



The Americans with Disabilities Act and Emergency Preparedness and Response

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Summary

The Americans with Disabilities Act (ADA) provides broad nondiscrimination protection for individuals with disabilities in employment, public services, and public accommodations and services operated by private entities. Although the ADA does not include provisions specifically discussing its application to disasters, its nondiscrimination provisions are applicable to emergency preparedness and responses to disasters. In order to further the ADA's goals, President Bush issued an Executive Order on July 22, 2004, relating to emergency preparedness for individuals with disabilities and establishing the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. The Department of Homeland Security (DHS) issued its Nationwide Plan Review Phase 2 Report, which includes a discussion of people with disabilities and emergency planning and readiness. The National Council on Disability has also issued recommendations on emergency preparation and disaster relief relating to individuals with disabilities. The Post-Katrina Emergency Management Reform Act of 2006 added the position of disability coordinator to FEMA.

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Introduction

According to the U.S. Census Bureau, there are 54.4 million individuals with disabilities in the United States.¹ The challenges faced by these individuals, and their civil rights to inclusion in disaster preparedness and response, have received increased attention after September 11, Hurricane Katrina, and other disasters.²

The Americans with Disabilities Act (ADA)³ provides broad nondiscrimination protection for individuals with disabilities in employment, public services, and public accommodations and services operated by private entities. Although the ADA does not include provisions specifically discussing its application to disasters, its nondiscrimination provisions are applicable to emergency preparedness and responses to disasters. In order to further the ADA's goals, President Bush issued an Executive Order on July 22, 2004, relating to emergency preparedness for individuals with disabilities and establishing the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. The Department of Homeland Security (DHS) issued its Nationwide Plan Review Phase 2 Report, which includes a discussion of people with disabilities and emergency planning and readiness. The Post-Katrina Emergency Management Reform Act of 2006 added the position of disability coordinator to FEMA. The National Council on Disability has also issued recommendations on emergency preparation and disaster relief relating to individuals with disabilities.

The Americans with Disabilities Act

Statutory and Regulatory Language

The ADA has as its purpose “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁴ Although the ADA does not specifically mention disasters, its provisions are broad and would provide nondiscrimination protection.

The definitions in the ADA, particularly the definition of “disability,” are the starting point for an analysis of rights provided by the law. The term “disability,” with respect to an individual, is defined as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as

¹ http://www.census.gov/newsroom/releases/archives/income_wealth/cb08-185.html.

² For a discussion of disaster related issues, CRS Report RL34758, *The National Response Framework: Overview and Possible Issues for Congress*, by Bruce R. Lindsay; CRS Report RL33579, *The Public Health and Medical Response to Disasters: Federal Authority and Funding*, by Sarah A. Lister; and CRS Report R40159, *Public Health and Medical Preparedness and Response: Issues in the 111th Congress*, by Sarah A. Lister. Although it is beyond the scope of this report to discuss financial assistance provided to individuals with disabilities, it should be noted that P.L. 109-82, the Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005, provides for certain reallocations of grants under the Rehabilitation Act of 1973 to assist individuals with disabilities affected by these disasters.

³ 42 U.S.C. §12101 et seq.

⁴ 42 U.S.C. §12101(b)(1). For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

having such an impairment (as described in paragraph (3)).”⁵ The issues involving the definition of disability have been among the most controversial under the ADA. The ADA was amended to expand the interpretation of the definition of disability.⁶

Title I of the ADA provides that no covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment.⁷ Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.⁸ “Public entity” is defined as state and local governments, any department or other instrumentality of a state or local government, and certain transportation authorities. Thus, emergency services operated by a state or local government cannot discriminate against individuals with disabilities. Title III provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.⁹ Entities that are covered by the term “public accommodation” are listed in the statute and include, among others, hotels, restaurants, theaters, museums, parks, zoos, private schools, day care centers, professional offices of health-care providers, and gymnasiums.¹⁰

The ADA regulations do not specifically discuss emergencies but their general prohibitions against discrimination have been interpreted by the Department of Justice to apply to such situations.¹¹ However, recent changes to the regulations for titles II and III do contain a reference to emergencies in the provisions relating to communication.¹² Although generally, a public entity or a place of public accommodation may not require an individual to bring another individual to interpret for them,¹³ there is an exception made for an “emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.”¹⁴

Department of Justice Guide

The Department of Justice has observed that “one of the most important roles of local government is to protect their citizenry from harm, including helping people prepare for and respond to emergencies. Making local government emergency preparedness and response

⁵ P.L. 110-325, §4(a), amending 42 U.S.C. § 12102(3).

⁶ See CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by Nancy Lee Jones.

⁷ 42 U.S.C. §12112(a).

⁸ 42 U.S.C. §§12131-12133.

⁹ 42 U.S.C. §12182.

¹⁰ 42 U.S.C. §12181.

¹¹ 28 C.F.R. Parts 35 (public entities) and 36 (places of public accommodation) (2010); 29 C.F.R. Part 1630 (employment)(2010).

¹² For a discussion of the changes made to the regulations see CRS Report R41376, *The Americans with Disabilities Act (ADA): Final Rule Amending Title II and Title III Regulations*, by Nancy Lee Jones.

¹³ 28 C.F.R. §35.160(c)(2010); 28 C. F. R. §36.303(c)(2010).

¹⁴ 28 C.F.R. §35.160(c)(2)(1)(2010); 28 C. F. R. §36.303(c)(3)(i)(2010).

programs accessible to people with disabilities is critical part of this responsibility. Making these programs accessible is also required by the ADA.”¹⁵

The Department of Justice has issued an ADA guide for local governments regarding making community emergency preparedness and response programs accessible to people with disabilities.¹⁶ This guide provides action steps, including

- planning for emergencies by soliciting and incorporating input from people with different types of disabilities for all phases of emergency plans;
- notification for individuals with disabilities when there is an emergency (e.g., providing ways to inform people who are deaf or hard of hearing of an impending disaster);
- evacuation of individuals with disabilities (e.g., adopting policies to ensure community evacuation plans enable individuals with disabilities to safely self-evacuate or to be evacuated);
- sheltering of individuals with disabilities (surveying shelters and remove barriers, invite representatives of group homes and other individuals with disabilities to meet regarding shelter planning, adopting procedures to ensure individuals with disabilities are not separated from their service animals, ensuring that a reasonable number of emergency shelters have back-up generators and a way to keep medications refrigerated, and adopting procedures to provide accessible communication for people who are deaf or hard of hearing);
- issues involved in returning individuals with disabilities to their homes (arrange for accessible housing if necessary); and
- making sure that contracts for emergency services require providers to follow the guide’s action steps.

FEMA Guidance

Title III of the ADA prohibits discrimination against individuals with disabilities in public accommodations. This prohibition in part requires that physical facilities be accessible if they are newly constructed or altered in a manner that affects the usability of the facility.¹⁷ Any public accommodations that are rebuilt or significantly altered as a result of damage during a disaster must comply with the ADA’s requirements for accessibility. Similarly, facilities that are rebuilt by states and localities (covered by Title II of the ADA) must also comply with the ADA’s requirements for accessibility.¹⁸

The Federal Emergency Management Agency (FEMA) issued guidance in 2010 on planning for functional needs support services (FNSS) that can be incorporated into existing shelter plans by

¹⁵ See <http://www.usdoj.gov/crt/ada/emergencyprep.htm>. This requirement would be under Title II of the ADA, which covers state and local governments.

¹⁶ *Id.*

¹⁷ 42 U.S.C. §12183; 28 C.F.R. §§36-401—36.407.

¹⁸ 42 U.S.C. §12132; 28 C.F.R. §§35.149—35.151.

state emergency planners.¹⁹ Generally, the guidance notes that “[c]hildren and adults with disabilities have the same right to services in general population shelters as other residents.” In addition, planning must ensure that the shelters are accessible.²⁰ FNSS is defined as including

- reasonable modification to policies, practices and procedures;
- durable medical equipment;
- consumable medical supplies;
- personal assistance services; and
- other goods and services as needed.²¹

The legal authority for these requirements includes the ADA, Section 504 of the Rehabilitation Act of 1973,²² and the Fair Housing Act.²³

FEMA also issued guidance on October 26, 2000, for determining the eligibility of costs for federally required ADA access compliance associated with Public Assistance (PA) grants.²⁴ The PA program authorizes FEMA to fund the cost of repairing or replacing a public or private nonprofit facility. The ADA guidance provides that a new facility receiving FEMA funding and constructed as a replacement facility must be designed and constructed to be readily accessible to and usable by individuals with disabilities. Similarly, when ADA-relevant repairs are made to any area of an existing facility, they must be done to meet the needs of individuals with disabilities. FEMA will fund compliance with “reasonable ADA requirements in a new facility” and fund ADA relevant repairs to existing facilities with certain limitations. For example, funding for providing an accessible path of travel to a repaired area may not exceed 20% of the total cost associated with the repair of the primary function area. It should also be noted that some states and localities have imposed additional accessibility standards. FEMA notes that costs of additional state and local requirements may be eligible on a case-by-case basis if they are found reasonable.

Nationwide Plan Review Phase 2 Report

The Conference Report on the DHS Appropriations Act of 2006 directed the Secretary of DHS to report on the status of catastrophic planning in all 50 states and the nation’s 75 largest urban areas.²⁵ DHS issued its report on June 16, 2006, and included a section on “special needs”

¹⁹ http://www.fema.gov/pdf/about/odc/fnss_guidance.pdf.

²⁰ *Id.* at 8.

²¹ *Id.*

²² 29 U.S.C. §794. For a general discussion of section 504 see CRS Report RL34041, *Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance*, by Nancy Lee Jones.

²³ 42 U.S.C. §3601 et seq. For a general discussion of the Fair Housing Act see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by Todd Garvey.

²⁴ See http://www.fema.gov/government/grant/pa/9525_5.shtm. This Stafford Act program authorizes FEMA to fund the cost of repairing, restoring, reconstructing, or replacing a public or private nonprofit facility in conformance with applicable codes, specifications and standards. 42 U.S.C. §5172(a). See also FEMA general standards (42 U.S.C. §5165a) and eligible cost considerations (42 U.S.C. §5172(e)).

²⁵ H.Rept. 109-241, 109th Cong., 1st Sess. (2005).

populations. The term “special needs” is defined as including individuals with disabilities but also covers other groups such as children.²⁶ The report concluded that although progress was being made, “substantial improvement is necessary to integrate people with disabilities in emergency planning and readiness.”²⁷ The report found that few plans recognized the legal obligations imposed by the ADA. Specific problems were identified regarding evacuation and transportation, communication and emergency public information, and sheltering and health services.²⁸

Executive Order 13347

President Bush issued Executive Order 13347, “Individuals with Disabilities in Emergency Preparedness,” on July 22, 2004.²⁹ This executive order states that its policy is “to ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism...” Federal agencies are to consider the needs of individuals with disabilities in their emergency plans; to encourage this consideration in state, local, and tribal governments and private organization emergency planning; and to facilitate cooperation among federal, state, local, and tribal governments and private organizations. The Executive Order also established the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities (ICC) within DHS, which coordinates the implementation of the policies and submits an annual report. The annual report for 2005³⁰ noted several highlights from the ICC’s work, including the creation of a disability preparedness resources center website,³¹ new guidance on the ADA’s requirements, workplace emergency preparedness guidelines for federal emergency planners, and an emergency transportation website.³² The Emergency Preparedness in the Workplace Subcommittee of the ICC issued a report that provides guidelines for emergency plans for federal agencies. This report is meant to serve as a starting point for federal agencies as they reevaluate and strengthen their Occupant Emergency Plans (OEPs).³³

²⁶ The use of the term “special needs” has been criticized as limiting an integrated approach to emergency planning. See “Caring for Special Needs During Disasters: What’s Being Done for Vulnerable Populations?” Hearing before the Subcommittee on Emergency Communications, Preparedness, and Response, House Homeland Security Committee, 111th Cong., 2d Sess. (June 15, 2010), (Testimony of Jonathan M. Young, Chairman, National Council on Disability) <http://homeland.house.gov/SiteDocuments/20100615101428-34995.pdf>; (Testimony of Marcie Roth, Director, Office of Disability Integration and Coordination, FEMA) <http://homeland.house.gov/SiteDocuments/20100615101354-11995.pdf>.

²⁷ U.S. Department of Homeland Security, *Nationwide Plan Review Phase 2 Report* 41 (June 16, 2006) at <http://homelandsecurity.tamu.edu/framework/statelocalgovt/nationwide-plan-review-phase-2-report.html/>. See also “Assessing the Impact of Hurricane Katrina on Persons with Disabilities” (January 2007), at http://www.rtcil.org/products/NIDRR_FinalKatrinaReport.pdf.

²⁸ *Id.* at 46-47.

²⁹ See <http://www.whitehouse.gov/news/releases/2004/07/20040722-10.html>. In his statement on the 14th anniversary of the ADA in 2004, President Bush noted this executive order as one of the ways the administration had worked to foster the goals of the ADA. See <http://www.whitehouse.gov/news/releases/2004/07/20040726-5.html>.

³⁰ See http://www.dhs.gov/xlibrary/assets/CRCL_IWDEP_AnnualReport_2005.pdf.

³¹ See <http://www.dhs.gov/disabilitypreparedness>.

³² See <http://www.dotcr.ost.dot.gov/asp/emergencyprep.asp>.

³³ Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities, Subcommittee on Emergency Preparedness in the Workplace, *A Framework of Emergency Preparedness Guidelines for Federal Agencies*, at <http://www.dol.gov/odep/pubs/ep/preparing.htm>. It should be noted that the ADA does not cover the executive branch or the U.S. Postal Service; these entities are covered by section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, which provides similar protections.

Post-Katrina Emergency Management Reform Act of 2006

The Post-Katrina Emergency Management Reform Act of 2006 added the position of disability coordinator to FEMA.³⁴ The disability coordinator reports directly to the Administrator of FEMA “to ensure that the needs of individuals with disabilities are being properly addressed in emergency preparedness and disaster relief.”³⁵ The act contains a detailed list of the responsibilities of the Coordinator, which include providing guidance and coordination on matters related to individuals with disabilities in emergency planning and disaster relief, as well as interacting with the staff of FEMA, the National Council on Disability (NCD), the Interagency Coordinating Council on Preparedness and Individuals with Disabilities, and other federal, state, local, and tribal government entities. During congressional testimony in 2010, the current disability coordinator noted that the Office of Disability Integration and Coordination was established in FEMA in February 2010 and detailed some of the recent activities of the office. These included regular meetings with the National Council on Disability, the National Council on Independent Living, and the DHS Office for Civil Rights and Civil Liberties; technical assistance; and training.³⁶

The National Council on Disability has recommended that similar disability coordinator positions be created in regional FEMA offices to “enhance the effectiveness of the national disability coordinator by addressing more localized disability issues.”³⁷ Legislation was introduced in the 111th Congress, S. 1386, which would have established an office of disability coordination in FEMA and regional disability coordinators.³⁸ The current disability coordinator testified that currently the staffing decisions rest in the regional FEMA offices and that most of them have chosen to incorporate the tasks of a disability coordinator into positions that already exist and work with individuals on disaster assistance.³⁹

³⁴ Section 513, of P.L. 109-295, 6 U.S.C. §321b.

³⁵ 6 U.S.C. §321b(a).

³⁶ Testimony of Marcie Roth, Director, Office of Disability Integration and Coordination, FEMA) <http://homeland.house.gov/SiteDocuments/20100615101354-11995.pdf>. The coordination with the National Council on Disability appears to address the concerns expressed by a GAO report which found that FEMA “has generally not coordinated with NCD as required by the Act, which could result in disability-related concerns not being fully addressed.” Government Accountability Office, “National Disaster Response; FEMA Should Take Action to Improve Capacity and Coordination between Government and Voluntary Sectors,” GAO-08-369 (Feb. 2008).

³⁷ National Council on Disability, “Effective Emergency Management: Making Improvements for Communities and People with Disabilities,” at 336, http://www.ncd.gov/newsroom/publications/2009/pdf/NCD_EmergencyManagement.pdf.

³⁸ Support for regional disability coordinators was also expressed at House hearings. “Caring for Special Needs During Disasters: What’s Being Done for Vulnerable Populations?” Hearing before the Subcommittee on Emergency Communications, Preparedness, and Response, House Homeland Security Committee, 111th Cong., 2d Sess. (June 15, 2010), <http://homeland.house.gov/SiteDocuments/20100615101320-72371.pdf>.

³⁹ Testimony of Marcie Roth, Director, Office of Disability Integration and Coordination, FEMA) <http://homeland.house.gov/SiteDocuments/20100615101354-11995.pdf>.

National Council on Disability

The National Council on Disability (NCD), an independent federal agency responsible for gathering information on the development and implementation of federal laws, policies, programs, and initiatives that affect individuals with disabilities, issued several reports on emergency preparation and disaster relief relating to individuals with disabilities.⁴⁰ The most recent NCD report, “Effective Emergency Management: Making Improvements for Communities and People with Disabilities,” evaluates emergency preparedness, disaster relief, and homeland security programs in the public and private sectors. It also provides examples of community efforts and offers recommendations. These recommendations include

- ensuring that disaster preparedness policies protect and maintain the independence of individuals with disabilities;
- requiring federal agencies to include disability organizations as partners in preparedness and outreach efforts;
- providing for alternative warning systems; and
- making shelters accessible.

John Vaughn, then NCD chairperson, testified before the Subcommittee on Economic Development, Public Buildings, and Emergency Management of the House Transportation and Infrastructure Committee regarding this report.⁴¹ The principles of this report were also emphasized by the current chairperson of the NCD, Jonathan M. Young, in his testimony before the Subcommittee on Emergency Communications, Preparedness, and Response of the House Homeland Security Committee on June 15, 2010.⁴² In addition, the Congressional Bipartisan Disabilities Caucus, the NCD, and the National Organization on Disability, among others, held a congressional briefing on November 10, 2005, entitled “Emergency Management and People with Disabilities: Before, During and After.” This briefing included discussions of responsibilities for emergency management, disaster planning, and rebuilding, as well as other issues.⁴³

⁴⁰ See http://www.ncd.gov/newsroom/publications/2009/pdf/NCD_EmergencyManagement.pdf; http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm; http://www.ncd.gov/newsroom/publications/2006/hurricanes_impact.htm

⁴¹ “Looking out for the Very Young, the Elderly and Others with Special Needs: Lessons from Katrina and other Major Disasters,” Hearing before the Subcommittee on Economic Development, Public Buildings, and Emergency Management of the House Transportation and Infrastructure Committee, 111th Cong., 1st Sess. (October 19, 2009), <http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=1030>.

⁴² “Caring for Special Needs During Disasters: What’s Being Done for Vulnerable Populations?” Hearing before the Subcommittee on Emergency Communications, Preparedness, and Response, House Homeland Security Committee, 111th Cong., 2d Sess. (June 15, 2010), (Testimony of Jonathan M. Young, Chairman, National Council on Disability) <http://homeland.house.gov/SiteDocuments/20100615101428-34995.pdf>.

⁴³ For a transcript of this briefing, see http://www.ncd.gov/newsroom/publications/2005/transcript_emergencymgt.htm.

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