

# ADA Transportation Series

## Paratransit Eligibility

Please be advised that this document has **not** been reviewed for legal sufficiency by the U.S. Department of Transportation or the U.S. Department of Justice.

### Questions and Answers

This document is part of a series devoted to increasing the understanding and awareness of the transportation provisions of the Americans with Disabilities Act (ADA).

The U.S. Department of Transportation is responsible for the enforcement of ADA transportation requirements. This information is intended solely as informal guidance. It is neither a determination of legal rights and/or responsibilities under the ADA, nor is it binding on any agency with enforcement responsibility under the ADA.

The requirements of 49 CFR Part 37 address the acquisition of accessible vehicles by public and private entities, requirements for complementary paratransit service by public entities operating a fixed route system and provision of nondiscriminatory accessible transportation service. Accessibility specifications for transportation vehicles are addressed in 49 CFR Part 38. Answers to the questions in this series are quoted directly from the transportation rules, with subsection locations shown in parenthesis.

To order other ADA documents, contact your regional ADA Technical Assistance Center at (800) 949-4232 (V, TTY).

Subpart F of the ADA Transportation Regulations states that public entities operating a fixed route system (that is, consistent routes traveled on a regular schedule) shall provide paratransit or other special services to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. This document addresses some of the most common questions about Paratransit Eligibility.

### Eligibility

#### 1. Who qualifies for paratransit services?

Paratransit eligibility is not simply a matter of whether or not a person has a disability, but instead relates to whether or not an individual can use the transportation entity's fixed route system. Thus, eligibility is a *functional* determination of a person's ability to use the regular transit system as it currently exists, and not simply a medical or psychiatric diagnosis. An individual must fit into one of the three ADA paratransit eligibility categories. (§37.123)

#### 2. What are the three categories of ADA paratransit eligibility?

**Category 1:** This category includes individuals who are unable, due to a physical or mental impairment, to board, ride or disembark independently from any readily accessible vehicle on the regular fixed route system. Among others, this category includes persons with mental or visual impairments who, as a result of their disability, cannot *navigate the system*. This means that, if an individual needs an attendant to board, ride, or disembark from an accessible fixed route vehicle (including *navigating the system*), the individual is eligible for paratransit.

**Category 2:** Also eligible are those persons with a physical or mental impairment who could use accessible fixed route transportation, but the accessible fixed route transportation is not available at that time on that route (e.g., the accessible vehicle is down for maintenance, the lift cannot be deployed, etc.). This second eligibility category is the broadest, with respect to persons with mobility impairments, but its impact should be reduced over time as transit systems become more accessible.

**Category 3:** Any individual with a disability who has a specific impairment-related condition which prevents that person from traveling to a boarding location or from a disembarking location on the system is also eligible. In this case, the impairment must *prevent* travel to or from a stop; significant *inconvenience* or *difficulty* does not form a basis for eligibility under this section. Further, barriers not under control of the public entity providing the fixed route service (such as weather) do not by themselves form a basis for eligibility under this section. The regulation makes the interaction between an impairment-related condition and the environmental barrier (whether distance, weather, terrain, or architectural barriers) the key to eligibility determinations. This is an individual determination. Depending on the specifics of an individual's impairment-related condition, one person may be able to get from his home to a bus stop under a given set of conditions, while the next-door neighbor may not. (§37.123)

### **3. Can an individual be eligible for some paratransit trips, but not others?**

Yes. An individual's inability to use the fixed route system may change with differing circumstances. In many cases, it is possible that a person will be eligible for some trips but not others. For instance, some routes may have accessible vehicles and some may not. However, as opposed to trying to establish eligibility on a trip-by-trip basis, it may often be possible to establish individual conditions on eligibility as part of the initial eligibility determination process. (See Question #18.) (§37.123)

### **4. Are people with temporary disabilities eligible for paratransit services?**

Individuals may be ADA paratransit eligible on the basis of a permanent or temporary disability. The individual must meet one of the three eligibility criteria, whether permanently or for a limited period of time. (§37.123)

### **5. What are the rules concerning the behavior of paratransit-eligible individuals?**

An individual with a disability who engages in violent, seriously disruptive, or illegal conduct may be refused service, using the same standards for exclusion that would apply to any other person who acts in such an inappropriate way. (§37.123)

## **Companions and Attendants**

### **6. May a paratransit-eligible individual bring a companion along on trips?**

An eligible individual must be allowed to bring one companion on a trip even if the companion's presence reduces the space available for other paratransit-eligible individuals. Additional companions (beyond one) are served on a space-available basis; in other words, as long as they do not displace other ADA paratransit-eligible individuals. To be considered as *accompanying* an eligible individual, a companion must have the same origin and destination point. (§37.123)

## **7. Must a paratransit-eligible individual reserve an extra space for a companion?**

The paratransit entity may require that the eligible individual reserve a space for the companion and/or a personal care attendant when the individual reserves his or her own ride. The entity cannot limit the eligible individual's choice of type of companion. (§37.123)

## **8. When is a person traveling with a paratransit-eligible individual considered a “companion” or “attendant”?**

A paratransit entity may require that, as part of the initial eligibility certification process, an individual indicate whether he or she travels with a personal care attendant. If someone does not indicate the use of an attendant, then any individual accompanying him or her would be regarded simply as a companion. (§37.123)

## **9. What if a paratransit-eligible individual wants to travel with an attendant *and* a companion?**

If the paratransit-eligible individual is traveling with a personal care attendant, the transportation entity must provide service to one other individual in addition to the attendant who is accompanying the eligible individual. (§37.123)

## **10. What are the rules for traveling with family members or friends?**

A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant. (§37.123)

### **Eligibility Process**

## **11. How is paratransit eligibility determined?**

Each entity required to provide complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. The goal of this process is to ensure that only people who meet the regulatory criteria, strictly applied, are regarded as eligible. (§37.125)

## **12. Why must an eligibility process be established?**

Transit entities are free to provide service to other persons, but the eligibility process should clearly distinguish those persons who are ADA eligible from those who are provided service on other grounds. This is important because only individuals who are actually paratransit eligible have rights to the paratransit services as required by the regulations. (§37.125)

## **13. Are there a great number of extra steps involved in determining eligibility?**

The process to determine paratransit eligibility may not impose unreasonable administrative burdens on applicants. (§37.125)

## **14. What is the cost to apply for paratransit eligibility?**

A paratransit entity may not charge *user fees* or application fees to a paratransit applicant. (§37.125)

## **15. What information about the eligibility process must be available?**

All information about the eligibility process, materials necessary to apply for eligibility, and notices and determinations concerning eligibility must be made available, and in accessible formats, upon request. A document does not necessarily need to be made available in the format a requester prefers, but it does have to be made available in a format the person can use. (§37.125)

## **16. How long does a transportation entity have to determine an individual's eligibility?**

If the transportation entity has not made a determination of eligibility within 21 days, the applicant must be treated as eligible and provided service until and unless the transportation entity denies the application. (§37.125)

## **17. How must a transportation entity notify a person when he or she is approved for paratransit eligibility?**

The public transportation entity must provide documentation to each eligible individual stating that he or she is *ADA paratransit eligible*. The documentation must include:

the individual's name

the name of the transit entity

the telephone number of the entity's paratransit coordinator

an expiration date for eligibility

any conditions or limitations on the individual's eligibility, including the use of a personal care attendant.

The last point refers to the situation in which a person is eligible for some trips but not others, or if the traveler is authorized to have a personal care attendant ride free of charge. For example, the documentation may say that the individual is eligible only when the temperature falls below a certain point, or when the individual is going to a destination not on an accessible bus route, or for non-work trips, etc.

All eligibility determinations must be provided in writing. In the case of a denial, the reasons must be specified and they must relate to the evidence in the matter; a simple statement that the applicant can use fixed route transit is not sufficient. (§37.125) (See the *Appeals Process* section below.)

## **18. What is a doctor's role in the paratransit eligibility process?**

A doctor's note alone does not determine eligibility. The eligibility determination process may include functional criteria related to the eligibility standards (such as inability to use the fixed route system) and, where appropriate, functional evaluation or testing of applicants. While evaluation by a physician or other professional may be used as part of the process, his or her diagnosis does not automatically qualify an individual as paratransit eligible; the determination relies on whether an individual can use the fixed route system in his or her own circumstances. *It is primarily a transportation decision, not a medical decision.* (§37.125)

### **19. Is periodic recertification of eligibility allowed?**

Recertification of ADA paratransit-eligible individuals at reasonable intervals is permissible. For example, reasonable interval for recertification may be between one and three years. Less than one year would probably be too burdensome for consumers; over three years would begin to lose the point of having recertifications. The recertification interval should be stated in the entity's plan. Of course, a user of the service can apply to modify conditions on his or her eligibility at any time. (§37.125)

### **Paratransit Eligibility Appeals Process**

### **20. What can an individual do if his or her application is denied?**

The applicant may appeal the decision. Each entity required to provide complementary paratransit service is also required to establish an administrative appeals process through which individuals who are denied eligibility can obtain review of the denial. An opportunity for the applicant to be heard in person and to present information must be provided as part of the appeals process. (§37.125)

### **21. How long does an individual have to file an appeal?**

The transportation entity may require that an appeal be filed within 60 days of the denial of an individual's initial application. (§37.125)

### **22. Who should be involved in reviewing the appeal?**

In order to have appropriate separation of functions, the person who made the decision on the initial application must not be the person who makes the decision on the appeal. Further, to the extent practicable, that person should not even be involved in the appeals decision. (§37.125)

### **23. How much time does the transportation entity have to review the appeal?**

If a decision has not been made 30 days following the completion of the appeals process, the transportation entity must begin providing paratransit service to the individual. The transportation entity is not required, however, to provide paratransit service to the individual during the 30-day time period allowed for review of the appeal. (§37.125)

### **24. How are the appeal results disseminated?**

The transportation entity must provide written notification of the appeals decision and the reasons for it. (§37.125)

### **Suspension of Eligibility for Missed Trips**

### **25. What can a paratransit entity do about individuals who miss trips?**

Each entity required to provide complementary paratransit service may establish an administrative process to suspend, for a reasonable period of time, complementary paratransit service to eligible individuals who establish a *pattern or practice* of missing scheduled trips. The purpose of this process would be to deter or deal with chronic *no-shows*. (§37.125)

## **26. What does “pattern or practice” mean?**

A *pattern or practice* involves intentional, repeated or regular actions, not accidental, singular, or isolated incidents. Only actions within the control of the individual count as part of a pattern or practice. Missed trips due to operator error (e.g., vehicle arrival substantially after scheduled time, going to the wrong address, going to the wrong entrance to a building) and not attributable to the passenger do not count towards establishing a pattern or practice. (§37.125)

## **27. What is the procedure for suspending an individual for missed trips?**

If a transportation entity proposes to suspend someone, it must first notify the individual in writing, and must specify the basis of the proposed action in terms of days and times of missed trips as well as the intended length of suspension. As part of this process, the individual must be provided an opportunity to be heard and to present information and arguments. During this due process period, the individual must continue to receive paratransit service. (§37.125)

## **28. What if the paratransit entity decides to follow through with the suspension?**

If the transportation entity decides to proceed with the suspension, it must notify the individual in writing about the decision, the reasons for it, and the sanctions imposed. (§37.125)

## **29. Does the suspended individual have any further recourse, after due process?**

When an entity decides to proceed with a suspension, the administrative appeals process (see the *Eligibility Appeals Process* section) is available to the individual. When an eligible individual uses the appeals process, the suspension must be put on hold during the administrative appeals process, and provision of paratransit service must be continued. (§37.125)

## **Complementary Paratransit Service for Visitors**

### **30. What obligations do paratransit entities have in providing services to visitors from outside their service area?**

Each public entity required to provide complementary paratransit service must make the service available to visitors. A visitor is an individual with a disability who does not reside in the jurisdiction served by the transportation entity or its partners with whom it coordinates paratransit services. (§37.127)

### **31. How is a visitor’s paratransit eligibility determined?**

Visitors are considered eligible if they present documentation of ADA paratransit eligibility from their home jurisdiction’s paratransit system. Visitors will also be considered eligible if they can present proof of visitor status (i.e., proof of residence somewhere else) and, if the individual’s disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional). Once this documentation is presented and is satisfactory, the local entity must make service available on the basis of the individual’s statement that he or she is unable to use the fixed route transit system. (§37.127)

### **32. What limitations are there for provision of paratransit service to visitors?**

A transportation entity is not required to provide service to a visitor for more than 21 days from the date of that visitor's first paratransit trip. The 21 days may be continuous, or parceled out over several shorter visits. After 21 days, the transportation entity may require the visitor to apply for paratransit eligibility in the usual local manner. (§37.127)

#### **Other Sources of Information**

Regional ADA Technical Assistance Centers: Toll-Free 1-800-949-4232

**Federal Transit Administration ADA Toll Free Technical Assistance Line: 1-888-446-4511 (Voice) or 1-800-877-8339 (TTY); <http://www.fta.dot.gov>**