



CRS Report for Congress

The Americans with Disabilities Act and Emergency Preparedness and Response

Nancy Lee Jones
Legislative Attorney
American Law Division

Summary

The Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., 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. This CRS report will be updated as appropriate.

The Americans with Disabilities Act

Statutory Language. The ADA has as its purpose “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”¹ Interest in emergency preparedness, including how to assist individuals with disabilities during emergencies, has increased as a result of the terrorist attacks of September 11, 2001; the devastation caused by Hurricanes Katrina, Rita, and

¹ 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.

Wilma; and the specter of pandemic influenza.² 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 having such an impairment(as described in paragraph (3)).”³ The issues involving the definition of disability have been among the most controversial under the ADA. The ADA was recently amended to expand the interpretation of the definition of disability.⁴

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.⁵ 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.⁶ “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.⁷ Entities that are covered by the term “public accommodation” are listed in the statute and include, among others,

² For a discussion of disaster related issues, see CRS Report RL34087, *FEMA Disaster Housing and Hurricane Katrina: Overview, Analysis, and Congressional Options*, by Francis X. McCarthy; CRS Report RL33579, *The Public Health and Medical Response to Disasters: Federal Authority and Funding*, by Sarah A. Lister; and CRS Report RS22602, *Public Health and Medical Preparedness and Response: Issues in the 110th 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 reallotments of grants under the Rehabilitation Act of 1973 to assist individuals with disabilities affected by these disasters. In addition, some funds have been made available under the Older Americans Act. See CRS Report RS22252, *Older Americans Act: Disaster Assistance for Older Persons After Hurricane Katrina*, by Carol O’Shaughnessy.

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

⁴ See CRS Report RL34691, *The ADA Amendments Act: P.L. 110-325*, by Nancy Lee Jones.

⁵ 42 U.S.C. §12112(a).

⁶ 42 U.S.C. §§12131-12133.

⁷ 42 U.S.C. §12182.

hotels, restaurants, theaters, museums, parks, zoos, private schools, day care centers, professional offices of health-care providers, and gymnasiums.⁸

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 programs accessible to people with disabilities is critical part of this responsibility. Making these programs accessible is also required by the ADA.”⁹

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.¹⁰ This guide provides action steps including

- planning for emergencies (solicit and incorporate input from people with different types of disabilities);
- notification for individuals with disabilities when there is an emergency (provide ways to inform people who are deaf or hard of hearing of an impending disaster);
- evacuation of individuals with disabilities (adopt policies to ensure community evacuation plans enable individuals with disabilities to safely self-evacuate or to be evacuated);
- sheltering of individuals with disabilities (survey shelters and remove barriers, invite representatives of group homes and other individuals with disabilities to meet regarding shelter planning, adopt procedures to ensure individuals with disabilities are not separated from their service animals, ensure that a reasonable number of emergency shelters have back-up generators and a way to keep medications refrigerated, and adopt 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.¹¹ Any public accommodations that are rebuilt or significantly altered as a result of damage during a disaster must comply with the ADA’s requirements

⁸ 42 U.S.C. §12181.

⁹ 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.

¹⁰ *Id.*

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

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.¹²

The Federal Emergency Management Agency (FEMA) issued guidance on October 26, 2000, for determining the eligibility of costs for federally required ADA access compliance associated with Public Assistance (PA) grants.¹³ 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.¹⁴ DHS issued its report on June 16, 2006, and included a section on "special needs" populations, defined as including individuals with disabilities. The report concluded that although progress was being made, "substantial improvement is necessary to integrate people with disabilities in emergency planning and readiness."¹⁵ 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.¹⁶

Executive Order 13347

President Bush issued Executive Order 13347, "Individuals with Disabilities in Emergency Preparedness," on July 22, 2004.¹⁷ This executive order states that its policy

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

¹³ See [http://www.fema.gov/government/grant/pa/9525_5.shtm]. See also FEMA general standards (42 U.S.C. §5165a) and eligible cost considerations (42 U.S.C. §5172(e)).

¹⁴ H.Rept. 109-241, 109th Cong., 1st Sess. (2005).

¹⁵ U.S. Department of Homeland Security, *Nationwide Plan Review Phase 2 Report* 41 (June 16, 2006). See also "Assessing the Impact of Hurricane Katrina on Persons with Disabilities" (January 2007), at [http://www.rtcil.org/products/NIDRR_FinalKatrinaReport.pdf].

¹⁶ *Id.* at 46-47.

¹⁷ 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
(continued...)

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 the Department of Homeland Security, which coordinates the implementation of the policies and submits an annual report. The annual report for 2005¹⁸ noted several highlights from the ICC’s work, including the creation of a disability preparedness resources center website,¹⁹ new guidance on the ADA’s requirements, workplace emergency preparedness guidelines for federal emergency planners, and an emergency transportation website.²⁰ 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).²¹

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.²² 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.”²³ 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. A Government Accountability Office (GAO) report found that, although a Disability

¹⁷ (...continued)

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>].

¹⁸ See [http://www.dhs.gov/xlibrary/assets/CRCL_IWDEP_AnnualReport_2005.pdf].

¹⁹ See [<http://www.dhs.gov/disabilitypreparedness>].

²⁰ See [<http://www.dotcr.ost.dot.gov/asp/emergencyprep.asp>].

²¹ 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.

²² Section 513, of P.L. 109-295, 6 U.S.C. §321b.

²³ 6 U.S.C. §321b(a).

Coordinator has been hired, FEMA “has generally not coordinated with NCD as required by the Act, which could result in disability-related concerns not being fully addressed.”²⁴

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 a report on emergency preparation and disaster relief relating to individuals with disabilities.²⁵ This report provides recommendations of what the federal government should do to “build a solid and resilient infrastructure that will enable the government to include the diverse populations of people with disabilities in emergency preparedness, disaster relief, and homeland security programs.” The primary focus of the report is on the work of FEMA²⁶ and the Office for Civil Rights and Civil Liberties (CRCL) both in the Department of Homeland Security, and the work of the Federal Communications Commission (FCC). It also includes a discussion of the experiences of individuals with disabilities with disasters, and the role of community-based organizations. The report makes several recommendations, including the following:

- CRCL should regularly issue guidance for state and local emergency planning departments to reinforce their legal obligations to comply with the ADA;
- CRCL should conduct compliance reviews to identify weaknesses and problems in complying with the ADA; and
- the Department of Homeland Security should develop and offer technical assistance and guidance materials for grantees about their ADA and section 504 legal obligations and compliance strategies.²⁷

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.²⁸

²⁴ “National Disaster Response; FEMA Should Take Action to Improve Capacity and Coordination between Government and Voluntary Sectors,” GAO-08-369 (Feb. 2008).

²⁵ See [http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm].

²⁶ See CRS Report RL33369, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, by Henry B. Hogue and Keith Bea.

²⁷ The NCD has also issued a report specifically addressing the needs of individuals with mental disabilities. See “The Needs of People with Psychiatric Disabilities During and After Hurricanes Katrina and Rita: Position Paper and Recommendations,” [<http://www.ncd.gov/newsroom/publications/2006/peopleneeds.htm>]

²⁸ For a transcript of this briefing, see [http://www.ncd.gov/newsroom/publications/2005/transcript_emergencymgt.htm].