rehabilitation Research (NIDRR) of the Department of Education.

The DBTAC Southwest ADA Center serves a wide range of audiences who are interested in or impacted by these laws, including employers, businesses, government agencies, schools and people with disabilities. Expert staff members are available to provide training and publications and to respond to your inquiries.

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ADAConsult Services is a full-service consultancy that can draw upon the expertise of legal, human resource, technology, and architectural accessibility professionals, and bring their services to you.

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Aaron's recent research interests include: fair housing accessibility, and defining dimensional tolerances in concert with accessibility standards.

Aaron and Vinh are long time friends, law school classmates, and they regularly collaborate on disability civil rights related legal writings. Aaron was happy to have Vinh do most of the heavy lifting in the development of this writing and he wishes it understood that any errors or omissions are likely his, rather than Vinh's.

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INTRODUCTION TO NEW ADA REGULATIONS IMPACTING HOSPITALITY:

Just a few years after the passage of the Americans with Disabilities Act it had become clear that there was a need to change the ADA, to update the design and construction requirements, and to amend other regulations that impact places of public accommodations to reflect the experience gained in that time period. The U.S. Access Board and Department of Justice (DOJ) began to review the law, and over time published a number of notices calling for input into rulemaking. Additionally, the Access Board created advisory committees to address specific occupancies not addressed in the 1991 ADA Accessibility Standards. In rather short order, preliminary proposed new ADA accessibility guidelines were published, and later proposed changes to the regulations affecting state and local governmental entities and public accommodations were revealed. Then nothing...

When asked, representatives of the Access Board, and the DOJ would respond that we might see movement on the new regulations, “next spring, next spring.” This became something of a joke among advocates, and accessibility compliance professionals. It seemed that there was a great deal of enthusiasm for the rule changes, and particular support for the new design and construction standards, but no action on making the developed guidelines enforceable law. This state of affairs seemed likely to change as the second term of the George W. Bush administration drew to a close, and the president signed the ADA Amendments Act into law. However, President Obama halted all pending Bush-era regulations for further review.¹ In July of 2010, the DOJ announced their intent to soon publish these new regulations, to establish effective dates in the rules, and develop technical assistance materials to aid in compliance efforts. On September 15th, 2010 they did just that.

The DOJ maintains that these new regulations merely reflect a technical update in the ADA Accessibility Guidelines, and other regulations that are informed by that nearly 20 years of experience in enforcement, and input from obligated entities, people with disabilities, and other interested stakeholders.² There is some truth to that claim, and in that many of these regulations just codify the DOJ’s approach to interpretation and compliance with the regulations. For many, these changes are welcome, especially the design and construction industries due to the changes the new 2010 ADA Accessibility Standards that will ease compliance. The hospitality industry is clearly a big target of a significant amount of the new Title III rules, and arguably has a heavier burden than most other Title III entities. This paper, and the accompanying lecture session, is aimed at highlighting these changes, putting the hospitality industry on notice, and hopefully suggesting methods to ease compliance.

I. 2010 ADA Standards for Accessible Design

A. History

In 2004, the U.S. Access Board updated its accessibility guidelines for the construction and alterations of facilities covered by the Americans with Disabilities Act (ADA). Known as the ADA-ABA Accessibility Guidelines (ADAABAAG), it is an extensive update to the original 1991 ADA Accessibility Guidelines (ADAAG). The purpose of the update was to 1) improve the format and usability of the guidelines to facilitate compliance, 2) harmonize the guidelines with model building codes, 3) make the requirements for facilities under the ADA consistent with requirements of federal facilities covered by the Architectural Barriers Act, and most important 4) update the specifications so that they continue to meet the needs of people with disabilities.³

However the ADAABAAG was merely advisory and was not enforceable for facilities covered by the ADA until the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT) adopted them. The DOT adopted the ADAABAAG as its ADA Standards for Transportation Facilities in 2006.⁴ The DOJ took much longer to review the new guidelines for adoption while it continued to enforce the 1991 guidelines as its building standard. Pressed by architects, builders, businesses, and people with disabilities as to when the new guidelines would be enforceable, DOJ was known to regularly speculate “maybe next spring” for several years, and through two different presidential administrations.

“Next spring” finally arrived late, in September of 2010, when the DOJ adopted the ADAABAAG as part of its new ADA Standards for Accessible Design (the 2010 standards) when it updated its ADA regulations.⁵ In terms of enforcement of design standards, builders will have *option* of using the 1991 standards or 2010 standards for new construction and alterations of facilities until March 15, 2012, when the 2010 standards become mandatory. However, designers and builders cannot use one standard for one aspect of the construction project, and use the other standard for another part. They must choose one or the other and follow it through the construction project.

B. Transient Lodging

The scoping requirements for transient lodging remain largely unchanged in the 2010 standards. However, the layout for the table used to determine the number of rooms required to have mobility features changed. However, the table layout was updated to clarify the minimum number of accessible guest rooms, and specifically the number of guest rooms with and without roll-in showers required.

The number of rooms that that must provide mobility features is established by the following table:

Guest Rooms with Mobility Features⁶			
Total Number of Guest Rooms Provided	Minimum Number of Required Rooms without Roll-In Showers	Minimum Number of Required Rooms with Roll-In Showers	Total Number of Required Rooms

Guest Rooms with Mobility Features⁶			
Total Number of Guest Rooms Provided	Minimum Number of Required Rooms without Roll-In Showers	Minimum Number of Required Rooms with Roll-In Showers	Total Number of Required Rooms
1 to 25	1	0	1
26 to 50	2	0	2
51 to 75	3	1	4
76 to 100	4	1	5
101 to 150	5	2	7
151 to 200	6	2	8
201 to 300	7	3	10
301 to 400	8	4	12
401 to 500	9	4	13
501 to 1000	2 percent of total	1 percent of total	3 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000	10, plus 1 for each 100, or fraction thereof, over 1000	30, plus 2 for each 100, or fraction thereof, over 1000

For rooms with mobility features, any living and dining areas must be accessible. Exterior spaces such as patios, terraces, and balconies that serve the guest room must also be accessible. At least one sleeping area should have enough clear floor space (30 inches by 48 inches) for a person to transfer from a parallel approach on both sides of the bed. For rooms with a two bed configuration that share clear floor space in-between the beds, a clear floor space is not required for both sides of the bed.⁷

The number of rooms that must have communication features for people with hearing impairments is established by the following table.

224.4 Guest Rooms with Communication Features⁸

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms with Communication Features
2 to 25	2
26 to 50	4
51 to 75	7
76 to 100	9
101 to 150	12
151 to 200	14
201 to 300	17

224.4 Guest Rooms with Communication Features ⁸

Total Number of Guest Rooms Provided	Minimum Number of Required Guest Rooms with Communication Features
301 to 400	20
401 to 500	22
501 to 1000	5 percent of total
1001 and over	50, plus 3 for each 100 over 1000

Required accessible communication features include visible alarms, and visible notification devices that alert the room occupant of incoming telephone calls and door knocks or bells.⁹

When facilities are being altered, the minimum number of rooms required to have accessibility features under the two tables is determined by the number of rooms being altered or added. This is an ongoing requirement, and with each alteration that continues until the minimum number accessible guest rooms required under the new ADA accessibility construction standards for the entire building is met.¹⁰ For example, suppose an existing hotel with 500 total guest rooms already has 20 guest rooms that have communication features. One of its floors is undergoing renovations which impacts 50 rooms. Normally, four (4) of the rooms undergoing renovations would need to be altered to include communication features, but since the building already has 20 guest rooms with these features, only two (2) additional rooms are needed to meet the minimum required total of 22 for the entire building.¹¹

Under the 1991 ADA Accessibility Standards, all newly constructed guest rooms with mobility features are required to include communication features.¹² Under the 2010 ADA Accessibility Standards, at least one (1) guest room with mobility features must also provide communication features. Additionally, not more than 10% of the guest rooms required to provide mobility features and also equipped with communication features can be used to satisfy the minimum number of guest rooms required to provide communication features.¹³

For example, under the 1991 Standards, a 200 unit hotel would require six (6) rooms with mobility accessibility features without roll-in showers, two (2) rooms with mobility accessibility features and roll-in showers, and all eight (8) of those rooms would need to provide communications features. In addition, you would need six (6) additional guest rooms that had communication accessible features without any mobility accessibility features. So, the grand total of rooms under the 1991 regulations that require communication features is 6+2+6, or 14 rooms with communication accessibility features.¹⁴ Under the 2010 ADA Accessibility Standards, that same 200 unit hotel would still be required to provide six (6) accessible rooms without roll-in showers, two (2) accessible rooms with roll-in showers, for a total of eight (8) rooms requiring accessible features for people with mobility impacting disabilities. Additionally, a minimum of 14 guest rooms with communication accessibility features would be required. Under the 2010 scheme, at least one (1) mobility enhanced guest room would need to be included in

that 14, but no more than 10% of the mobility enhanced guest rooms also outfitted with communication accessibility features can be used to satisfy the total requirement. With that same hotel with 200 guest rooms, the specific minimal requirement would thus be eight (8) guest rooms with mobility focused accessibility features, two (2) of those with roll-in showers. One of those eight (8) mobility enhanced rooms must also provide required communication features, and an additional 13 rooms would *only* require communication accessibility features.¹⁵ The reasoning is that not all people with hearing impairments have mobility impairments and vice versa. This 10% limitation on overlapping accessible room types is calculated to expand the number of rooms available for people who need either class of accessible features, but not both. For example, if occupants who needed communication features were to book all of the rooms under the existing 1991 scheme, there would be reduced availability of rooms configured for people with mobility impairments.

The 2010 ADA Accessibility Standards further require that rooms with mobility features and rooms with communication features should be dispersed among the various classes of guest rooms. People who need these features should have the choices of types of guest rooms, number of beds, and other amenities comparable to the choices that other guests have. If the minimum number of guest rooms do not allow for complete dispersion, they must be dispersed within the following order: by guest room type, number of beds, and amenities.¹⁶

C. Water Closets (toilets clearances in accessible hotel rooms required to have mobility features)

The clear floor space and approach required for a person to maneuver a wheelchair so he can transfer to the toilet has expanded under the new 2010 scheme. The dimensions required in the 1991 standards allowed for either a forward *or* side approach and transfer to the toilet.¹⁷ In the 2010 standards, the dimension is now 60 inches from the side wall and 56 inches from the back wall so that a person can have both forward *and* side approach options to the toilet.¹⁸ The required clearance of the toilet can only overlap the toilet, associated grab bars, dispensers, sanitary napkin disposal units, coat hooks, shelves, accessible routes, clear floor space and clearances required by other fixtures in the bathroom. Note that the lavatory cannot overlap with the clearance of the toilet.

The bathrooms do not necessarily have to be larger to accommodate this new clearance rule. The DOJ drafted several example floor plans with different configurations that demonstrate that the 2010 Standards typically do not require more overall square footage than the 1991 Standards.¹⁹

D. Different Scoping Requirements for Types of Hospitality Facilities

1. Transient Lodging v. Residential Dwelling

The 2010 standards make distinctions between transient lodging and residential dwellings and have different scoping and technical provisions driving the design standards for each.

Multi-family residential dwellings may also be subject to the Fair Housing Act which has different accessibility requirements²⁰.

A place of lodging has been redefined, or clarified as a facility that has sleeping guest rooms meant generally for short-term stays. Residential dwelling units are defined as units intended for residence, usually of a long-term nature. These two definitions are exclusive in that residential units are not considered transient lodging (more on that next).²¹ However, it is possible for a building to have both transient lodging units and residential dwelling units, as evidenced by the somewhat recent hospitality industry trend in developing hybrid lodging properties containing both hotel rooms and condos.²² Under those circumstances, the scoping and technical requirements of both laws would apply where relevant.

What is the difference then between short-term and long-term under these two definitions? The Department of Justice has adopted a definition for places of transient lodging that is typically 30 days or less, and where the guest has no right to return to a particular guest room or unit; which is more consistent with building codes, local laws, and common real estate practices that treat stays of 30 days or less as transient rather than residential use. This 30-day guideline factor is only aimed at determining whether the ADA's transient lodging standards apply to a particular facility. Additional considerations for determining if a facility with rooms to let meets the ADA transient lodging definition include the provision of rooms in a facility with on or off-site management, the availability of rooms to walk-up guests, the provision of linen or housekeeping services, and the acceptance of reservations without the guarantee of a specific guest room, a requirement of lease or prior deposit.²³

2. Housing at a Place of Education

One major exception to this 30-day guideline is housing at a place of education, commonly known as academic or student housing, and included here since the hospitality developers are getting in the business of converting hotel properties into student housing²⁴, and developing and managing student housing properties, including mixed use developments.²⁵ They range from traditional residence halls and dormitories to apartment or townhouse-style residences. The ADA's transient lodging standards apply to student housing facilities even though students generally stay in these units for months at a time.²⁶

The DOJ was concerned that applying the residential construction standards could hamper access to educational programs for students with disabilities. Important accessibility features such as roll-in showers are included in the transient lodging standards but not in the residential standards. Transient lodging standards also require access to all floors.²⁷

In addition to the requirements of the transient lodging standards, the DOJ imposed additional requirements drawn from the residential facilities standards. These

requirements ensure accessible kitchens and an accessible circulation route to and into all of the rooms within in a suite or apartment.²⁸

The only exceptions to the hybrid academic housing scoping requirement are apartments and townhouses exclusively leased to graduate student and faculty on a year-round basis. These types of housing follow only the residential building requirements of the Fair Housing Act unless they have common or public use areas that are available for educational programming.²⁹ For example, if the apartment complex has classrooms, entertainment space, or a study or computer lab, then the hybrid academic housing requirements applies throughout the complex. If complex has a gym where classes are taught, the hybrid requirements apply.

E. Significant Changes for Food and Beverage Facilities

Of course dining areas in food and beverage establishments will have to comply with all of the specific scoping and technical changes inherent in the 2010 ADA Accessibility Standards, after the effective date, but for the most part these changes are not a remarkable departure from the prior 1991 Standards. However two such changes do stand out. First, the “mezzanine” exception in the 1991 Standards has changed. Under the 1991 Standards, in buildings without elevators (those existing facilities or new construction that meet the elevator exception³⁰) an accessible route is not required to dining areas on a mezzanine that contains less than 33% of total dining seating.³¹ Under the 2010 Standards, this percentage for the exception has been reduced to 25% of total accessible dining seating; effectively creating an obligation to provide vertical access to many smaller mezzanine dining areas.³² The second significant change is to the calculation accessible dining surfaces. The newer 2010 Standards require that at least 5% of seating and standing places comply with the provisions requiring that they be on an accessible interior circulation route and provide clear floor space for use of a mobility aid. This is a departure from the 1991 Standards which calculated accessible dining spaces based on fixed seated dining spaces.³³

II. Reservations by Places of Lodging

The U.S. Department of Justice adopted new rules concerning reservations that will come into effect March 12, 2012.

One rule requires that people with disabilities can make reservations for accessible rooms during the same hours and the same manner as people who do not need accessible rooms.³⁴ This means that if a person can book a non-accessible room by phone, through the Internet, through a travel agent, or by walk-in, another person can also use these methods to book an accessible room. There should be no requirement or inherent advantages in booking an accessible room using one method if this requirement or advantage does not exist for booking a non-accessible room.

Rooms with accessible features should be evaluated, and described with enough specificity to allow a potential guest with a disability to determine whether the accessible

features can meet their needs; this information needs to be available across various reservation systems employed by hotel management.³⁵ This rule was put in because people with disabilities have found it difficult or impossible to obtain this type of information in the past, and that even when information is provided, it often is found to be incorrect upon arrival.³⁶

Additionally, a place of lodging should make sure that accessible rooms are held for the use by guests with disabilities. Rooms with accessible features should not be made available to the general public until all of other non-accessible rooms of the same type have been rented, and the accessible room is the only remaining room of that type.³⁷ For example, if there are 25 double bed rooms and two (2) of these rooms are accessible; the reservations service must rent all 23 non-accessible rooms before it can rent the two (2) accessible rooms to individuals without disabilities. If a one-of-a-kind room such as a penthouse or presidential suite is and accessible guest room, that room can be made available to the first person to request it.³⁸

Once a reservation is made for an accessible guest room, the room *must* be blocked and removed from all reservation systems.³⁹ That specific accessible guest room *must* be held for the reserving customer with a disability even if it is not the policy to hold specific guest rooms more generally for people without disabilities.⁴⁰ The rationale for this rule change was simply that accessible rooms are much more limited in availability than other guest rooms, and the presence of the accessibility features is often the critical difference allowing a person with a disability can use a guest room or not; which is typically not at issue for people without disabilities who may merely prefer a room, or room type.⁴¹

III. Effective Communication

Places of public accommodations are required to provide auxiliary aids and services whenever necessary to ensure effective communication with people with disabilities under the ADA.⁴² In the hospitality context, that might typically involve assisting someone with a vision impairment or other disability to complete a guest reservation form at check-in, to provide alternative formats such as Braille or large print for restaurant menus, or to provide someone with a hearing disability access to a TTY (a telecommunications device for that interfaces with a telephone and provides a keyboard for communication with another TTY-user, or a relay operator) to communicate over available telephones.

The updated regulations also clarify that the obligation of public accommodations to provide these auxiliary aids and services and to provide effective communications extends to those companions of customers who have disabilities.⁴³ Consider the scenario where a hotel guest has a business related visitor who is deaf, and who needs access to a TTY where phones are generally made available. The DOJ's updated regulations have added specific examples of auxiliary aids and services that reflect changes in available and commonly used technology unanticipated in the 1991 regulations.⁴⁴ The new regulations further clarify that the type of aid or service to be provided should look to several factors, including: preference of the person with a disability; the nature, length,

and complexity of the communication involved; and the context in which the communication is taking place. The public accommodation should consult with the person with a disability whenever possible to determine what type of aid or service is needed. However, the ultimate decision of method to achieve effective communication does rest with the public accommodation long as the chosen method results in effective communication. Additionally, the necessary auxiliary aids and service must be provided in formats accessible to the person, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.⁴⁵

The new regulations also address specific telecommunications technology that, if not directly targeted at the hospitality industry, certainly create general obligations that may impact an industry that more heavily relies on that technology. For example, if a hotel uses an automated attendant system, or telephonic customer service messaging, that system must be able to interface with auxiliary aids and services like TTYs or relay service operators (telecommunications relay services are operator assisted services that allow people who are hearing or speech impaired to place calls to standard telephone users via a keyboard or assistive device). As mentioned before, if a hotel provides a phone for the guests' use, it should also offer a TTY or some other system accessible to people with disabilities. Furthermore, a hotel must respond to incoming calls using telecommunication relay services⁴⁶ in the same manner that it responds to other telephone calls.⁴⁷ This regulatory requirement was specifically promulgated in response to the high incidence of public accommodations that failed or refused to take these calls.⁴⁸

To the extent that sign language interpreters are used in the hospitality setting, it is important to consider the new rules addressing off-site interpreters accessed through video remote interpreting (VRI) technology; technology then not available at promulgation of the original Title III regulations.⁴⁹ The essential requirement where this technology is used is that staff must be trained so that they can quickly and efficiently set up and operate the VRI.⁵⁰

IV. Mobility Devices

The DOJ issued new rules regarding the use of power-driven mobility devices other than more familiar powered wheelchairs. In 1991, there were very few people using non-traditional devices, and in fact, far few non-traditional mobility devices. As the choice of powered mobility devices expanded, the DOJ received ever increasing questions and complaints from businesses about people using devices that were not primarily designed for the use of people with mobility diminishing disabilities; such as golf carts, Segways, and all-terrain-vehicles. The businesses were concerned about safety and physical accommodation issues in allowing these businesses on the premises.⁵¹

In response, the DOJ has now introduced a two-tiered approach to this issue.

1. The public accommodation must allow anyone with a mobility disability using wheelchairs and other manually-powered devices such as crutches, walkers, and

- canes access to areas that are open to other pedestrians. Wheelchairs include both manual and power-driven ones.⁵²
2. With all other-powered devices, the public accommodation should make reasonable modification to their policies, practices, and procedures to allow their use by people with mobility disabilities within their facilities unless these devices cannot be operated in accordance with legitimate safety concerns. Factors that should be considered for allowing the devices are:
 - a. The type, size, and speed of the device,
 - b. The volume of pedestrian traffic in the facility,
 - c. The design and operational characteristics of the facility,
 - d. Whether legitimate safety requirements can be established to allow the device in the facility.
 - e. Whether the device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.⁵³

In determining whether the person needs the mobility device, the public accommodation should not ask about the extent or nature of his disability. For inquiries about powered devices besides wheelchairs, the public accommodation may ask for a “credible assurance” that the device is needed because of the person’s disability. The public accommodation should accept parking placards or other state-issued proof of disability as the credible assurance. Otherwise, the public accommodation should accept verbal assurance that the device is needed unless it is contradicted by observable fact.⁵⁴

V. Service Animals

A. New ADA Regulations

Service animals are trained to perform important tasks that assist people to minimize the limiting impact of their disabilities. Many people with disabilities are not able to participate in the community or travel without the assistance of these animals. In recognition of this, the ADA required public accommodations such as hotels and restaurants to allow patrons with disabilities to bring their service animals into their establishments, even if there is a no-pets policy or a local ordinance prohibiting the presence of animals in guest rooms or dining rooms.⁵⁵

Unsurprisingly, businesses have had issues in determining whether an animal is a legitimate service animal, rather than a pet. Some people have fraudulently or mistakenly claimed their animals to be service animals so that their animals can accompany as they enter places of public accommodation, creating confusion and ire about compliance obligations. People with disabilities using legitimate service animals were concerned that their right to use these animals would become unnecessarily restricted due to backlash from the public and the business community.⁵⁶ In response to the confusion and concerns, the Department of Justice updated the ADA regulations to codify some of its previously informal guidance on service animals. This regulation update is effective March 15, 2011.

Under the original 1991 regulations, the definition of service animals was not limited to a particular species. In addition to dogs, people could use unusual or exotic animals such as monkeys or parrots as long as they were trained to assist the person with his disability. The DOJ decided that limiting the species under the definition would give public accommodations greater predictability in recognizing service animals, and would assure access for people who use service dogs.⁵⁷ With the 2010 update, the Department of Justice has restricted the definition of service animals to dogs, with an exception, in limited cases,⁵⁸ for miniature horses. To clarify, miniature horses are not service animals under the new definition, but rather an exception. This exception was carved out in response to the growing use of people with disabilities of trained miniature horses, most commonly used as guide animals for the blind. A hotel, for example, is allowed to consider certain factors in determining whether miniature horses can be appropriately accommodated within their facilities. These factors include:

1. The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
2. Whether the handler has sufficient control of the miniature horse;
3. Whether the miniature horse is housebroken; and
4. Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.⁵⁹

It seems likely that this will still create a potential for confusion in only the very rare circumstances hotel guests, and restaurant patrons attempt to pass off a miniature horse as a trained alternative to a service animal.

When an employee or owner of a public accommodation does not know whether a customer is using an animal as a service animal, they may make only two inquiries. The may ask the owner (1) whether the animal is needed because of a disability, and (2) about the tasks that the animal is trained to do to assist the person with the disability.⁶⁰ No such inquiry should be made where the answers are readily apparent, such in the case of a guide dog leading a person who is blind. No inquiries are allowed about the nature and extent of the person's disability, nor can a service animal user be required to produce documentation that proves the animal is certified or trained.⁶¹ Additionally, there is no requirement in the ADA for a service animal to be certified, or go through a formal training process an established service academy like the Seeing Eye guide dog school.⁶² Of additional note, the presence of a service animal vest, badge, or harness does not prove that an animal is a neither service animal, nor are those items required to meet the definition of service animal.⁶³

Once the public accommodation staff determines that the patron is using a service animal, it should allow the person and the animal access to any area of the establishment that other people without disabilities are allowed to go.⁶⁴ However, the person must have his animal under control, for example using a harness or leash; unless the person's disability does not allow him to use these restraints or that the restraints interfere with the service animal's work tasks.⁶⁵ The public accommodation staff may ask the service animal user to remove a service animal if the animal is out of control, and the owner cannot bring it under control.⁶⁶ The service animal may also be removed if it is not housebroken.⁶⁷ If the animal is removed or excluded due to these reasons, the business must still give the

person the opportunity to obtain the goods, services, or accommodations without the service animal on the premises.⁶⁸ A public accommodation is not responsible for any care of the service animal.⁶⁹

No deposit, fee or surcharge is allowed because of the service animal, even if the hotel, for example, routinely charges a pet fee for non-service animals. However, if a business normally charges people for the damages that they cause, the business may charge for any damage that the service animal may cause.⁷⁰

B. Fair Housing Act

Note that the preceding section only describes a place of lodging's obligations under the ADA. If the hospitality entity operates residential units covered by the Fair Housing Act, then the entity is obligated to make reasonable accommodations to allow the tenant with a disability to live with an assistive animal, even if there is a no-pets policy.⁷¹

An assistive animal is any animal that assists a person with his disability and includes service animals and emotional support (companion) animals. The main difference is that the emotional support animal is not trained to assist the person with a disability; its companionship provides a therapeutic or comforting effect to the person with the disability.

Under the Fair Housing Act, assistive animals are not limited to dogs and miniature horses like in the new ADA regulations. Fair Housing regulations do not limit the species as long as the animal assists the person with his disability. Unlike the ADA, the landlord can ask the tenant with a disability to provide documentation about the need for the animal to properly review a request to waive a no-pets policy.⁷²

VI. Entertainment Venues

Many hospitality entities, such as hotel-casinos for example, operate entertainment venues which will be affected by new DOJ regulations on assembly areas and ticketing.

A. Assembly Areas

Newly constructed or renovated entertainment venues are required to comply with the 2010 ADA Standards for Accessible Design applicable to assembly areas. The seating requirements presume that the seating is fixed rather than movable/configurable like tables and chairs in a ballroom.

Number of Seats	Minimum Number of Required Wheelchair Spaces
4 to 25	1
26 to 50	2

51 to 150	4
151 to 300	5
301 to 500	6
501 to 5000	6, plus 1 for each 150, or fraction thereof, between 501 through 5000
5001 and over	36, plus 1 for each 200, or fraction thereof, over 5000

The above table calculates the number of wheelchair spaces required in the assembly area. At least one companion seat should be provided for each wheelchair space.⁷⁴

Stadiums, arenas, and grandstands are expected to have accessible seating (wheelchair spaces + companion seating) dispersed in all levels and class of seating served by an accessible route. If there are specialty seating areas that offer distinct services or amenities, like club areas or luxury boxes, there should be accessible seating dispersed to each specialty area. There are specific requirements for accessible seating spots in stadium-style movie theatres that ensure wheelchair users comfortable viewing angles.⁷⁵

B. Ticketing

The new DOJ ticketing requirements become effective March 15, 2011, and in many ways mirror the obligations of the hospitality industry regarding room reservations. The vendor must offer a person with a disability an equal opportunity to purchase tickets for accessible seating compared to people who buy non-accessible seating. Ticket buyers must be allowed to buy the accessible seating tickets at the same hours, through the same methods, under the same terms and conditions as all other purchasers. If there are pre-sales, promotions, lotteries, or wait lists involved, people seeking accessible seats must have the same opportunity to participate in those opportunities. The vendor of the ticket must be able to identify the locations of accessible seating, and also describe the features of the seats so that the person can figure out if the seating meets his accessibility need. The vendor must provide materials such as maps, plans, pricing chart, etc. that identify these seats, along with relevant information if they provide similar material about seating to the general public. The vendor is also expected to hold the accessible seating for sale to people with disabilities and their companions until all of the other seats in the same seating area or price category have been sold. Box office staff and other vendors cannot require proof of the person's disability like a doctor's note before selling the ticket.⁷⁶ However, vendors can make a verbal inquiry as to the need for accessible seating due to a mobility impacting disability, and a written attestation of need for season tickets or other series-of-event ticketing situations.⁷⁷

Prices for the accessible seating should be set no higher than other tickets in the same seating section. Accessible seating tickets should be available at all price levels. If accessible seating at a particular price level cannot be provided because barrier removal was not readily achievable, then the percentage of seats that should have been available at that price level can be offered in a nearby accessible section for the same price.⁷⁸ So

imagine there is a section of seating exclusively priced at \$15.00, and that section of seating should normally be required to provide four (4) accessible seats, but due to engineering realities, that section cannot be made accessible. Under those circumstances, a ticket vendor should then offer up to four (4) tickets at that price point in a nearby or similar accessible location.

People with disabilities (or someone who is buying a ticket for them) should have the opportunity to buy up to three (3) additional tickets for in the same row that are contiguous with the wheelchair space. If less than three (3) seats are available, the vendor should offer the remaining tickets to seats nearby so that the people can sit as a group. For example, if there were two (2) seats open directly in front or behind the wheel chair spot and the companion, then the vendor should offer those seats. However, if there was a rule limiting the general public to buying less than four (4) tickets, then the vendor can offer as many seats to people with disabilities, including the wheelchair seating space, as it would offer the person without the disability.⁷⁹

If a person with a disability acquires non-accessibility tickets through the secondary market (ticket scalpers), the entertainment venue should offer the person the ability to exchange his tickets for ones to accessible seating in a comparable location and at a comparable price, if they are still vacant.⁸⁰

VII. Future Rulemaking

The Department of Justice is in the process of developing additional new ADA regulations regarding websites, furniture, and equipment. They requested comments from the public, and have held public hearings with the commentary period closing on January 24, 2011.⁸¹

A. Accessibility of Web Information and Services

The Internet as we now know it really did not exist when the ADA was passed in 1990 in any way meaningful to contemporary public accommodations and how they conduct business via their websites or other online vendors. With the proliferation of businesses using websites to offer their goods and services, it is important to recognize that people with disabilities encounter access barriers on the Internet just as they do in the physical world. A person who is deaf might not learn about a hotel feature if the information was solely provided through a video on the website without captions or an alternate transcript. A person who is blind may not be able to book a room through the website if the online reservation form is not programmed correctly to work with screen reading technology. Remember that hotels have the obligation to offer the same methods of reservations for people with disabilities as they do for the general public disabilities.

The Department of Justice has repeatedly affirmed that the ADA applies to websites of public accommodations. The DOJ first made this position public in a 1996 letter to Senator Tom Harkin regarding the accessibility of websites to individuals with visual

disabilities.⁸² It has been their policy to encourage self-regulation with regard to the Internet wherever possible and to regulate only where self-regulation is insufficient and government involvement may be necessary.⁸³ It appears the DOJ now believe it is necessary.

The Department of Justice is now reviewing what web accessibility standard to use for its regulation.⁸⁴ In the previously mentioned DOJ settlement agreement with Hilton Worldwide in 2010, Hilton agreed to use the W3C's Web Content Accessibility Guidelines 2.0 to make their websites accessible.⁸⁵

The DOJ is studying whether to adopt coverage limitations for certain entities, like small businesses, and what resources and services are available to make existing websites accessible to individuals with disabilities. They have solicited comments on the costs of making websites accessible, whether there are effective and reasonable alternatives to make websites accessible that they should consider permitting, and when any adopted web accessibility requirements should become effective.⁸⁶

B. Equipment and Furniture

People with disabilities often face barriers presented by inaccessible equipment and furniture. Consider a hotel bed that is so high that a person cannot independently transfer safely from his wheelchair and back. What about the kiosks that can check-in a guest or allows him to print his plane ticket? A wheelchair user might not be able to use the kiosk due to its height or inadequate recess for knee space, or a person who is blind might not be able to use it for lack of Braille keypad markings, and audio instructions.

The DOJ is now considering revising its ADA regulations to ensure that equipment and furniture in programs and services provided by public accommodations are accessible to and usable by people with disabilities. The DOJ initially identified several key areas that concern the hospitality industry: hotel beds and electronic and information technology, including point-of-service devices, kiosks, and ATMs.⁸⁷

The DOJ asked the public about the nature of accessibility problems that people encounter and possible solutions for making equipment and furniture accessible. Advances in technology have increased the choices of accessible equipment and furniture that benefit individuals with disabilities.⁸⁸

At the November 18, 2010 public hearing in Chicago, the former chairperson of the National Council on Disability, a federal advisory group, noted that she could no longer stay at the same hotels she used to stay at in Washington, DC due to the bed issue.

*The beds are too high. I have to ask them to take the mattress out and then the beds are too low. I have been stuck in bed and then told that they can't provide assistance to get me out of bed because I would be an insurance risk in the very hotels I was able to stay in before.*⁸⁹

At the same hearing, a commenter noted that video phones are now the preferred option for many people with hearing impairments, but hotels typically offer only TTYs. She also suggested exploring other information technology that would facilitate direct communications between consumers and service agents like text messages, instant messages, text chats, and emails.⁹⁰

Another person testified that the keyboards that are in some hotel rooms were not accessible to him, and asked for simple call buttons in the room to alert the staff or open the door. Another person mentioned that bars and restaurants had only tables and counters that were too high for people in wheelchairs.⁹¹

CONCLUSION:

The changes to the ADA are positive, if a qualified boon to the hospitality industry. Undoubtedly, commentators representing the industry did not get every concession they would have wished for in the rulemaking process, but the changes coming in March of 2011, and March of the following year do ease the compliance burden for hoteliers, and food and beverage businesses as a whole. The sea change in the design and construction requirements will lend some sanity to accessibility compliance. No longer will a construction related reality, an acceptable tolerance issue, create a cloud of potential liability. A smart designer will always design to the middle of the range, and a savvy developer will make sure to hold those designers to this in their contracts. The new regulations lend further sanity to the issue of service animals, eliminating the need to seriously consider if a large boa constrictor, a screeching cockatoo, or a 350lb Vietnamese potbelly pig can be accommodated in your restaurants, bars, and hotel guest rooms. However, other changes clearly present a challenge, but one that the industry has a chance to get in front of now. The new rules regarding reservations do, in some ways, merely reflect a codification of DOJ guidance and enforcement over the past two decades. In other ways, these rules present a departure from past interpretation, and raise the burdens on those obligated to comply. Specifically, the requirement that accessibility features in each accessible guest room in each hotel and motel property be described with some specificity and in some manner uniform enough to be included in the many varied complex reservations systems presents a real, if achievable, challenge. It is the writers' hopes that this paper and the accompanying presentation do help prepare those participants, and anyone within the hospitality industry they choose to share this with, to meet those challenges. To paraphrase Romans 12:10-13, be ever faithful, diligent in work, patient in this time of change, ready to help those in need, and ever eager to practice hospitality.⁹²

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