Center for Disability Rights, Inc.

CDR Policy Position:
Enforcing and Expanding the Americans with Disabilities Act

On July 26, 1990, when President George H. W. Bush signed into law the Americans with Disabilities Act (ADA), people with disabilities finally had clearly defined rights and protections. The ADA prohibits discrimination against people with disabilities in employment, transportation, public accommodations, communication, and governmental activities. While the ADA has led to marked improvements in many areas of life for people with disabilities – including access to public accommodations, public buses, and government services, to name a few – there is still a great deal of work to be done. For example, employment discrimination against people with disabilities is still rampant, many public buildings remain inaccessible, equal access to transportation remains an ongoing concern, and the lack of accommodations still limits access to health care for people with disabilities.

Many members of the Center for Disability Rights (CDR) advocated for passage of the ADA before CDR was even CDR. CDR is dedicated to implementing, expanding and enforcing the ADA. CDR protects the civil rights of people with disabilities by ensuring that policy makers are educated on the ADA. This requires a broad array of strategies and, often times, nonviolent civil disobedience. Without active enforcement of this legislation, the rights of people with disabilities will continue to be neglected. CDR will not allow this to happen.

Notice and cure amendments to the ADA are inappropriate and unnecessary.

Notice and cure bills are harmful to disabled people.
The ADA has come under threat from notice and cure bills. These bills require people to notify businesses that they are inaccessible or are discriminatory and then allow the businesses a period of time to start fixing the problem before the individual can bring a lawsuit. Proponents of these notice and cure bills say that the purpose is to eliminate frivolous lawsuits and prevent people who are being discriminated against from "unfairly" burdening businesses and asking for financial compensation a rather than accessibility improvements. In reality, notice and cure bills do nothing to curb unnecessary lawsuits by people seeking monetary damages; monetary damages are a matter of state laws and not the ADA, which does not provide for money damages.

The primary effect of notice and cure bills is to remove any incentive for businesses to make themselves compliant any time before being notified. The ADA already relies on individual complaints to drive enforcement. Notice and cure bills would place an even greater burden on the Disability Community because we would be required to engage in an additional process and waiting period before we could even file a lawsuit, which are already time-consuming and

financially burdensome. The ADA is not new legislation. Decades after the ADA was signed, it is still under-enforced; notice and cure bills would only make us wait longer for accessibility.

Businesses have no excuse for inaccessibility today.
Another false justification for notice and cure bills is that business owners do not know what the ADA requires of them. This ignores the extensive resources, including many provided by the federal government, available to businesses on exactly what the law requires, how to improve accessibility, and address noncompliance. It is the responsibility of businesses to know their obligations are under the ADA, just like any other applicable law. There is no excuse for businesses to be out of compliance if they utilize existing resources. CDR supports and endeavors to provide such educational opportunities, and encourages the use of existing resources such as those provided by the U.S. Department of Justice, the regional ADA Centers, and countless state-level and local organizations such as independent living centers like CDR. Rather than put off compliance and support bills that would lengthen the process of fixing inaccessibility, businesses can make use of resources and grants in their communities to achieve accessibility sooner, without litigation, and ultimately welcome a broader clientele as a result.

Frivolous lawsuits will be dealt with through existing safeguards.
State courts and bar associations have mechanisms for handling frivolous lawsuits and unscrupulous attorneys. Just as CDR supports educational opportunities for businesses desiring to become compliant with civil rights law, CDR also supports the education of businesses on resources in the state courts and bar associations. Frivolous lawsuits do not contribute to improved accessibility, so when they are filed, we support businesses using existing mechanisms to check fraud or unscrupulous behavior, such as filing ethics violations when warranted. As an issue however, frivolous lawsuits are overblown and restricted to a handful of states. Rather than demonizing the practice of ADA related law, the American & State Bar associations must encourage it. We need to good lawyers working to support the ADA so genuine violations get addressed and not ignored or allowed to continue.

Employment discrimination continues despite the ADA.

Employment protections in the ADA should be expanded to end segregated, sheltered employment.
While the 1999 *Olmstead* decision held that institutionalizing people with disabilities is a violation of the ADA, its finding that people with disabilities must be in the most integrated setting appropriate can be applied to areas, such as employment. The decision implies that segregated employment of people with disabilities should be eradicated, but no decisive action to end it has been taken in law or policy. Sheltered workshops are segregated employment, which typically resemble an assembly line and require no skill. Sheltered workshops operate exclusively for people with disabilities who receive wages far below minimum wage. Disabled people languish in them under the guise of receiving vocational training for years, while the organizations that “serve” them get government subsidies, preference in contracting, and pay their nondisabled staff much more. Sheltered employment and subminimum wages for people with disabilities are discriminatory and must be eradicated.

Employment protections in the ADA should protect against subtle discrimination.

Even if they do not blatantly discriminate against disabled people, many employers have hiring processes that discriminate against disabled applicants. Job descriptions often include "requirements" that are not necessary to perform the essential functions of the job and have the effect of eliminating some disabled applicants. Some common examples include the ability to lift a certain weight, have a driver's license, or have access to a private vehicle. It may not be clear to an applicant how to request an accommodation in the hiring process. Employers must review their hiring processes to ensure that they are not inadvertently limiting their applicant pools and discriminating against disabled people. There are numerous resources available to help accomplish this review and create better hiring practices.

Additionally, employers must review their internal policies to ensure they have positive retention practices that do not discriminate against employees with disabilities, particularly those who acquire disabilities or have episodic disabilities. There are underused accommodations available to allow disabled people to continue to work and perform the essential functions of their jobs, such as telework, flex-time, and both paid and unpaid leave. These accommodations may be nontraditional but they can be beneficial for both the employer and employee. Employers should also consider these options when designing a new position or hiring. A job may be able to be performed remotely part-time, or even full-time. A job may not actually have to be performed during the traditional hours of 9am - 5pm and could have a flexible schedule. A single job could be split into two part time jobs, allowing the employer to hire two individuals with disabilities who may each be unable to fulfill a full-time position. Employers must consider these possibilities, and more. Employers must educate themselves, and use available resources to improve their hiring and retention practices.

Communications access is not optional.

Too often, public accommodations and government services neglect to provide communications access to disabled people, and rarely offer it as a matter of course. Few official materials are made available in Braille and many electronic versions of official documents are not made available in accessible formats. Government offices often fail to provide sign language interpreters, or may only do so at certain locations or on certain days, severely limiting access. Courts routinely fail to provide sign language interpreters. Rather than accommodate disabled people to do their civic duty, courts will simply deny disabled people the opportunity to serve on juries. It is rare for governmental bodies or public officials to provide sign language or real-time captioning services unless pushed to do so. Public events, like roundtables, speeches, or concerts, routinely fail to provide accommodation for Deaf people. Emergency and public safety alerts frequently do not include captioning or on screen interpreting. Public accommodations with televisions fail to turn on the captioning feature on their televisions. All of these situations are unacceptable. Greater enforcement of the ADA is needed to ensure that communications access and other accommodations are readily available.

Local governments need to be a greater part of enforcement.

The ADA was written to be very friendly to businesses by not providing for damages or imposing unrealistic time frames for compliance. Businesses have now had decades to comply, but many remain physically inaccessible to many disabled people. Numerous resources are available to business owners seeking to make their businesses more accessible; they must make use of these resources. Municipal governments should also encourage voluntary compliance by modifying their local zoning laws and codes to make compliance easier.

Municipalities must assist in addressing noncompliance by making ADA compliance a part of local code enforcement and building inspections so business owners are made aware of what they need to change to become compliant. Accessibility should be reviewed alongside fire safety and health requirements. Local governments should adequately fund and train code enforcers to accomplish this additional task. Local governments need to then invest fines collected from code violations to fund grants for accessibility modifications. Local government corporations offer grants for various purposes; when it comes to grants to small businesses, local governments must direct the use of grant funds to improve accessibility.

Definitions of "public" and "reasonable" accommodations must be broadened.

Changes in technology since the passage of the ADA have created new and different types of public accommodations. The first prominent example of this is the rise of the internet. Just like physical storefronts, internet websites must be made accessible to comply with the ADA. Mobile applications must also be accessible. Furthermore, websites and mobile apps that facilitate the "sharing economy" must make sure their physical goods and services are also accessible to disabled people. One example is ridesharing and e-hailing companies like Uber and Lyft. Not only must their apps be accessible, but the service they offer – on demand transportation – must also provide rides that are accessible to disabled people.

Some public accommodations, i.e. transportation network companies (TNCs) and homesharing like Airbnb, use apps to connect customers with physical goods and services. These goods and services must also comply with the ADA. Compliance by these "sharing economy" businesses involved ensuring that they can provide service, whether it be an on-demand ride in an accessible vehicle or an accessible homeshare, to disabled people to at least meet demand.

Finally, businesses that use public places to operate their services must ensure that they do not create accessibility barriers for disabled people. For example, some companies are providing e-scooters for use by customers on public streets and sidewalks. This has caused e-scooters to obstruct otherwise accessible paths of travel and pose a safety threat to blind to physically disabled people. While the proliferation of new goods and services is positive, these companies must be held accountable for not only ADA noncompliance of their services, but also the noncompliance they create in public spaces.

Health plans and health care providers must comply with an expanded ADA.

Health plans, such as managed care entities, and health care providers must comply with the ADA. Health care providers must ensure that their facilities are accessible. For example, there must be at least one accessible exam room, complete with necessary equipment, and the room must be reserved when an individual with a disability has a scheduled appointment. All exam rooms must have sufficient room to maneuver a wheelchair. In addition to physical accessibility requirements, there are other components of the ADA that apply to health care providers, such as the requirement to provide interpreting services and informational materials in alternative formats.

Healthcare providers' obligations must be expanded under the ADA. Personal assistance in accomplishing tasks like transferring, dressing, and undressing in places like doctors' offices needs to be considered a reasonable accommodation. Furthermore, disabled people requiring

personal assistance or attendant services must be allowed to access those services regardless of setting. Currently, the use of personal attendant services is considered a duplication of services if the disabled person is in the hospital. This ignores the reality that disabled people continue to need attendant services in that setting.

Furthermore, the interpretation of the ADA must be expanded to prevent healthcare insurance plans from discriminating against disabled people living in the community by capping services. For example, a cap on physical and occupational therapy sessions only applies to people who have significant needs for such services and receive them in the community, not in institutional settings. Another example is that availability of community-based attendant services must be adequate to allow people an actual choice in whether to receive attendant services in the community versus an institution. The number of authorized hours of attendant care a person receives must be based on need, not cost, to not run afoul of the requirement that disabled people receive their services in the most integrated setting appropriate; inadequate hours force people into institutions. A similar example is that healthcare plans must not limit access to need-appropriate durable medical equipment (DME) and complex rehabilitation technology (CRT) because of cost. Not only is it discriminatory to not provide a type of equipment to a person with higher needs and therefore more costly needs, denying the appropriate equipment limits the person's independence and puts the individual at risk of physical harm.

Recent innovations in telehealth programs have the potential to offer a reasonable accommodation and open up health care to many disabled people. Telehealth could be particularly useful to many without reliable access to transportation and those living in rural areas. It is important to note, however, that while this may be a useful accommodation to many, it cannot be used in place of offering on site healthcare and communication access.

Paratransit guidelines in the ADA need to be improved.

People with disabilities are subject to much more stringent requirements for public transportation than their nondisabled peers. People without disabilities who use public transportation enjoy full flexibility and are free to cancel or change their travel plans, while people with disabilities who use paratransit do not enjoy the same flexibilities. In some instances, paratransit riders are subject to severe penalties for cancellations, such as suspension of service. Furthermore, different paratransit providers impose different rules. The ADA needs to explicitly address the discriminatory policies that are currently in place in the paratransit system.

Paratransit should be defined as door-to-door. In order to reduce costs, many paratransit entities only provide curb-to-curb service, which can be difficult for people with certain disabilities. By providing door-to- door service, the paratransit system becomes more accessible and usable for all individuals. Additionally, there must be fare parity between paratransit and the base fare of the main system. It is unfair that the people who are statistically least able to afford higher fares must pay them, and for a typically lesser service.

Paratransit service area must be expanded to cover entire counties, and allow for interconnectivity with neighboring services so that disabled people can travel between counties. Many disabled people who would rely on paratransit do not have the opportunity to live close enough to fixed routes and so are cut off from access to public transportation

altogether. This is especially problematic as public transportation systems are competing against other, less accessible forms of transportation like TNCs; if the public transportation system shrinks so will the paratransit system. Finally, it is inappropriate to continue to rely on "fixed" routes to demarcate where paratransit service begins and ends. Public transportation is evolving to include flex-routes and even on-demand, point-to-point service. Disabled people will not be left behind by an archaic paratransit system.

Enforcement of the ADA needs to be strengthened.

Even though the ADA provides explicit parameters for public and private entities in order to eliminate discriminatory practices against people with disabilities, too often violations go unchecked. It is essential to provide more resources for oversight bodies like the U.S. Department of Justice and the Equal Employment Opportunity Commission (EEOC) to investigate and prosecute violations. It is also vital to offer more education and support to those attorneys who enforce the ADA. The bodies charged with ensuring compliance with the ADA must not be constrained from carrying out their responsibilities through a lack of resources.

The ADA is not the maximum requirement, but rather the minimum.

The ADA has undoubtedly brought significant progress toward increased accessibility and integration; however, there is still a long way to go. The ADA should be expanded to prevent discrimination against people with disabilities in all aspects of American life so that everyone with a disability may live fully integrated into society. The various sections of the ADA apply only to specific activities – employment, transportation, public accommodations, communications, and government activities – and even these specific sections do not apply to everyone. For example, only employers with fifteen or more employees are subject to the ADA employment provisions. The ADA, the ADA Amendments Act, the *Olmstead* decision, and other court cases lay the groundwork and offer tools for the enforcement of the rights of people with disabilities. Yet as it stands, the ADA is not the maximum requirement, but rather the minimum. CDR is committed to implementing, enforcing and expanding the ADA.

The Olmstead decision must be codified in law to realize the full potential of the ADA.

In its 1999 *Olmstead v. LC* ruling, the Supreme Court found that disabled people have a right to live in the "most integrated setting appropriate" under the ADA. In the years since, rather than implementing systemic change to recognize that the 'most integrated setting appropriate' is *always* in the community, states have forced advocates to fight for community living on a case by case basis. Legislation is needed that would secure the right to live in the community as a civil right. We must pass legislation that will require that wherever insurers (both public and private) offer long term services and supports, they must offer them in the community. Any bill would need to codify the *Olmstead* ruling and guarantee the option to live in the community to anyone who wants it. Congress must pass this legislation to ensure the full potential of the ADA.

The ADA ensures disabled Americans share in all our constitutionally guaranteed freedoms.

The Americans with Disabilities Act is a civil rights law. We cannot continue to allow the ADA to be undermined and unenforced. If Disabled Americans are to enjoy all the freedoms of our Constitution, full compliance with a robust ADA is necessary to make it a reality.

The Center for Disability Rights, Inc. (CDR) is a non-profit service and advocacy organization devoted to the full integration, independence and civil rights of people of all ages with all types of disabilities.

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