

DEPARTMENT OF AGING

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**PROGRAM MEMO**

TO: CDA Contractors	NO.: PM 07-16 (P)
SUBJECT: Access to Programs, Services and Activities – Persons with Disabilities	DATE ISSUED: August 28, 2007
REVISED	EXPIRES: Until Superseded
REFERENCES: Americans with Disabilities Act; California Government Code Sections 11135-11139.8	SUPERSEDES:
PROGRAMS AFFECTED: <input type="checkbox"/> All <input checked="" type="checkbox"/> Title III-B <input checked="" type="checkbox"/> Title III-C1/C2 <input checked="" type="checkbox"/> Title III-D <input checked="" type="checkbox"/> Title III-E <input checked="" type="checkbox"/> Title V <input checked="" type="checkbox"/> CBSP <input checked="" type="checkbox"/> MSSP <input checked="" type="checkbox"/> Title VII <input type="checkbox"/> ADHC <input type="checkbox"/> Other: _____	
REASON FOR PROGRAM MEMO: <input type="checkbox"/> Change in Law or Regulation <input type="checkbox"/> Response to Inquiry <input checked="" type="checkbox"/> Other Specify: Policy Guidance and Technical Assistance _____	
INQUIRIES SHOULD BE DIRECTED TO: Rachel de la Cruz, Manager, Contracts and Business Services Section (916) 419-7539 or rdelacru@aging.ca.gov	

BACKGROUND AND PURPOSE

This Program Memo provides policy guidance and technical assistance to CDA contractors to help them comply with the Americans with Disabilities Act (ADA) and California Government Code Sections 11135 – 11139.8. For the purposes of this memo, “contractor” refers to an AAA and Multipurpose Senior Service Program (MSSP). “Subcontractor” refers to a service provider that has contracted with either an AAA or MSSP. The term “agency” refers to an entity covered by the nondiscrimination laws. This Memo is intended to remind CDA contractors of their existing statutory and contractual obligations to provide individuals with disabilities equal access to programs, services and activities. These State and federal laws have been in effect for many years and do not constitute new requirements. This memo does not address physical access to new buildings.

WHO MUST COMPLY

CDA and all of its contractors and subcontractors must comply with the requirements of the ADA and California Government Code Section 11135-11139.8. Both of these laws require that government funded services, programs and activities be accessible to, and usable by, individuals with disabilities. The Department complies with its obligation by including nondiscrimination requirements in its contract terms and conditions. However, CDA’s legal obligation to ensure that services, programs and activities are accessible does not relieve these agencies from complying with their own legal



obligations to provide equal access under the State and federal laws. CDA contractors are expected to pass these requirements on to their providers through the terms and conditions of their contracts.

WHAT IS REQUIRED

The specific requirements of the ADA and State law can be complex. The Department does not prescribe a particular method or measure to achieve compliance. However, the Department expects all of its contractors and subcontracting service providers to take proactive steps to make public services readily accessible to individuals with disabilities. The Technical Assistance Manual prepared by the federal Department of Justice includes substantial guidance and numerous examples to help contractors and subcontractors in their compliance efforts. The Technical Assistance Manual is referenced in Attachment 2 and is available at www.usdoj.gov/crt/ada.

The following requirements highlight some of the major State and federal mandates. This list is not exhaustive. Agencies should review available resources or consult with their parent agency for additional guidance.

- **Services, programs and activities.** Government funded programs, services and activities must be accessible to, and usable by, individuals with disabilities. Agencies must make reasonable modifications to policies, practices, and procedures that deny equal access to individuals with disabilities. Agencies may achieve program and service accessibility by a number of methods. In many situations, providing access to buildings through structural methods may be the most efficient method of providing program and service accessibility. This would include measures such as building a ramp for wheelchair access or otherwise altering an existing building to provide equal access. In other cases, it might be sufficient to use nonstructural methods in order to achieve program or service accessibility. Nonstructural methods include providing services at alternate accessible sites or on a ground floor location. It is important to note that other federal laws require places of accommodation, including private entities that provide public services, to remove barriers where the removal is readily achievable. Whether removal of a barrier is “readily achievable” may depend on factors including program size and available financial resources. Agencies should consult the technical assistance guides and resources attached to the memo for further information and guidance.
- There are limited exceptions to the requirement to modify a program or service where the modification would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burden. A decision to invoke one of these exceptions can only be made by agency director such as an AAA Director or MSSP Program Manager and must be confirmed by CDA’s Director or her designee. The decision must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that that a modification would result in a fundamental alteration of a program or impose an undue burden for the entity must be based on an evaluation of all resources available for use in the program. If an action would result in a fundamental alteration or undue burden, the agency must take another action to ensure that individuals with disabilities receive the benefits and services of the program or activity. Examples of reasonable modifications to policies, practices, and procedures are provided in the DOJ Technical Assistance Manual.

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- **Communication.** Agencies must ensure that communications with individuals with disabilities are as effective as communications with others. Individuals with disabilities who do not have effective communication tools are less likely to have equal access to services. Depending upon the specific circumstances, agencies may need to arrange to make available auxiliary aids and services including interpreters, special equipment, or TDDs. However, agencies may be able to ensure effective communication through simple measures like note-takers, readers and assistance with completing forms. Factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place and the number of people involved. Agencies should consult with the individual to determine the most appropriate auxiliary aid or service.
- **Integrated Setting.** Agencies must, to the maximum extent appropriate, provide programs and services in an integrated setting. Separate programs may be permitted where it is necessary to ensure equal opportunity.
- **No charge for measures.** Agencies may not charge individuals with disabilities to cover the costs of taking the necessary measures to ensure nondiscriminatory treatment, such as printing materials in Braille or providing qualified interpreters.

SELF-EVALUATION

To enable CDA to ensure compliance with State and federal laws, CDA requests that its contractors and subcontracting service providers conduct a self-evaluation of current policies and practices to determine whether they comply with equal access requirements. Agencies may wish to use the attached ADA Self-Evaluation for Program and Services Access form to help them assess their compliance. Agencies are not required to send a copy of their self-evaluations to CDA. However, Agencies should maintain a copy of their self-evaluation in their files for three years.

If as a result of a self-evaluation, an agency determines that any policy or practice is not in compliance, it must modify the policy to bring it into compliance. CDA recognizes that many of its contractors are part of local government agencies, which have their own requirements and compliance activities related to program and physical access. The Department is not requesting that a contractor duplicate evaluation or compliance activities conducted by the local government agency.

COMPLAINT PROCESS

All CDA contractors, including AAAs and MSSPs, must establish a complaint process to accept and resolve disability related complaints received from service and program recipients. This applies to complaints lodged against an AAA or MSSP and complaints directed at their service providers. AAAs and MSSPs must investigate and make a good faith effort to resolve a complaint and eliminate any barriers to access. If CDA receives a complaint directly about a program administered by an AAA, MSSP or service provider, CDA will forward the complaint to the appropriate AAA or MSSP to investigate and resolve at the local level. AAAs and MSSPs should direct their service providers to immediately forward to them all complaints received at their level for investigation and resolution. If an AAA or MSSP cannot resolve a complaint to the satisfaction of the consumer, the agency must notify the CDA Director immediately and provide written documentation of the facts and reasons for not resolving the complaint. AAAs and MSSPs are required to make the complaint process available upon request to all recipients of services and program benefits.

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We encourage you to visit the Web sites identified on the attached Relevant Disability Laws and Agency Resources. This list includes references to laws, technical assistance guides and consumer resources available to assist you with compliance. These sites also provide many examples of ways to resolve access issues, including communication practices and facility access.

Thank you for your attention and dedication to our ADA and Government Code compliance efforts. I appreciate your willingness to assist us in meeting these important State and federal requirements. If you need assistance regarding completion of your program and services access self-evaluation, please contact Rachel de la Cruz, CDA ADA Compliance Officer, at rdelacru@aging.ca.gov.

A handwritten signature in blue ink that reads "Lynn Daucher". The signature is written in a cursive style and is contained within a light gray rectangular box.

Lynn Daucher
Director

Attachments – Relevant Disability Laws and Agency Resources
Self-Evaluation for Access to Programs and Services