

ADA UPDATE FOR TRANSIT

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STANDARD ELEMENTS OF YOUR PROGRAM

- Procedures for Eligibility Determinations
- Reasonable Modification Procedures
- Stop Announcements
- Conduct Policies
- Lift and Securement Policies and Procedures
- Training Requirements
- No Show Policies and Procedures
- Appropriate websites and access to information
- Complaint Procedures

REVIEW OF POLICIES AND PROCEDURES

- Ride Guide- How are you communicating rules, policies and procedures to your customers?
- How often are you looking at your website accessibility?
- Have you changed your process and procedure to deal with COVID?
- What procedures do you have for customer service personnel
- Driver training regarding lifts, priority seating, assisting passengers, serviced animals
- What policies and procedures are in place for maintenance staff?
- How has COVID impacted your shared ride/ADA service from an administrative standpoint?

SUB-CONTRACTORS?

- Of note, the entity providing fixed route transit service, is ultimately responsible for ensuring any subcontractor providing complementary shared ride service is compliant. You must remain diligent with subcontractors and ensure contracts include appropriate requirements and processes to examine their ADA service
- For Example, in the context of triennial reviews and FTA ADA reviews there is a large focus on ensuring agencies hold their subcontractor's to an appropriate standard.

ELIGIBILITY DETERMINATIONS

- The first and foremost consideration remains on the eligibility determination and appeal process.
- Do you have a methodology to provide all forms of ADA required responses?
 - Full Eligibility
 - Temporary Eligibility
 - Denial of Eligibility
 - Conditional eligibility – Does your database include a method of tracking the conditions?
- DO you have a recertification process?
- DO you have an appeal process and appeal board?

COMPLAINT PROCEDURES

- You need to have an articulated policy for processing complaints from customers (how long will you investigate complaints, how will communications occur regarding the outcome of findings and investigations ^[2])
- Ensure that you maintain a summary of complaints as required in the regulatory process

RESERVATIONS/PICK UP TIMES

- Negotiation of pick up times?
- What if you change your reservation process? You must engage in the public participation process.
- How far in advance can you make reservations?
 - Generally, Section 37.131(b)(2) allows you to make reservations up to 14 days in advance of the desired trip subject to the negotiation process
 - You must take into account the rider's practical restraints

TRIP DENIALS

- Transit agencies cannot have substantial numbers of trip denials and missed trips. Examples of trip denials include:
 - A passenger requests a trip which agency cannot provide.
 - A passenger requests a trip and agency can only offer a trip that is outside of the one hour (-60/+60) negotiating window. This results in a denial whether the passenger accepts the reservation or not.
 - A passenger requests a round-trip and agency can only provide one leg of the trip. If the passenger does not accept the one-way trip, both portions of the trip are denials. If the same situation occurs and the passenger accepts the first leg of the trip, it would only count as one denial.

MISSED TRIPS

- Missed trips result from trips that are requested, confirmed, and scheduled, but do not take place because:
 - The vehicle arrives and leaves before the beginning of the pick up window without picking up the passenger and without any indication from the passenger that he or she no longer wants to make the trip. A passenger is not obligated to board until the beginning of the pick up window or from the start of the pick up window until five minutes has lapsed.
 - The vehicle does not wait the required time within the pick up window, there is no contact with the passenger, and the vehicle departs without the passenger. If during the wait time the passenger indicates he or she no longer wants to take the trip, this is recorded as a no-show.
 - The vehicle arrives after the end of the pick up window and departs without picking up the passenger (either because the passenger is not there or declines to take the trip because it is now late).
- The vehicle does not arrive at the pick up location

RIDER COMMUNICATIONS

- FTA considers a potential capacity constraint through poor communication with customers. The expectations of passengers should be communicated prior to the booking process through the conclusion of the trip.
- Are rules communicated regarding expectations?
 - For example, "You should be waiting in the apartment complex lobby".
 - We expect nursing homes to have the passenger available
 - We will remind you the day before your trip.
 - We may arrive up to ___ minutes early.
- Communications must be consistent – your ride guide and website should not conflict.

CALL HOLD TIME AND RESERVATION PROCEDURES

- Is your call hold time policy established?
- Are you analyzing your phone system design and staffing?
- How are you tracking your hold times?
- Do you have proper language proficiency tools in place to minimize call hold time?
- Is there a process for limited scheduling in one call in order to facilitate better hold time efficiencies?
- For example: all calls will not be left on hold more than x minutes for 90% of the time? Is your standard actually achievable?

NO SHOW POLICY

- Do you have a policy that articulates what you consider a "no show"?
- Do you have a standard for suspensions?
- Do you have a methodology for determining whether a trip missed beyond a customer's control does not fit within your definition of a "pattern or practice of a 'no show'"?
 - This may include scheduling errors, emergencies or criteria
- Again, do you have a process for appeals of a no-show suspension?
- Do you have a policy for canceling second legs of trips for no shows? Is it communicated?

REASONABLE MODIFICATIONS

- Did you implement your policy?
- Have you properly documented your process as well as any requests and responses?
- You must have an appeal process.
- Your policy must be written and must be posted for ridership's information.

SERVICE ANIMALS

- The U.S. Department of Transportation (DOT) defines a service animal as "any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items." This is the definition with which the drivers of public transit service must comply, and it can be found in Section 37.3 of 49 CFR Part 37- Transportation Services for Individuals with Disabilities (ADA).
- Comfort animals? Support animals?
- Rules for behavior of service animals?

DISRUPTIVE PASSENGER POLICY

- With regard to considering a "direct threat" U.S. Department of Justice regulations state in 28 CFR Sec. 36.208. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

TRAINING

- All persons involved in the ADA process must be trained to proficiency to avoid service constraints
- How often is training required
- Who must undergo training:
 - Drivers
 - Customer service
 - Administrative staff
 - Maintenance
- Understanding and enforcing your policies is a critical component of this training!

FTA ADA INVESTIGATION OVERVIEW

- FTA has the responsibility for ensuring compliance with ADA obligations.
 - Random Spot Assessments
 - Response to Complaints
- The process includes a pre-review documentation collection and review, off-site assessments (calls, complaint review, website review, etc.)
- A full visit –typically 2-3 days for a full assessment
- Assessments and all findings are publicly posted and remain available for public review

REVIEW OBJECTIVES

- The Focus is System capacity constraints – which includes a full system analysis
- Review of policies and standards that may contribute to complaints (this may include long hold times, inefficiencies, patterns or practices of trip limitations or denials, operational deficiencies, etc.)
- The review looks at public communications
- The review looks closely at the complaint processing process
- An analysis of ALL FORMS of training are reviewed – from customer service, driver skills, management statistical analysis, and safety considerations

ADA AUDITS
WHAT TO EXPECT IF IT HAPPENS TO YOU!

HOW ARE AGENCIES SELECTED FOR AN AUDIT?

- Very few agencies are chosen each year for an FTA ADA Audit
- 3 have been selected over the years from Pennsylvania
- In 2012 the Office of Governmental Accountability indicated that the reasons may include media reports, complaints, experience with an agency or general information
- Generally, self-certification is how agencies demonstrate ADA compliance to the FTA in addition to minor reviews by state agencies or through a triennial review
- The GAO does not support the methodology for FTA verification of ADA compliance and has recommended additional compliance reviews

WHAT IS THE AUTHORITY OR CONSEQUENCE FOR NON-COMPLIANCE WITH ADA STANDARDS?

- If FTA, through a compliance review, report, complaint, or any other means, identifies an alleged failure to comply with applicable statutes and regulations, FTA investigates the pertinent practices and policies of the recipient and the circumstances of the alleged noncompliance. 49 C.F.R. § 27.123(c). If this investigation substantiates a failure to comply, FTA notifies the recipient and seeks informal compliance. 49 C.F.R. § 27.123(d). If FTA determines that the matter cannot be resolved through informal means, FTA may take formal action. Formal action may include suspension or termination of Federal financial assistance, refusal to grant or to continue Federal financial assistance, referral of the matter to DOJ for enforcement, or any other steps authorized by law. 49 C.F.R. § 27.125(a).

WHAT IS THE PROCESS?

- The FTA's consultants request information prior to the meeting for review which may include trip data, policies and procedures and correspondence and interviews with paratransit customers and/or advocacy groups in the service area
- There will be a site visit to review the processes of the agency, including review of how trips are scheduled, dispatch procedures and review applications and interviews with staff (including: eligibility determination files, fleet roster, records of customer complaints and comments and responses for 5 years, capital budget and cost data)
- A analysis and reporting process that identifies deficiencies, required corrective actions and suggestions on effective practices

ON SITE REVIEW DOCUMENTATION

- Each one of the compliance reviews was slightly different once preliminary data was analyzed but examples of documentation required for on-site review included:
 - 6 months of manifests
 - Six months of service data including missed trips, no-shows and data showing trip length
 - A full analysis of trips requested, scheduled and provided
 - ADA policies and procedures – **including goals** for aspects of the program (on-time performance, call times, missed trips, etc.
 - Documentation regarding processes that are provided to the public
 - Fleet rosters, driver roster and budgets and capital plans

REPORT FINDINGS

- The Report contains findings, summary data, objectives of the report and summaries of data involved
- The reports generally include extensive summaries of all interviews – including those from community groups
- The report goes through key areas of review and how an agency measures up with regarding to comparisons with fixed route service and other measurements
- The report includes Positive Program Elements, Administrative Deficiencies and Substantive Deficiencies
- The report provides for a 60 day period of corrective action if necessary

EXAMPLES OF POSITIVE PROGRAM ELEMENTS

- Positive working relationships with community partners
- No denials and few missed trips
- Some agencies had 90% on time performance
- One agency had shorter travel time on paratransit than on fixed route

EXAMPLES OF ADMINISTRATIVE DEFICIENCIES

- Eligibility applications ask improper questions
- Eligibility notifications require several revisions for accuracy
- Failure to designate a job position for handling complaints
- The ADA application was not in an accessible format
- Complaints were not properly logged and maintained
- One agency improperly required that a rider with an oxygen tank ensured that the tan was 2/4
- Improper handling of visitors to the service area.

EXAMPLES OF SUBSTANTIVE DEFICIENCIES

- Paratransit service times do not match fixed route service times
- Failure to provide service when eligibility determinations are not timely
- Improper service of visitors
- Improper eligibility determinations based upon specific disabilities as opposed to functional ability to use the fixed route system
- Scheduling procedures that lead to trip denials
- Failure to accept trip requests with pick up times within an hour of the end of the service hours of fixed route systems
- Improper no-show policies for suspension of service

DEFICIENCY PROCESS

- Corrective action will be expressed as:
 - A statement concerning the policy or practice in question at the time of the review
 - Statement concerning the DOT ADDA requirements being violated or potentially being violated
 - A statement concerning the required corrective action to resolve the issue

SPECIFIC AREAS OF CONCERN

- Requiring a physician to certify applications involving the need for a PCA and/or service animal
 - You may ask if a PCA is involved for trip scheduling but not ask about the function of the PCA or certification
- Trip focused issues on the application as opposed to eligibility issues
 - I.e., you can ask about weight for operational purposes (600lbs) but not as an eligibility determination
- Many agencies had complaints and findings regarding how the complementary paratransit system operated when compared with fixed routes. Ride times, operational times, reservation times were included in most findings for each agency

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- Some agencies were found deficient for having goals that were too aggressive and they could not meet those standards (e.g., responding to complaints within 48 hours which was rarely met and unrealistic)
- In many instances, findings were made because internal documents and/or material provided to the public is inconsistent (i.e., ride guide does not match the website or none of the publications actually match practices). Of particular note, findings in this area centered around hours of operation and hours when reservations could be booked.

REGULATORY REVIEW COMPONENTS

- Complaint resolution and compliance information
- Nondiscrimination
- Service Under Contract (if applicable)
- Requirement for comparable complementary paratransit
- Eligibility standards
- Eligibility process
- Reasonable policies for suspending service for those patrons who have a pattern of missed trips
- Types of Service

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- Service Criteria
 - Service Area
 - Response times
 - Fares
 - Trip purpose restrictions
 - Hours and Days of Service
 - Capacity constraints
- Training Requirements
- Subscription service (if applicable)

INTERVIEW TOPICS FOR CUSTOMERS AND STAKE HOLDERS

- Interview topics focus on several areas:
 - Eligibility processes
 - Telephone access
 - Reservations, denials and wait lists
 - On time performance
 - Travel times
 - Drivers
 - Resolving complaints
- **** Of interesting note, many customers and partners complained that Board Members do not have direct knowledge or understanding of what the transit agency actually does**

DEPARTMENT OF JUSTICE

- There are several instances where jurisdiction over public agencies were delegated to the department of justice regarding their ADA programs. Some topics include:
 - Subcontracting out service to uber/lyft that was not accessible to some customers and those who required wheelchair accessible vehicles used the paratransit vehicles creating inequitable service (2021)
 - Failure to provide training and have accessible stops, failure to cure on-time performance issues, failure to have proper lift procedures/lift failures (2021)
 - Failure to have proper reservation protocols, use of voicemail in reservations, customer service deficiencies, failure to include eligibility application on-line (2021)
 - Non-accessible stops, shelters, parking areas for customers, etc. (2021)

THANK YOU FOR YOUR PARTICIPATION

- Please feel free to contact me with any questions or concerns:
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