Order Code RS22676
June 11, 2007

CRS Report for Congress

Public Transportation Providers' Obligations Under the Americans with Disabilities Act (ADA)

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Summary

The Americans with Disabilities Act (ADA), 42 U.S.C. §§12101 *et seq.*, is a broad non-discrimination statute that includes a prohibition of discrimination in public transportation. To prevent such discrimination, the ADA imposes several affirmative obligations on transportation providers, including a requirement that providers offer separate "paratransit" service, or accessible origin-to-destination service, for eligible individuals with disabilities. Under the statute, the level of such service must be "comparable" to the level of service offered on fixed route systems to individuals without disabilities. Department of Transportation regulations implement this "comparable" standard with specific requirements regarding the scope and manner of paratransit service. Regarding the time taken by providers to respond to individuals' requests for paratransit service, recent case law suggests that providers' legal obligation under the ADA and accompanying regulations is to avoid discriminatory "patterns or practices" of service. For more information on the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.[1]

Statutory Language. Under the ADA, individuals with disabilities may not "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 such an entity." 42 U.S.C. §12132. In the context of public transportation, the statute requires transportation entities to offer supplemental "paratransit" service for people with disabilities. The statute provides,

> it shall be considered discrimination … for a public entity which operates a fixed route system … to fail to provide … paratransit [services] … that are sufficient to

[1] This report was prepared under the general supervision of Nancy Lee Jones, Legislative Attorney.

> provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such a system. 42 U.S.C. §12143(a).

All public entities operating a "fixed-route system" are subject to the ADA's complementary paratransit requirements. The ADA defines "fixed-route system" as "a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule." 42 U.S.C. §12141(3).

A public entity is any state or local government, any department or instrumentality of a state or local government, the National Railroad Passenger Corporation, and certain commuter authorities. 42 U.S.C. §12131(1). Also, the subcontractors of such public entities are subject to these obligations, even if the subcontractors are private entities. [2]

Paratransit Regulations. The Department of Transportation first promulgated regulations to implement the ADA's public transportation provisions on September 6, 1991. 56 Fed. Reg. 45584 *et seq.* Under these regulations, "each public entity operating a fixed route system" (excluding commuter bus, commuter rail, and intercity rail systems) must provide "complementary" paratransit service for individuals with disabilities. 49 CFR §37.121(a). Paratransit service, generally defined, is responsive, accessible origin-to-destination transportation service that is an alternative to a fixed-route system.

It is important to note that paratransit requirements do not authorize public entities to supercede the ADA's other non-discrimination provisions. Although the regulations obligate entities to offer paratransit service, the regulations also forbid entities from *requiring* their customers with disabilities to utilize the paratransit services instead of the services available to the general public. Specifically, transportation entities "shall not, on the basis of disability, deny to any individual with a disability the opportunity to use the entity's transportation service for the general public, if the individual is capable of using that service." 49 CFR §37.5(b). Furthermore, entities shall not require that individuals with disabilities sit in specific seats (49 CFR §37.5(c)) or be accompanied by an attendant (49 CFR §37.5(e)).

Minimum Service Requirements. The statutory language provides little guidance regarding the required scope of paratransit service. It merely requires entities to offer a level of service that is "comparable" to the level of service offered to the general public. 42 U.S.C. §12143(a). The ADA therefore required the Department of Transportation to develop minimum service criteria to "determine the level of services" sufficient to be "comparable" with services offered to individuals without disabilities. 42 U.S.C. §12143(b). Note that the regulations do not prohibit public entities from offering paratransit services that exceed these minimum service requirements. 49 CFR §37.131(g).

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[2] DA regulations allow public entities to contract with private entities to provide paratransit services for people with disabilities. 49 CFR §37.23(a). When they enter such a contract, however, public entities must ensure that the private entities adhere to ADA regulations, including requirements for paratransit services. For more information on subcontrators' requirements, see [http://www.fta.dot.gov/civilrights/ada/civil_rights_3892.html].

Eligibility. The regulations require entities to provide paratransit service to all "paratransit-eligible" individuals (49 CFR §37.123(a)), including non-resident visitors "who present documentation that they are ADA paratransit eligible" (49 CFR §37.127). An individual is paratransit-eligible if he or she is an individual with a disability who meets the requirements for one of three categories. The first eligibility category includes individuals who are unable, as a result of a physical or mental impairment, to board and ride accessible fixed-route transit systems. 49 CFR §37.123(e)(1). Department commentary accompanying the final rule shows that the department intended this first category to especially target individuals who are unable to "navigate the system." 56 Fed. Reg. 45601. The second eligibility category includes individuals who are able to use accessible vehicles but whose fixed-route system lacks accessible vehicles. 49 CFR §37.123(e)(2). Finally, the third eligibility category includes individuals "who have specific impairment-related conditions that prevent their getting to or from a stop." 49 CFR §37.123(e)(3).[3]

The regulations also require entities to provide paratransit service to one individual accompanying each paratransit-eligible individual. 49 CFR §37.123(f). This accompanying-individual allowance does not address assistance by personal care attendants; rather, it enables individuals with disabilities to travel with a friend or family member for pleasure. Thus, if the individual with a disability requires a personal care attendant, an accompanying individual shall also be provided service. 49 CFR §37.123(f)(1)(i).

Service Times. The regulation regarding minimum service times implements the ADA's "comparable" requirement in a straightforward manner. It provides that public entities must offer paratransit services for the same time frame for which they offer fixed-route transportation service to the general public. 49 CFR §37.131(e).

Fares. The regulations allow entities to charge a higher fare to paratransit riders than they charge to general riders; however, the fare charged to paratransit riders cannot exceed twice the amount charged to an individual for a similar trip on the general, fixed-route transportation service. 49 CFR §37.131(c). Likewise, the entity cannot charge "premiums" above this amount unless the premium is charged for services that exceed the minimum service requirements mandated by the regulations.[4]

Geographic Scope. Under the regulations, entities must provide paratransit service in all areas within three quarters of a mile of the fixed-route service. 49 CFR §37.131(a). For bus systems, this requirement refers to three-quarters of a mile on either side of the fixed-route corridor and includes "small areas not inside any of the corridors but which are surrounded by corridors." 49 CFR §37.131(a)(1). For rail systems, this requirement refers to a three-quarter-mile radius surrounding each rail station. 49 CFR §37.131(2).

"Origin to Destination". The regulations require that all paratransit service be "origin-to-destination" service. 49 CFR §37.129(a). The department intentionally left

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[3] See also 56 Fed. Reg. 45602.

[4] For more information about charging premiums for paratransit service, see [http://www.fta.dot.gov/civilrights/ada/civil_rights_3895.html].

ambiguous whether "origin-to-destination" service means door-to-door or curb-to-curb service, preferring to leave that specific "operational decision" to local-level decision-makers. 56 Fed. Reg. 45604. However, in later guidance documents, the epartment has clarified that it would be inappropriate for an entity to "establish an inflexible policy that refuses to provide service to eligible passengers beyond the curb in all circumstances."[5]

Response Times. Multiple regulations govern entities' obligations regarding the time it takes to respond to an individual's request for paratransit service. One response-time regulation, the next-day service requirement, provides a bright-line rule: it requires transportation entities to provide paratransit services for the day after a paratransit-eligible person has requested them. 49 CFR §37.131(b). That regulation further states that although entities can negotiate pick-up times, they cannot move the requested time by more than one hour. 49 CFR §37.131(b). A second Department of Transportation regulation, which governs "capacity constraints," seems to allow for flexibility in the next-day service provision requirement. It provides an exclusive list of ways in which entities cannot limit the availability of complementary paratransit service, thereby suggesting that other manners of limiting the service are acceptable. Specifically, this "capacity constraints" regulation prohibits limiting paratransit service in any of the following three ways: (1) restricting the number of trips provided to any one individual, (2) waiting lists for access to the service, and (3) "any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons." 49 CFR §37.131(f). This regulation also provides examples of discriminatory "patterns or practices," including "(A) substantial numbers of significantly untimely pickups for initial or return trips, (B) substantial numbers of trip denials or missed trips, and (c) substantial numbers of trips with excessive lengths. 49 CFR §37.131(f)(3)(i).

At least one court has interpreted the department's multiple regulations regarding paratransit response times as being somewhat in tension.[6] In *Anderson v Rochester-Genesee Regional Transportation Authority*, the Second Circuit — relying on Department of Transportation commentary accompanying these regulations, an agency opinion letter addressed to the court, and opinion letters issued by the Federal Transit Administration's Office of Civil Rights — interpreted the next-day service requirement (49 CFR §37.131(b)) as imposing an affirmative obligation on public entities to plan, design, and implement a paratransit service that meets 100% of demand and accounts for fluctuations in demand over time. 337 F.3d 201, 208 (2nd Cir. 2003). Additionally, it interpreted the more flexible "capacity constraints" regulation as functioning to give entities practical flexibility when situations arise for which advance planning is difficult. *Anderson*, 337 F.3d at 212. Therefore, the court held that a transportation provider cannot be held liable for failing to meet 100% of demand for paratransit services unless the failure results in denying a number of paratransit-eligible riders "sufficient to constitute a pattern or practice." *Anderson*, 337 F.3d at 212.

In *Anderson*, plaintiffs argued that the Rochester Genesee Regional Transportation Authority (RGRTA), a public entity for purposes of the ADA, violated the ADA when it denied them and other disabled riders paratransit services scheduled a day or more in

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[5] See, e.g., [http://www.fta.dot.gov/civilrights/ada/civil_rights_3891.html].

[6] See *Anderson v Rochester-Genesee Regional Transportation Authority*. 337 F.3d 201, 207 (2d Cir.2003).

advance. *Anderson*, 337 F.3d at 204. RGRTA admitted denying rides requested a day or more in advance by paratransit-eligible riders but claimed that it denied the rides because it encountered "not usual" constraints on capacity. *Anderson*, 337 F.3d at 213. The court held that RGRTA had violated the ADA because RGRTA's organizational records showed that RGRTA had anticipated an increased demand for paratransit services and yet failed to plan or change its operations in order to meet that demand.

Similarly, in *Martin v Metropolitan Atlanta Rapid Transit Authority*, plaintiffs sued the Metropolitan Atlanta Mass Transit Authority (MARTA), alleging in part that MARTA discriminated against riders with disabilities by failing to provide adequate paratransit service. 225 F.Supp.2d 1362, 1371 (N.D. GA 2002). The *Martin* court held that the plaintiffs had a substantial likelihood on the success of the merits for their paratransit claim, because "operational patterns and practices in MARTA's paratransit service [had] significantly limited the availability of service to paratransit eligible persons in violation of the ADA." *Martin*, 225 F.Supp.2d 1362 at 1380. According to the court, MARTA's troubling practices included changing "ready times" without properly notifying riders and charging riders for paratransit service even when the driver arrived more than thirty minutes after the scheduled "ready time."

In sum, the available case law interpreting the paratransit response time regulations appears to suggest that under the next-day service requirement, entities must plan to meet 100% of demand for next-day service to paratransit riders. However, the case law also suggests that under the capacity constraints regulation, entities can be held liable for failing to provide next-day service only if such a failure results in one of the three situations — waiting lists, restricting rides for an individual person, or a discriminatory "pattern or practice" — as enumerated in 49 CFR §37.131(f).

Undue Burden Exception. The ADA limits its paratransit requirement by waiving the obligation in cases where providing such a service would impose an "undue financial burden" on an entity. 42 U.S.C. 12143(c)(4). The regulations delineate 10 factors for the Federal Transit Administration to consider when determining whether an entity is entitled to an "undue burden" waiver. 49 CFR §37.155(a). These include (1) effects on current fixed route service, (2) average number of per capita trips made by the general population as compared with the average number of per capita trips made by paratransit riders, (3) reductions in other services, (4) increases in fares, (5) resources available to implement complementary paratransit service, (6) percentage of the budget needed to implement the plan, (7) current level of accessible service, (8) cooperation/coordination among area transportation providers, (9) evidence of increased efficiencies, and (10) unique circumstances in the area. *Id*.