



## ADA Audio Conference Series August 21, 2012

This session is scheduled to begin at  
2:00pm Eastern Time

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**ROCKY MOUNTAIN**  
ADA CENTER

## Segways, Golf Cars, Four Wheelers, Oh My!

Sandy Lahmann  
August 21, 2012

OPERATED BY  MEETING THE CHALLENGE

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## New Regulations

- Wheelchairs and other power-driven mobility devices
- Went into effect March 15, 2011
- Title II and Title III regulations are identical

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## New Regulations

- Title II regulations § 35.137  
[http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm)
- Title III regulations § 36.311  
[http://www.ada.gov/regs2010/titleIII\\_2010/titleIII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm)



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## Best Guidance

- No settlement agreements, consent decrees, or Project Civic Access as yet
- Limited publications
- Go to the 2010 Guidance and Section-by-section Analysis included with the regulations



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## Overview

- Two tiered approach
  - Definition for “wheelchair”
    - Provisions for use: allowed everywhere
  - Definition for “other power-driven mobility device”
    - Provisions for use: assessment factors determine use



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## Definition of “Wheelchair”

- “A manually-operated or power-driven device **designed primarily for use by an individual with a mobility disability** for the main purpose of indoor or of both indoor and outdoor locomotion.”
- Includes mobility scooters
- No size or weight maximum



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## Definition of “Wheelchair”

- “Mobility disability” includes a wide range of disabilities, including, circulatory and respiratory disabilities that make walking difficult or impossible.



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## Use of Wheelchairs and Manually Powered Mobility Aids

- Covered entities must permit individuals with mobility disabilities to use wheelchairs in any area open to pedestrian use.
- Must also allow individuals with mobility disabilities to use manually-powered mobility aids in areas open to pedestrian use.
  - Include walkers, crutches, canes, braces, and other similar devices



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## Other Power-Driven Mobility Device (OPDMD)

- “Any mobility device powered by batteries, fuel, or other engines- whether or not designed primarily for use by individuals with mobility disabilities- that is used by individuals with mobility disabilities for the purpose of locomotion.”
- Is not a wheelchair



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## Definition of “OPDMD”

- Includes
  - Golf cars
  - Electronic personal assistance mobility devices (EPAMD), e.g. Segway® PT
  - Electric assisted bicycles (EAB)
  - ATVs
  - Any mobility device designed to operate in areas without defined pedestrian routes



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## Use of OPDMDs

- Covered entities **must make reasonable modifications to permit** individuals with mobility disabilities to use OPDMDs **unless** the entity can demonstrate such use would:
  - fundamentally alter programs, services or activities
  - create a direct threat
  - create a safety hazard. that the class of OPDMD cannot be operated in accordance with legitimate safety requirements adopted by the entity



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## Legitimate Safety Requirements

- Must be based on actual risks, not on mere speculation, stereotypes, or generalizations about a particular class of devices, about individuals with disabilities, or about how such individuals will use the device.



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## Legitimate Safety Requirements

- Must consider whether legitimate safety requirements can be established for safe operation
  - Can't exclude a device simply because it has the capacity to go fast
  - Instead you set a speed limit



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## Reasonable Modifications Regarding OPDMDs

- Burden on entity to show not reasonable
- Assessment is made regarding class of devices, instead of an individual's use of the device
  - This does not mean that an entity cannot look at an individual's use of a device, it is just not the assessment under § 35.137(b)(1) and §36.311(b)(1).
- Fundamental alteration, direct threat, and undue burden still apply



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## OPDMD Assessment Factors

- Sections § 35.137(b)(2) and §36.311(b)(2) set forth specific assessment factors that covered entities must consider to determine whether a particular other power-driven mobility device should be allowed in a specific facility as a reasonable modification.



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## OPDMD Assessment Factor 1

- The type, size, weight, dimensions, and speed of the device.



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## OPDMD Assessment Factor 2

- The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year)



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## OPDMD Assessment Factor 3

- The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user.)



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## OPDMD Assessment Factor 4

- Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility.



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## OPDMD Assessment Factor 5

- Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.



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## Impermissible Questions

- Entities may not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability
- § 35.137 (c)(1) and § 36.311 (c)(1)



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## Permissible Questions Regarding OPDMD

- The rules allow covered entities to ask persons using an other power-driven mobility device to provide a “credible assurance” that the device is required because of the person's mobility disability.
- § 35.137 (c)(2) and § 36.311(c)(2)



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## Credible Assurances

- A valid, disability parking placard or card, or other State-issued proof of disability
- A “valid” disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements for disability placards or cards



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## Credible Assurances

- A verbal representation by the individual with a disability, that is not contradicted by observable fact, that the OPDMD is being used for a mobility disability



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## Development of OPDMD Policies

- Not included in the regs, but suggested in the interpretive guidance: entities that determine reasonable modifications can be made to allow the use of OPDMDs should consider developing a policy that clearly states the circumstances under which the use of OPDMDs by individuals with disabilities will be permitted.
  - Types and sizes permitted
  - Places, times and circumstances permitted
  - Speed limits and other safety rules
  - Storage availability
  - Policy related to credible assurance
- Provide advance notice of policy



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## Good Sample Policy

- The U.S. General Services Administration (GSA) has developed a policy allowing the use of Segways® in Federal buildings
  - Details devices covered by the policy
  - Sets out requirements for safe operation
    - Speed limit
    - Prohibits use on escalators
  - Provides guidance regarding security screening of these devices and their operators
  - [http://www.gsa.gov/graphics/pbs/Interim\\_Segway\\_Policy\\_121007.pdf](http://www.gsa.gov/graphics/pbs/Interim_Segway_Policy_121007.pdf)



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## Problem Policies

“The following policies govern the use of OPDMDs on assets and easements:  
Mobility devices used on trails designated as Restricted must fit the following design requirements: less than 32” wide, design speed of 20 mph or less, must be electrically powered, vehicle weight of 60 lbs or less (not including the weight of the rider).”



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- The problem: Cannot exclude a device just because it is able to go fast. Instead, you set a speed limit.



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## Problem Policies

“Persons with a mobility disability may use any EAB (electric assisted bicycle) or EPAMD (electronic personal assistance mobility device – common example is a Segway PT) that has maximum power drive speed equal or less than 20 mph, is no wider than 36 inches, and has brakes that enable the operator to make the wheels skid on dry, level and clean pavement.”



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- The problem:
  - Can't exclude device because it can go fast. Set a speed limit.
  - Can't necessarily exclude a device that doesn't have brakes if technology provides another means of stopping device safely
    - Segway PT doesn't have brakes. You move forward by leaning slightly forward. You stop by stopping your lean. No brakes. Still safe.



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## Problem Policies

In a natural area:

“The use of any power driven devices or vehicles by the public, including other power-driven mobility devices used by disabled individuals, creates a substantial risk of serious harm to the immediate environment and natural resources. Due to the need to address soil integrity, erosion and vegetative concerns along with guest safety, XXXX Resort has adopted a ‘no motorized’ policy for the public during the summer season.”



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- The problem: Can't exclude any power driven device. Power wheelchairs must be allowed in any area open to pedestrian use.



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## Problem Policies

- “. . . defines a wheelchair as a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or outdoor locomotion.”



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- The problem: The definition for a wheelchair states it is used for “the main purpose of indoor or of both indoor and outdoor locomotion.” It’s not either indoor or outdoor. It must be suitable for using indoors. In other words, it must be appropriate to use at an indoor shopping mall. If it is only suitable for outdoor use, it’s not a wheelchair; it’s an OPDMD.



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# Questions?



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# Resources

- From the Department of Justice - ADA Update: A Primer for Small Business  
<http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.pdf>



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## Resources

- From the ADA National Network: Wheelchairs and Other Power-Driven Mobility Devices

<http://adata.org/sites/cms.adata.org/files/files/National%20ADA%20Center%20Fact%20Sheet%207%20WHEELCHAIRS.pdf>

- From the Northwest ADA Center: Wheelchair and Other Power Driven Mobility Devices

[http://www.dbtacnorthwest.org/\\_public/site/files/factsheets/Facts-OPDMD-RA.pdf](http://www.dbtacnorthwest.org/_public/site/files/factsheets/Facts-OPDMD-RA.pdf)



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Thank you for participating in today's  
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The next scheduled session is:  
***“Don’t Forget to Cast Your Vote:  
Accessibility of Polling Places”***  
**September 18, 2012**

Register at: [www.ada-audio.org](http://www.ada-audio.org) or call 877-232-1990 V/TTY