Approved: 2/14/97
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:09 a.m. on January 23, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused
Rep. Dennis Wilson - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Martha Gabehart, KDHR

Others attending: See attached list

Chairman Lane recognized Rep. Sue Storm. She wanted to thank all the members for their cards and expressions of condolences at the recent death of her father.

Chairman Lane introduced Martha Gabehart, Executive Director, Commission on Disability Concerns, Kansas Department of Human Resources (KDHR). She appeared before the committee to discuss four specific issues concerning the Americans with Disabilities Act (ADA) They are: 1) the impact on existing business, 2) the impact on remodeling and building, 3) comments on discrimination and the Workers Compensation Second Injury Fund, and 4) employer violations. (see Attachment 1) Included in the attachment is The ADA Project, a technical assistance manual that explains the American Disability Act. The committee had many questions and experiences they wanted to ask or share about how this act has impacted their lives and the lives of their constituents.

Ms. Gabehart suggested that anyone who had questions should call her office and talk with her. She also introduced her ADA expert, Randy Fisher, who could also answer any questions we may have.

Chairman Lane asked if anyone was present who wanted to introduce a bill before the committee. No one came forward and the meeting was adjourned at 9:50 a.m.

The next meeting is scheduled for January 28, 1997.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE January 23, 1997

NAME	REPRESENTING
Randy Fisher	Ks Comm Disability Concerns
Lon Smelser	DofA DPS
Ashley Sherard	Overland Park Chamber
Susan Torsch	Dept of Administration
Roland E. Smith	WIBA
Jason Pitsenberger	Brad Smoot
Michael Byington	Wichita Industries and Services for the Blind
Cindy L. Tibbe	SRS Civil Rights / EEO Sector
Nicole Johnson	Legislative Intern
Ann Carlin Ozegovic	KS Dept. Human Resources - KCDC
Susan Briggs	Topeka Independent Living Ctr.

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES

Bill Graves, Governor

Wayne L. Franklin, Secretary

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TESTIMONY BY
MARTHA K. GABEHART, EXECUTIVE DIRECTOR

TO THE
HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE
JANUARY 23, 1997

Thank you Chairman Lane and committee members for inviting me here to talk about the Americans with Disabilities Act (ADA). The four specific issues I was asked to discuss were:

1. the impact on existing business
2. the impact on remodeling and building
3. comments on discrimination and the Workers Compensation Second Injury Fund
4. employer violations

Impact on Existing Business (Handout-Title III Technical Assistance Manual (TAM))

Title III of the Americans with Disabilities Act (ADA) requires businesses (public accommodations) to:

. make reasonable modifications to policies, practices and procedures when necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities unless the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations (i.e., retrieving items from shelves or displays which are too high for a person in a wheelchair to reach).

. provide auxiliary aids and services so that people with communication limitations (hearing, vision or speech) are not excluded, denied services, segregated or otherwise treated differently than other individuals unless it can be shown that providing the aids and services will fundamentally alter the public accommodation or would be an undue burden (significant difficulty or expense).

. remove barriers where removal is readily achievable. Readily achievable means easily accomplishable and able to be carried out without much

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1/23/97
Attachment 1

difficulty or expense. This relieves business owners from the requirement of making expensive alternations to buildings which are old and will be difficult to modify.

. provide services in an alternate manner where barrier removal is not readily achievable, i.e., providing curb service or home delivery, retrieving merchandise from inaccessible shelves and racks, relocating activities to accessible locations.

Title III does not require provision of personal use devices or specialty goods.

Impact on Remodeling & Building

The ADA requires public accommodations (private businesses) to remove barriers where removal is readily achievable in existing buildings. All new construction must comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

As mentioned before, "readily achievable" means the modification can be carried out with little or no difficulty or expense. The factors in determining readily achievable are:

1. the nature and cost of the action needed;
2. the overall financial resources of the site or sites involved in the action;
3. the geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
4. if applicable, the overall financial resources of any parent corporation or entity, size of such entity with respect to the number of its employees and the number, type and location of its facilities; and
5. if applicable, the type of operation or operations of any parent corporation or entity including the composition, structure and functions of the workforce of the parent corporation or entity (page 30 of TAM).

New Construction

All new construction of buildings which will house public accommodations and commercial facilities must be readily accessible to and usable by individuals with disabilities. These new buildings must conform to the Americans with Disabilities Act Accessibility Guidelines (ADAAG) unless it is structurally impracticable (page 43 of TAM). New buildings which are one or two stories or with fewer than 3,000 square feet per floor unless they are a shopping center or mall, professional office of a health care provider, public transit station; or an airport passenger terminal are not required to have an elevator. This is called the elevator exemption.

Alterations

If alterations are made to an existing public accommodation, those alternations must be readily accessible to and usable by people with disabilities (page 48 in TAM). An accessible path of travel to the altered part of the public accommodation must be made as well. Alterations also have the elevator exemption.

The ADA and the Second Injury Fund of Workers Compensation ✓

At this time there is no Second Injury Fund in Workers Compensation. However, when there was one, there were some concerns about whether or not it was discriminatory and whether or not it was necessary.

The background of the Second Injury Fund is that it was used as an incentive for employers to hire people with disabilities. The fund was used to pay for medical expenses for people who were injured on the job when that injury was related to their disability. This kept the employer's experience rating from being raised because of an injury. A different insurance fund was used to pay for the medical expenses.

Discrimination concerns started when the ADA was passed. The employment regulations of the ADA prohibit employers from making inquiries about a person's disability and medical history prior to an offer of employment. Many employers were having job applicants complete the Second Injury form (Form 88) prior to their interviews. This is a violation of the ADA. In fact, the Form 88 did not have to be completed prior to hiring a person with a disability in order to utilize the Second Injury Fund. If all employers who wanted to utilize the fund had known and practiced this, there would not have been a concern about discrimination.

When the Second Injury Fund was eliminated, the reasoning was that it was no longer necessary to entice employers to hire people with disabilities when the ADA was passed to protect people's employment rights. The reality is that most employers are still reluctant to hire people with disabilities. Having complaints filed against them is not going to make hiring people with disabilities any more appealing. Instead, supports like the Second Injury Fund and the Work Opportunity Tax Credit will help employers take a more positive approach to hiring people with disabilities. It will also help people get off of welfare and become tax payers.

Employer Compliance with the ADA and the Kansas Act Against Discrimination (KAAD)

The Kansas Human Rights Commission (KHRC) has a contract with the federal Equal Employment Opportunity Commission (EEOC) to process and investigate employment complaints because of disability. The handout on employment complaints is from KHRC. You will see that the number of complaints started out with 238 in 1992, rose to 571 in 1994 and is back down to 333 in 1996. The projected number for 1997 is approximately 294. The total per year is expected to level out like all of the other protected classes since employers are more aware of their responsibilities.

Thank you for the opportunity to speak to you today on the ADA and its impact on business. If you have any questions, please let me know.

BASIS OF COMPLAINT VERSUS AREA IN WHICH COMPLAINT WAS ALLEGED YEAR TO YEAR

CATEGORY	1997*	1996	1995	1994	1993	1992
SEX	207	513	517	639	585	526
Employment	200	503	495	608	552	509
PA	3	4	6	10	11	7
Housing	4	6	16	21	22	10
RACE	181	344	436	443	382	428
Employment	157	287	357	361	296	364
PA	12	34	30	20	35	18
Housing	12	23	49	62	51	46
DISABILITY	147	347	376	613	522	258
Employment	138	333	351	571	482	238
PA	8	7	12	8	12	13
Housing	1	7	13	34	28	7
AGE	108	233	287	367	310	328
Employment	108	233	287	367	310	328
RETALIATION	114	254	206	211	174	218
Employment	114	252	199	208	173	218
PA	0	0	1	0	0	0
Housing	0	2	6	3	1	0
ANCESTRY	36	47	83	103	120	94
Employment	36	39	74	93	106	84
PA	0	4	5	3	7	5
Housing	0	4	4	7	7	5
NATIONAL ORIGIN	17	87	52	46	49	55
Employment	17	84	42	39	42	49
PA	0	1	2	1	4	1
Housing	0	2	8	6	3	5
RELIGION	12	19	30	30	31	26
Employment	12	16	30	29	27	23
PA	0	2	0	0	2	1
Housing	0	1	0	1	2	2
COLOR	11	10	1	4	7	8
Employment	11	10	1	4	6	8
Housing	0	0	0	0	1	0
FAMILIAL STATUS	2	10	19	19	21	6
Housing	2	10	19	19	21	6

*This column represents the first half of FY 1997, the period of July 1 through December 31, 1996.

U.S. Department of Justice
Civil Rights Division
Office on the Americans with Disabilities Act

The ADA Project

The Great Plains Disability and Business
Technical Assistance Center

Americans With Disabilities Act Technical Assistance Manual Title III

Reprinted by:

Great Plains Disability and Business Technical Assistance Center
and

Kansas Commission on Disability Concerns
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III-1.0000 COVERAGE

Regulatory references: 28 CFR 36.102-36.104.

III-1.1000 General. Title III of the ADA covers —

1) Places of public accommodation;

2) Commercial facilities; and

3) Examinations and courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

The obligations of title III only extend to private entities. State and local government entities are public entities covered by title II of the ADA, not by title III.

Title III also covers private entities primarily engaged in transporting people. The Department of Transportation has issued regulations implementing that section of title III.

Is the Federal Government covered by title III because it is not a "public entity" under title II? The operations of the executive branch of the Federal Government are not covered by title III of the ADA. They are covered, however, by sections 501 and 504 of the Rehabilitation Act of 1973, as amended, which prohibit disability discrimination in programs and activities conducted by Federal Executive agencies or the United States Postal Service, and by the Architectural Barriers Act, which requires that the design, construction, and alteration of Federal buildings be done in an accessible manner. The activities of the legislative branch, including Congress, on the other hand, are covered under title V of the ADA.

Are places of public accommodation and commercial facilities subject to the same requirements? No. Both places of public accommodation and commercial facilities (which include many facilities that are not places of public accommodation) are subject to the title III requirements for new construction and alterations. In addition to these requirements, places of public accommodation must be operated in accordance with the full range of title III requirements, such as nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and removal of barriers in existing facilities.

III-1.2000 Public accommodations. The broad range of title III obligations relating to "places of public accommodation" must be met by entities that the Department of Justice regulation labels as "public accommodations." In order to be considered a public accommodation with title III obligations, an entity must be private and it must —

Own;
Lease;
Lease to; or
Operate

a place of public accommodation.

What is a place of public accommodation? A place of public accommodation is a facility whose operations —

Affect commerce; and

Fall within at least one of the following 12 categories:

1) Places of lodging (e.g., inns, hotels, motels) (except for owner-occupied establishments renting fewer than six rooms);

2) Establishments serving food or drink (e.g., restaurants and bars);

3) Places of exhibition or entertainment (e.g., motion picture houses, theaters, concert halls, stadiums);

4) Places of public gathering (e.g., auditoriums, convention centers, lecture halls);

5) Sales or rental establishments (e.g., bakeries, grocery stores, hardware stores, shopping centers);

6) Service establishments (e.g., laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals);

7) Public transportation terminals, depots, or stations (not including facilities relating to air transportation);

8) Places of public display or collection (e.g., museums, libraries, galleries);

9) Places of recreation (e.g., parks, zoos, amusement parks);

10) Places of education (e.g., nursery schools, elementary, secondary, undergraduate, or post-graduate private schools);

11) Social service center establishments (e.g., day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies); and

12) Places of exercise or recreation (e.g., gymnasiums, health spas, bowling alleys, golf courses).

Can a facility be considered a place of public accommodation if it does not fall under one of these 12 categories? No, the 12 categories are an exhaustive list. However, within each category the examples given are just illustrations. For example, the category "sales or rental establishments" would include many facilities other than those specifically listed, such as video stores, carpet show-rooms, and athletic equipment stores.

camp activities. The camp, however, may not use this information to screen out children with disabilities from admittance to the camp.

ILLUSTRATION 2: A retail store requires applicants for a store credit card to supply information regarding their physical or mental health history. This policy violates the ADA because such information is not relevant to a determination of credit worthiness.

III-4.1400 Surcharges. Although compliance may result in some additional cost, a public accommodation may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses.

ILLUSTRATION: The ABC pharmacy is located on the second floor of an older four-story building that does not have an elevator. Because the pharmacy's owner has determined that providing physical access to the pharmacy for those unable to climb stairs would not be readily achievable, she has chosen to provide home delivery as a readily achievable alternative to barrier removal. The pharmacy may not charge an individual who uses a wheelchair for the cost of providing home delivery.

III-4.2000 Reasonable modifications

III-4.2100 General. A public accommodation must reasonably modify its policies, practices, or procedures to avoid discrimination. If the public accommodation can demonstrate, however, that a modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations it provides, it is not required to make the modification.

ILLUSTRATION 1: A private health clinic, in collaboration with its local public safety officials, has developed an evacuation plan to be used in the event of fire or other emergency. The clinic occupies several floors of a multistory building. During an emergency, elevators, which are the normal means of exiting from the clinic, will be shut off. The health clinic is obligated to modify its evacuation procedures, if necessary, to provide alternative means for clients with mobility impairments to be safely evacuated from the clinic without using the elevator. The clinic should also modify its plan to take into account the needs of its clients with visual, hearing, and other disabilities.

ILLUSTRATION 2: Under its obligation to remove architectural barriers where it is readily achievable to do so, a local motel has greatly improved physical access in several of its rooms. However, under its present reservation system, the motel is unable to guarantee that, when a person requests an accessible room, one of the new rooms will actually be available when he or she arrives. The ADA requires the motel to make reasonable modifications in its reservation system to ensure the availability of the accessible room.

III-4.2200 Specialties. It is not considered discriminatory for a public accommodation with a specialty in a particular area to refer an individual with a disability to a different public accommodation if —

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III-4.1400 Surcharges.

[Insert the following text after Illustration, p. 22.]

ILLUSTRATION 2: In order to ensure effective communication with a deaf patient during an office visit, a doctor arranges for the services of a sign language interpreter. The cost of the interpreters services must be absorbed by the doctor.

ILLUSTRATION 3: A community civic association arranges to provide interpreting services for a deaf individual wishing to attend a business seminar sponsored by the organization in rented space at a local motel. The interpreting service requires the organization to provide payment in full prior to the seminar. Due to a business emergency, the individual is unable to attend. The organization may not charge the deaf individual for the cost of the unused interpreting services.

III-4.2000 Reasonable modifications.

III-4.2100 General.

[Insert the following text after Illustration 2, p. 22.]

ILLUSTRATION 3: A retail store has a policy of not taking special orders for out-of-stock merchandise unless the customer appears personally to sign the order. The store would be required to reasonably modify its procedures to allow the taking of special orders by phone from persons with disabilities who cannot visit the store. If the stores concern is obtaining a guarantee of payment that a signed order would provide, the store could, for example, take orders by mail or take credit card orders by telephone from persons with disabilities.

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III-4.0000 SPECIFIC REQUIREMENTS

III-4.1000 Eligibility criteria.

III-4.1100 General.

[Insert the following text after Illustration 3, p. 21.]

ILLUSTRATION 4: A committee reviews applications from physicians seeking admitting privileges at a privately owned hospital. The hospital requires all applicants, no matter their specialty, to meet certain physical and mental health qualifications, because the hospital believes they will promote the safe and efficient delivery of medical care. The hospital must be able to show that the specific qualifications imposed are necessary.

1) The individual is seeking a service or treatment outside the referring public accommodation's area of expertise; and

2) The public accommodation would make a similar referral for an individual who does not have a disability.

ILLUSTRATION: An individual who is blind initially visits a doctor who specializes in family medicine. The doctor discovers that the individual has a potentially cancerous growth. The family practice physician may refer the blind individual to a cancer specialist, if he or she has no expertise in that area, and if he or she would make a similar referral for an individual who is not blind. The cancer specialist who receives the referral may not refuse to treat the individual for cancer-related problems simply because the individual is blind.

III-4.2300 Service animals. A public accommodation must modify its policies to permit the use of a service animal by an individual with a disability, unless doing so would result in a fundamental alteration or jeopardize the safe operation of the public accommodation.

Service animals include any animal individually trained to do work or perform tasks for the benefit of an individual with a disability. Tasks typically performed by service animals include guiding people with impaired vision, alerting individuals with impaired hearing to the presence of intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items.

The care or supervision of a service animal is the responsibility of his or her owner, not the public accommodation. A public accommodation may not require an individual with a disability to post a deposit as a condition to permitting a service animal to accompany its owner in a place of public accommodation, even if such deposits are required for pets.

ILLUSTRATION: An individual who is blind wishes to be accompanied in a restaurant by her guide dog. The restaurant must permit the guide dog to accompany its owner in all areas of the restaurant open to other patrons and may not insist that the dog be separated from her.

See supplemental page 3 next page

III-4.2400 Check-out aisles. If a store has check-out aisles, customers with disabilities must be provided an equivalent level of convenience in access to check-out facilities as customers without disabilities. To accomplish this, the store must either keep an adequate number of accessible aisles open or otherwise modify its policies and practices.

ILLUSTRATION: PQR Foodmart has twenty narrow, inaccessible check-out aisles and one wider, accessible aisle. The accessible aisle is used as an express lane limited to customers purchasing fewer than ten items. K, who uses a wheelchair, wishes to make a larger purchase. PQR Foodmart must permit K to make his large purchase at the express lane.

III-4.2500 Accessible or special goods. As a general rule, a public accommodation is not required to alter its inventory to carry accessible or special products that are designed for or easier to use by

customers with disabilities. Examples of accessible goods include Brailled books, books on audio tape, closed-captioned video tapes, specially sized or designed clothing, and foods that meet special dietary needs.

> ILLUSTRATION: A local book store has customarily carried only regular print versions of books. The ADA does not require the bookstore to expand its inventory to include large print books or books on audio tape.

On the other hand, a public accommodation may be required to special order accessible goods at the request of a customer with a disability if —

1) It makes special orders for unstocked goods in its regular course of business, and

2) The accessible or special goods requested can be obtained from one of its regular suppliers.

> ILLUSTRATION: A customer of a local bookstore begins to experience some vision loss and has difficulty reading regular print. Upon request by the customer, the bookstore is required to try to obtain large print books, if it normally fills special orders (of any kind) for its other customers, and if large print books can be obtained from its regular suppliers.

The ADA does not require that manufacturers provide warranties or operating manuals that are packed with the product in accessible formats.

III-4.2600 Personal services and devices. A public accommodation is not required to provide individuals with disabilities with personal or individually prescribed devices, such as wheelchairs, prescription eyeglasses, or hearing aids, or to provide services of a personal nature, such as assistance in eating, toileting, or dressing.

Although discussed here as a limit on the duty to make reasonable modifications, this provision applies to all aspects of the title III rule and limits the obligations of public accommodations in areas such as the provision of auxiliary aids and services, alternatives to barrier removal, and examinations and courses.

However, the phrase "services of a personal nature" is not to be interpreted as referring to minor assistance provided to individuals with disabilities. For example, measures taken as alternatives to barrier removal, such as retrieving items from shelves or providing curb service or home delivery, or actions required as modifications in policies, practices, and procedures, such as a waiter's removing the cover from a customer's straw, a kitchen's cutting up food into smaller pieces, or a bank's filling out a deposit slip, would not be considered "services of a personal nature." Also, if a public accommodation such as a hospital or nursing home customarily provides its clients with what might otherwise be considered services of a personal nature, it must provide the same services for individuals with disabilities.

> ILLUSTRATION: An exclusive women's clothing shop provides individualized assistance to its customers in selecting and trying on garments. Although "dressing" might otherwise be considered a personal service, in this case the store must extend the same service to its

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III-4.2300 Service animals.

[Insert the following text after Illustration, p. 23.]

A number of States have programs to certify service animals. A private entity, however, may not insist on proof of State certification before permitting the entry of a service animal to a place of public accommodation.

customers with disabilities. However, a "no frills" merchandiser would not be required to provide assistance in trying on garments, because it does not provide such a service to any of its customers.

III-4.3000 Auxiliary aids

III-4.3100 General. A public accommodation is required to provide auxiliary aids and services that are necessary to ensure equal access to the goods, services, facilities, privileges, or accommodations that it offers, unless an undue burden or a fundamental alteration would result.

Who is entitled to auxiliary aids? This obligation extends only to individuals with disabilities who have physical or mental impairments, such as vision, hearing, or speech impairments, that substantially limit the ability to communicate. Measures taken to accommodate individuals with other types of disabilities are covered by other title III requirements such as "reasonable modifications" and "alternatives to barrier removal."

ILLUSTRATION: W, an individual who is blind, needs assistance in locating and removing an item from a grocery store shelf. A store employee who locates the desired item for W would be providing an "auxiliary aid or service."

BUT: If G, who uses a wheelchair, receives the same retrieval service, not because of a disability related to communication, but rather because of his inability to physically reach the desired item, the store would be making a required "reasonable modification" in its practices, as discussed in III-4.2000 of this manual.

III-4.3200 Effective communication. In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

ILLUSTRATION 1: H, an individual who is deaf, is shopping for film at a camera store. Exchanging written notes with the sales clerk would be adequate to ensure effective communication.

ILLUSTRATION 2: H then stops by a new car showroom to look at the latest models. The car dealer would be able to communicate effectively general information about the models available by providing brochures and exchanging notes by pen and notepad, or perhaps by means of taking turns at a computer terminal keyboard. If H becomes serious about making a purchase, the services of a qualified interpreter may be necessary because of the complicated nature of the communication involved in buying a car.

ILLUSTRATION 3: S, an individual who is blind, visits an electronics store to purchase a clock radio and wishes to inspect the merchandise information cards next to the floor models in order to decide which one to buy. Reading the model information to S should be adequate to ensure effective communication. Of course, if S is unreasonably demanding or

is shopping when the store is extremely busy, it may be an undue burden to spend extended periods of time reading price and product information.

Who decides what type of auxiliary aid should be provided? Public accommodations should consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is strongly encouraged, the ultimate decision as to what measures to take to ensure effective communication rests in the hands of the public accommodation, provided that the method chosen results in effective communication.

Who is a qualified interpreter? There are a number of sign language systems in use by persons who use sign language. (The most common systems of sign language are American Sign Language and signed English.) Individuals who use a particular system may not communicate effectively through an interpreter who uses another system. When an interpreter is required, the public accommodation should provide a qualified interpreter, that is, an interpreter who is able to sign to the individual who is deaf what is being said by the hearing person and who can voice to the hearing person what is being signed by the individual who is deaf. This communication must be conveyed effectively, accurately, and impartially, through the use of any necessary specialized vocabulary.

Can a public accommodation use a staff member who signs "pretty well" as an interpreter for meetings with individuals who use sign language to communicate? Signing and interpreting are not the same thing. Being able to sign does not mean that a person can process spoken communication into the proper signs, nor does it mean that he or she possesses the proper skills to observe someone signing and change their signed or fingerspelled communication into spoken words. The interpreter must be able to interpret both receptively and expressively.

If a sign language interpreter is required for effective communication, must only a certified interpreter be provided? No. The key question in determining whether effective communication will result is whether the interpreter is "qualified," not whether he or she has been actually certified by an official licensing body. A qualified interpreter is one "who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary." An individual does not have to be certified in order to meet this standard. A certified interpreter may not meet this standard in all situations, e.g., where the interpreter is not familiar with the specialized vocabulary involved in the communication at issue.

III-4.3300 Examples of auxiliary aids and services. Auxiliary aids and services include a wide range of services and devices that promote effective communication. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

Examples for individuals with vision impairments include qualified readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.

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III-4.3000 Auxiliary aids.

III-4.3200 Effective communication.

A.[Insert the following text after Illustration 3, p. 26.]

ILLUSTRATION 4: S also has tickets to a play. When S arrives at the theater, the usher notices that S is an individual who is blind and guides S to her seat. An usher is also available to guide S to her seat following intermission. With the provision of these services, a Brailled ticket is not necessary for effective communication in seating S.

ILLUSTRATION 5: The same theater provides S with a tape-recorded version of its printed program for the evenings performance. A Brailled program is not necessary to effectively communicate the contents of the program to S, if an audio cassette and tape player are provided.

B.[Insert the following text after the answer to the question, Who decides what type of auxiliary aid should be provided? , p. 26.]

ILLUSTRATION: A patient who is deaf brings his own sign language interpreter for an office visit without prior consultation and bills the physician for the cost of the interpreter. The physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication. If the patient believes that the physicians decision will not lead to effective communication, then the patient may challenge that decision under title III by initiating litigation or filing a complaint with the Department of Justice (see III-8.0000).

Examples for individuals with speech impairments include TDD's, computer terminals, speech synthesizers, and communication boards.

III-4.3400 Telecommunication devices for the deaf (TDD's). In order to ensure effective communication by telephone, a public accommodation is required to provide TDD's in certain circumstances. Because TDD relay systems required by title IV of the ADA (which must be operational by July 26, 1993) will eliminate many telephone system barriers to TDD users, the auxiliary aids requirements relating to TDD's are limited in nature.

III-4.3410 Calls incident to business operations. A public accommodation is not required to have a TDD available for receiving or making telephone calls that are part of its business operations. Even during the interim period between the effective date of title III and the date the TDD relay service becomes available, there is no requirement that public accommodations have TDD's. Of course, the ADA does not prevent a public accommodation from obtaining a TDD if, for business or other reasons, it chooses to do so.

III-4.3420 Outgoing calls by customers, clients, patients, or participants. On the other hand, TDD's must be provided when customers, clients, patients, or participants are permitted to make outgoing calls on "more than an incidental convenience basis." For example, TDD's must be made available on request to hospital patients or hotel guests where in-room phone service is provided. A hospital or hotel front desk should also be equipped with a TDD so that patients or guests using TDD's in their rooms have the same access to in-house services as other patients or guests.

III-4.3500 Closed caption decoders. Hospitals that provide televisions for use by patients, and hotels, motels, and other places of lodging that provide televisions in five or more guest rooms, must provide closed caption decoder service upon request.

III-4.3600 Limitations and alternatives. A public accommodation is not required to provide any auxiliary aid or service that would fundamentally alter the nature of the goods or services offered or that would result in an undue burden.

However, the fact that providing a particular auxiliary aid or service would result in a fundamental alteration or undue burden does not necessarily relieve a public accommodation from its obligation to ensure effective communication. The public accommodation must still provide an alternative auxiliary aid or service that would not result in an undue burden or fundamental alteration but that would ensure effective communication to the maximum extent possible, if one is available.

> ILLUSTRATION: It may be an undue burden for a small private historic house museum on a shoestring budget to provide a sign language interpreter for a deaf individual wishing to participate in a tour. Providing a written script of the tour, however, would be an alternative that would be unlikely to result in an undue burden.

What is a fundamental alteration? A fundamental alteration is a modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

What is an undue burden? "Undue burden" is defined as "significant difficulty or expense." Among the factors to be considered in determining whether an action would result in an undue burden are the following —

1) The nature and cost of the action;

2) The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;

3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Does a public accommodation have to do more or less under the "undue burden" standard than under other ADA limitations such as "undue hardship" and "readily achievable"? The definition of undue burden is identical to the definition of undue hardship used in title I of the ADA as the limitation on an employer's obligation to reasonably accommodate an applicant or employee. Under both limitations, an action is not required if it results in "significant difficulty or expense." The undue burden standard, however, requires a greater level of effort by a public accommodation in providing auxiliary aids and services than does the "readily achievable" standard for removing barriers in existing facilities (see III-4.4200). Although "readily achievable" is therefore a "lesser" standard, the factors to be considered in determining what is readily achievable are identical to those listed above for determining undue burden.

III-4.4000 Removal of barriers

III-4.4100 General. Public accommodations must remove architectural barriers and communication barriers that are structural in nature in existing facilities, when it is readily achievable to do so.

What is an architectural barrier? Architectural barriers are physical elements of a facility that impede access by people with disabilities. These barriers include more than obvious impediments such as steps and curbs that prevent access by people who use wheelchairs.

In many facilities, telephones, drinking fountains, mirrors, and paper towel dispensers are mounted at a height that makes them inaccessible to people using wheelchairs. Conventional doorknobs and operating controls may impede access by people who have limited manual dexterity.

Deep pile carpeting on floors and unpaved exterior ground surfaces often are a barrier to access by people who use wheelchairs and people who use other mobility aids, such as crutches. Impediments caused by the location of temporary or movable structures, such as furniture, equipment, and display racks, are also considered architectural barriers.

What is a communication barrier that is structural in nature? Communication barriers that are "structural in nature" are barriers that are an integral part of the physical structure of a facility. Examples include conventional signage, which generally is inaccessible to people who have vision impairments, and audible alarm systems, which are inaccessible to people with hearing impairments. Structural communication barriers also include the use of physical partitions that hamper the passage of sound waves between employees and customers, and the absence of adequate sound buffers in noisy areas that would reduce the extraneous noise that interferes with communication with people who have limited hearing.

How does the communication barrier removal requirement relate to the obligation to provide auxiliary aids? Communications devices, such as TDD's, telephone handset amplifiers, assistive listening devices, and digital check-out displays, are not an integral part of the physical structure of the building and, therefore, are considered auxiliary aids under the Department's title III regulation. The failure to provide auxiliary aids is *not* a communication barrier that is structural in nature. The obligation to remove structural communications barriers is independent of any obligation to provide auxiliary aids and services.

What is a "facility"? The term "facility" includes all or any part of a building, structure, equipment, vehicle, site (including roads, walks, passageways, and parking lots), or other real or personal property. Both permanent and temporary facilities are subject to the barrier removal requirements.

III-4.4200 Readily achievable barrier removal. Public accommodations are required to remove barriers only when it is "readily achievable" to do so. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

How does the "readily achievable" standard relate to other standards in the ADA? The ADA establishes different standards for existing facilities and new construction. In existing facilities, where retrofitting may be expensive, the requirement to provide access is less stringent than it is in new construction and alterations, where accessibility can be incorporated in the initial stages of design and construction without a significant increase in cost.

This standard also requires a lesser degree of effort on the part of a public accommodation than the "undue burden" limitation on the auxiliary aids requirements of the ADA. In that sense, it can be characterized as a lower standard. The readily achievable standard is also less demanding than the "undue hardship" standard in title I, which limits the obligation to make reasonable accommodation in employment.

How does a public accommodation determine when barrier removal is readily achievable? Determining if barrier removal is readily achievable is necessarily a case-by-case judgment. Factors to consider include:

1) The nature and cost of the action;

2) The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;

3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

If the public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, the public accommodation must consider the resources of both the local facility *and* the parent entity to determine if removal of a particular barrier is "readily achievable." The administrative and fiscal relationship between the local facility and the parent entity must also be considered in evaluating what resources are available for any particular act of barrier removal.

What barriers will it be "readily achievable" to remove? There is no definitive answer to this question because determinations as to which barriers can be removed without much difficulty or expense must be made on a case-by-case basis.

The Department's regulation contains a list of 21 examples of modifications that may be readily achievable:

1) Installing ramps;

2) Making curb cuts in sidewalks and entrances;

3) Repositioning shelves;

4) Rearranging tables, chairs, vending machines, display racks, and other furniture;

5) Repositioning telephones;

6) Adding raised markings on elevator control buttons;

7) Installing flashing alarm lights;

8) Widening doors;

9) Installing offset hinges to widen doorways;

10) Eliminating a turnstile or providing an alternative accessible path;

11) Installing accessible door hardware;

12) Installing grab bars in toilet stalls;

13) Rearranging toilet partitions to increase maneuvering space;

14) Insulating lavatory pipes under sinks to prevent burns;

15) Installing a raised toilet seat;

16) Installing a full-length bathroom mirror;

17) Repositioning the paper towel dispenser in a bathroom;

18) Creating designated accessible parking spaces;

19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;

20) Removing high pile, low density carpeting; or

21) Installing vehicle hand controls.

Businesses such as restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit wheelchair access, but they are not required to do so if it would result in a significant loss of selling or serving space.

The list is intended to be illustrative. Each of these modifications will be readily achievable in many instances, but not in all. Whether or not any of these measures is readily achievable is to be determined on a case-by-case basis in light of the particular circumstances presented and the factors discussed above.

Are public accommodations required to retrofit existing buildings by adding elevators? A public accommodation generally would not be required to remove a barrier to physical access posed by a flight of steps, if removal would require extensive ramping or an elevator. The readily achievable standard does not require barrier removal that requires extensive restructuring or burdensome expense. Thus, where it is not readily achievable to do, the ADA would not require a public accommodation to provide access to an area reachable only by a flight of stairs.

Does a public accommodation have an obligation to search for accessible space? A public accommodation is not required to lease space that is accessible. However, upon leasing, the barrier removal requirements for existing facilities apply. In addition, any alterations to the space must meet the accessibility requirements for alterations.

Does the ADA require barrier removal in historic buildings? Yes, if it is readily achievable. However, the ADA takes into account the national interest in preserving significant historic structures. Barrier removal would not be considered "readily achievable" if it would threaten or destroy the historic significance of a building or facility that is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470, *et seq.*), or is designated as historic under State or local law.

ILLUSTRATION 1: The installation of a platform lift in an historic facility that is preserved because of its unique place in American architecture, or because it is one of few surviving examples of the architecture of a particular period, would not be readily achievable, if the installation of the lift would threaten or destroy architecturally significant elements of the building.

ILLUSTRATION 2: The installation of a ramp or lift in a facility that has historic significance because of events that have occurred there, rather than because of unique architectural characteristics, may be readily achievable, if it does not threaten or destroy the historic significance of the building and is within appropriate cost constraints.

Does the ADA permit a public accommodation to consider the effect of a modification on the operation of its business? Yes. The ADA permits consideration of factors other than the initial cost of the physical removal of a barrier.

ILLUSTRATION 1: CDE convenience store determines that it would be inexpensive to remove shelves to provide access to wheelchair users throughout the store. However, this change would result in a significant loss of selling space that would have an adverse effect on its business. In this case, the removal of the shelves is not readily achievable and, thus, is not required by the ADA.

ILLUSTRATION 2: BCD Hardware Store provides three parking spaces for its customers. BCD determines that it would be inexpensive to restripe the parking lot to create an accessible space and reserve it for use by persons with disabilities. However, this change would reduce the available parking for individuals who do not have disabilities. The loss of parking (not just the cost of the paint for restriping) can be considered in determining whether the action is readily achievable.

III-4.4300 Standards to apply. Measures taken to remove barriers should comply with the ADA Accessibility Guidelines (ADAAG) contained in the appendix to the Department's rule. Barrier removal in existing facilities does not, however, trigger the accessible path of travel requirement (see III-6.2000). Deviations from ADAAG are acceptable only when full compliance with those requirements is not readily achievable. In such cases, barrier removal measures may be taken that do not fully comply with the standards, so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

ILLUSTRATION: As a first step toward removing architectural barriers, the owner of a small shop decides to widen the shop's 26-inch wide front door. However, because of

space constraints, he is unable to widen the door to the full 32-inch clearance required for alterations under ADAAG. Because full compliance with ADAAG is not readily achievable, the shop owner need not widen the door the full 32 inches but, rather, may widen the door to only 30 inches. The 30-inch door clearance does not pose a significant risk to health or safety.

Are portable ramps permitted? Yes, but only when the installation of a permanent ramp is not readily achievable. In order to promote safety, a portable ramp should have railings and a firm, stable, nonslip surface. It should also be properly secured.

III-4.4400 Continuing obligation. The obligation to engage in readily achievable barrier removal is a continuing one. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances.

If the obligation is continuing, are there any limits on what must be done? The obligation is continuing, but not unlimited. The obligation to remove barriers will never exceed the level of access required under the alterations standard (or the new construction standard if ADAAG does not provide specific standards for alterations).

ILLUSTRATION 1: A 100-room hotel is removing barriers in guest accommodations. If the hotel were newly constructed, it would be required to provide five fully accessible rooms (including one with a roll-in shower) and four rooms that are equipped with visual alarms and notification devices and telephones equipped with amplification devices. A hotel that is being altered is required to provide a number of accessible rooms in the area being altered that is proportionate to the number it would be required to provide in new construction.

A hotel that is engaged in barrier removal should meet this alterations standard, if it is readily achievable to do so. It is not required to exceed this level of access. Even if it is readily achievable to make more rooms accessible than would be required under the ADAAG alterations standards, once the hotel provides this level of access, it has no obligation to remove barriers in additional guest rooms.

ILLUSTRATION 2: A grocery store that has more than 5000 square feet of selling space and now has six inaccessible check-out aisles is assessing its obligations under the barrier removal requirement. ADAAG does not contain specific provisions applicable to the alteration of check-out aisles, but, in new construction, two of the six check-out aisles would be required to be accessible. The store is never required to provide more than two accessible check-out aisles, even if it would be readily achievable to do so.

ILLUSTRATION 3: An office building that houses places of public accommodation is removing barriers in common areas. If the building were newly constructed, the building would be required to contain areas of rescue assistance. However, the ADAAG alterations standard explicitly specifies that areas of rescue assistance are *not* required in buildings that are being altered. Because barrier removal is not required to exceed the alterations standard, the building owner need not establish areas of rescue assistance.

III-4.4500 Priorities for barrier removal. The Department's regulation recommends priorities for removing barriers in existing facilities. Because the resources available for barrier removal may not be adequate to remove all existing barriers at any given time, the regulation suggests a way to determine which barriers should be mitigated or eliminated first. The purpose of these priorities is to facilitate long-term business planning and to maximize the degree of effective access that will result from any given level of expenditure. These priorities are not mandatory. Public accommodations are free to exercise discretion in determining the most effective "mix" of barrier removal measures to undertake in their facilities.

The regulation suggests that a public accommodation's first priority should be to enable individuals with disabilities to physically enter its facility. This priority on "getting through the door" recognizes that providing physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities.

The next priority is for measures that provide access to those areas of a place of public accommodation where goods and services are made available to the public. For example, in a hardware store, to the extent that it is readily achievable to do so, individuals with disabilities should be given access not only to assistance at the front desk, but also access, like that available to other customers, to the retail display areas of the store.

The third priority should be providing access to restrooms, if restrooms are provided for use by customers or clients.

The fourth priority is to remove any remaining barriers to using the public accommodation's facility by, for example, lowering telephones.

Must barriers be removed in areas used only by employees? No. The "readily achievable" obligation to remove barriers in existing facilities does not extend to areas of a facility that are used exclusively by employees as work areas.

How can a public accommodation decide what needs to be done? One effective approach is to conduct a "self-evaluation" of the facility to identify existing barriers. The Department's regulation does not require public accommodations to conduct a self-evaluation. However, public accommodations are urged to establish procedures for an ongoing assessment of their compliance with the ADA' s barrier removal requirements. This process should include consultation with individuals with disabilities or organizations representing them. A serious effort at self-assessment and consultation can diminish the threat of litigation and save resources by identifying the most efficient means of providing required access.

If a public accommodation determines that its facilities have barriers that should be removed, but it is not readily achievable to undertake all of the modifications now, what should it do'? The Department recommends that a public accommodation develop an implementation plan designed to achieve compliance with the ADA's barrier removal requirements. Such a plan, if appropriately

designed and diligently executed, could serve as evidence of a good faith effort to comply with the ADA's barrier removal requirements.

In developing an implementation plan for readily achievable barrier removal, a public accommodation should consult with local organizations representing persons with disabilities to solicit their suggestions for cost-effective means of making individual places of public accommodation accessible. These organizations may provide useful guidance to public accommodations in identifying the most significant barriers to remove, and the most efficient means of removing them.

If readily achievable modifications are being made in a single facility that has more than one restroom for each sex, should the public accommodation focus its resources on making one restroom for each sex fully accessible or should the public accommodation make some changes (e.g., lowering towel dispensers or installing grab bars) in each restroom? This is a decision best made on a case-by-case basis after considering the specific barriers that need to be removed in that facility, and whether it is readily achievable to remove these barriers. It is likely that if it is readily achievable to make one restroom fully accessible, that option would be preferred by the clients or customers of the facility.

III-4.4600 Seating in assembly areas. Public accommodations are required to remove barriers to physical access in assembly areas such as theaters, lecture halls, and conference rooms with fixed seating.

If it is readily achievable to do so, public accommodations that operate places of assembly must locate seating for individuals who use wheelchairs so that it —

1) Is dispersed throughout the seating area;

2) Provides lines of sight and choices of admission prices comparable to those offered to the general public;

3) Adjoins an accessible route for emergency egress; and

4) Permits people who use wheelchairs to sit with their friends or family.

If it is not readily achievable for auditoriums or theaters to remove seats to allow individuals who use wheelchairs to sit next to accompanying family members or friends, the public accommodation may meet its obligation by providing portable chairs or other means to allow the accompanying individuals to sit with the persons who use wheelchairs. Portable chairs or other means must be provided only when it is readily achievable to do so.

How many seating locations for persons who use wheelchairs must be provided? Under the general principles applicable to barrier removal in existing facilities, a public accommodation is never required to provide greater access than it would be required to provide under the alterations provisions of the ADAAG.

Must the seating locations be dispersed? The ADA accessibility standard for alterations requires wheelchair seating to be dispersed (i.e., provided in more than one location) only in assembly

areas with fixed seating for more than 300 people. Because the requirements for making existing facilities accessible never exceed the ADAAG standard for alterations, public accommodations engaged in barrier removal are not required to disperse wheelchair seating in assembly areas with 300 or fewer seats, or in any case where it is technically infeasible.

Must a public accommodation permit a person who uses a wheelchair to leave his or her wheelchair and view the performance or program from a stationary seat? Yes. And in order to facilitate seating of wheelchair users who wish to transfer to existing seating when fixed seating is provided, a public accommodation must provide, to the extent readily achievable, a reasonable number of seats with removable aisle-side armrests. Many persons who use wheelchairs are able to transfer to fixed seating with this relatively minor modification. This solution avoids the potential safety hazard created by the use of portable chairs, and it also fosters integration. In situations when a person who uses a wheelchair transfers to existing seating, the public accommodation may provide assistance in handling the wheelchair of the patron with the disability.

May a public accommodation charge a wheelchair user a higher fee to compensate for the extra space required to accommodate a wheelchair or for storing or retrieving a wheelchair? No. People with disabilities may not be subjected to additional charges related to their use of a wheelchair. In fact, to the extent readily achievable, wheelchair seating should provide a choice of admission prices and lines of sight comparable to those for members of the general public.

III-4.4700 Transportation barriers. Public accommodations that provide transportation to their clients or customers must remove barriers to the extent that it is readily achievable to do so. Public accommodations that provide transportation service must also comply with the applicable portions of the ADA regulation issued by the Department of Transportation (56 *Fed. Reg.* 45,884 (September 6, 1991) to be codified at 49 CFR Part 37)).

What kinds of transportation systems are covered by the Department of Justice's title III rule? The Department of Justice's rule covers any fixed route or demand responsive transportation system operated by a public accommodation that is not primarily engaged in the business of transporting people. Examples include airport shuttle services operated by hotels, customer bus or van services operated by shopping centers, transportation systems at colleges and universities, and transport systems in places of recreation, such as those at stadiums, zoos, and amusement parks. If a public accommodation *is* primarily engaged in the business of transporting people, its activities are not covered under the Department of Justice's title III regulation. Rather, its activities are subject to the Department of Transportation's ADA regulation.

What requirements apply to the acquisition of new vehicles? Requirements for the acquisition of new vehicles are found in the Department of Transportation regulation and vary depending on both the capacity of the vehicle and its intended use, as follows:

1) *Fixed route system: Vehicle capacity over 16.* Any vehicle with a capacity over 16 that is purchased or leased for a fixed route system must be "readily accessible to and usable by individuals with disabilities, including those who use wheelchairs."

2) *Fixed route system: Vehicle capacity of 16 or less.* Vehicles of this description must meet the same "readily accessible and usable" standard described in (1) above, unless they are part of a system that already meets the "equivalent service" standard.

3) *Demand responsive system: Vehicle capacity over 16.* These vehicles must meet the "readily accessible and usable" standard, unless they are part of a system that already meets the "equivalent service" standard.

4) *Demand responsive system: Vehicle capacity of 16 or less.* Vehicles of this description are not subject to any requirements for purchase of accessible vehicles. However, "equivalent service" must be provided.

What is "equivalent service"? A system is deemed to provide equivalent service if, when the system is viewed in its entirety, the service provided to individuals with disabilities, including those who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals. The Department of Transportation regulation lists eight service characteristics that must be equivalent. These include schedules/ response time, fares, and places and times of service availability.

Is it necessary to install a lift in an existing vehicle? No. The ADA states that the installation of hydraulic lifts in existing vehicles is not required.

Are employee transportation systems covered? Transportation services provided only to employees of a place of public accommodation are not subject to the Department's title III regulation but are covered by the regulation issued by the Equal Employment Opportunity Commission to implement title I of the ADA. However, if employees and customers or clients are served by the same transportation system, the provisions of the title III regulation will also apply.

III-4.5000 Alternatives to barrier removal

III-4.5100 General. When a public accommodation can demonstrate that the removal of barriers is not readily achievable, the public accommodation must make its goods and services available through alternative methods, if such methods are readily achievable.

> ILLUSTRATION 1: A retail store determines that it is not readily achievable to rearrange display racks to make every aisle accessible. However, the store is still required to make the goods and services that are located along inaccessible aisles available to individuals with disabilities through alternative methods. For example, the store could instruct a clerk to retrieve inaccessible merchandise, if it is readily achievable to do so.
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> ILLUSTRATION 2: A pharmacy that is located in a building that can be entered only by means of a long flight of stairs determines that it is not readily achievable to provide a ramp to that entrance; therefore, it is not required to provide access to its facility. However, the pharmacy is still required to provide access to its services, if any readily achievable alternative method of delivery is available. Therefore, the pharmacy must consider options, such as delivering goods to customers at curbside or at their homes.

ILLUSTRATION 3: A self-service gas station determines that it is not readily achievable to redesign gas pumps to enable people with disabilities to use them; therefore, the gas station is not required to make physical modifications to the gas pumps. However, the gas station is required to provide its services to individuals with disabilities through any readily achievable alternative method, such as providing refueling service upon request to an individual with a disability.

ILLUSTRATION 4: A restaurant determines that it is not readily achievable to remove physical barriers to access in a specific area of the restaurant. The restaurant must offer the same menu in an accessible area of the restaurant, unless it would not be readily achievable to do so.

How can a public accommodation determine if an alternative to barrier removal is readily achievable? The factors to consider in determining if an alternative is readily achievable are the same as those that are considered in determining if barrier removal is readily achievable (see III-4.4200).

If a public accommodation provides its services through alternative measures, such as home delivery, may it charge its customers for this special service? No. When goods or services are provided to an individual with a disability through alternative methods because the public accommodation's facility is inaccessible, the public accommodation may not place a surcharge on the individual with a disability for the costs associated with the alternative method.

ILLUSTRATION 1: A gas station that chooses to provide refueling service to individuals with disabilities at a self-service island, rather than removing the barriers that preclude that individual from refueling his or her own vehicle, must provide the refueling service at the self-service price.

ILLUSTRATION 2: An inaccessible pharmacy that provides home delivery to individuals with disabilities, rather than removing the barriers that prevent those individuals from being served in the pharmacy, must provide the home delivery at no charge to the customer. However, a pharmacy that normally offers home delivery as an option to its customers and charges a fee for that service, may continue to charge a delivery fee to customers with disabilities, if the pharmacy provides at least one "no-cost" alternative, such as delivering its products to a customer at curbside.

May a public accommodation consider security issues when it is determining if an alternative is readily achievable? Yes. Security is a factor that may be considered when a public accommodation is determining if an alternative method of delivering its goods or services is readily achievable.

ILLUSTRATION 1: A service station is not required to provide refueling service to individuals with disabilities at any time when it is operating exclusively on a remote control basis with a single cashier.

ILLUSTRATION 2: A cashier working in a security booth in a convenience store when there are no other employees on duty is not required to leave his or her post to retrieve items for individuals with disabilities.

III-5.0000 NEW CONSTRUCTION

Regulatory references: 28 CFR 36.401; 36.406; Appendix A.

III-5.1000 General. All newly constructed places of public accommodation and commercial facilities must be readily accessible to and usable by individuals with disabilities to the extent that it is not structurally impracticable. This requirement, along with the requirement for accessible alterations, are the *only* requirements that apply to commercial facilities.

What is "readily accessible and usable"? This means that facilities must be built in strict compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG). There is no cost defense to the new construction requirements.

What buildings are covered? The new construction requirements apply to any facility first occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as complete after January 26, 1992; or in those jurisdictions where the government does not certify completion of applications, the date that the last application for a building permit or permit extension is received by the government.

What if a building is occupied before January 26, 1993? It is not covered by the title III new construction requirements.

What does "structurally impracticable" mean? The phrase "structurally impracticable" means that unique characteristics of the land prevent the incorporation of accessibility features in a facility. In such a case, the new construction requirements apply, except where the private entity can demonstrate that it is structurally impracticable to meet those requirements. This exception is very narrow and should not be used in cases of merely hilly terrain. The Department expects that it will be used in only rare and unusual circumstances.

Even in those circumstances where the exception applies, portions of a facility that can be made accessible must still be made accessible. In addition, access should be provided for individuals with other types of disabilities, even if it may be structurally impracticable to provide access to individuals who use wheelchairs.

> ILLUSTRATION: M owns a large piece of land on which he plans to build many facilities, including office buildings, warehouses, and stores. The eastern section of the land is fairly level, the central section of the land is extremely steep, and the western section of the land is marshland. M assumes that he only need comply with the new construction requirements in the eastern section. He notifies his architect and construction contractor to be sure that all buildings in the eastern section are built in full compliance with ADAAG. He further advises that no ADAAG requirements apply in the central and western sections.
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> M's advice as to two of the sections is incorrect. The central section may be extremely steep, but that is not sufficient to qualify for the "structural impracticability" exemption under the ADA. M should have advised his contractor to grade the land to provide an accessible slope at the entrance and apply all new construction requirements in the central section.

M's advice as to the western section is also incorrect. Because the land is marshy, provision of an accessible grade-level entrance may be structurally impracticable. This is one of the rare situations in which the exception applies, and full compliance with ADAAG is not required. However, M should have advised his contractor to nevertheless construct the facilities in compliance with other ADAAG requirements, including provision of features that serve individuals who use crutches or who have vision or hearing impairments. For instance, the facility needs to have stairs and railings that comply with ADAAG, and it should comply with the ADAAG signage and alarm requirements, as well.

Who is liable for violation of the ADA in the above example? Any of the entities involved in the design and construction of the central and western sections might be liable. Thus, in any lawsuit, M, the architect, and the construction contractor may all be held liable in an ADA lawsuit.

III-5.2000 Commercial facilities in a home. When a commercial facility, such as a home sales office or production workshop, is located in a home, the portion used exclusively as a commercial facility, as well as the portion used both as a commercial facility and for residential purposes, are covered by the new construction and alterations requirements. The covered areas include not only the rooms used as a commercial facility but also an accessible route to the commercial facility from the sidewalk, through the doorway, through the hallway, and other portions of the home, such as restrooms, used by employees and visitors.

III-5.3000 Application of ADAAG. The Department of Justice has adopted the ADA Accessibility Guidelines (ADAAG), issued by the Architectural and Transportation Barriers Compliance Board, as the standard to be applied in new construction. The major provisions of ADAAG are summarized in III-7.0000.

What if ADAAG has no standards for a particular type of facility — such as bowling alleys, golf courses, exercise equipment, pool lifts, amusement park rides, and cruise ships? In such cases, the ADAAG standards should be applied to the extent possible. Where appropriate technical standards exist, they should be applied. If there are no applicable scoping requirements (i.e., how many features must be accessible), then a reasonable number, but at least one, must be accessible.

ILLUSTRATION 1: A swimming pool complex must comply fully with ADAAG in the parking facilities, route to the facility door, entrance to the facility, locker rooms, showers, common areas, and route to the pool. However, ADAAG does not contain technical standards for access to the pool itself. Thus, the owner cannot be found in violation of ADAAG for failure to install a lift or other means of access into the pool.

ILLUSTRATION 2: Most bowling alleys are inaccessible because they have a few steps down to the bowling area and a step up to the lanes. ADAAG requirements for ramping steps can be applied to the design of new bowling alleys, resulting in an accessible bowling alley. Unlike in the case of pool lifts above, appropriate technical standards for ramps are applicable. However, ADAAG contains no "scoping" for bowling alleys. In other words, it does not specify how many alleys need to be accessible. As a result, if a reasonable number, but at least one, of the alleys is designed to be accessible, no ADA violation will be found.

ILLUSTRATION 3: Because of the unique structure of ships, none of the ADAAG technical or scoping standards are appropriate. Until such time as the Architectural and Transportation Barriers Compliance Board issues specific standards applicable to ships, there is no requirement that ships be constructed accessibly. (Cruise ships would still be subject to other title III requirements.)

III-5.4000 Elevator exemption. Elevators are the most common way to provide access in multistory buildings. Title III of the ADA, however, contains an exception to the general rule requiring elevators. Elevators are not required in facilities under three stories or with fewer than 3000 square feet per floor, unless the building is a shopping center or mall; professional office of a health care provider; public transit station; or airport passenger terminal.

ILLUSTRATION 1: A two-story office building has 40,000 square feet on each floor. Because the building is less than three stories, an elevator is not required. (To qualify for the exemption, a building must *either* be under three stories *or* have fewer than 3000 square feet per floor; it need not meet both criteria.)

BUT: A two-story shopping center with 40,000 square feet on each floor is required to have an elevator, because shopping centers are not entitled to the exemption.

ILLUSTRATION 2: A four-story building has 2900 square feet per floor. An elevator is not required because each floor has less than 3000 square feet.

ILLUSTRATION 3: A four-story office building has 3500 square feet on the first floor and 2500 square feet on each of the other floors. An elevator is required. (*All* of the stories must be under 3000 square feet to qualify for the exemption.)

What is a "story"? A story is "occupiable" space, which means space designed for human occupancy and equipped with one or more means of egress, light, and ventilation. Basements designed or intended for occupancy are considered "stories." Mezzanines are not counted as stories, but are just levels within stories.

If a two-story building is not required to have an elevator to the second floor, must it provide a lift? No. The elevator exemption is a "vertical access" exemption. This means that no access by any means need be provided to the second floor. However, if an entity wishes to provide access by ramp or a lift, it is, of course, free to do so.

What if a building is not required to have an elevator, but the owner decides to install an elevator anyway? Must the elevator comply with ADAAG elevator requirements? Yes. And that elevator must serve every level of the building, unless it only provides service from a garage to one level of the building.

If a building is subject to the elevator exemption, do any other ADAAG requirements apply in the building? Yes. Even in buildings that are exempt from the elevator requirement, *all* other ADAAG requirements (apart from the requirement for an elevator) must still be met.

ILLUSTRATION: A two-story building will be used as real estate offices. There will be bathrooms on both the ground floor and the second floor. No elevator will be installed because it is not required in a building with less than three stories. However, the second floor bathrooms must still be accessible. In other words, *both* the ground floor *and* the second floor bathrooms must be accessible.

But why are accessible bathrooms and fountains required on the second floor when there is no way that an individual using a wheelchair can get to the second floor? There are many individuals who can walk up stairs by using crutches, but then use wheelchairs to get around once they reach the upper floor. Also, since the ground floor is being designed to be accessible, there is little additional cost involved in designing the second floor to be accessible as well. In addition, ADAAG contains accessibility features for individuals with disabilities other than those who use wheelchairs, and those features should be incorporated in building design. Finally, an elevator may be installed at a future date, or an addition with an elevator may be added later on. In addition, accessible design of bathroom facilities will foster ease of use by all persons.

III-5.4100 Shopping center or mall. A "shopping center or mall" is either —

(1) A building with five or more "sales or retail establishments," or

(2) A series of buildings on a common site, either under common ownership or common control or developed together, with five or more "sales or retail establishments."

Included within the phrase "sales or retail establishments" are those types of stores listed in the fifth category of places of public accommodations, i.e., bakery, grocery store, clothing store, hardware store, etc. (see III-1.2000). The term includes floor levels containing at least one such establishment, or any floor that was designed or intended for use by at least one such establishment. The definition of "shopping center or mall" is slightly different for purposes of alterations (see III-6.3000).

ILLUSTRATION 1: A strip of stores includes a grocery store, a clothing store, a restaurant, a dry-cleaner, a bank, and a pharmacy. This is not a shopping center or mall because only two stores are in the fifth category of "sales or retail establishments" (the grocery store and the clothing store). The restaurant is an establishment serving food or drink (the second category of place of public accommodation). The remaining establishments are "service establishments" included under the sixth category in the definition of place of public accommodation.

ILLUSTRATION 2: A building has a card store, office supply store, video store, and a bakery on the first floor; and a hobby shop, accountant's office, and lawyer's office on the second floor. In this case, both the first and second floors qualify as a "shopping center or mall," because each of those floors has at least one sales establishment. Although no floor alone has five sales establishments, the first and second floor each have at least one such establishment and, together, the total is five. (The accountant's and lawyer's offices are "service establishments" and are not included in the number of "sales or retail establishments.")

When a building is being constructed, the owner or developer does not always know exactly what types of stores will be located in the facility. In such a situation, how will the Department of Justice determine whether a facility was intended as a shopping center? There are a number of factors that can be considered in determining whether a particular floor was designed or intended for use by at least one sales or rental establishment (which would mean that floor is a shopping center). Relevant questions include —

1) What type of businesses did the developer target in his advertising and marketing of the property? Was the developer trying to encourage sales establishments to join the property?

2) Was the facility designed with any special features for sales or rental establishments? For example, are there counters and large windows and check-out aisles?

3) What type of establishment actually first occupied the floor? Was it retail stores or was it offices, for example?

If a shopping mall has 25 stores on each level, how many elevators are needed? Generally, one is enough, as long as an individual could use the elevator and then be able to reach any of the stores on the second level during the hours that the mall is open.

III-5.4200 Professional office of a health care provider. A "professional office of a health care provider" is a location where a State-regulated professional provides physical or mental health services to the public. The ADA's elevator exemption does not apply to buildings housing the offices of a health care provider.

ILLUSTRATION: A physician has offices on the first floor of a multistory building. The second floor has other types of offices. An elevator is not required.

BUT: If the second floor was designed or intended for use by a health care provider, an elevator would be required. See Supplemental next page

How will the Department of Justice determine whether a facility was designed or intended for occupancy by a health care provider? Factors that the Department of Justice will look at in making that determination include —

1) Whether the facility has special plumbing, electrical, or other features needed by health care providers;

2) Whether the facility was marketed as a medical office center; and

3) Whether any of the establishments that actually first occupied the floor were, in fact, health care providers.

III-6.0000 ALTERATIONS

Regulatory references: 28 CFR 36.402-36.406; Appendix A.

III-6.1000 General. If an altration in a place of public accommodation or commercial facility is begun after January 26, 1992, that alteration must be readily accessible to and usable by individuals with disabilities in accordance with ADAAG to the maximum extent feasible.

What is an alteration? An alteration is any change that affects usability. It includes remodeling, renovation, rearrangements in structural parts, and changes or rearrangement of walls and full-height partitions. Normal maintenance, reroofing, painting, wallpapering, asbestos removal, and changes to electrical and mechanical systems are not "alterations," unless they affect usability.

> ILLUSTRATION 1: Flooring in a store is being replaced. This is an alteration because it can affect whether or not an individual in a wheelchair can travel in the store. The new floor must comply with, for example, ADAAG requirements for a nonslip surface or with the ADAAG carpeting requirements, if applicable.
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> ILLUSTRATION 2: A doorway is being relocated and a new door will be installed. The new doorway must be wide enough to meet ADAAG. The new door must have appropriate hardware that can be used without grasping, twisting, or pinching of the wrist.
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> ILLUSTRATION 3: An electrical outlet is being relocated. The location of the new outlet can affect usability by an individual who uses a wheelchair because, if the outlet is placed too low, the individual will be unable to reach it. This, then, is an alteration that must be done in accordance with ADAAG reach requirements.
>
> BUT: If the electrical wiring inside the wall is being changed, usability by an individual with disabilities is not affected. Thus, the wiring need not be done in compliance with ADAAG because it is not an "alteration."

What does "maximum extent feasible" mean? Occasionally, the nature of a facility makes it impossible to comply with all of the alterations standards. In such a case, features must only be made accessible to the extent that it is technically feasible to do so. The fact that adding accessibility features during an alteration may increase costs does *not* mean compliance is technically infeasible. Cost is not to be considered. Moreover, even when it may be technically infeasible to comply with standards for individuals with certain disabilities (for instance, those who use wheelchairs), the alteration must still comply with standards for individuals with other impairments.

> ILLUSTRATION 1: A restaurant is undergoing a major renovation. Widening the entrance would affect the building structure because removal of an essential part of the structural frame would be required. In this case, it is "technically infeasible" to widen the entrance, and the action is not required. However, all other ADAAG alterations requirements apply to the renovation.
>
> BUT: If the only problem with widening the entrance is that it would increase the cost of

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TIII Technical Assistance Manual Update
April 1993

III-5.0000 NEW CONSTRUCTION

III-5.4000 Elevator exemption.

III-5.4200 Professional office of a health care provider.

A.[Insert the following text after the paragraph beginning BUT: If the second floor . . . , p. 47.]

ILLUSTRATION 2: A newly constructed two-story building houses a business that provides home health care services. No health care services are actually provided at the company's offices. While the building must meet all other requirements for ne construction, no elevator is required.

B.[Insert the following new section after this section, p. 47.]

III-5.4300 Transportation terminals.

The ADAs elevator exemption also does not apply to bus or train terminals or depots, or to airport passenger terminals. If, however, all passenger services in a two-story facility ^E including boarding, debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public ^E are located on the same floor level and on an accessible route from an accessible entrance, an elevator is not required.

the renovation, the "technically infeasible" exception does not apply, and the entrance must be widened.

III-6.2000 Alterations: Path of travel. When an alteration is made to a "primary function area," not only must that alteration be done in compliance with ADAAG, but there must also be an accessible path of travel from the altered area to the entrance. The "path of travel" requirement includes an accessible route to the altered area and the bathrooms, telephones, and drinking fountains serving the area. Alterations to provide an accessible path of travel are required to the extent that they are not "disproportionate" to the original alteration, that is, to the extent that the added accessibility costs do not exceed 20 percent of the cost of the original alteration to the primary function area.

What is a primary function area? It is any area where a major activity takes place. It includes both the customer services areas and work areas in places of public accommodation. It includes all offices and work areas in commercial facilities. It does not include mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms.

ILLUSTRATION 1: The customer service area of a dry cleaning store and the employee area behind the counter are both primary function areas.

ILLUSTRATION 2: Remodeling an office is an alteration to a primary function area. But remodeling the employee restrooms is not an alteration to a primary function area.

ILLUSTRATION 3: Installing a new floor surface in a factory work room is an alteration to a primary function area, but installing a new floor surface in the corridor leading to the work room is not.

What is a "path of travel"? It is a continuous route connecting the altered area to the entrance. It can include sidewalks, lobbies, corridors, rooms, and elevators. It also includes phones, restrooms, and drinking fountains serving the altered area.

Does this mean that every single time any minor alteration is made in a primary function area, the "path of travel" requirement is triggered? In other words, does a simple thing like changing door hardware trigger the path of travel requirement? No. There are some alterations that will *never* trigger the path of travel requirement. The Department's regulation states that alterations to windows, hardware, controls, electrical outlets, and signs do not trigger path of travel requirements. (If they affect usability, however, they are still considered to be "alterations" and must be done accessibly.) ADAAG gives some additional exceptions: the path of travel requirement is not triggered if alteration work is limited solely to the electrical, mechanical, or plumbing system, hazardous material abatement, or automatic sprinkler retrofitting, unless the project involves alteration to elements required to be accessible.

ILLUSTRATION 1: An office building manager is replacing all of the room number signs. This is an "alteration" because it can affect usability by an individual who is blind. Thus, the new signs must comply with ADAAG requirements for permanent signs. How-

ever, the path of travel requirement is not triggered. Even though an alteration is being made in a primary function area, alterations to "signs" are in the list of alterations that will never trigger the path of travel requirement.

ILLUSTRATION 2: The building manager now replaces the men's and women's room signs. Again this is an alteration because it can affect usability, and the new signs must comply with ADAAG. Here, the path of travel requirements are not triggered for two separate reasons. First, as in the above case, the alteration is to "signs" and thus will never trigger the path of travel requirement. In addition, in this case, the alteration is to the restroom. Restrooms are not primary function areas except in limited circumstances, such as highway rest stops.

What if a tenant remodels his store in a manner that would trigger the path of travel obligation, but the tenant has no authority to create an accessible path of travel because the common areas are under the control of the landlord? Does this mean the landlord must now make an accessible path of travel to the remodeled store? No. Alterations by a tenant do not trigger a path of travel obligation for the landlord. Nor is the tenant required to make changes in areas not under his control.

What costs can be included in determining whether the 20 percent disproportionality limitation has been met? Widening doorways, installing ramps, making bathrooms accessible, lowering telephones, relocating water fountains — as well as any other costs associated with making the path of travel accessible — can be included.

What if the cost of making an accessible path of travel would exceed the cost of the original alteration by much more than 20 percent? In such a case, is the entity exempt from the path of travel requirement? No. The entity must still make the path of travel accessible to the extent possible without going over 20 percent, giving priority to those elements that provide the greatest degree of access. Changes should be made in the following order: accessible entrance, accessible route to the altered area, at least one accessible restroom for each sex or single unisex restroom, phones, drinking fountains, and then other elements such as parking, storage, and alarms.

ILLUSTRATION: A library is remodeling its reading area for a total cost of $20,000. The library must spend, if necessary, up to an additional $4,000 (20 percent of $20,000) on "path of travel" costs. For $4,000 the library can install a ramp leading to the reading area, and it can lower telephones and drinking fountains. For $3,500 the library can create an accessible restroom. Because the most important path of travel element is the entrance and route to the area, the library should spend the money on the ramp, telephones, and drinking fountains.

Can an entity limit its path of travel obligation by engaging in a series of small alterations? No. An entity cannot evade the path of travel requirement by doing several small alterations (each of which, if considered by itself, would be so inexpensive that adding 20 percent would not result in addition of any path of travel features). Whenever an area containing a primary function is altered, other alterations to that area (or to other areas on the same path of travel) made within the preceding three years are considered together in determining disproportionality. Only alterations after January 26, 1992, are counted. In other words, all of the alterations to the same path of travel taken within the preceding three years are considered together in deciding whether the 20 percent has been reached.

ILLUSTRATION: On February 1, 1992, a nursery school with several steps at its entrance renovates one of its classrooms. The renovations total $500, triggering up to $100 worth of path of travel obligations (20 percent of $500). Because $100 will not buy a ramp and because no other accessible features needed in that particular nursery school can be added for $100, no path of travel features are added. On October 1, 1992, more renovations are done at a cost of $1,000, this time triggering path of travel obligations of up to $200. As before, no path of travel features are added. Then, on March 1, 1993, another minor renovation ($2,000) is made to the same area, this time triggering path of travel obligations of up to $400. Had the nursery school done all three small renovations at the same time, the cost would have been $3,500, triggering a path of travel obligation of up to $700. For $700, an accessible ramp could have been installed.

In determining amounts that must be spent on path of travel features at the time of the March 1, 1993, renovation, the nursery school must spend up to 20 percent not just of the $2,000 renovation taking place on March 1, but, rather, up to 20 percent of *all* of the renovations in the preceding three years put together. Thus, on March 1, 1993, the nursery school must spend up to 20 percent of $3,500 or $700 (the total cost of the three small renovations) rather than up to 20 percent of $2,000 or $400 (the cost of just the March 1, 1993, renovation).

III-6.3000 Alterations: Elevator exemption. As under new construction, elevators are not required to be installed during alterations in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; professional office of a health care provider; public transit station; or airport passenger terminal. As discussed below, "shopping center or mall" is defined differently for alterations than it is for new construction.

Does this mean that shopping centers, health care providers, and transit facilities have to install elevators every time they do alterations that would trigger a path of travel obligation involving vertical access? No. The 20 percent disproportionality limit discussed above applies and means that elevators are not required when installing them would exceed 20 percent of the cost of the original alteration (which will most often be the case).

BUT, if escalators or stairs are being planned where none existed before and major structural modifications are necessary, an elevator or platform lift may need to be installed, because ADAAG provides that, in such a situation, an accessible means of vertical access must be provided. However, elevators or lifts are never required to be installed during alterations if it is technically infeasible to do so.

Why is there a different definition of "shopping center or mall" for alterations as opposed to new construction? A "shopping center or mall" is defined in the alterations provisions as a series of existing buildings on a common site connected by a "common pedestrian route" above or below the ground floor. This definition was included to avoid a requirement for several separate elevators in buildings that were initially designed and built independently of one another. The common pedestrian route would allow access to all of the stores to be provided by a single elevator.

If an alteration is planned on the third floor of a building and an elevator is not required, do any other ADAAG requirements apply to the third floor? Yes. All other ADAAG requirements, aside from the requirement for an elevator, apply to the third floor.

III-6.4000 Alterations: Historic preservation. Alterations to historic properties must comply with the historic property provisions of ADAAG, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative standards may be used. The decision to use alternative standards for that feature must be made in consultation with the appropriate advisory board designated in ADAAG, and interested persons should be invited to participate in the decision-making process.

What are "historic properties"? These are properties that are listed or that are eligible for listing in the National Register or Historic Places, or properties designated as historic under State or local law.

What are the alternative requirements? The alternative requirements provide a minimal level of access. For example —

1) An accessible route is only required from one site access point (such as the parking lot).

2) A ramp may be steeper than is ordinarily permitted.

3) The accessible entrance does not need to be the one used by the general public.

4) Only one accessible toilet is required and it may be unisex.

5) Accessible routes are only required on the level of the accessible entrance.

But what if complying with even these minimal alternative requirements will threaten or destroy the historic significance? In such a case, which is rare, structural changes need not be made. Rather, alternative methods can be used to provide access, such as providing auxiliary aids or modifying policies.

> ILLUSTRATION: A historic house is being altered to be used as a museum. The architect designing the project concludes that most of the normal standards for alterations can be applied during the renovation process without threatening or destroying historic features. There appears, however, to be a problem if one of the interior doors is widened, because historic decorative features on the door might be destroyed. After consulting ADAAG, the architect determines that the appropriate historic body with jurisdiction over the particular historic home is the Advisory Council on Historic Preservation. The architect sets up a meeting with the Council, to which a local disability group is invited.
>
> At the meeting the participants agree with the architect's conclusion that the normal alterations standards cannot be applied to the interior door. They then review the special alter-

native requirements, which require an accessible entrance. The meeting participants determine that application of the alternative minimal requirements is likewise not possible.

In this situation, the museum owner is not required to widen the interior door. Instead, the owner modifies the usual operational policies and provides alternative access to the activities offered in the inaccessible room by making available a video presentation of the items within the inaccessible room. The video can be viewed in a nearby accessible room in the museum.