



Legal Obligations of Emergency Management Planning Professionals Before, During, and After Disasters

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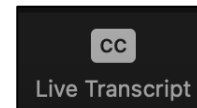
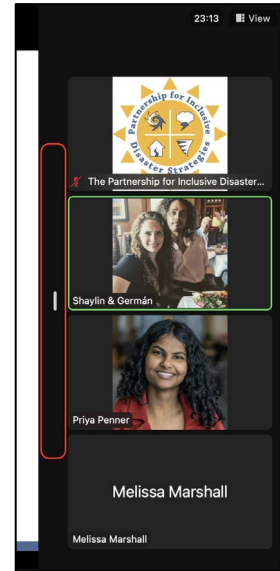
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Welcome and About Us

Who We Are

The Partnership for Inclusive Disaster Strategies is the only U.S. disability-led organization with a focused mission on equity for people with disabilities and people with access and functional needs throughout all planning, programs, services and procedures before, during and after disasters and emergencies.



Acknowledgements

Thank you to our sponsor, the Connecticut State Independent Living Council (CT SILC)!



Acknowledgements

Thanks to the Planning Committee:

- Gretchen Knauff, Office of Disability Services, City of New Haven
- Molly Cole, CT State Independent Living Council
- Rick Famigletti, Center for Disability Rights
- Rich Luby, Independence Northwest
- Eileen Healy, Independence Northwest
- Heather Kwolek, UConn UCEDD



Acknowledgements

Thanks to the Planning Committee:

- Susan Shaw, American Red Cross
- Christina Thompson, Independence Unlimited
- Melissa Thompson, Independence Unlimited
- Julie Ferrucci, Access Independence
- Walter Glomb, CT Council on Developmental Disabilities
- Carmen Correa-Rios, Center for Disability Rights
- Brynn Hickey, Disabilities Network of Eastern CT



Ground Rules

- Maintain confidentiality
- Ask questions
- Have fun!!!

Do you have ground rules you'd like to suggest?



Disclaimer

Material presented does not constitute legal or clinical advice and is for informational purposes only. If you are seeking legal or clinical advice, please contact a qualified attorney or clinician.



This Presentation is an Overview

This presentation is an overview of legal obligations
many specifics have not been included here.



Today's Objectives

For you to be able to have an understanding of

- How to meet legal obligations to people with disabilities during disaster planning and throughout disasters.
- Specific obligations including providing equally effective communication and physical access, and otherwise meeting non-discrimination obligations.
- Inclusive emergency management planning strategies.



Today's Audience

- Emergency Management directors
- Disability Community stakeholders
- Nursing facilities management
- Service providers
- Municipal officers
- Preparedness coordinators
- Emergency Medical Technicians (EMTs)
- Health directors
- Community Emergency Response Team (CERT) members
- Fire departments
- Others!



Some Laws That Protect Disabled People During Disasters

Disability Rights are Civil Rights

In order to be able to plan to meet legal obligations to people with disabilities, you need to understand basics of those civil rights obligations.



Some Laws That Protect Disabled People During Disasters

Americans with Disabilities Act (ADA)

(42 U.S. Code § 12102 et seq.)

Protects the rights of people with disabilities
including during disasters



Some Laws That Protect Disabled People During Disasters

Olmstead Decision (1999)

Olmstead v. L. C., 527 U.S. 581

Supreme Court decision that stated that people with disabilities must receive services in the most integrated setting that meets their needs



Some Laws That Protect Disabled People During Disasters

Rehabilitation Act of 1973 (Rehab Act)

29 U.S.C. § 701 et seq.

Section 504

Creates the obligation not to discriminate against people with disabilities for recipients and subrecipients of Federal funds



Check In Poll (1)

How familiar are you with the ADA and Section 504 of the Rehab Act?

- Not at all familiar
- Somewhat familiar
- Very familiar

Some Laws That Protect Disabled People During Disasters

21st Century Communications and Video Accessibility Act (CVAA)

Public Law 111-260

Updates federal communications law to increase the access of persons with disabilities to modern communications



Some Laws That Protect Disabled People During Disasters

Individuals with Disabilities Education Act (IDEA)

20 U.S.C. § 1400 (2004)

Requires a free and appropriate public education for children with disabilities between 3 and 21



Some Laws That Protect Disabled People During Disasters

Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)

42 U.S.C. 5121 et seq.

Created the system by which a presidential disaster declaration or an emergency declaration triggers financial and physical assistance through the Federal Emergency Management Agency (FEMA)



Some Laws That Protect Disabled People During Disasters

Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA)

Amends the Stafford Act to direct FEMA to appoint a Disability Coordinator to ensure that the needs of individuals with disabilities are being addressed in emergency preparedness and disaster relief



Some Laws That Protect Disabled People During Disasters

Integrated Public Alerts and Warnings Systems (IPAWS)

FEMA's national system for local alerting that provides authenticated emergency and life-saving information to the public



Some Laws That Protect Disabled People During Disasters

Fair Housing Amendments Act

"Fair Housing Act". SEC. 801

Protects people with disabilities from discrimination in certain types of housing



Poll (1) Responses

How familiar are you with the ADA and Section 504 of the Rehab Act?

- Not at all familiar
- Somewhat familiar
- Very familiar

Civil Rights Obligations

Civil rights of people with disabilities
are **NEVER suspended**,
including during disasters!



Equal Access to Emergency and Disaster-Related Programs and Services

Emergency Management's Legal Obligations

Who has obligations?

What are they?



ADA Obligations to Disabled People in Disasters

Who has obligations?

Entities that are covered under the ADA

- **Title I:** Employment
- **Title II:** State and Local Government Entities
- **Title III:** Places of Public Accommodation
- **Title IV:** Telecommunications
- **Title V:** Miscellaneous



Check In Poll (2)

Do you think that your agency or organization has obligations under the ADA?

- Yes
- No
- I don't know

Definition of Disability

Under the ADA and the Rehab Act, people with disabilities are individuals with a:

- Physical or mental impairment that substantially limits one or **more major life activities**
- Record of having such impairment
- Regarded as having an impairment



Definition of Disability

Under the ADA Amendment Acts of 2008, 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
- Working
- Major bodily functions



Definition of Disability

Under the ADA Amendment Acts of 2008, major bodily functions include but are not limited to:

- Functions of the immune system;
- Normal cell growth; and,
- Digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.



Poll (2) Responses and Questions

Poll Responses: Do you think that your agency or organization has obligations under the ADA?

- Yes
- No
- I don't know

What do you think they might be?

To whom do you think you have obligations?

Rehab Act Obligations

Remember:

- If your entity receives ANY federal funding, it has obligations that are nearly identical to Title II of the ADA
- The definition of disability is the same under both laws



Equal Access to Disaster-Related Programs and Services

Disaster-related programs and services **must not discriminate against people with disabilities**



Questions and Comments?

Structural and Program Access Requirements

Structural Access

For emergency planners, structural and program access means that programs and services must be accessible.



Structural Access

Programs and services includes:

- Exercises
- Planning meetings
- Disaster Recovery Centers (DRCs)
- Points of Distribution (PODs)
- Shelters
- Transportation



Structural Access

Structurally accessible includes ADA compliant:

- Path of travel
- Restrooms
- Registration
- Spaces
- Showers and cots in shelters



Structural Access

ADA compliant path of travel includes:

- Non-slip surfaces
- No steps or high thresholds
- Accessible restrooms
- Compliant ramps where necessary
- Visual fire alarms
- Tactile signage



Structural Access

To determine if a facility is ADA compliant, consult with someone who is familiar with ADA and Connecticut's building code requirements.

Never assume that a facility is accessible.



Program Access

Under Title II of the ADA:

- In existing construction (pre-1991), all **programs** must be accessible
- However, not all buildings or every part of every building, must be accessible



Program Access

Under Title II of the ADA:

- Programs may be moved to an accessible part of a building or to another building in reasonable geographic proximity
- “New” (post-1991) construction must be accessible



Effective Communication

Equally Effective Communication

Communication with individuals with disabilities must be as effective as communication to people without communication disabilities.

Communication disabilities are:

- Visual disabilities
- Speech disabilities
- Hearing disabilities



Equally Effective Communication

In order to provide equally effective communication, sometimes auxiliary aids and services (accommodations) may be required.



Equally Effective Communication

For emergency planners, equally effective communication requirements mean that:

- Planning meetings, activities, and exercises must provide equally effective communication for all events, including outreach and follow-up
- Planners should model compliance



Equally Effective Communication

Examples of auxiliary aids and services for people with hearing disabilities:

- American Sign Language interpreters
- Tactile interpreters
- Oral interpreters
- Video Remote Interpreting (VRI)
- Communication Access Real-time Translation (CART)
- Assistive listening system
- Using a microphone



Equally Effective Communication

Examples of auxiliary aids and services for people with speech disabilities:

- Allowing for extra time
- Using a communication board or speech synthesizer
- Pen and paper
- Using a screen



Equally Effectective Communication

Examples of auxiliary aids and services for people with visual disabilities:

- Large print
- Readers
- Screen reader-compatible electronic material
- Braille



Questions and Comments?

Break!
5 minutes

Non-Discrimination in General Operations

Non-Discrimination in General Operations

Requirements:

- Surcharges prohibited
- Service animals must be allowed
- No discriminatory eligibility criteria
- Equal opportunity to participate and benefit



Non-Discrimination in General Operations

Requirements:

- Programs and services in the most integrated setting appropriate to the needs of the person (Olmstead)
- Reasonable modifications to policies, practices, and procedures



Non-Discrimination in General Operations

For emergency planners, these requirements mean that planners:

- Must understand legal requirements and incorporate them into plans and exercises
- May need to assist in disaster should access needs not be met



Non-Discrimination in General Operations

Reasonable modifications to policy, practice, or procedure include:

- Completing a form for someone who cannot due to their disability
- Allowing someone to have a support person with them

Reasonable modifications are not required when they fundamentally alter the nature of the program.



Non-Discrimination in General Operations

Reasonable modifications to policy, practice or procedure include:

- Allowing someone with difficulty standing to advance in a line

Reasonable modifications are not required when they fundamentally alter the nature of the program.



Types of Obligations During Disasters

Equal Access to Disaster-Related Programs and Services

Notification

- Notifications **should** be ASL interpreted and must be captioned
- Alternatives to door knocks must be used
- Maps must be accessible



Equal Access to Disaster-Related Programs and Services

Evacuation

- Building evacuation
- Geographic area evacuation



Equal Access to Disaster-Related Programs and Services

Shelters must:

- Be structurally accessible
- Provide equally effective communication
- Meet general non-discrimination obligations



Equal Access to Disaster-Related Programs and Services

Structurally accessible shelters includes ADA compliant:

- Path of travel
- Toilets and shower
- Cots
- Registration
- All spaces



Equal Access to Disaster-Related Programs and Services

Equally effective communication includes:

- Relay or on-site interpreters
- Print material in multiple formats
- Tactile signage
- Announcements



Equal Access to Disaster-Related Programs and Services

Shelters must meet general non-discrimination obligations, including making reasonable modifications to policies and practices and allowing service animals.



Equal Access to Disaster-Related Programs and Services

Sheltering

- Quiet areas
- Service animals must be allowed
- Personal assistants must be allowed
- Personal assistance services must be provided
- Dietary accommodations must be provided
- No segregation or separation



Equal Access to Disaster-Related Programs and Services

Disaster-related programs and services must be provided in the most integrated setting most appropriate to the needs of the person with a disability.



Questions and Comments?

National Planning Framework

The National Planning Frameworks

The National Planning Frameworks describe how the **whole community works together** to achieve the National Preparedness Goal.

- **The Goal:** “A secure and resilient nation with the capabilities required across the whole community to prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.”



National Preparedness System

The National Planning Frameworks describe how the **whole community works together to achieve the National Preparedness Goal.**

- The Goal is the cornerstone for the implementation of the National Preparedness System.



National Incident Management System (NIMS)

- Guides all levels of government, nongovernmental organizations (NGO), and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from incidents.
- Provides stakeholders across the whole community with the shared vocabulary, systems, and processes to successfully deliver the capabilities described in the National Preparedness System.



Emergency Support Functions (ESF)

ESFs provide the structure for coordinating Federal interagency support for a Federal response to an incident.

“... describe[s] the federal coordinating structures that group resources and capabilities into functional areas most frequently needed in a national response.”

- National Response Framework



Emergency Support Functions (ESF)

There are 15 Federal Emergency Support Functions

- States may have different ESFs
 - [CT's Emergency Support Functions](#)



Emergency Support Function (ESF) #6

ESF #6 “coordinates the delivery of Federal mass care, emergency assistance, housing, and human services when local, tribal, and State response and recovery needs exceed their capabilities.”

Includes:

- Mass Care
- Emergency Assistance
- Housing
- Human Services



Emergency Support Function (ESF) #8

ESF #8 includes:

- “[Providing] planning and coordination of Federal public health, healthcare delivery, and emergency response systems to minimize and/or prevent health emergencies from occurring;
- detect and characterize health incidents;



Emergency Support Function (ESF) #8

ESF #8 includes:

- provide medical care and human services to those affected;
- reduce the public health and human service effects on the community;
- and enhance community resiliency to respond to a disaster."



Whose Responsibility is Sheltering?

- Always local or county government
- Sometimes the state also has responsibilities
- Locals governments may contract with other entities
 - American Red Cross via charter
 - Salvation Army
- Sometimes county manages the shelters, and other entities like Red Cross supplement services
- Pop-up shelters



American Red Cross

Relationship with government:

- Has authority given by the Federal Government
- Not a government entity
 - They have a charter
- They share responsibility for mass care with FEMA



Civil Rights Obligations Are Often Delegated to Charities

- Federal and state government still retain their legal obligations; they cannot contract legal obligations away.
- Charity organizations often follow the medical model approach to disability, influencing the institutional bias.



Charity in Disasters

Civil rights obligations are delegated to volunteers

- VALS: Voluntary Agency Liaison Specialists
- VOADs: Voluntary Organizations Active in Disasters
- COADs: Community Organizations Active in Disasters
- Durable Medical Equipment (DME), consumable medical supplies, and other disaster resources are referred for donations and charitable solutions



Gaps in Emergency Support Functions

- There is a gap in what people with disabilities need that none of the ESFs cover
- Emergency management is not inherently inclusive of the rights and needs of people with disabilities
- This gap can lead to institutionalization of disabled people



Mutual Aid Agreements

“Mutual aid agreements:

- Establish the legal basis for two or more entities to share resources.
- May authorize mutual aid between two or more neighboring communities, among all jurisdictions within a state, between states, between Federal agencies, and/or internationally.”



Mutual Aid Agreements

Since most jurisdictions do not maintain sufficient resource levels to handle extreme events independently, mutual aid agreements provide a means for jurisdictions to augment their resources when needed for high-demand incidents.



Mutual Aid Agreements

Mutual aid agreements can:

- Support all mission areas
- Be established before, during, or after incidents
- Be between all levels of government, non-governmental organizations (NGOs), and the private sector.



Institutionalization During and After Disasters

Institutional Bias

To review:

- The unconscious or conscious individual belief and systemic practice that people with disabilities belong, or are better off, in institutions, such as nursing homes.
- Ageism is often, but not always, a factor.



Institutionalization During and After Disasters

Waivers are an example of institutional bias.

- In recent disasters, Centers for Medicare and Medicaid (CMS) have issued blanket 1135 waivers that waive the 3-day hospital stay before a person is transferred to a long-term care facility.
- Nursing facility pre-admission screening are also waived.



Institutionalization During and After Disasters

Under waivers, people can be placed in nursing facilities from:

- Their homes if they don't have a personal care attendant (PCA) and call 911
- Emergency departments
- Hospital rooms, if it will benefit another patient



Institutionalization During and After Disasters

Consequences of institutionalization:

- People get lost
- People get sick
- People lose their jobs, homes, and independence
- People die



National Council on Disability Report

Preserving Our Freedom:

Ending Institutionalization of People with

Disabilities During and After Disasters



Questions and Comments?

Inclusive Planning Strategies

Inclusive Disaster Planning Strategies

- Comply with disability rights laws before being asked
- Go beyond compliance



Beyond Compliance

After meeting your legal obligations, work with people with disabilities to prioritize disabled people's experiences throughout disaster planning, mitigation, response, recovery, and reconstruction.



Beyond Compliance

This can include:

- Using a disability-specific trauma-informed approach
- Using respectful non-ableist language
- Creating plain language materials
- Maintaining an intersectional framework



Inclusive Disaster Planning Strategies

Connect with of the Disability Community by contacting:

- Centers for Independent Living (CILs)
- The State Independent Living Council (SILC)
- Other disability-led groups



Centers for Independent Living (CILs)

CILs are:

- Disability-led
- Cross-disability
- Locally administered
- Not-for-profit organizations

They provide advocacy and support to assist people with disabilities of all ages to live independently and fully integrated in their communities.



Centers for Independent Living (CILs)

Core services include:

- Information and referral services
- Peer counseling
- Individual and systems advocacy
- Independent living skills training
- Transition services for both youth transition and nursing facility transition

CILs have can and have been resources in disasters and public health emergencies.



Inclusive Disaster Planning Strategies

Centers for independent living may be able to:

- Identify locations of some disabled people
- Be points of distribution
- Identify accommodations
- Collaborate in response and recovery



Inclusive Disaster Planning Strategies

Invite people with disabilities to your table:

- Planning meetings
- Exercises
- Conferences



Inclusive Disaster Planning Strategies

Go to Disability Community tables

- You are already doing that!
- Continue to build relationships
- Get on disability community mailing lists



Planning for a Disaster

How will you change or expand disaster planning based on what we have discussed?

What organizations or individuals might you add to your planning group or team?

What remaining questions do you have?

Scenario 1

A co-worker tells you that, while they appreciate you thinking about access, there is no need to worry, because “the Red Cross handles all of that.”

How do you respond?



Scenario 2

You are an emergency management planning group coordinator.

What steps should you take to ensure that your meetings are compliant with ADA/Rehab Act requirements when the meeting:

- Is in person?
- Is virtual?



Promising Practice

Regular meetings with stakeholders from across sectors and across the disability community to identify barriers and create collaborative solutions.

Stakeholders such as:

- Emergency management agencies,
- Public health,
- Decision and policy makers,
- Disability-led and disability-related organizations.



Promising Practice

The Coalition on Inclusive Emergency Planning (CIEP) in Washington State

- CIEP is a statewide, cross-disability, advisory group that works with state and local emergency management stakeholders to build disability accessibility and inclusion into all aspects of emergency management.



Promising Practice

The Coalition on Inclusive Emergency Planning (CIEP) in Washington State:

- CIEP is funded by a grant from the WA State Department of Health Emergency Preparedness and Response.



Your Areas of Interest

Registries

Registries are not a good practice because:

- People with disabilities do not stay at home
- Registries are costly and ineffective
- Registries create false expectations



Evacuating Hospitals and Nursing Homes

Emergency Preparedness Requirements
for Medicare and Medicaid Participating
Providers and Suppliers Final Rule

(effective November 16, 2016)



Evacuating Hospitals and Nursing Homes

US Department of Health and Human Services (HHS) Assistant Secretary for Preparedness and Response (ASPR) Technical Resources, Assistance Center, and Information Exchange (TRACIE) has compiled a [Resources at Your Fingertips](#) document.



Evacuating Hospitals and Nursing Homes

The document can help facilitate compliance with the four core elements of the CMS rule that became effective in 2017:

- Emergency Plan
- Policies and Procedures
- Communication Plan
- Training and Testing



Questions?

Resources

Connecticut Community Disability Resources:

- Centers for Independent Living
 - Find more information at [CT SILC](#)
- [Advocacy Unlimited](#)
- [Disability Rights Connecticut](#)



Resources

Literature

- CT Developmental Disabilities Network: [Guide for Including People with Disabilities in Disaster Preparedness Planning](#)
- The Partnership for Inclusive Disaster Strategies: [Getting It Wrong: An Indictment with a Blueprint for Getting It Right](#)



Resources

Literature

- National Council on Disability: [Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and after Disasters](#)



Resources

June Isaacson Kailes:

- [Checklist for Integrating People with Disabilities and Others with Access and Functional Needs into Emergency Preparedness, Planning, Response & Recovery](#)
- [Disaster Resources for People with Disabilities and Others with Access and Functional Needs, Emergency Managers & Planners & Disability-focused Organizations](#)





Thank you!

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