

Dedicated in Memory of Murray Vidockler, founder of the
Society for the Advancement of Travel for the Handicapped (SATH)

***Industry Report:
Americans with Disabilities Act (ADA)***

**presented by
NTA's Market Development Council**

**November 1999
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2000 Update

The Transportation section of this industry report describes in detail the U.S. Department of Transportation's accessibility rule for over-the-road buses (OTRBs), which imposed a system of fines for transportation companies that failed to provide disabled passengers with a wheelchair lift-equipped motorcoach. October 2000 was the deadline for full compliance with this rule.

Just weeks after the deadline passed, the U.S. Court of Appeals, responding to a lawsuit brought by the motorcoach industry, ruled that the USDOT had acted outside of its authority by establishing the system of monetary penalties. The motorcoach industry had argued that the ADA itself already provides legal remedies for disabled persons denied opportunities protected by the law.¹

Earlier in the year, the U.S. Court of Appeals overturned a Miami federal district judge's 1998 ruling that the ADA does not apply to foreign-flagged cruise ships. The original decision is summarized in the Cruise Industry section of this report. The Court of Appeals agreed with a friend-of-the-court brief issued by the Justice Department, ruling that the ADA covers cruise vessels when they are in the ports or other internal waters of the United States, even if they are registered in a foreign country.²

NTA's Government Relations Department will continue to monitor court decisions related to the ADA, and this report will be updated accordingly.

¹American Bus Association Press Release, "Bus Industry Wins Federal Appeal To Kill Unfair Penalty Scheme," November 14, 2000.

² U.S. Department of Justice, Civil Rights Division, Disability Rights Section, *Enforcing the ADA: A Status Report from the Department of Justice*, April-September 2000, www.usdoj.gov/crt/ada/aprsep00.htm; Catherine Wilson, "Inaccessibility on the Seas: Justice Department Wants Cruising to Become Accessible," ABCNews.com, August 24, 1999.

Introduction

The disabled traveler is an ever-increasing portion of the traveling market. *Fortune* magazine recently called it the largest untapped U.S. market based on estimates that 54 million Americans have disabilities. They also had \$796 billion in 1998 aggregate income and \$176 billion in disposable income.³

At least 12 to 14 million disabled travelers are either traveling now or plan to travel in the future. Add another 24 million, who report they would like to travel, and you have an extremely large market. Disabilities do not just include mobility impairments and wheelchairs. Only about 10 million use wheelchairs. The remainder includes persons with hearing and sight impairments, medical dependencies and much more.⁴ That is why considering every portion of your business is so crucial in reaching this huge market.

The Americans with Disabilities Act prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and activities of state and local government. Signed into law on July 26, 1990, provisions of the law have become effective at various times ranging from 30 days to 30 years.⁵ One issue that is still undecided and not yet in effect is that regarding compliance for “over-the-road buses.” This provision, however, is looming on the horizon.

More and more companies are striving to reach this ever-expanding market through preparation and training for its special needs, placing concern regarding ADA and the disabled traveler at an all-time high. The following report will outline the regulations facing transportation, some challenges to these regulations, and a review of ways other companies are reaching this huge market.

Transportation

One of the largest trends still being discussed with regard to ADA is the issue of transportation. With the passage of the Americans with Disabilities Act in 1990, companies have focused their efforts on complying with the various regulations associated with the act in the areas of employment, public accommodations and state and local government activities. One portion of the law that directly affects travel, and specifically NTA tour operators, is the portion from the U.S. Department of Transportation concerning “over-the-road buses” (OTRBs). Regulations for disabled travelers were scheduled to be issued in 1994 and implemented by 1997. However, the OTRB regulations were delayed until September 1998, with full compliance by transportation companies slated for October 2000.

The proposed regulations on OTRBs are separated into two categories, fixed route and demand response. The fixed route does not apply to NTA operator members; however,

³ *Travel Trade*, “Tapping Growing Disabled Market,” March, 1999.

⁴ *Ibid.*

⁵ The Americans with Disabilities Act – Public Law 101-336,
www50.pcep.gov/pcep/pubs/fact/ada92fs.htm, accessed September 28, 1999.

it does apply to companies that run the same route every day. The demand response portion does cover chartered trips and would have a direct effect on tour operators.

The demand response portion of the regulation states that a tour operator, or any other provider of a chartered motorcoach trip, must be able to provide a handicapped accessible motorcoach within 48 hours of request. As stated earlier, this is scheduled to be fully implemented by October 2000. Upon implementation, tour operators can no longer provide alternate boarding options such as EMT assistance, boarding ramps or provide a van for handicapped travelers. The disabled traveler must be on the same vehicle as all other travelers and the coach must have a lift.

There is one provision of this law that bears mentioning – you do not have to displace any passenger to make room for a disabled passenger. What that means is, if you have sold 54 seats on a 55 seat coach and a wheelchair-bound customer calls for a seat on the tour, you can tell that person that it is sold out. Due to the fact that you must have six unoccupied seats to accommodate a wheelchair-bound traveler, making that booking would force you to displace travelers already on the trip. By the same token, if a single traveler with no disability that would require special accommodations calls for the same trip, you can make the booking with no repercussion from ADA or the disabled traveler who was turned away. That booking does not displace anyone on the trip and is feasible where the disabled traveler was not.⁶

An “accessible” OTRB will be lift-equipped with door clearance at a minimum 30” wide x 65” high and a light below the bottom step, two spaces for wheelchairs with securement device, and assistance on and off at rest stops. If the coach does not have an accessible restroom, the tour operator must make a good-faith effort to accommodate a request for a rest stop on a trip three hours or longer. Failure to meet any of these accessibility requirements by the October 2000 deadline could result in a fine of \$300 to \$700, payable to the ADA passenger not receiving the required service. A strict standard is imposed with no excuses such as good-faith effort or equipment failure being accepted.⁷

The greatest concern of tour operators should be the coach companies with whom they are working. Consider the following scenario: XYZ Tours is planning a trip to Niagara Falls. They have a seat on their tour purchased by a handicapped traveler, so they phone ABC Charter to book a handicapped accessible coach. Unless that coach company is sold out to the public at large (i.e. had no coaches available for this or any tour), they **must** provide the handicapped accessible coach. If they do not have one available, they must find one from another coach company. So, in an attempt to find a handicapped accessible bus, ABC Charter calls LMG Company, a competitor, for a handicapped accessible coach. LMG Company has one available but they do not want to let it go in the event that they are called on to provide it to one of their customers. By law, ABC Charter cannot call XYZ Tours and tell them that they don't have a coach, but LMG Company does. That would allow coach companies to absolve themselves of the responsibility of providing the appropriate transportation and pass it along to someone

⁶ Phone interview with Peter Worthington, Sales Manager, DATTCO, September, 1999.

⁷ Paul T. Cronin, Travel Law Counsel, speaking notes, 1999.

else. Somehow, ABC Charter must provide the tour operator with a handicapped accessible coach.

The moral of this story is that a tour operator must be knowledgeable about the motorcoach suppliers they utilize and how their fleet measures up. If a tour operator calls on a tour supplier to provide a handicapped accessible coach – of which the tour operators are legally responsible to provide because they marketed and sold the tour – and they are unable to provide one or find one from another source, the tour operator is liable.⁸

As for air and rail travel, most companies can accommodate a disabled traveler within 48 hours notice. Amtrak even offers discounts to travelers with written proof of a disability. During any type of air or rail travel, experts suggest allowing extra time between connections. If, as a disabled passenger, special boarding assistance is required, the passenger will be the first to board and the last to leave. Disabled passengers should plan to arrive earlier and allow extra time after the trip for the assistance necessary.⁹

Although most regulations regarding transportation deal mainly with accessibility by those passengers who are in wheelchairs or have other mobility problems, tour operators should also consider their clients with hearing or sight impairments. Guides often speak over a microphone on coaches – telling passengers about the sights and places on the tour. Special hearing aids or written scripts, also available in Braille, will allow those passengers to enjoy the tour as much as their non-disabled counterparts.

Because the ADA prohibits discrimination against people with disabilities, every effort must be taken to make a disabled tour passenger's trip as enjoyable and fulfilling as every other guest. Even though steps that are considered reasonable may be taken by a company, lawsuits do arise from ADA issues. The law is vague and the wording "individual with a disability" is fraught with conditions that are often applied on a case-by-case basis.¹⁰ Because of the often varying interpretations of the law, what one company considers "reasonable" a disabled passenger may not, resulting in a claim against the company. In a conversation with Maureen Kay of the Berkley Group – an NTA partner providing insurance to tour operators – ADA-related issues are covered in the basic liability insurance provided in the policy available to NTA tour operators. Berkley would defend the claim, should one arise. This provides NTA tour operators who have taken advantage of that particular benefit of membership with the peace of mind that should a problem or claim arise, there is protection available.

Non-Transportation ADA Issues

Motorcoach access is not the only issue facing travel professionals. In addition to motorcoach issues, tour operators must also look at the accessibility of the hotels, restaurants, attractions, rest areas and any other place their travel packages may visit.

⁸ Phone interview with Peter Worthington, Sales Manager, DATTCO, March, 1999.

⁹ www.fodors.com/resources/disabilities, Accessed April 22, 1999.

¹⁰ "Myths and Facts About the Americans with Disabilities Act," www.usdoj.gov, accessed Sept. 28, 1999.

According to an informational booklet from the Society for the Advancement of Travel for the Handicapped (SATH), tour operators must be certain that every portion of a tour is accessible and the disabled traveler is not being left out or denied access to any tour components. SATH also suggests that special guides for tours with disabled passengers be considered. A tour guide who is experienced in dealing with various types of disabilities, and who is sensitive to the disabled traveler's needs, is crucial.

NTA tour operators have the luxury of more than 3,000 tour supplier and DMO members with whom they can do business. Partnering with a reputable tour supplier or DMO to ensure that your passengers will enjoy all-accessible facilities is crucial to the success of your tour and to the happiness of your passengers. Laws regarding public accommodations such as hotels, restaurants and attractions have been in place for some time. (You can find a listing of the many regulations these facilities must provide on the ADA Fact Sheet.) As you do business with any tour supplier, ask about their ADA compliance. Have they had any claims filed against them? Have they made every effort to modify all areas as specified by the law? Is there any area of particular concern to you or someone on the tour? Do your homework – ask a lot of questions and think of every type of disability, not just wheelchair-bound travelers, and the tour will be a success.

Employee Awareness of Disabilities

Businesses across the country are learning just how crucial it is to have employees who are sensitive to those with disabilities. Microtel Inn & Suites is the first, and only, budget chain of hotels to implement their "Opening Doors" program nationwide. This program is a training session for Microtel employees to make them more sensitive to the needs of their disabled customers by emphasizing exactly what it feels like to be disabled. The training utilizes actual wheelchairs, blindfolds, earplugs and taped hands to illustrate just how difficult it is to maneuver through a hotel lobby when you have a disability. The program teaches practical skills such as what to do if an employee cannot understand a customer with a speech impairment, to the use of service dogs.¹¹

Tour operators and tour suppliers could implement similar programs to assist in understanding the problems that the disabled encounter when traveling. There is no better way to have an understanding and sensitivity to another person's life than to put yourself in their shoes. NTA members can also become involved at the grassroots level as well. The Grassroots Action Network constantly monitors activity and changes in laws – including ADA. If you have a particular interest in these regulations and how they pertain to your company, you can get involved. Write letters to government officials stating your point of view, encourage employees to become active in learning and monitoring legal issues and activity surrounding legislation or simply lend your support to NTA's government relations staff. You can have a hand in molding and shaping this and any other legislation that may interest you.

¹¹ "Microtel Inn & Suites 'Opens Doors' to Travelers with Disabilities," www.yahoo.com/prnews/990524/ga_microte_1.html, Accessed May 27, 1999.

Types of Disabilities

As stated earlier, ADA pertains to all types of disabilities, not just to persons in wheelchairs. Passengers who are sight or hearing impaired, have speech difficulties or emotional and/or mental problems, are all subject to protection under this law. When reviewing adherence to ADA laws, consider more than just wheelchair access and other changes made for those with mobility problems. Does someone in the company know sign language? Are brochures provided in Braille or on audiocassette? Whether a tour operator, tour supplier or DMO, the information made available to the average passenger must also be available to those with any form of disability.

Microtel Inn & Suites, mentioned before for their employee sensitivity training program, has a special section dedicated to travelers with disabilities on their website, www.microtelinn.com. There are links to other sites of interest, frequently asked questions, travel tips and a virtual tour where visitors can actually see a 360-degree view of a typical Microtel ADA guestroom.¹² Microtel Inns & Suites are striving to make themselves the experts in providing for disabled hotel guests, realizing that providing for travelers with disabilities is good business.

Going the extra mile for this very large and potentially lucrative group of travelers is the best way to tap the market. Consider the accommodations or attractions that you visit during a tour. Although the room may be accessible, is the swimming pool? The restaurant and bar? The gift shop? Disabled travelers also wish to swim, dine with their companions and shop for souvenirs. Experts point out that when designing accessible products, aim for a universal design. A well-designed product will benefit everyone, not just the disabled.¹³

The Cruise Industry

For the most part, hotels, restaurants and other businesses are well prepared and equipped for disabled travelers, and the ground and air transportation issues are being handled. But, what about cruising? A recent ruling has upset many in the travel industry as well as physically challenged travelers wishing to go on a cruise. A Miami federal judge ruled that ADA does not apply to any foreign-flagged cruise ship. This decision makes virtually all cruise ships that Americans sail, with the exception of U.S.-flagged ships operated by American Hawaii Cruises, exempt from compliance with the ADA due to the fact that most cruise ships fly under foreign flags. Although many of the newer ships do have some accessible rooms, professionals say there are never enough. They also argue that cruise lines make little attempt to provide accessible shore excursions.

¹² "Microtel Inn & Suites 'Opens Doors' to Travelers with Disabilities,"

www.yahoo.com/prnews/990524/ga_microte_1.html, Accessed May 27, 1999.

¹³ *American Demographics*, "The Fun Factor: Marketing Recreation to the Disabled," February, 1998.

Travel professionals interviewed in a *Leisure Travel News* article believe this decision limits the travel options for disabled passengers and are furious that, although these cruise lines sail from American ports and rely on those departures for many of their passengers, they are not being held up to the scrutiny of the ADA.¹⁴ Currently, many cruise lines such as NTA members Princess Cruises and Holland America Westours are making more attempts to increase the number of accessible rooms and make shore excursions readily available to disabled passengers.¹⁵

Challenging the ADA

According to Peter Worthington, sales manager for NTA member DATTCO, the American Bus Association had filed a lawsuit pending on several issues. The claims filed by ABA, however, have been denied in a court of law with appeals being planned. One of the issues being appealed was relative to the fixed route carriers and does not affect NTA members. However, another issue relates to the denied boarding compensation clause – which is of particular interest to NTA tour operators. According to the ADA, if a disabled person is denied boarding for any reason (even if the coach has broken down and it is completely unrelated to their physical disability), they are awarded \$700 in compensation. Worthington also stated that the 48-hour rule, which gives companies 48 hours to comply with a handicapped travel request, is still somewhat murky. Although it is left to some interpretation, the general rule of thumb is that the accommodation must be made within 48 hours of the disabled traveler's request. This 48 hours begins from the minute the disabled customer requests the tour, even if they a message is left on voice mail. Like many other parts of the law, common sense would tell us that it is unreasonable to expect a tour company to comply with a request 48 hours after a voice mail message was left by a customer on a Friday evening. However, if we look at the letter of the law, that scenario could occur.

As it stands today, the law will be enforced as written in October 2000. Mr. Worthington explained the regulations this way, "Consider it business as usual plus 48 hours." Treat a disabled passenger as you would any other passenger requesting a seat on your trip. For example, if all other passengers must reserve seats one month prior to departure, so should a handicapped passenger. You simply get the benefit of 48 extra hours to make their request happen. Keep in mind that many of these transportation issues are centered around those travelers who have mobility impairments or are bound to a wheelchair. Don't forget – lack of mobility is not the only disability you may be faced with. Making coaches accessible to those travelers may be the focus of many of these regulations, however, you cannot forget that the sight or hearing impaired traveler, the traveler who is speech-impaired or a traveler with a mental illness is protected under these laws as well. You must consider all areas of your trip and make certain you are prepared to accept and assist any disability that may be presented to you.

¹⁴ *Leisure Travel News*, "ADA/Cruise Ruling Draws Agents' Ire," March, 1999.

¹⁵ *Ibid.*

Trends in the Disabled Travel Market

One thing to consider is that studies have shown disabled travelers enjoy traveling in groups and especially with those who have a similar disability. The travel agent members of the consortia SPACE report having handled cruise groups of more than 200 who are all diabetic. Studies have also shown that even those without disabilities support companies that serve the disabled.¹⁶ Because of the ADA and the awareness of disabled travelers it has produced, this group is enjoying more recreational opportunities than ever before and presents an excellent opportunity for NTA members.

The passage of the Americans with Disabilities Act brought the needs and desire of this market to the forefront. As mentioned earlier, the largest trend looming for disabled travel and providers of travel as a whole is the motorcoach transportation issue. The tour operator must be aware of the impending regulations and how it will affect their bookings. As mentioned before, tour operators should carefully study motorcoaches and other tour suppliers, as well as develop an understanding of their own liability issues, for successful implementation of the ADA regulations by October 2000.

Once the regulations are in place and all disputes have been settled, the only factor remaining will be to tap the market. Disabled travelers utilize the Internet as a source of information, but also enjoy the counsel and experience of a live travel professional.¹⁷ This market is estimated to reach \$1 trillion by the year 2001.¹⁸ Put yourself in a disabled person's shoes, look for the little things that your company can do to reach out to this market and you could be on your way to tapping one of the fastest growing markets today.

¹⁶ *Travel Trade*, "Tapping Growing Disabled Market," March, 1999.

¹⁷ *Ibid.*

¹⁸ *American Demographics*, "The Fun Factor: Marketing Recreation to the Disabled," February, 1998.

Americans with Disabilities Act – ADA FACT SHEET¹⁹

The following are some items associated with the ADA that are crucial for all travel professionals to remember as the October 2000 compliance deadline approaches. These guidelines are not currently in place; however, they will be on October 2000 barring successful appeals by the ABA or any other deadline changes:

- Tour operators must provide “Demand-Responsive” service. “Demand-Responsive” service is that which accommodates ADA passengers with an accessible over-the-road bus (OTRB) when booking by that passenger is confirmed. Generally, carriers must provide an accessible OTRB on 48 hours notice, making a reasonable effort to provide appropriate transportation in less than 48 hours if possible.
- An accessible OTRB is lift-equipped, has a door clearance at a minimum of 30” wide x 65” high, a light below the bottom step, two spaces for wheelchairs with securement device, and assistance on and off at rest stops. If the motorcoach does not have an accessible restroom, the tour operator must make a good-faith effort to accommodate a request for a rest stop on any trip over three hours.
- Failure to provide accessible transportation can result in a fine of \$300 – \$700, payable to the ADA passenger not receiving the required service. This is a strict standard with no excuses, such as good-faith effort or equipment failure.
- The ADA pertains to more than wheelchair-bound travelers, including passengers with emotional or mental problems, hearing and speech problems, or blindness.
- Tour operators must be aware of ADA compliance by tour suppliers, such as hotels, restaurants and attractions, included on the tour.

Public accommodations, such as hotels, restaurants, theaters, stores, offices, transit stations, museums, parks, schools, social service agencies and gyms are areas which have had ADA regulations in place for some time. They must not discriminate against individuals with disabilities and have a number of regulations that they must comply with.²⁰ Those regulations include:

- Removal of architectural barriers. These barriers are physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered. Areas that must be reviewed are parking spaces, entrances and the type of door at that entrance, turnstiles or security gates, shelves and maneuvering space, sales and service counters, fixed seating and tables, and many other physical barriers.²¹
- Modifications can be simple and inexpensive to existing buildings. Existing altered facilities must be accessible to the maximum extent feasible. When alterations affect a primary function area, a path of travel to the altered area and restrooms

¹⁹ Paul T. Cronin, Travel Law Counsel, speaking notes, 1999.

²⁰ *President’s Committee – ADA Focus on Public Accommodations*, www50.pcep.d.gov/pcep/d/pubs/adabro/pubacs.htm, accessed September 28, 1999.

²¹ ADA Guide for Small Business, janweb.icdi.wvu.edu/kinder/pages/small_biz.html, accessed September 28, 1999.

serving the altered area must be accessible to the extent that added costs are not disproportionate.²²

- New facilities must be accessible unless structurally impracticable. Businesses are only required to do what is readily achievable at that time and are encouraged to evaluate their facilities and develop a long-term plan for barrier removal that is commensurate with their resources.²³
- Elevators need not be provided in buildings under three floors or with less than 3,000 square feet per floor, other than in shopping centers and health care buildings.
- Bona fide private clubs and religious groups are not covered by these provisions.²⁴
- As for effective communication, it is not true that all restaurants must have menus in Braille or that sign language interpreters are required everywhere. A waiter can read the menu to a customer who is sight-impaired or printed materials of information generally provided for those who are hearing-impaired is sufficient. The law does not require any measure that would cause an undue financial or administrative burden.²⁵

For questions regarding these or any ADA regulations, contact:

U.S. Department of Justice
P.O. Box 66738
Washington, DC 20035-6738
202-514-0301
202-514-0383 - TDD

The complete industry report addresses these issues and provides ideas on ways to make your company compliant. This report can be downloaded from the Industry Reports page of NTA Online.

²² President's Committee – ADA Focus on Public Accommodations, www50.pcepd.gov/pcepd/pubs/adabro/pubacs.htm, accessed September 28, 1999.

²³ "Myths and Facts About the Americans with Disabilities Act," www.usdoj.gov/crt/ada/pubs/myuthfct.txt, accessed September 29, 1999.

²⁴ President's Committee – ADA Focus on Public Accommodations, www50.pcepd.gov/pcepd/pubs/adabro/pubacs.htm, accessed September 28, 1999.

²⁵ "Myths and Facts About the Americans with Disabilities Act," www.usdoj.gov/crt/ada/pubs/myuthfct.txt, accessed September 29, 1999.