ADA Title II Comments on Proposed Changes

Students for Disability Awareness
Western Washington University
By: Brittany Otter, Vice President

Service Animals

In response to the Department's Question 9 regarding the phrase "providing minimal protection," we see that such circumstances as seizures, comas, or some forms of unconsciousness warrant the use of service animals to provide this protection, in such ways as retrieving assistive equipment or alerting handlers of hypoglycemic episodes.

We feel that the phrase "do work or perform tasks" is an appropriate description of service animals because it accurately describes the services that these animals provide. The ability to perform these tasks is what allows them to provide a service and animals that do not provide these tasks are not equipped with the means to provide necessary services.

The "do work or perform tasks" stipulation will weed out those animals that are unlikely to provide appropriate services (snakes or rats for example) but to eliminate certain species or imply that only "common domestic animals" be used would limit services that could be provided elsewhere (for instance, from miniature horses). We do not oppose elimination of species entirely, but wish to recognize the value of species like miniature horses for the blind.

We do not agree to the imposition of a size or weight limitation for service animals. If the service animal is able to perform the tasks or "work" that is needed should be determined independent of the animal's weight or size. If the size or weight of the animal provides a direct threat or fundamentally alters a public entity or accommodation, there are provisions within these rules that allow for its exclusion or removal. See, 28 CFR 36.302 and 28 CFR 35.136.

Seating/Ticketing in Theatres/Stadiums

We appreciate the proposed ruling that ensures that individuals with disabilities can purchase tickets for accessible seating in the same way as others, through the same distribution methods, and during the same hours, unless fundamentally altering the nature of the ticketing service.

But the inconsistencies between Title II and Title III regulations are confusing. We notice very few differences between public and private stadiums, theaters, and arenas and we fell that both should be addressed using the same language and rules.

We strongly support the provision that "tickets for accessible seating tickets will be made available during all stage of ticket sales." In response to Question 21, we feel that individuals without disabilities should be able to purchase both "accessible" and "inaccessible" seat tickets

through the secondary market and individuals with disabilities who purchase "inaccessible" seats are provided with an accessible seat unless it would be a fundamental alteration to do so.

As part of the identified features of accessible seating we insist that designated isle seats be included so that individuals with mobility disabilities other than wheelchair users may be able to benefit. Also, all types of seating requirements of the 2004 ADAAG must be included.

Regarding season or multi-event tickets, we would recommend language adopted from the case *Independent Living Resources v. Oregon Arena Corp.* about not selling off season tickets to non-disabled people such that the ticket pool is diminished over time.

Also, when a person with a disability transfers a ticket to a non-disabled individual, the "portable chair" provided by the facility must meet the standards for companion seating (providing the same size, quality, and comfort as the nearby seating).

In response to Question 20, if an individual resells the ticket for accessible seating to someone who does not need accessible seating, the secondary purchaser may be asked to move if the space is needed for someone with a disability, but to a seat of comparable quality and be allowed to sit with his/her companions if she/he wishes.

We find that the three limited conditions under which covered entities may release unsold accessible seating are not fair limitations because this subsection assumes that accessible seats are evenly distributed, located in each seating section, and are available for all price ranges. However, this does not reflect the reality of accessible seating for many venues and so we propose to eliminate conditions two (2) and three (3) from the proposed rules and leave only the first (1) which allows the release of such tickets forty-eight hours before the event. We find that there is much less accessible seating and not as evenly distributed through price ranges or seating sections as assumed and so to ensure available seats for wheelchair users we suggest that change.

When preventing fraudulent purchase of accessible seating, venues should not be permitted to ask the ticket purchaser if he/she will be using a wheelchair but if the ticket is going to be used for a wheelchair space. The purchaser may not be the individual using the accessible seating ticket and may be purchasing the ticket for someone else. The Department should specify that the authorization of potential fraud does not permit the venue to subject the ticket purchaser to providing documentation of disability, which can be burdensome, costly, and excessively intrusive. In the event that an individual who uses a wheelchair must answer whether the wheelchair space is used for a wheelchair seat the question and answer must be a "yes" or "no" statement that is nondiscriminatory as the individual answers it on a website or mails it in.

We strongly approve the sections describing new construction and alterations and the improvements it renders toward accessible seating in stadium-style movie theaters.

<u>Medical Care Facilities</u>

We support the Department's decision to include a dispersion requirement to prevent facilities from having a high concentration of accessible rooms in one area and no accessible patient rooms in another. We recommend that the regulations specify that the 10% of rooms that need to be accessible must be dispersed proportionally through each specialty unit. One benefit to this is that rooms that are accessible can be used temporarily by individuals who do not require accessible rooms, whereas inaccessible rooms cannot be made readily accessible for those who need the accessible rooms.

We oppose the Department's decision not to add specific regulatory guidance or clarifying requirements for accessible equipment and furniture. The failure to list explicit examples of accessible medical equipment can lead to further unequal access.

We recommend that the Department adopt:

Sec. --- Accessible Medical Equipment.

(a) General. A public accommodation [public or government-funded entity] shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of accessible medical equipment and treatment, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) Examples. The term "accessible medical equipment and treatment" includes --

(1) Examination tables (height adjustable, with a minimum height of 15" from the floor, extra-wide top and higher weight capacities, adjustable hand rails, and adjustable foot/leg supports), weight scales with accessible features, diagnostic and imaging equipment (including mammogram machines) with accessible features, medical chairs (including dental chairs) with accessible features;

(2) Acquisition or modification of equipment or devices and implementation of necessary policies;

(3) Provision of appropriate training for staff; and

(4) Other similar actions, such as provision of headrests or pillows.

(c) Equal treatment. A public accommodation [public or government-funded entity] shall furnish accessible medical equipment where necessary to ensure full and equal medical care for individuals with disabilities.

(d) Alternatives. If provision of a particular piece of accessible medical equipment by a public accommodation [public or government-funded entity] would result in a fundamental alteration in

the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation [public or government-funded entity] shall provide an alternative accommodation, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation [public or government-funded entity].

We also propose that the Department add the following section regarding floor space in the context of medical equipment:

Sec. -- Clear Floor Space. Medical Equipment. Exam tables, scales, and diagnostic and imaging equipment shall have a clear floor space complying with 305 positioned for transfer or for use by an individual seated in a wheelchair. Clear floor or ground spaces required at diagnostic and imaging equipment shall be permitted to overlap.

Advisory for 1004.1 One clear ground or floor space is permitted to be shared between two pieces of medical equipment. The position of the clear floor space may vary greatly depending on the use of the equipment. For example, to provide access to a bone density scanner that operates with the patient in a supine position, clear floor space next to the table would be appropriate to allow for transfer. Clear floor space for a mammography machine, designed for use by an individual seated in a wheelchair, however, will most likely be centered on the scanning mechanisms.

<u>Definition of "Wheelchairs"</u>

The Department asked Questions 8, and 12-16 regarding the definition and qualifications of wheelchairs. In response to Question 8, the definition of "other power-driven mobility devices" is not overly inclusive because all such vehicles should be included when determining if an individual with a disability needs it for access. We support the definition of "wheelchair" although "designed by use of individuals with mobility impairments" should be clarified to address the breadth of mobility impairments. We feel, in response to Question 13, that segways should not be included in the definition of "wheelchair" but in the "other power-assisted mobility devices."

We accept the Department's definition for "manually powered mobility aids." When defining personal mobility devices it is appropriate to consider the intended purpose and consequences of use before the size and weight of the device. Devices with combustible engines (such as ATVs or OTVs) should be considered "other power-driven mobility devices" and each device should be considered on a case by case basis applying the factors that the Department has set forth. Some minor revisions to the factors need to be made: In factor one; "dimensions, weight, and speed" should be addressed to say the appropriateness of the device under the circumstances is what covered entities should be considering. For factor two, "The risk of potential harm to others" is

too broad. It needs to be restricted to the definition of "direct threat," which prohibits determinations made based on unfounded stereotypes, generalizations, and prejudices.

Prisons and Jails

The proposed rules for prisons and jails are generally very good. However, we feel that the Department should provide clarification to ensure that the accessibility regulations apply to both juvenile and adult facilities.

We wish that the language in subsection (b) (2) be changed to read: "Unless the *individual with a disability and the public entity agree* that it is appropriate to make an exception for a specific individual, *or the public entity can demonstrate that the individual with a disability poses a direct threat to the health or safety of self or others that cannot be eliminated by reasonable modifications*." Without the change in language we are concerned that practices such as restrictive classifications due to having a disability will continue. Assignment to administrative segregation because of the existence of a disability should not continue.

In response to the Department's Question 45, we believe that the requirements for accessible cells in sections 232.2 and 232.3 of the 2004 ADAAG are not adequate to meet the needs of any prison population. Instead of the 2% that the 2004 ADAAG requires, we encourage that 5%-7% of the cells of any prison should be required to be accessible. Section 232.3 should also be expanded to require both 2% scoping for each scoping for each special holding cell, and that the scoping requirements in 2004 ADAAG Sec. 232.2.1 should be modified to require 2% scoping in each area, type, use and class of cells in a facility. If a correctional facility has separate areas for inmates in specific programs, each of those areas must have 2% but not less than one accessible cell. If a correctional facility has separate housing for different classifications, the 2% scoping should apply to each of those housing units. If the facility has shift areas, the 2% should be provided in both the shift areas, as well as in each housing area.

We believe that the requirement of 2004 ADAAG Section 232.4 that medical facilities in detention and correctional facilities must comply with Section 223 should be expanded to apply to all medical facilities with detention and correctional facilities, regardless of licensure.

In response to Question 45, we believe that this is a very practical response that would meet the needs for inmates with disabilities in existing and newly constructed facilities. Because inmates spend a great deal of time, in some cases a lifetime in these cells, they need to be able to live in a facility that caters to their specific needs (since they can't just choose another facility like you can a hotel or resort if you don't like it). In many instances inmates do not need all of the elements that standards require and this approach will meet the needs of inmates in an expedient and cost effective way.

The concern with this approach, however, is that some inmates with disabilities arrive to a facility without the facility having prior knowledge of his/her needs. Strong regulatory language

and communication should fix this. We feel that to help, Section 35.152 (b) Needs to be modified to read: "Unless the *individual with a disability and the public entity agree* that it is appropriate to make an exception for a specific individual, *or the public entity can demonstrate that the individual with a disability poses a direct threat to the health or safety of self or others that cannot be eliminated by reasonable modifications*."

Dispersal of accessible cells is very important but scoping should be modified to require a percentage of accessible cells in each program, classification, and use or service area within each facility to be accessible to inmates with mobility disabilities.

<u>Social Service Agencies, Dorms, Timeshares</u>

We support treating social service establishments and dorms as residential facilities, however, we encourage adding a requirement that dorms offer a variety of options for accessible bathing. We also support setting one standard for all social service establishments to follow because it will alleviate any confusion and inaction sometimes caused by current conflicting requirements.

We support classifying all dorms as residential facilities because they serve as long-term homes for full-time students. Treating these dorms as residential units will also ensure that they have access to the dorm in its entirety, not just their sleeping room and select lounges.

The Department should require that all floors, not only the first, to contain accessible rooms.