

Access to Transportation

Michael Bachhuber, Attorney
Wisconsin Coalition for Advocacy

Introduction

Congress has enacted several laws to provide access to transportation for people with disabilities. These laws include two types: laws providing access to “specialized transportation” programs and laws providing access to standard transportation systems, including anti-discrimination laws. The State of Wisconsin also regulates local “specialized transportation” programs primarily through requirements to access funding assistance.

3 USC 142 & note;
49 USC 5301(d) & (f)(4)

Federal revenue grants

49 USC 5307(b)(2)(B);
49 USC 5307(d)(1)(D)

49 USC 5309(a)(6) & 5310

State revenue grants
Secs. 85.20-.22, Wis. Stats.

Anti-discrimination laws

Local economies benefit from programs such as federal highway aid and Mass Transit Block Grants. Recipients of these types of aid must work through planning organizations to meet the needs of the area, including the needs of elderly people and people with disabilities. All projects receiving assistance must be “planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who ... are unable without special facilities or special planning or design to utilize such facilities and services effectively.” Recipients of funding under the block grants must use funds to comply with the Americans with Disabilities Act (**ADA**). They must also certify that elderly individuals and people with disabilities get a discount of at least 50% on non-peak transit fares. The U.S. Department of Transportation also gives discretionary grants to meet the transportation needs of people with disabilities. Recipients must include people with disabilities in planning for these projects.

There are three main revenue programs distributed by the State of Wisconsin. One assists mass transit. These funds may be used to provide transit services that are accessible to people with disabilities. Another program funds assistance for counties to provide specialized transportation for people with disabilities. The third program supplements federal funds with state funds to assist non-profit corporations and local governments with the capital expenses of specialized transportation programs.

Perhaps the most important laws affecting access to transportation are the federal anti-discrimination laws. These laws provide standards for public transportation systems and private systems which receive federal transportation assistance or are “public accommodations”. Federal law requires comparable access to transportation from programs or services of public entities, recipients of federal assistance, or public accommodations. Department of Transportation regulations generally prohibit discrimination against people with disabilities. For

some modes of transportation, however, not all parts must be accessible. At a minimum, these modes must be operated so that when evaluated as a whole, they are accessible.

Recipients
49 CFR Part 27

Air carriers
49 CFR Part 382

Other transportation
49 CFR Parts 37 and 38

Regulations which apply to highways, airports and inter-city rail service receiving federal assistance have been in effect since 1979. Regulations implementing the Air Carrier Access Act went into effect during 1990. Those applying to private transportation systems, urban mass transportation, like subways and commuter bus and rail systems, and other public transportation systems (except public school transportation, air transportation, and intercity or commuter rail transportation), including transportation facilities, have been in effect since 1992.

49 CFR 37.161-.173

Public and private entities providing transportation services must maintain accessibility features within their facilities and vehicles. They must provide appropriate training for their staff and permit wheelchairs and the people who use them in required "securement locations." They must allow a person who uses a wheelchair to decide whether to ride when the chair may not be secured satisfactorily. They must provide assistance upon request, announce stops, allow service animals and permit use/transport of portable oxygen supplies (consistent with safety regulations) for those who require them because of disability.

Facilities: Publicly and Privately Owned

Requirements for publicly owned transportation facilities (other than those used for educational transportation) apply to facilities owned by state governments; subunits, including local governments; Amtrak; and to facilities of recipients of federal funds. While, generally these facilities must meet ADA Accessibility Guidelines (ADAAG), different requirements may apply depending on the type of facility (airport, rail, highway or mass transit) and when it was built. Former 504 rules applied to rail, air and bus facilities constructed after July, 1981. Rail systems were given until July, 1986 to make some changes and are not required to be completely accessible until 2010. In general, 504 regulations were replaced by the ADA regulations. However, U.S. Department of Transportation policies have allowed providers more time to achieve compliance in many cases.

49 CFR 37.9

Rail facilities – public entities
49 CFR 37.55

Airports and rail facilities
49 CFR 27.71 - 27.73 (1989)

49 CFR 37.41

Airports
49 CFR 27.71-.72

Planning
49 CFR 37.61, 27.11

Intercity or commuter rail stations constructed after October 7, 1991 must meet ADAAG. Transportation facilities (other than rail or air) constructed after January 25, 1992 must meet ADAAG. Most airport terminal facilities and services must also meet ADA standards, including ADAAG, after 1996. In general, most public transportation providers must plan to make existing facilities accessible, plus make areas accessible as alterations are made to the area.

Highways 49 CFR 27.75 Highway rest areas constructed after 1981 with federal funds are required to have accessible features. Rest areas which pre-date the regulations were to have been made accessible on Interstate highways by 1982. Rest areas on other highways are to be made accessible either when the rest area or the adjacent road is altered with federal funds.

Crosswalks Sec.66.616, Wis. Stats. Pedestrian crosswalks constructed with federal financial assistance must have curb ramps for wheelchairs. Pedestrian over-passes, under-passes and ramps must also be accessible unless alternate means are provided or it would not be feasible. Wisconsin law has required curb ramping since 1971.

Construction 49 CFR 37.45; 28 CFR 36.401 New privately owned transportation facilities not covered above (except for public school transportation) must meet ADAAG specifications if constructed after January 26, 1993. All areas housing passenger services and other common areas open to the public in a terminal, depot or station must be on an accessible route from an accessible entrance even if doing so would require the installation of an elevator.

Alteration 28 CFR 36.402 When existing facilities are altered after January 26, 1992, the provider must ensure that the altered portions of the facility and the path of travel to altered portions (if the altered portion is used by riders for transportation or other "primary functions" and affects the usability of a facility) are accessible to and usable by individuals with disabilities to the maximum extent feasible.

Mass Transit and Paratransit

49 CFR 37.71 ADA regulations require that buses, rail and other vehicles obtained after August 25, 1990 for fixed-route transportation systems of public and assisted entities be accessible to people with disabilities, including those who use wheelchairs. Vehicles used for other ("demand responsive") public and assisted transit systems obtained after that date must be accessible unless the system, when viewed in its entirety, provides a level of service to people with disabilities equivalent to that provided for people without disabilities.

49 CFR 37.77

Public entities operating a fixed-route system (other than commuter bus, commuter rail or intercity rail) must also provide "paratransit."

Paratransit definition and eligibility

49 CFR 37.121-.127 Paratransit is special service to individuals, who cannot ride regular transit due to their disability, that is comparable to the service provided to others. Regulations provide standards for eligibility and for the process of determining eligibility. The standards require service to those who have a temporary or permanent impairment that (1) causes them to be unable to board, ride or disembark transit without assistance; (2) makes them unable to use transit because they want to travel on a part of the system that is not accessible within a reasonable time of when they want to travel due to inaccessible vehicles or key rail stations; or (3) prevents them from traveling to a boarding location or from a disembarking location. The standards also require personal attendants to travel without cost (when needed by an eligible rider to make the

trip) and other companions to accompany a traveler with a disability (on a space available basis for more than one companion) at the same cost. Visitors with eligibility credentials from another transit provider may use paratransit, but the paratransit service must also serve visitors without eligibility documentation for 21 days during a year if they certify that they are unable to use fixed route transit, have proof of residence elsewhere and proof of disability (if not apparent).

49 CFR 37.135-.149 and
49 CFR 37.131

Covered entities are required to plan how they will meet paratransit requirements. The planning, ongoing development, and assessment for the system must include outreach to and consultation with anticipated users, individuals with disabilities, and groups representing them. The Federal Transit Administration (FTA) assesses whether service is comparable with respect to six factors:

Comparable standards

1. Service area must extend for at least three quarters of a mile around the areas served by buses or rail stations and incorporate small areas between these “corridors” where corridors converge to form a mass.
2. Service must be offered on a “next day” basis. This means no more than one hour before or one hour after the requested time and, if reservations need to be made in advance, the provider may not require more notice than during regular business hours on the day preceding the requested service.
3. Fares may not be more than twice the regular transit fare.
4. Providers may not restrict or prioritize service based on trip purpose.
5. Service must be available during the same days and hours as regular transit.
6. Service may not be limited by trip restrictions, waiting lists or operational patterns or practices such as untimely pickups, trip denials, missed trips or excessively long trips that significantly limit availability of the service.

The FTA now requires that most providers only certify that they are complying with these requirements. However, the FTA may require greater verification when it has reason to do so.

Rail Service: Other than Urban Mass Transit Systems

49 CFR 37.79, 49 CFR 37.107, 49 CFR
37.91-37.93

Federal transportation regulations require that intercity (Amtrak) and commuter rail vehicles obtained after August 25, 1990 be accessible to people with disabilities, including those who use wheelchairs. Rail passenger cars obtained by public accommodations primarily

engaged in the business of transporting people must also be accessible. Each passenger train must have at least one accessible car (more for Amtrak trains) and its operator must provide appropriate aids and services to ensure that equivalent food service is provided when available on the train.

Amtrak was sued in 1996 to force it to provide accessible rail service. The plaintiffs, on behalf of all persons with mobility impairments, settled the lawsuit in 1998. The settlement provides people with mobility impairments with discounts, reservation holds for accessible bedrooms until fourteen days before departure, enhanced customer service, information and complaint resolution, and access to menus, movies and other onboard programs. These accommodations are to last ten years.¹

Private Transportation Services

Sec. 106.04, Wis. Stats.

Private persons, associations and companies are covered by the ADA if they own, lease (or lease to), or operate a terminal, depot, or other station used for bus, rail or other transportation (except aircraft) that provides the general public with general or special service on a regular and continuing basis or any other place of public accommodation. State law also prohibits public places of accommodations from denying service or charging a higher price because of disability. *(See ADA: Title III - Public Accommodations chapter, pg. 326.)*

49 CFR 37.101

Transportation regulations supplement the general protections of the ADA with specific rules. Which rules apply depends upon whether the public accommodation is primarily engaged in the business of transporting people, whether the transport system operates on fixed routes, the size of a vehicle and other factors. Large vehicles used by private fixed-route systems must be accessible. Smaller vehicles used on fixed-route systems and large vehicles used by other systems must be accessible unless the system viewed in its entirety provides an equivalent level of service for people with disabilities.



Equivalent level of service

The concept of “equivalent level of service” is used in several contexts. To determine whether a service provides an equivalent level of service, look at things like the length of time it takes to get service. If a person without a disability can be picked up in a half hour, does it take the same amount of time to get a lift-equipped vehicle? Other factors include whether: fares are equivalent for accessible and general service; service areas are equivalent; accessible service is offered throughout the times that general service is available; information and reservations are available at equivalent levels between accessible and general service; and trips are restricted based on purpose or system capacity in an equivalent manner.

Large, non-rail vehicles obtained by private entities which are primarily engaged in the business of transporting people and operate fixed-route service after August 25, 1990 must generally be accessible. Large, non-rail vehicles for use by these entities which operate demand

49 CFR 37.103 responsive systems must be accessible unless the system engaged in the business of transporting people after February 25, 1992 viewed in its entirety, provides an equivalent level of service for people with disabilities. Vans with a capacity of less than eight obtained after February 25, 1992 must be accessible unless the system provides an equivalent level of service.

Taxis

49 CFR 37.29 and 49 CFR 37.105

Taxi service providers may not discriminate against people with disabilities. This includes the requirement to reasonably modify the service, when necessary, to allow a person with a disability to use the service. This may include assistance in stowing a wheelchair among other things. When a provider of taxi service obtains a vehicle other than an automobile, the vehicle must be accessible unless the provider demonstrates that service available to people with disabilities is provided in the most integrated setting and is equivalent to the service provided other people.

Over the Road Buses

63 Fed. Reg. 51670;
49 CFR 37.169

The U.S. Department of Transportation approved ADA regulations for “over-the-road” buses (**OTRBs**) more than eight years after the law’s passage. These rules apply to high-floor buses with the passenger deck over a baggage compartment, including intercity bus lines like Greyhound or Badger and tour buses.

A 1991 rule, still in effect, requires only that OTRBs provide accessible service, including announcing stops on fixed-route systems, allowing service animals, and providing adequate boarding time. This rule also requires operators to provide boarding assistance to inaccessible OTRBs upon 48 hour notice, proper training for safe boarding assistance, accommodation of wheelchairs and other devices in the passenger compartment or baggage compartment, and other assistance.

49 CFR 37.181-.197

The new rules require that buses obtained after October 30, 2000 by large operators of fixed-route systems must be accessible. They set timelines for making fleets of both large and small OTRB operators accessible. After October 30, 2001 for large or October 29, 2002 for small operators and until the fleet of a fixed-route operator is 100% accessible, it must ensure that a person with a disability who requests service in an accessible OTRB receives it.

49 CFR 37.189-.199

OTRBs obtained by “demand responsive” operators, such as charter and tour lines, and some operators of mixed systems need not be accessible. Operators of these systems must provide service in an accessible OTRB upon request after the effective date. Operators may not require more than 48 hours advance notice and must compensate a person with a disability when the operator is required and fails to provide an accessible bus upon request.

49 CFR 37.201-.213 The OTRB provisions include record-keeping requirements. They also define other acts or omissions as discrimination, including failure to permit riders with disabilities to leave an OTRB on the same basis as other passengers (including providing assistance on and off at rest stops); failure to provide accessible facilities at rest stops owned, leased or controlled (directly or by contractual relationship) by the operator; failure to reasonably accommodate requests for a rest stop on trips of three hours or more on OTRBs with inaccessible restrooms; and failure to maintain lifts.

Note: A portion of these regulations were stricken by a federal judge. Some details remain in doubt at the time of publication.

Air Travel

49 USC 41705, 49 CFR Part 382, 49 USC 40103(a)(2), 49 USC 41511(b)(4)

Air Carrier Access Act of 1986

Rules providing a legal basis for aviation accessibility date back more than 40 years. When the Supreme Court held that these rules were not broad enough to ensure access to service on air carriers which did not receive direct financial assistance from the government, Congress enacted the Air Carrier Access Act of 1986 (ACAA). Like the ADA (which excludes air carriers), the Act built upon Section 504 concepts to prohibit discrimination against people with disabilities by air carriers. The Department of Transportation issued rules implementing the Act in 1990. Two additional laws address accessibility for air travelers. One requires the Department to consult with the Access Board before acting when accessibility of airports or commercial air transportation may be affected. The other allows air carriers to reduce the price of foreign air transportation on a space-available basis to an individual with a disability and an accompanying attendant.

49 CFR 382.3 The ACAA prohibits discrimination against people with physical or mental impairments that substantially limit one or more major life activities, who have a record of such an impairment, or are regarded as having such an impairment. With a more recent amendment, it applies to air carriers that provide regularly scheduled services for hire to the public. Regulations implementing the Act address a wide range of issues including boarding assistance and accessibility features in new or altered aircraft and facilities.

Publ.L. 106-181

49 CFR 382.33, 49 CFR 382.57,
49 CFR 382.39

Special airline assistance

While airlines cannot ordinarily require advance notice that a traveler has a disability, a person requesting accommodations, such as respirator hook-up or transportation of an electric wheelchair on an aircraft with less than 60 seats, may be required to give 48 hours notice. Airlines may not charge for special assistance unless the assistance is optional, such as the provision of medical oxygen. Airlines must assist passengers who need help due to disability but are not required to carry any passenger onto an inaccessible plane.

49 CFR 382.21 Aircraft accessibility rules do not generally allow passengers to travel in their own wheelchair. Only certain aircraft are required to have accessible lavatories. Electric wheelchairs will generally be disassembled if the

Wheelchairs

49 CFR 382.43

49 CFR 382.45-.47

battery might be spillable. If disassembled, however, the carrier must reassemble and ensure its prompt return to the passenger. Limits of liability with respect to baggage on domestic flights do not apply to loss or damage of wheelchairs and other assistive devices.

Administrative provisions require training for personnel who may deal with passengers with disabilities, designation of “complaint resolution officials” to respond to accessibility complaints and enhanced information for people with disabilities. The ACAA has a somewhat broader exception than that provided by 504 and the ADA. Under the exception, a carrier may refuse to provide transportation to a person when carriage “would or might be inimical to the safety of the flight.” For more information, contact the Federal Aviation Administration or:

Department of Transportation
Aviation Consumer Protection Division, C-75
400 Seventh Street, SW
Washington, DC 20590
www.faa.gov/acr/dat.htm

Enforcement

28 CFR 35.190(b)(8)

The U.S. Department of Transportation has the responsibility to enforce the ADA and 504 with respect to transportation by public entities and recipients of federal transportation assistance. The Federal Transit Administration will investigate accessibility complaints regarding providers of public transit, commuter rail, and paratransit service. An injured party may sue to stop a violation of the ADA or 504 and for monetary damages.

28 CFR Part 36, Subpart E

Public accommodations provisions of the ADA are enforced by private parties or the Department of Justice. *(See ADA: Title III - Public Accommodations chapter, pg. 332 for more information on enforcement.)*

The ACAA is enforced by the Federal Aviation Administration (FAA) or the Department of Transportation or by filing a private lawsuit. Complaints about accessibility of transportation by air carriers, governments and recipients of federal transportation assistance may be made to:

For more information
www.dot.gov

Office of the Secretary of Transportation
Office of Civil Rights, S-30, Room 10215
400 Seventh Street, SW
Washington, DC 20590
202-366-4000 (voice)
202-366-5273 (TTY)

1. *Ferreyra et al. v. Amtrak*, Case No. C-96-2704 FMS (N.D. Cal. S.F. Div. (1998))