



THE PARTNERSHIP
FOR INCLUSIVE DISASTER STRATEGIES

You've Got It Right: Disability Rights in Disasters

— www.disasterstrategies.org —

Welcome and About Us

Who We Are: The Partnership

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.

Your Disability & Disaster Hub



Group Agreements

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

Disclaimer

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

This Presentation is an Overview

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

Training Goals

For you to have a better understanding of:

- What your agencies' legal obligations are to disabled people throughout the disaster cycle
- How to meet these obligations
- How to facilitate compliant emergency management planning strategies

Disability Civil Rights

Disability Rights are Civil Rights

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

What are civil rights?

Disability Rights are Civil Rights

“Civil Rights are personal rights guaranteed and protected by the U.S. Constitution and federal laws enacted by Congress, such as the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990. Civil rights include protection from unlawful discrimination.”

Civil Rights Obligations

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

Disability Civil Rights Laws

Question for You

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

1. Not at all familiar
2. Somewhat familiar
3. Very familiar

Discussion

At your tables:

- Discuss a time when you were not sure what a disabled person's rights were surrounding a disaster or a time you felt pretty sure what their rights were.
- Appoint a spokesperson for your group.
- Report back.

Civil Rights 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

Sections of the ADA

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

Court Decision that Protects Disabled People During Disasters

Olmstead Decision (1999)

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

Supreme Court decision that interpreted the ADA to require that people with disabilities must receive services in the most integrated setting appropriate to their needs

Civil Rights 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

ADA Title II and Section 504 Obligations

Obligations under Title II of the ADA and Section 504 of the Rehabilitation Act are functionally identical.

- Same definition of disability
- Same obligations

Comparison: Section 504 and ADA

Section 504:

- Federally funded agencies, programs, and activities can't discriminate against people with disabilities.

ADA:

- **Federal money does not have to be spent** to cause ADA obligations.
- Title II (state and local government, including public schools) provides the same protections as section 504.

Who is Protected Under ADA/504?

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

Substantially Limits

Substantially Limits does not mean a severe condition, but it does mean a condition that creates an impairment when compared to most people. Determining whether a condition is substantially limiting must be done on a case-by-case basis.

Example: A mild allergy to pollen is not a substantially limiting condition.

Major Life Activities

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

Major Bodily Functions

Under the ADA Amendment Acts of 2008, **major bodily functions** include

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

Who Has Obligations Under the ADA/504?

Question for You

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

- Yes
- No
- I don't know

Brainstorm Activity: Who has obligations under ADA/504?

Let's make a list of who you think has obligations to people with disabilities in disasters under ADA and 504 in disasters and emergencies.

Entities with Obligations Under ADA

Entities with obligations under ADA include:

- City, town, county, state emergency management, public health, public schools, public hospitals
- Governor's Office and state legislature
- Nonprofits, including American Red Cross

Entities with Obligations Under 504

Entities with obligations under 504 include anyone receiving federal funds:

- Religious entities and other nonprofits receiving federal funds
- City, town, county, state emergency management and public health that receive federal funds
- Federal agencies including FEMA, HHS

Questions?

Obligations Under ADA/504 in Disasters

Equal Access to Disaster-Related Programs and Services

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

Programs and Services

These programs and services must comply with ADA and 504 (as applicable):

- Exercises/drills
- Planning meetings
- Disaster recovery centers (DRCs)
- Points of distribution (PODs)
- Shelters
- Transportation
- Emergency alerts/ notifications

Programs and Services

To comply with its obligations covered entities must provide

- Structural/ program access
- Equally effective communication
- Non-Discrimination in general operations

Structural Access

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

Structurally accessible requires an ADA compliant:

- Path of travel
- Restrooms
- Areas where programs and services are provided

Structural Access

ADA compliant path of travel requirements:

- 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 Illinois building code requirements.

Never assume that any 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.
- 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.

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.

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 Effectective Communication

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

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

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 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

Planning for Effective Communication

To provide effective communication you need to know how to:

- Identify and schedule sign language interpreters
- Use video remote interpreting (VRI)
- Have electronic material assessed for accessibility

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

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

Non-Discrimination in General Operations

Reasonable modifications to policy, practice or procedure include:

- Allowing someone with difficulty standing to advance in a line.
- Providing accessible transportation during evacuations and emergency situations.

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

Obligations as They Apply to 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 and geographic area evacuation must be accessible

- Information must be in an accessible format
- Verbal instruction should be interpreted
- Accessible transportation must be provided when provided for others

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 must include ADA compliant:

- Path of travel
- Restrooms, including showers
- Registration; eating; sleeping, including accessible cots; quiet and other areas in shelters

Equal Access to Disaster-Related Programs and Services

Equally effective communication includes:

- On-site interpreters or VRI
- Print material in multiple formats
- Tactile signage

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?

Institutionalization During and After Disasters

Institutionalization During and After Disasters

Consequences of institutionalization:

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

Institutional Bias

- The unconscious or conscious individual belief and systemic practice that people with disabilities belong, or are better off, in institutions, such as nursing facilities.
- 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

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 Centers for Medicare and Medicaid Services (CMS) rule that became effective in 2017:

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

Questions?

Other Laws That Protect Disabled People in Disasters

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

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

Fair Housing Amendments Act

"Fair Housing Act". SEC. 801

Protects people with disabilities from discrimination in certain types of housing

Inclusive Planning Strategies

Inclusive Disaster Planning Strategies

- Involve disabled people throughout the process.
- Comply with disability rights laws before being asked.
- Go beyond compliance when you can.

Beyond Compliance

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

Activity

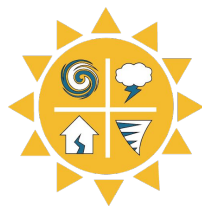
List things your organization does or plans to do during disasters that is compliant with ADA or 504 obligations.

List some areas where you may not be need to work toward compliance.

Questions?

Resources

- [Equip for Equality](#) (Protection & Advocacy)
- [Great Lakes ADA Center](#)
- National Council on Disability: [Preserving Our Freedom: Ending Institutionalization of People with Disabilities During and after Disasters](#)



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Thank you!

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