

Transcript

FTA ADA Circular Webinar 1: ADA General Requirements, Oversight and Monitoring

January 20, 2016, 2–3pm, EST

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>> Okay. Good afternoon, everyone. Welcome to the first of a series of webinars on the FTA ADA circular. I'm John Day, of the FTA Civil Rights Office. Joining me in the chat box is Dawn Sweet, program manager for complaints and communications. We have Richie Nguyen of my staff who is going to be keeping the thing running on time, and making sure we get out of the conference room before somebody kicks us out. Because there are so many people, we have everybody in listen-only mode. With this many people it's statistically very likely that someone at some point will put us on hold, and we didn't want everybody to have to try to listen to me over somebody else's hold music.

Everyone is on listen-only mode. For that reason, if you have questions going forward, please use the chat box. We may or may not have time to get to everybody's questions. But we will post a Q and A later on the civil rights training page. There will be some time at the end for Q&A as well.

With that, let's go ahead and move on.

Today, we are going to talk a little bit about the origins of the ADA circular, we are going to cover chapters 1, 2 and 12, the introduction and applicability, the general requirements, and oversight complaints and monitoring, and as I said, we will have some time for questions in the chat box.

Trying to anticipate one of those questions, why do we need an ADA circular now? The answer is easy, because in November 2010, a task force led by acting administrator Therese McMillan conducted a top-to-bottom review of civil rights in FTA. The task force analyzed ADA compliance data from triennial reviews, state management reviews, and ADA specialized reviews, and found that ADA compliance deficiencies were number 2 across all grantees. Procurement was number one.

The task force recommended an ADA circular similar to the ones that we have had in place for a long time, for things like Title VI.

That is why we have got the circular now. The intent of the circular is to provide one stop shopping for all your ADA needs, because the DOT ADA regulations are imposing. It covers four different parts of the Code of Federal Regulations, as well as separate facilities standards.

We want to provide information and tools that will help transit agencies avoid deficiencies. The circular became effective November 4, 2015, but most of the DOT ADA regulations have been in effect since 1991.

There are 12 chapters in the circular. It may seem imposing, but it is important to recognize it's intended to be a reference document. It is not meant to be read cover to cover.

What does the circular do? What we hope it does is provide a reader friendly, plain English explanation of the DOT ADA requirements. We have provided detailed headings and subheadings for easier navigation. We have provided some pictures, figures and tables, and some sample forms, letters and policies that we will talk about a little later.

For example, we have arranged things by topic in the circular. If you want to know about service animals, before the circular, first thing you have to do is find out what is a service animal, and that is in section 37.3 of the regulations. Then you need to know what you have to do about service animals, and that you would find in section 37.167(d) of the regulations.

To help pull it all together, you want to look up language in appendix D that tells you what you are supposed to do with this information. That is a lot of stuff to have to know and try to look up.

What we have done is taken all that information for service animals in this example and put it in circular section 2.6. So go to section 2.6 of the circular, find everything you need to know about service animals.

We have also provided some reader friendly tools to help understand the regulations better. We have provided some checklists for things like facilities, buses and vans, and stop announcements. This is the same checklist we use for compliance reviews. We have provided sample letters for things like paratransit denials, some sample forms like a sample complaint form, and sample policies including a paratransit no show suspension policy, which is by far the biggest issue that we find in our oversight reviews.

Those are examples of what the ADA circular does. It is also important to know what the circular doesn't do. It does not create any new requirements. Some things may seem like new requirements, but they might just be new to you. As I said, most of the DOT ADA regulations have been in effect since 1991.

The circular is set up in a requirement and discussion format. It talks about what the requirement is and a little about it, it cites regulations and existing guidance. We reviewed all of the terminology and you should not find the word "should" in the circular at all. A lot of commenters on the draft found it confusing, between what is required and what is simply a good idea.

So we have taken out all the "shoulds" and it should be clear in the final document what you need to do and what we are telling you is a good idea.

We have also included caveat language in each chapter introduction, that says that it doesn't alter supersede or otherwise amend the DOT ADA regulations themselves.

This is all about what is in those regulations.

How to use the circular. Basically it's a reference guide. You refer to it to provide an explanation on a topic. Refer to the sample material as examples. You can refer to complainants to a section on hard to understand regulation or policy. We have made an effort to make sure the circular and workbook are consistent with each other. If you are following the information in the circular, you should be able to avoid triennial review findings.

Let's say, for example, you have had a triennial review, and a deficiency was found regarding your transit agency's no show suspension policy. The first thing you want to do is look at the relevant regulation in section 37.125(h).

Then you want to look to the circular for the following information, to clarify those requirements. You look at section 9.12 of the circular for no show suspensions, discussion of those, and look at the 9.4 of the circular to find out an example of a no-show policy.

Just as important as how to use the circular is how not to use the circular. It is important to understand not to refer to a circular as the requirement. You wouldn't refer to section 9.12 of the circular as containing the requirement. You would look at section 37 point, whatever it was I just said on the last slide, for the requirement. You always cite the regulation as the requirement.

You don't have to use the sample materials provided. They are a guide. But it is not required to follow them to the letter. They are just again a good example of something that we thought would be helpful to people.

Don't think that a deficiency finding will occur if your agency doesn't follow an optional good practice. We have included some of those in the circular to again help guide people in their understanding of the regulations, but if it's not a regulatory requirement, there shouldn't be a deficiency finding in a FTA review.

Deficiencies only apply if you don't comply with the regulatory requirements. Chapter 1 gives background on what FTA is and what we do. It talks about where do the applicable regulations come from, and the DOT ADA regulations are in 49 CFR Parts 37, 38 and 39. The section 504 regulations which were the predecessor to the ADA and which link all of the ADA requirements to Federal funding, those requirements are found in 49 CFR Part 27, also contains complaint information and requirements.

There are also regulations from the Department of Justice that are relevant. It also talks about the applicability of the DOT ADA regulations, things like the stand-in-the-shoes requirement where a contractor stands in the shoes of the public entity. If you have, say, you contract out your paratransit service, you don't contract away your ADA responsibilities. Your contractor has to comply with those as if they were you, the public entity.

We talk a little about that as well in chapter 1.

Chapter 2 is the cross-cutting chapter, talks about the general nondiscrimination requirements in the DOT ADA regulations. It talks about nondiscrimination, service denials for conduct, accessible features, wheelchairs, securement, lifts and ramps, personnel training, service animals, providing information in accessible formats, and reasonable modification. We will touch a bit on each of these as we go through the presentation.

But these are things that apply regardless of what mode of transportation you are operating, whether it's fixed route, demand response, complimentary paratransit, bus, rail, ferryboat, whatever. These are all of the cross-cutting requirements.

The overarching requirement of the ADA is that entities can't discriminate against individuals on the basis of disability. That is spelled out in 49 CFR section 37.5(a). That is pretty self-explanatory. Again that applies across the board.

Examples of nondiscrimination include refusing to provide service because of a person's disability, such as requiring individuals with disabilities to use seat belts when other riders are not required to, imposing special charges on providing required service to individuals with disabilities, using an insurance company stipulations as reason to deny service to an individual with a disability. We don't see that too much. But I'm sure it comes up from time to time, where some insurance company doesn't want you to do certain things that you are required to do. The regulations sort of say you have to do that regardless.

Requiring individuals with disabilities to sign liability waivers as a condition of receiving service, so those are all examples of discrimination that is prohibited under the ADA we talk about in the circular.

Service denials for conduct, basically, under the ADA, you don't have to provide service to someone who engages in violent, seriously disruptive or illegal conduct or represents a direct threat to the health or safety of others.

The circular gives examples of what that might look like, and we also talk about permanent bans that we hear about from time to time. We don't want to see, the circular talks about not banning somebody permanently, unless the direct threat remains, and the need for due process in order to show that whatever it was that led to somebody's suspension is not likely to happen again.

So, again, those are some of the things that we talk about in the circular under service denial conduct.

Another topic that we hear about rather frequently are wheelchairs, what constitutes a wheelchair. Basically, you have to transport individuals using wheelchairs, there is language in there that talks about subject to legitimate safety concerns, which is pretty narrow.

Basically it means the wheelchair is of such a size that it would block the aisles, it would not enter a rail car fully, it would block an emergency exit, things like that.

It doesn't mean, I don't think that thing you are sitting in is safe, so therefore I have a legitimate safety requirement. It's not that broad. It is specific to those types of examples.

Basically, so long as an individual's wheelchair meets definition of a wheelchair, and can be accommodated on the vehicle, you have to transport them. The wheelchair means any mobility aid belonging to any class of three or more wheeled devices used indoors designed, modified for and used by individuals with mobility impairments, whether operated manually or powered. That is from section 37.3 in the regulations. It doesn't say anything in the definition about needing foot plates or wheel locks or push handles or anything like that on a wheelchair.

Those are not required and we do see from time to time people's policies saying you have to have foot plates. You have to have brakes. Those are not things that are within the definition of a wheelchair, and those are not things that can be required.

Chapter 2, we also talk about securement. Basically, securement devices are required for buses and vans. An agency can require securement, but regulations do not require that the securement devices be used. It leaves it up to the individual transit agency to decide whether or not they are going to have a mandatory securement policy.

If you do require securement, you can deny service if the rider refuses to have their mobility

device secured. However, if you cannot figure out how to secure someone's mobility device, you cannot deny service on that basis. You can make your best efforts to secure someone's wheelchair to the best of your ability, but you can't say we can't figure out how to secure you, so get off the bus.

That is not something that is allowed.

Also, the regulations require along with the securement system that every securement location be equipped with a seat belt and a shoulder harness. Again, it does not require their use. People can ask to use them and you would be required to provide assistance with that. But you can't require somebody to use a seat belt and shoulder harness unless you provide and require them for everyone else on the vehicle.

And also, one more thing. It's important to never try to use the seat belt and shoulder harness without having first secured someone's wheelchair, because you don't want to be using essentially the person to secure their wheelchair and which is what putting the lap belt across them without securing the chair would do.

The design specifications for lifts and ramps are the same as they have always been. The design load of 600 pounds, it has to be able to accommodate wheelchairs measuring 30 by 48 inches. There is a requirement specific to maintenance of lifts, basically you are required to make sure that they stay in operating condition. There are provisions for, that are discussed in the circular for what to do if they break down in service, for what to do before putting them back into service, once you have repaired the lift, things like that, they are all discussed in the circular.

We also talk about the requirement that standees be allowed to use the lift or the ramp. We get a lot of complaints and questions and things of drivers refusing to deploy the lift or ramp for somebody that uses a cane, crutches, a walker, another assistive device or nothing at all. Someone may not need an assistive device to ambulate generally but still may not be able to step up into a bus, and you would have to deploy the lift or ramp for them and the circular gets into that a little bit.

One of the other most common questions that we get concerns assistance provided by transit personnel. Basically, assistance by transit agency personnel is required even if it's not otherwise customary for them to leave their seats. That includes things like assistance with a ramp, assistance with a securement system, things like that.

Drivers are not required to provide services that a personal care attendant would provide things like assisting with luggage or packages. Some assistants elect to do that. It is not something that is required. We would not require you to do that but you can do it on your own. Obtain rider fares from their wallet or purse, we don't expect someone to reach into someone's pocket and pull out exact change for the fare. They can deposit in the box for them but nothing more than that. Or take charge of the service animal. We talk about these in the circular a bit.

Personnel must be trained proficiency in the performance of their duties. That means they need to safely operate vehicles and equipment and properly assist and treat individuals with disabilities in a respectful and courteous way.

That includes not just drivers but also mechanics. They need to know how to keep the lifts and

the ramps working. Customer service agents need to know how to interact with people with disabilities. Supervisors, vehicle dispatchers, managers, there is all aspects of ADA compliance that they would need to be familiar with to make sure that the system runs in a compliant fashion. We talked about that in the circular.

Service animals is another issue that comes up from time to time. Basically a service animal is any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability.

This can include guiding individuals with impaired vision, alerting individuals with impaired hearing, pulling a wheelchair, fetching dropped items, things like that.

It's important to recognize that the DOT definition has remained the same as it has since the regulations were first issued in 1991. It's a bit different from DOJ which amended their service animal definition so that it basically includes only dogs.

DOT has not followed suit. And our definition remains unchanged. Guide dogs, signal dog or other animal, but it has to be individually trained to work, perform a task.

You can ask, is this animal a service animal required because of a disability? And what work has the service animal been trained to perform? You are also not required, and it's important to recognize that an individual's disability may be hidden. You can have somebody who has a seizure disorder and requires a service animal to alert them of an oncoming seizure. Things like that. You can't have a policy requiring riders to provide documentation for their service animal before boarding a bus or train or rendering facilities, but you can ask those two questions I just mentioned.

Emotional support animals are not required to be accommodated under DOT ADA regulations. Basically they are not trained to perform a task. They provide comfort passively by their nature or through their owner's perception, and there is no requirement that they be accommodated in public transportation.

Accessible information: Basically, you have to make available to people with disabilities adequate information concerning transportation services. This includes making adequate communications capacity available through accessible formats and technology to enable users to obtain information and schedule service.

One of the best ways that you can do that is to make sure that your website is accessible. That reduces the need to provide things in other formats on a case by case basis. There are some resources that we can point you to, to help with accessible website programming. The Department of Justice has guidance. The U.S. Access Board has standards under section 508 of the Rehabilitation Act that can provide further guidance. 508 only applies to Federal agencies but it's useful information to help program your website.

The more accessible your website is, the less likely it is that you are going to have to, that you are going to have somebody saying, I want an audiotape of all the bus routes near my house. You know, if they can go on-line, and click on a bus schedule, and have their screen reading software read out to them what the schedule is, then that works for everybody. But it's important to recognize that scanning a bus schedule and putting a picture of it up on the website is not the same thing as having accessible bus schedule. It actually has to be something that is machine readable.

You also don't have to provide someone with the information in the format that they request. Let's say somebody does want an audiotape of the bus schedule, and you can provide them with an accessible electronic copy. It would be acceptable to provide them with that electronic copy rather than have someone narrate a tape of all the bus stops. So again, it's to your advantage to do that.

Reasonable modification. This is one of the subjects that, or one of the topics that is new to the ADA regulations. This basically became effective July of last year. It specifies that the regulations were amended to specify that agencies are required to make reasonable modifications to policies, practices, and procedures to avoid discrimination, and to ensure that their programs are accessible to individuals with disabilities.

We had a separate webinar on that last year, after the rule came out. It is still on our website, if you want to learn more. It's a little too new. It is addressed in the circular but it hasn't been around long enough for us to have a whole lot more to say about it than what you find in the regulations. So we would direct you to the reasonable modification webinar to learn more about that topic.

Moving on to oversight, basically, how FTA assesses compliance, it's a multi-pronged process. We rely on things like grantee self-certification, each year all FTA grantees sign FTA's master agreement t standard assurances and by doing so they comply with Federal law including the ADA. We will cover complaint investigations in a couple of slides, but that is another way where we conduct oversight and can have an effect on assisting with ADA compliance.

We also conduct on-site reviews. Many of you are familiar with the triennial reviews. Once every three years everybody gets a visit from FTA to assess their compliance with a whole raft of different requirements, including ADA but a lot of other things.

Also state management reviews, and the Office of Civil Rights conducts a number of specialized compliance reviews under civil rights laws including the ADA. Our process relies a lot on informal resolution, when we find something wrong through a complaint investigation or through a compliance review, the first thing we try to do is gain the cooperation of the transit system, and provide technical assistance for them to try to come into compliance. We don't want to sanction for the sake of sanctioning, because that doesn't help anybody.

But we do have a number of administrative enforcement tools at our disposal, should the need arise, including termination of Federal funding and referral to the Department of Justice for enforcement.

I should mention, the civil rights specialized compliance reviews, everybody is always asking us what criteria do you use to decide who gets a site visit for an ADA paratransit review or stop announcement review. We have discussed that in the circular, the factors that lead us to want to conduct a compliance review. So more helpful information.

Okay, the final rule on reasonable modification included changes to the complaint process. This is something that I think has flown under a lot of entities' radar. Everybody was concerned when the reasonable modification rule came out about reasonable modification. I'm not sure enough attention was paid to the changes in the complaint process.

The circular touches on that a bit, and we will spend a little time on that right now.

Basically, prior to the final rule, the requirement on transit agencies to resolve complaints was

basically that, to promptly resolve complaints.

Now the process must be sufficiently complaint process must be sufficiently advertised to the public, it must be accessible to and usable by individuals with disabilities, and you must promptly communicate to the complainant the response and document that response. The regs aren't prescriptive on that. The circular gives examples of how you can collect and process complaints. It could be written, electronic, in person, but you have to document your response in your internal records in some fashion.

FTA also has a complaint process. We handle complaints filed against grantees and non-grantees. DOT is a designated agency for enforcement of complaints relating to transportation programs or other entities even if they don't receive Federal financial assistance. While compliance with the ADA requirements is a condition of receiving Federal funds, they apply whether you receive Federal funding or not. Basically when we get a complaint that comes in, we will review it and a lot of times, it's clear at intake that it doesn't amount to an ADA violation. We will close that administratively. Otherwise, we will conduct an investigation, we will send a letter to the transit system, asking for essentially their side of the story. It's fact specific analysis. And again, we seek informal resolution whenever we can. We want to try to help people come into compliance, not ding them for not being in compliance. That is our overall goal.

When we do close a complaint administratively, we will send a written response, explaining to the complainant why we are not taking action. Sometimes it will be due to ongoing litigation. The complaint may not have been filed within 180 days; it doesn't indicate a violation of DOT ADA regulations; it's lacking in detail; it's not grounded in fact. Things like that are why we might administratively close a complaint. Otherwise we would look into the facts of the situation and try to come to a resolution.

FTA is not the only one monitoring agencies' compliance. We expect agencies to monitor their own compliance as well, whether they are providing it in-house or by contractors. Basically, what that does is, it confirms to you internally and to FTA – in the case of a compliance review – that the service you are delivering is consistent with ADA requirements.

We don't dictate the specifics of these monitoring efforts, but we like to know that you know what is going on and that you know that what is going on is compliant with the regulations. We talk more about that in the circular.

Thank you, everyone, for listening. I want to thank you, Dawn Sweet, who has been handling the chat box as I've been rambling on. She has been keeping track of some of the frequently asked questions. Let's hear what is on everybody's mind.

>> DAWN SWEET: Great. We have still got some really interesting questions waiting in the chat box. If you don't get to your question, we will be posting Q and A from this session, and upcoming ones in our civil rights training, and that is the announcement for on this webinar series. Watch for those in the coming week.

Also in the meantime, if you have questions that you think of after this section, after the session, we encourage you to use FTA's Contact Us tool, at the bottom of all of the webpages you will find a message that says connect with FTA. There is an icon that says Contact Us. Click it. It

will pull up a form where you can submit questions to us. In the drop down select “Civil Rights & Accessibility” that will transmit your question to the Office of Civil Rights in real time.

We report any questions you may have on the circular or any civil rights topic. A question for John and we have a few questions on this issue, variation, but it’s “What about gurney or gurney style wheelchairs, one that will lay flat? Do those need to be transported?”

>> JOHN DAY: If it fits within the 30 by 48 envelope, the answer is yes.

>> DAWN SWEET: In addition to the circular, there is a good DOT disability law guidance that was issued in 2013. It’s on our website under technical assistance. It talks about the wheelchair parameters.

Often, gurney style chairs are going to exceed the (overlapping speakers) envelope of most securement areas. So the answer is usually no.

>> JOHN DAY: Yeah.

>> DAWN SWEET: Next question for John, also about mobility devices. The question is, you correctly mentioned that an agency cannot deny a passenger using mobility device that lacks brakes. However, what if a lack of braking functionality creates a safety hazard? Such as while using a lift or other accessibility feature.

>> JOHN DAY: I think that is speculative. In a lot of cases, you may not be able to look at somebody’s wheelchair and know whether it has brakes or not. Power wheelchairs have brakes internal to the motors. You are not going to know whether they are working or not.

Very active wheelchair users will simply not have brakes, because they don’t want to keep catching their thumbs on them as they push down the street. They are perfectly capable of holding their chair still on the lift or the ramp. They wouldn’t be holding still on a ramp, but they are perfectly capable of holding their chair in place, perhaps even in a wheelie on the lift surface and it’s safe for them.

I don’t think there is a hard and fast answer to that. Again, service can only be denied for violent seriously disruptive or illegal conduct, or only if there is a direct threat to the health or safety of someone else. I hope that answers the question.

>> DAWN SWEET: Sticking with the mobility device theme, the question is, will the FTA be discussing nontraditional mobility aids in future ADA circular webinars?

>> JOHN DAY: Not beyond what is in the guidance that you mentioned earlier. Hasn’t come out with anything since the, I don’t want to say the S word, but the guidance on the self-balancing mobility devices.

>> DAWN SWEET: That was way back in --

>> JOHN DAY: 2005-ish, I believe. There is not a lot of innovation in the wheelchair industry these days, because of tightening requirements by center for Medicaid and Medicare services, FDA and all the other non-DOT agencies that approve medical devices, things like that. I’m not sure how nontraditional things are going to be getting.

>> DAWN SWEET: This is a question we don’t hear often. If an agency wants a compliance review to improve its service, is that a possibility?

>> JOHN DAY: Probably we wouldn’t do it on that basis. Probably the best thing to do would

be to hire a consultant to look at your services, and have them do a sort of audit for you, I think, is the best answer I'd have for that.

We like to think of our compliance reviews in terms of technical systems, but I think that is going a little beyond our intent.

>> DAWN SWEET: Okay. This is a question that we get a lot actually. It's a challenging one. If a wheelchair has so much stuff attached to it and hanging off that it cannot be secured using the belt securement system, should the rider be permitted to ride without securement or not permitted to ride?

>> JOHN DAY: I think in that situation, you do the best you can to secure them to the best of your ability, and that's about all you can do. You know, it's hard to draw the line between what is too much stuff, and you know, it's a little hard at the Federal level to say, you know, one bag or two bags or ten bags or whatever, that's a little hard for us to deal with.

I think you do the best that you can to secure them under the circumstances. Of course, if they are sticking out and blocking the aisle, or blocking an emergency exit, things like that, if they don't fit all the way into the subway car or whatever, then you get back to the legitimate safety requirements argument that I mentioned earlier.

>> DAWN SWEET: Here is a question I couldn't resist, could a turkey be considered an emotional support animal?

>> JOHN DAY: I suppose it could, but under DOT regulations you wouldn't have to let him on the bus.

>> DAWN SWEET: That of course was coming out of the Delta Airlines story.

>> JOHN DAY: Yes (chuckles).

>> DAWN SWEET: This is an add-on question from another agency. I was told only dogs could be service animals, is that a state-by-state issue?

>> JOHN DAY: That is not a state-by-state issue. Basically, somebody has been quoting the Department of Justice's regulations. They amended their definition of service animal in 2010 to be a dog unless it's a miniature horse under some circumstances. They made it very narrow. DOT had no foreknowledge of that change, and has not done anything to amend its own definition of service animal, so it's still any guide dog, signal dog or other animal individually trained to perform a task for someone with a disability.

>> DAWN SWEET: We get this question a lot. We addressed it to the extent we could in the circular. The question is, we have found that our vehicle ramps are steep, and pose a problem for pushing oversized wheelchair users into the vehicles. Would the wheelchair ramp load requirements apply to this issue?

Essentially what is being asked is whether, if you have a ramp let's say that can accommodate 600 pounds, that would be the minimum, does the driver need to push somebody who weighs 600 pounds in their chair?

The regs are clear that in the appendix, they discuss the fact that drivers need to assist people with manual chairs up vehicle ramps. As we discussed in the circular, it doesn't mean that it's going to be 600 pounds. They need to first assist. And also, to the extent that a direct threat isn't

present, so there is going to be an individualized assessment on how much the driver can push. It is not the assumption that most drivers will be able to push 600 pounds of deadweight up or down a vehicle ramp.

All right. Let's see. Back to mobility devices, is asking a person on a scooter to be seated in a seat after the scooter is secured too much to ask for, they almost always tip over when the vehicle turns when they sit on it.

>> JOHN DAY: The regulations allow you to recommend that someone transfer to a vehicle seat, but you can't force them to do so. You can offer them a seat on the bus, but it's up to them whether or not they want to transfer or not.

>> DAWN SWEET: All right. We are seeing a lot of home built mobility devices. Where can we find guidance as to what standards we can apply for safety limits for these devices?

>> JOHN DAY: I think this is the first I've heard of home-built mobility devices. I think if somebody has built something designed for and used by themselves as a person with a disability, I'm reminded that the ultra light wheelchair was built by somebody who was into hang gliding and got her hang gliding friends to weld tubes together and make the world's first lightweight wheelchair. Before that, they were 50, 60-pound chrome things you still see in hospitals today. If it hadn't been for that kind of innovation, a lot of people would be a lot less mobile today.

So there is a place in the world for home brew devices. I think for our purposes, you would have to look to the definition of wheelchair, is it a three or more wheeled device, is it usable indoors so nothing gas powered, and is it bigger than 30 by 48 inches? Does it weigh less than 600 pounds when occupied?

>> DAWN SWEET: Service animals again, what about service animals that provide sensing in the medical events, a seizure for example, are they considered a service animal and not an emotional support animal?

>> JOHN DAY: That would be something that the animal is trained to do. They may be able to have an innate ability to sense certain things but you have to train them to tell the person what they are supposed to do. I think we mentioned in one of the slides that is an example of what a service animal would be.

>> DAWN SWEET: All right. The next question is, we have had homeless individuals bring dogs on the bus, they are clearly not trained animals. They get in fights with other dogs. They growl at passengers. But the rider answers the questions properly regarding whether it's trained and what it's trained to do. Can we deny the animal if it is aggressive?

>> JOHN DAY: Yeah, I think that would fall under the category of direct threat, or at the very least, seriously disruptive and you would be able to deny service on that basis.

>> DAWN SWEET: The next question I can answer. Are hover boards considered mobility device?

We would say typically no, that they aren't. There is a good discussion that was added to appendix E with the 2011 updates to the rule that explained that devices not primarily intended for use by people with disabilities are not considered analogous to wheelchairs. It gives the example of skateboards, bicycles, and things like that.

We would say that hover boards fall into that category.

This question regards priority seating. Agencies can have policies that require customers to move for persons with disabilities and seniors. However these types of policies may be risky, especially for questions to those with hidden disabilities, what is FTA's position on that?

>> JOHN DAY: FTA's position is what is articulated in the rules, that you are required to ask someone to move but you are not required to enforce them to move, and it's up to your own devices, if you want to have a policy that requires people to move. I think in the case of someone with a hidden disability, I don't know what you would do, other than take their word for it. That is about the only thing that you could do. I don't know how else to answer that.

>> DAWN SWEET: Next question, I'll take this one, it's as demand responses are passengers able to request certain vehicles, and are we as providers mandated to cater to the individual's needs, for example passengers that prefer minivans over cut aways? And this comes up a lot with people who prefer sedans over the vans, for example.

We said in complaint decisions and other oversight activity that agencies need to dispatch accessible vehicles to those who need them. An accessible vehicle is one that is defined as meeting the vehicle design specifications in part 38. An accessible vehicle is never for example a sedan.

The reasonable modification rulemaking also expanded on this issue and included an example of a type of request that isn't typically considered reasonable. That would be a request for a certain type of vehicle or a dedicated piece of equipment, as those would both fall under the category of a fundamental alteration service.

So the simple answer is no.

Next question, would you be able to apply the direct threat of harm to themselves and others that the person who consistently tips over in the vehicle?

>> JOHN DAY: First of all, direct threat is specifically to the health or safety of someone else, not to self.

However, if someone is constantly tipping over on the bus and you have to keep stopping to pick them up or something like that, I think that gets into seriously disruptive territory pretty quick and you would be able to refuse service on that basis.

>> DAWN SWEET: The circular in chapter 2 in the discussion on denial of service, it talks a lot about how the threshold, that rarely is behavior not more than one of the thresholds. If it's seriously disruptive sometimes it's a direct threat and vice versa.

>> It's violent, illegal.

>> DAWN SWEET: That is even a clearer example. We recommend in the circular that you consider the thresholds as a unit.

If a passenger is using a manual wheelchair to transport personal items, groceries, are agencies required to transport the wheelchair and/or secure the device in a wheelchair position? If so, how does that affect capacity refusal policy? We have answered this question before.

It came up recently in contact us. I would refer you back to that language I mentioned in appendix D, about not being required to transport people who are using a device that isn't designed for people with disabilities, or that section goes on to say is used in a way that it wasn't intended.

The example there, this would be analogous to I think would be grocery carts, they don't need to be transported. But a wheelchair is meant to be used for mobility, not to transport items.

Scrolling down looking at the chat box here, all right. Doesn't the new definition of mobility devices take out the weight and size dimensions?

>> JOHN DAY: The new definition does. Those were never intended to be required or to be requirements that were imposed upon wheelchairs. It was intended to be descriptive.

And because they were being used in a way that was restrictive, that is the reason the department removed them from the definition of wheelchair. However, you will notice that the capacities and dimensions for lifts and ramps and securement systems, securement areas, remain the same as they always were.

So there is no requirement to go out and buy a bigger lift or buy a bigger bus or anything like that. It just removed it from the definition of wheelchair and put it where it was originally intended to be, which was upon the equipment itself.

>> DAWN SWEET: Okay. This is priority seating, if one refuses to move from a priority seating area, do we refuse the ride to the mobility device, if it is the only space opened? I did not hear the answer.

>> JOHN DAY: Okay, so this would be somebody apparently sitting on the flip up seat or something in a securement location. Again, the regulations say you have to ask, but you cannot, you are not required to enforce. So I think that's basically the answer to that.

I will point out that nothing says you have to have flip up seats, either. If this is a frequent problem on your transit system, you might want to consider whether or not you want to have the flip up seats in that area.

>> DAWN SWEET: Okay. What about a nursing home who uses paratransit for all their clients, even those who are really bed bound, and they strap them upright in a chair because the fare is cheaper than an ambulance or for a trip to the doctor. They won't send an attendant with the person. Can the trip be denied or can we require an attendant for the trip even though the person is not seriously disruptive?

>> JOHN DAY: Well, there is a requirement that says you can't require an attendant to be present as a condition of transportation. But there's a fine line in there somewhere between providing attendant type services, expecting the bus driver to provide attendant type services and expecting them to provide transportation.

Again, as Dawn said with the pushing 600 pounds up a ramp, the expectation there is for assistance, not necessarily doing something for someone. I think maybe that is a discussion to have with whatever this facility is that is allegedly acting in this fashion. We are all shaking our heads here (chuckles).

>> DAWN SWEET: Getting lots of requests in the chat box for a transcript. We will definitely take a look at that.

>> JOHN DAY: We are recording this. So we will have a recording out at some point on our website.

>> DAWN SWEET: Another question: Have regulatory requirements ever been used as a

successful defense in litigation for an unstable wheelchair device injuring someone since the regulations require us to provide service?

>> JOHN DAY: Not that I'm aware of one way or the other.

>> DAWN SWEET: Let's see here. So going to the hover board question, I also mentioned that we have seen razor scooters with seats and electric motors. I think many are not aware of the nontraditional mobility policy and did not see response to these questions.

They are asking here about the razor scooters.

>> JOHN DAY: Yeah, I think the answer is the same as it was with the hover board.

>> DAWN SWEET: Yeah, I think it would be analogous to the bicycle.

>> JOHN DAY: Yeah.

>> DAWN SWEET: Next question, the wheelchair lift is it acceptable to use the lift to accommodate someone who is under 600 pounds but not able to walk up the stairs of the bus, such as seniors, or a heavy person or someone with a disability? The answer to that is yeah, absolutely.

>> JOHN DAY: Yes.

>> DAWN SWEET: The regulations in Part 37 are clear that agencies must allow standees on the lifts. Lifts are designed to accommodate standees, they have the handrails on them. The circular talks a little about the fact that the regs say that the driver needs to deploy the ramp or lift to standees upon their request. It is not appropriate for example to ask for assurance that the person is actually a person with a disability for example, that the driver essentially needs to take the person's word for it that they need the lift. Hopefully not too many people are going through the trouble of using a lift who actually don't need it.

But yeah, standees definitely, there are standees who need to use the lift.

If you have a passenger who unfortunately has a total weight that greatly exceeds the lift capacity, and the passenger cannot walk even short distances, how is it recommended to address the situation and be in compliance? I'm concerned with the passenger's safety as we have experienced broken lift episodes immediately after transporting this particular passenger.

>> JOHN DAY: If they exceed the capacities of -- assuming the lift is compliant and the vehicle is compliant, if the passenger exceeds the capacities of the lift and the vehicle, then there is no duty to transport them.

You are not expected to exceed the capacity of your compliant equipment.

>> DAWN SWEET: I'll take this question. The question is, if you cannot pick up a wheelchair user at the bus stop, do you have to get them another ride or can they wait for the next bus? We address this in the circular in chapter 6 since it's specific to fixed route.

The answer is no, sometimes those securement areas are just filled with other wheelchair users or with ambulatory passengers who can't move because the bus is already at capacity. So recommended that the driver stop and explain that to the wheelchair user so they don't mistakenly think that they are just being bypassed but there has been some confusion that in those cases, the agency needs to dispatch alternative transportation within 30 minutes.

And that provision only applies when the lift is broken. Of course you can adopt such an optional practice or policy, but it's not required.

Okay. There are one or two more, kind of sticking with this theme. If a passenger and -- let's see here, the passenger and a wheelchair together weigh over 600 pounds, can they use the lift -- okay, basically the question here is, does an agency need to board people separately, so you have a power wheelchair user for example, who exceeds the designed load of the lift or, yeah, of the lift. Does the agency need to allow the person to board separately from the device?

>> JOHN DAY: Yeah, and in general the answer is yes. We have said that where that is a possibility, you would have to accommodate that person.

However, they are going to be responsible for getting their power chair, if that is what we are talking about, onto and off of the lift themselves. We have said that there shouldn't be any expectation that the bus driver is going to drive somebody's power mobility device. That is just not a good idea.

>> DAWN SWEET: I think one more question here. When scheduling paratransit trips can we set a minimum amount of time between the drop off of the trip and the pickup of the return trip? We have a lot of riders that want to schedule return trips, only a couple minutes after the first trip, but end up taking much longer than a couple minutes.

I'll save that question probably for our next webinar series which is next week on paratransit. We discuss this very issue in chapter 8 of the circular.

So typically, there are agencies, for example, that because of the fixed route schedule may require paratransit pickups and drop-offs to have half hour, an hour in between. That might be required because of the overlapping pickup window. So there are a lot of factors to consider when setting the policies for scheduling trips. The circular again in chapter 8 goes into that a little bit.

>> JOHN DAY: All right. I think we are going to have to wrap it up here. Thanks, everyone, for spending the afternoon with us or morning if it's still morning where you are.

And thanks for all the questions, and the next webinar will be in two weeks.

(end of webinar at 2:00 p.m. CST)

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