

## 12. AMERICANS WITH DISABILITIES ACT (ADA) COMPLEMENTARY PARATRANSIT

### PURPOSE OF THIS REVIEW AREA

Titles II and III of the ADA of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

### QUESTIONS TO BE EXAMINED

1. Does the recipient's eligibility determination process meet ADA complementary paratransit service requirements?
2. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?
3. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?
4. Does the recipient limit the availability of service to ADA paratransit eligible individuals?
5. Does the recipient monitor contracted service or service provided by another public entity on the recipient's behalf for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?
6. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with the US DOT ADA regulations?

### INFORMATION NEEDED FROM RECIPIENT

#### Recipient Information Request

- Operations, dispatch, scheduling or reservation procedures
- Sample notification letter templates for eligibility, temporary eligibility, and denials
- Definitions for denials, missed trips, on-time performance, and excessively long trips
- ADA reasonable modification policy, if written
- ADA complementary paratransit service contracts
- Oversight tools including required reports, questionnaires, and checklists for ADA complementary paratransit service

#### Recipient Follow-up

- Service denials for the past three years by year
- No-show policy

---

---

**CPT1. Does the recipient's eligibility determination process meet ADA complementary paratransit service requirements?**

### BASIC REQUIREMENT

ADA complementary paratransit service must be provided to ADA eligible individuals.

### APPLICABILITY

All ADA complementary paratransit service providers

## EXPLANATION

Each entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. The entity must process a completed application within 21 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service on the 22nd day until and unless the entity denies the application.

Individuals may be ADA paratransit eligible on the basis of a temporary, conditional, or permanent disability. The entity is not required to implement conditional eligibility.

Applicants given conditional or temporary eligibility must be given a written decision conveying the determination and information on the right to an appeal. The written determination denying eligibility and those granting less than unconditional eligibility cannot just state that it has been determined that the applicant can use fixed-route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed-route transit is not sufficient. The reasons must specifically convey the evidence in the matter and relate it to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant is not required to submit a written justification prior to the hearing, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that this written notice be filed within 60 days of the denial of a person's application. The process must include a hearing to present information and "separation of authority" between those hearing the appeal and those that made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.

The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

## INDICATORS OF COMPLIANCE

- a. *Are eligibility decisions made within 21 days of receipt of a complete application? If an application is not processed within 21 days, is presumptive eligibility granted on the 22nd day until and unless the application is denied in writing?*
- b. *Does the recipient give to persons who are denied eligibility or given conditional or temporary eligibility a written notice with specific reasons for the decision?*
- c. *Are applicants notified of the right to an appeal? Do applicants have at least 60 days to appeal? Does the process include an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it? If a decision is not made within 30 days of completing the appeal process, is paratransit service provided until and unless a decision to deny the appeal is issued?*

## DETERMINING COMPLIANCE

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service.

Review information provided to the public that describes the ADA complementary paratransit services and the eligibility process.

Onsite, discuss with the recipient how the application progress is documented, processed, and monitored, and how eligibility determinations are made. Spot check recent application files and the determination letters issued to ensure that the recipient processed them within 21 calendar days and whether

notification was timely. If not, determine whether and how applicants are informed that they can schedule and use the ADA paratransit service on the 22nd day until such time that the application is denied.

Review template certification letters. Onsite, review a sample of recent application files and determination letters for denial of eligibility, conditional eligibility, and temporary eligibility. Reasons provided must specifically reference transit-related functional skills. The reasons must specifically convey the evidence in the matter and relate it to the applicant's functional abilities.

Review public information that describes the ADA complementary paratransit services and the eligibility process and template certification letters to determine how applicants are notified of the right to an appeal. Verify that at least 60 days are provided to the applicant to request an appeal. Determine if the notice requires an applicant to submit a written justification prior to the appeal hearing, as this would constitute a prohibited unreasonable administrative burden. Review appeal procedures to verify that the appeals process provides for separation of functions; that is, separation of authority between any individuals hearing the appeal and any individuals who made the original decision to deny eligibility or grant conditional or temporary eligibility. Verify that the applicant is provided an opportunity to be heard; an applicant may waive the in-person hearing and proceed on the basis of a written presentation. Verify that a written notification of an appeal determination, with the specific reasons for it, are provided to any applicant. Verify that transportation is provided when decisions have not been made within 30 days of completing the appeal process; the recipient is not required to provide ADA complementary paratransit pending the determination of the appeal. Review a sample of appeal files to verify documentation and timely processing and notification.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not grant presumptive eligibility for applications not processed within 21 days of receipt of a complete application.

DEFICIENCY CODE CPT1-1: Presumptive eligibility deficiencies

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the RCRO a procedure for granting presumptive eligibility for applications not processed within 21 days until and unless the recipient denies the application.

The recipient is deficient if it does not provide the specific reasons for granting less than unconditional eligibility.

DEFICIENCY CODE CPT1-2: Eligibility letter deficiencies

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the RCRO a procedure for stating the specific reason for granting less than unconditional eligibility and evidence of its implementation.

The recipient is deficient if it does not have an eligibility appeals process. The recipient is deficient if its deadline for filing an appeal is shorter than 60 days. The recipient is deficient if it requires the applicant to submit a written justification prior to the appeal hearing. The recipient is deficient if the appeals process does not provide for an opportunity to be heard, separation of functions, or written notification of the decision and the reason for it. The recipient is deficient if it does not provide paratransit service within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

DEFICIENCY CODE CPT1-3: Eligibility appeals process not properly implemented

**SUGGESTED CORRECTIVE ACTION 1:** The recipient must submit to the RCRO an eligibility appeals process.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO an eligibility appeals process that provides for at least 60 days to file an appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO an eligibility appeals process that does not require the applicant to submit a written justification prior to the appeal hearing.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO an eligibility appeals process that provides for an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it.

SUGGESTED CORRECTIVE ACTION 5: The recipient must submit to the RCRO an eligibility appeals process that provides the applicant with paratransit service when the appeal decision is not made within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.125 ADA paratransit eligibility: Process**

"Each public entity required to provide complementary paratransit service by §37.121 of this part shall establish a process for determining ADA paratransit eligibility...

...(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding...

...(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (*i.e.*, a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued."

---

---

## **CPT2. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?**

### **BASIC REQUIREMENT**

ADA complementary paratransit service must be provided to out-of-town visitors.

### **APPLICABILITY**

All ADA complementary paratransit service providers

## **EXPLANATION**

Complementary paratransit service must be provided to visitors if:

1. The visitor can present documentation from his or her "home" jurisdiction's ADA complementary paratransit system that he or she is eligible. The local provider will give "full faith and credit" to the identification card or other documentation from the other entity.
2. The visitor can present, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional) and, if required by the local provider, proof of visitor status (i.e., proof of residence somewhere else). Once the documentation is presented and is satisfactory, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed-route transit system, that is, the local provider cannot require functional testing.

Determining whether service should be provided to a visitor should be a fairly simple and quick process enabling individuals to contact the host agency to learn what is required and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described above, entities are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. The Federal Transit Administration (FTA) envisions this as a process that can often be completed the same day or no more than one day later.

The entity is not required to provide more than 21 days of service within a 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

## **INDICATORS OF COMPLIANCE**

- a. *Does the recipient accept documentation of eligibility from the visitor's home jurisdiction?*
- b. *Does the recipient provide service to visitors whose disability is apparent, or who provide documentation of disability?*
- c. *Does the recipient provide service to visitors for at least 21 days within a 365-day period?*

## **DETERMINING COMPLIANCE**

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service for visitors. Review information provided to the public that describes the ADA complementary paratransit services and the process for providing service to visitors to determine the recipient:

- Accepts documentation of eligibility from the visitor's home jurisdiction
- Provides service to persons who provide documentation of disability
- Provides service to visitors who seek service in person and whose disability is apparent without requesting additional information beyond proof of residency

Onsite, discuss with the recipient how paratransit service is provided to visitors. Agencies are expected to accept this documentation directly from the individual and not require that the documentation be provided directly from the individual's home transit agency. The recipient may request documentation of residency.

Evaluate whether the recipient provides any combination of 21 days of service during a 365-day period beginning with the visitor's first use of the service, rather than a continuous 21-day period commencing from the first use. The recipient may require the visitor to apply for eligibility to receive additional service beyond the 21 days. Onsite, discuss with the recipient how many days of service is provided to visitors.

## **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not accept documentation of eligibility from the visitor's home jurisdiction.

DEFICIENCY CODE CPT2-1: Home jurisdiction eligibility documentation not accepted

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for accepting documentation of eligibility from the visitor's home jurisdiction.

The recipient is deficient if it does not grant service to visitors based on apparent disabilities or documentation of disability.

DEFICIENCY CODE CPT2-2: Service not provided to visitors with apparent or documented disabilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for providing service to visitors whose disability is apparent or who present documentation of disability, provided that if documentation of residency has been requested, it has also been submitted.

The recipient is deficient if it does not provide service to visitors for 21 days within a 365-day period.

DEFICIENCY CODE CPT2-3: Service to visitors not provided for at least 21 days

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for providing eligible visitors 21 days of service within a 365-day period.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.127 Complementary paratransit service for visitors**

“(a) Each public entity required to provide complementary paratransit service under §37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of §37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation [documentation of home jurisdiction eligibility], the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.”

---

---

**CPT3. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?**

## **BASIC REQUIREMENT**

Recipients may establish an administrative process to suspend, for a reasonable amount of time, the provision of ADA complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips. The procedure must provide for due process.

## **APPLICABILITY**

All ADA complementary paratransit service providers

## **EXPLANATION**

Under 49 CFR 37.125(h), an entity may establish an administrative procedure to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

As explained in Appendix D to this section of the regulation, a “pattern or practice” involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity’s no-show policy must therefore be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Any suspensions must be “for a reasonable period of time.” Suspension of service for 30 days for a first “offense,” for example, is not “reasonable.” A reasonable suspension for a first instance of a pattern or practice of no-shows might be a few days to a week. Subsequent offenses may justify longer suspensions, but FTA generally considers suspensions longer than 30 days to be excessive.

Entities may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have voluntarily and mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

Only no-shows that are under the rider’s control may be counted against the rider. No-shows caused by reasons beyond the rider’s control (e.g., scheduling problems, late pickups, and operational problems on the part of the entity or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted entities to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider’s control. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

§37.125(g)(2) obligates entities to inform riders in writing that they have the right to appeal the proposed suspension (with an option for an in-person appeal), consistent with the appeals process outlined in §37.125(g). This means including instructions on the appeal process, and how to request an appeal. Under §37.125(h)(3), suspensions are stayed pending the outcome of the appeal.

It is important to note that 49 CFR 37.125(h) permits an entity to establish a no-show policy; it does not require one to do so. An entity is therefore not deficient if it does not have a no-show policy and does not suspend riders based on no-shows.

## **INDICATORS OF COMPLIANCE**

- a. *Does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*

- b. *Does the recipient impose a mandatory financial penalty as part of its no-show policy, including charging for the fare of the no-show trip?*
- c. *Are only no-shows under the rider's control counted towards the suspension?*
- d. *Before suspending service for no-show violations, does the recipient notify the rider and provide an opportunity to respond? Does the recipient allow individuals to appeal no-show policy violations and stay suspensions pending the outcome of the appeal?*

## **DETERMINING COMPLIANCE**

Prior to the site visit, review the recipient's website and other information provided to the public that describes the ADA complementary paratransit services for information on the ADA complementary paratransit service no-show policy. Determine:

- If the recipient suspends riders and for how long
- If there is discussion on imposing mandatory financial penalties
- If there is discussion on not suspending riders for no-shows not under their control
- If there is discussion on the process of suspending riders

Onsite, discuss the no-show process with the recipient.

- Verify that any suspensions are "for a reasonable period of time."
- Verify that the recipient does not impose a financial penalty as part of a no-show policy, including charging the fare for the no-show trip.
- Verify that only no-shows under the rider's control are counted against the rider.
- Verify that before suspending service, the recipient notifies the individual in writing that it proposes to suspend service, providing the specific basis for the proposed suspension and the proposed sanction.
- Verify that the recipient provides the individual an opportunity to be heard and to present information.
- Verify that the suspension is stayed pending the outcome of the appeal.

## **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it suspends riders for an unreasonable amount of time (consult with the FTA Office of Civil Rights as needed). The recipient is deficient if it suspends riders without establishing that the rider has a pattern or practice of missing scheduled trips (consult with the FTA Office of Civil Rights as needed).

DEFICIENCY CODE CTP3-1: Unreasonable no-show suspension

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a procedure for suspending riders for a reasonable amount of time.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO a procedure for suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

The recipient is deficient if it imposes an involuntary financial penalty for no-shows.

DEFICIENCY CODE CTP3-2: Financial penalty imposed for no-shows

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that it has ceased the assessment of financial penalties for no-shows.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO a procedure for accepting payment for missed trips in lieu of suspension only if voluntarily agreed to by the passenger.



The recipient is deficient if it counts no-shows not under the rider's control toward suspension.

DEFICIENCY CODE CTP3-3: Suspension based on no-shows not under rider control

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for only counting no-shows under the rider's control toward the suspension.

The recipient is deficient if it does not notify the rider of the pending suspension in writing and provide the specific basis for it, does not offer the opportunity for the rider to appeal, or does not stay the suspension pending the outcome of the appeal.

DEFICIENCY CODE CTP3-4: Insufficient no-show suspension procedures

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO an appeals process that notifies the rider of the suspension in writing, specifically indicating the basis of the proposed suspension and the proposed sanction.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO an appeals process that provides the rider an opportunity to be heard.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO an appeals process that stays the suspension pending the outcome of the appeal.

#### **GOVERNING DIRECTIVE**

##### **49 CFR 37.125 ADA paratransit eligibility: Process**

“(h) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

(1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.”

(2) Before suspending service, the entity shall take the following steps:

(i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.

(ii) Provide the individual an opportunity to be heard and to present information and arguments; (iii) Provide the individual with written notification of the decision and the reasons for it.

(3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

(g) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.

(1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.

(2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.”

---

---

#### **CPT4. Does the recipient limit the availability of service to ADA paratransit eligible individuals?**

##### **BASIC REQUIREMENT**

Recipients shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals.

##### **APPLICABILITY**

All ADA complementary paratransit service providers

##### **EXPLANATION**

The US DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pickups, missed trips, or excessively long trips). “Pattern or practice” in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the entity, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, entities should have a definition of ADA trip denial, missed trip (i.e., trip missed by the entity), on-time performance, and excessively long trip. The entity’s definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) and late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Entities are required to plan and budget for 100 percent of demand for next-day service. The entity may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow entities to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the entity cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity’s inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the “return” trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

The entity may not limit the number of trips an individual will be provided. For example, the entity cannot have a policy of no more than four trips per day. Accordingly, the entity cannot set a minimum or maximum number of trips for an eligible individual. Similarly, policies limiting the number of trip requests per telephone call are considered restrictive.

The entity may not use what amounts to a waiting list. Although it may not be called a waiting list, placing callers' names on a list when the schedules are full and informing them they will be contacted if space becomes available would constitute a prohibited waiting list. Similarly, telling callers the schedules are full and suggesting they call back later to see if space becomes available would be a waiting list. Entities may accept a trip request during a reservation call and internally schedule the trip later (within the pickup window communicated to the rider at the time of reservation), which are often referred to as confirmed but unscheduled trips.

Entities should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, entities must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Entities should track service for ADA trips separately from non-ADA trips.

#### **INDICATORS OF COMPLIANCE**

- a. *Where the recipient cannot provide a trip at the requested time, does the recipient negotiate trip times so that trips are scheduled within one hour before or after an individual's desired departure time?*
- b. *Does the recipient restrict the number of trips an eligible individual will be provided?*
- c. *Does the recipient limit the availability of service by using waiting lists?*
- d. *Does any operational pattern or practice significantly limit the availability of service to eligible individuals?*

#### **DETERMINING COMPLIANCE**

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service reservations and scheduling. Review the rider guide or other customer information and reservation procedures. Note references to negotiating eligible trip requests within the one-hour window, and the handling and documentation of potential trip denials. Verify that the recipient does not limit the number of trips an individual will be provided. Verify that the recipient does not use what amounts to a waiting list. Note how the recipient logs its reservations, pickup times, and scheduled trips.

Onsite, review reports from the reservation and scheduling software or sample driver manifests. Evaluate data on trip denials, on-time performance, missed trips, and excessively long trips for the previous two years and the current year for any operational pattern or practice that has the effect of limiting availability such as trip denials, late pick-ups, missed trips, or excessively long trips. If data indicate no pattern or practice of capacity constraints and the recipient does not collect or analyze data to ensure that capacity constraints do not develop, document such as an issue of concern for FTA awareness.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not schedule trips at the requested time and does not negotiate trips within one hour before or after an individual's desired departure time.

DEFICIENCY CODE CPT4-1: ADA complementary paratransit scheduling deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation, such as updated public information and scheduling procedures, that demonstrates that it negotiates trips within one hour before or after an individual's desired departure time.

The recipient is deficient if rides scheduled outside the hour before-or-after scheduling window are not tracked as denials, even when a rider accepts the trip. The recipient is deficient if it does not track as two denials when one leg of a roundtrip cannot be reserved and the rider declines both trips.

DEFICIENCY CODE CPT4-2: ADA complementary paratransit service denial tracking deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation, such as updated public information and scheduling procedures, that rides scheduled outside the hour before-or-after scheduling window are tracked as denials.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation, such as updated public information and scheduling procedures, that declined roundtrips are tracked as two denials when one leg of the trip cannot be reserved.

The recipient is deficient if it restricts the number of trips an eligible individual will be provided.

DEFICIENCY CODE CPT4-3: ADA complementary paratransit service restricted for eligible individuals

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation, such as updated public information and scheduling procedures, demonstrating that it has eliminated restrictions on the number of trips.

The recipient is deficient if it restricts the availability of trips using waiting lists.

DEFICIENCY CODE CPT4-4: ADA complementary paratransit service waiting lists

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation, such as updated public information and revised scheduling procedures, demonstrating that it has eliminated the use of waiting lists or practices that amount to waiting lists.

The recipient is deficient if it demonstrates an operational pattern or practice that significantly limits the availability of complementary paratransit service.

DEFICIENCY CODE CPT4-5: Limits or capacity constraints on ADA complementary paratransit service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a plan to eliminate an operational pattern or practice that creates ADA complementary paratransit capacity constraints.

## **GOVERNING DIRECTIVE**

### **49 CFR 37.131 Service criteria for complementary paratransit**

“(b) (2) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.”

“(f) *Capacity constraints.* The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided”

(2) Waiting lists for access to the service

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.”

---

---

**CPT5. Does the recipient monitor contracted service or service provided by another public entity on the recipient’s behalf for compliance with the US DOT ADA regulations?**

**BASIC REQUIREMENT**

Contracted ADA complementary paratransit service must meet the US DOT ADA requirements that apply to the recipient.

**APPLICABILITY**

Recipients who contract out or rely on another public entity to provide service

**EXPLANATION**

When a public entity enters into a contractual or other arrangement with a private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the contractor meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself.

Where an entity relies on another public entity to provide paratransit service on its behalf, the entity remains responsible for meeting the requirements of 49 CFR part 37 Subpart F. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the public entity operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met.

**INDICATOR OF COMPLIANCE**

- a. *If a recipient contracts for all or a portion of its ADA complementary paratransit service or relies on any other public entities to provide the service, does the recipient ensure that the contractor(s) or provider(s) meets the ADA complementary paratransit requirements?*

**DETERMINING COMPLIANCE**

Review contracts and interagency agreements to ascertain if the recipient communicated ADA requirements, including contracts to provide eligibility services and agreements with supplemental transportation providers such as taxi overflow service. Review contract management procedures to understand how the recipient will ensure the contractor complies with the requirements. Review monitoring procedures and documentation for monitoring activities conducted during the review period to note if ADA requirements were reviewed. Onsite, discuss the recipient’s tracking, monitoring, and reporting procedures for all contractor functions, including eligibility. Review oversight files for the contractor(s) and entity(ies) to be visited during the site visit to determine if the program is implemented in accordance with the agreement. Discuss ADA complementary paratransit policies and procedures with the contractor(s) visited to determine if the program is implemented in accordance with the agreement.

## POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that its contractors and providers comply with ADA complementary paratransit service requirements.

DEFICIENCY CODE CPT5-1: Insufficient oversight of contracted ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that contractors or providers comply with the ADA service provisions and evidence of implementation.

## GOVERNING DIRECTIVE

49 CFR 39.23 Service under contract

“(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.”

---

---

## CPT6. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with the US DOT ADA regulations?

### BASIC REQUIREMENT

ADA complementary paratransit service provided by subrecipients must be comparable to fixed-route service.

### APPLICABILITY

Recipients with subrecipients

### EXPLANATION

Recipients are required to ensure that subrecipients adhere to all relevant ADA requirements. See preceding questions for a more detailed explanation of each requirement.

### INDICATOR OF COMPLIANCE

- a. Does the recipient monitor subrecipients for ADA complementary paratransit service?

## **DETERMINING COMPLIANCE**

Review subrecipient agreements to ascertain if the recipient communicated ADA requirements, including training requirements, to the subrecipient as part of the contractual obligations. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements to determine how the recipient monitors that the ADA requirements are met. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited during the site visit to assess when last the recipient performed oversight of the subrecipient and when ADA was addressed. Discuss ADA complementary paratransit policies and procedures with the subrecipient(s) visited to determine if the program is implemented in accordance with the agreement.

## **POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it does not ensure that its subrecipients comply with ADA provision of service requirements.

DEFICIENCY CODE CPT6-1: Insufficient oversight of subrecipients for ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements and evidence of implementation.

## **GOVERNING DIRECTIVE**

49 CFR 200.331 Requirements for pass-through entities

“All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.”

---

---

## **ISSUES/AREAS OF CONCERN FOR FTA AWARENESS**

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA?
2. Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?
3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?
4. Are any oversight review, investigation, or audit findings currently open?

5. Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?
6. What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?
7. Have any ADA complaints been filed with FTA?
8. Does the recipient have a definition for ADA trip denial, missed trip (i.e., trip missed by the recipient), on-time performance, and excessively long trip?
9. Does the recipient monitor its service for a pattern or practice of capacity constraints?
10. Did background research or site visit observations reveal any potential issues or concerns about:
  - a. Service provision to all origins and destinations within the minimum ADA complementary paratransit service area and during all days and hours as fixed-route service
  - b. Changes to the recipient's ADA complementary paratransit service (i.e., change in no-show/late cancellation policy, change in fare payment methods, implementation of door-to-door, curb-to-curb, or origin-to-destination service) that have been implemented since the last Comprehensive Review
  - c. Changes to the recipient's ADA complementary paratransit delivery (e.g., change or add contractors, enter into a delegated management agreement with a public or private entity, combine service with another agency, change from in-house to contracted operation or vice-versa, or otherwise change its business model) that have been implemented since the last Comprehensive Review
  - d. Accuracy of operation data
  - e. Training provided to staff
  - f. Provision of complementary paratransit service not covered previously in this section?

## **REFERENCES**

1. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
6. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

## **USEFUL WEBLINKS**

1. FTA ADA Website
2. US DOT Disability Law Guidance



3. ADA Standards for Transportation Facilities
4. Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities
5. <https://www.yleadprojectaction.com/>
6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
7. U.S. Department of Justice ADA Homepage

***PAGE INTENTIONALLY LEFT BLANK***