



# County Technical Assistance Service

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## ADA Title II

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## ADA Title II

**Reference Number:** CTAS-2033

Title II of the ADA applies to all activities, services and programs of public entities. A public entity is any state or local government and any of its departments, agencies or other instrumentalities. 42 U.S.C. § 12131(1).

Included under Title II are activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. Under section 504 of the Rehabilitation Act, only programs that receive federal funds are covered. Under Title II of the ADA, all activities of State and local governments are covered whether or not they receive Federal funds.

Private entities that operate public accommodations are covered under Title III of the ADA and public transportation services operated by state and local governments are covered by Department of Transportation (DOT) regulations.

## Title II Requirements

**Reference Number:** CTAS-2034

To be in compliance with Title II, state and local governments—

- May not refuse to allow an individual with a disability to participate in a service, program, or activity because of the disability.
- Must provide programs and services in an integrated setting, unless separate or different accommodations are needed for equal opportunity.
- Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy programs and services.
- Are required to make needed modifications to policies, practices, and procedures that deny equal access to individuals with disabilities unless doing so would result in a major change to the program.
- Must ensure effective communication by furnishing auxiliary aids and services unless doing so would result in an undue burden or change.
- May provide additional special benefits to individuals with disabilities.
- May not charge individuals with disabilities to cover the costs of changes needed to ensure nondiscriminatory treatment.
- Shall operate all programs so that they are readily accessible and usable by individuals with disabilities.

42 U.S.C. § 12132.

## Qualified Individuals under Title II

**Reference Number:** CTAS-2035

Under Title II, the definition of an individual with a disability is the same as already described under Title I. However, the definition of a qualified individual with a disability differs slightly.

Under Title II a qualified individual with a disability meets the essential eligibility requirements for the program or activity offered by a public entity.

Essential eligibility requirements vary depending on the program or activity. For some activities, like state licensing programs, there may be skills or performance requirements that are considered essential. Other activities may have minimal eligibility requirements.

42 U.S.C. § 12131(2).

## Program Access under Title II

**Reference Number:** CTAS-2036

State and local governments—

- Must make sure buildings that house services, programs, and activities are accessible to individuals with disabilities.
- Need not remove physical barriers in existing buildings so individuals with disabilities can access programs as long as they provide an alternative method to provide the program such as—
  - Relocate the program/service to an accessible facility (example: moving a public information office from the third floor to the first floor).
  - Provide an aid or personal assistant to help the individual with disability obtain the service.
  - Provide the program/service at the individual's home or an alternate accessible site.
- May not carry an individual with a disability as a method of providing program access except in exceptional circumstances.
- Do not have to make any changes that will result in a fundamental alteration of the program or service or be an undue financial burden.

One of the purposes of the ADA is to integrate individuals with disabilities into the mainstream of society. For this reason, public entities should not offer separate programs for individuals with disabilities unless a separate program is necessary to ensure benefits and services are equally effective.

State and local governments can not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept. Even if separate programs are offered, individuals with disabilities have the right to choose to participate in the regular program. 42 U.S.C. § 12182.

## Communication under Title II

**Reference Number:** CTAS-2037

To ensure effective communications with individuals with disabilities, state and local governments must offer auxiliary aids when necessary. Auxiliary aids include—

- Qualified interpreters,
- Assistive listening headsets,
- Television captioning and decoders,
- Telecommunications devices for deaf persons (TDD's),
- Videotext displays,
- Readers,
- Taped texts,
- Brailled materials and
- Large print materials.

A public entity may not charge an individual with a disability for use of an auxiliary aid. Telephone emergency services, including 911, must provide direct access to individuals with speech or hearing impairments. Public entities do not have to make any changes that will result in a fundamental alteration of the program or service or be an undue financial burden.

## Accessibility, Enforcement and Compliance

**Reference Number:** CTAS-2038

### Accessibility

Public entities must ensure that newly constructed buildings are readily accessible to individuals with disabilities. When a building is altered, it must still be accessible to individuals with disabilities. While ADA does not require retrofitting of existing buildings to eliminate barriers, it does establish a high standard of accessibility for new buildings.

Public entities can choose between—

- The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act; or
- The Americans with Disability Act Accessibility Guidelines (ADAAG), adopted by the Department of Justice for places of public accommodation and commercial facilities covered under Title III of the ADA.

The elevator exemption for small buildings under the ADA Accessibility Guidelines do not apply to public entities under Title II.

Under Title II, if the start date for new construction is March 15, 2012 or after, the construction must comply with the 2010 Americans with Disabilities Act Standards for Accessible Design. The state of Tennessee adopted the 2010 Standards for Accessible Design for all public buildings constructed, enlarged, or substantially altered or repaired after July 1, 2012. T.C.A. 68-120-204.

#### Enforcement and Compliance

Private parties may file lawsuits to enforce their rights under Title II of the ADA. The remedies available are the same as under Section 504 of the Rehabilitation Act. Reasonable attorneys fees may be awarded to the prevailing party.

There are eight administrative agencies designated to handle complaints filed under Title II. They are—

Department of Agriculture  
Department of Education  
Department of Health and Human Services  
Department of Housing and Urban Development  
Department of Interior  
Department of Justice  
Department of Labor  
Department of Transportation

Individuals may file a complaint with the appropriate administrative agency or with any federal agency that provides financial assistance to the program in question. Complaints may also be filed with the Department of Justice who will refer the complaint to the appropriate agency.

The address for the Department of Justice is—

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Complaints on behalf of a class of people are permitted. Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name, address, and describe the public entities discriminatory action.

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