

INDICATORS OF COMPLIANCE

- a. *If the recipient has adopted a no-show policy, does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*
- b. *If the recipient has adopted a no-show policy, does the recipient impose a mandatory financial penalty as part of its no-show policy?*
- c. *Are only no-shows under the rider's control counted towards the suspension?*
- d. *Before suspending service for no-show violations, does the recipient notify the rider and provide an opportunity to respond? Does the recipient allow individuals to appeal no-show policy violations and stay suspensions pending the outcome of the appeal?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website and other information provided to the public that describes the ADA complementary paratransit services for information on the ADA complementary paratransit service no-show policy.

Determine:

- If the recipient suspends riders, for how long and under what circumstances
- If there is discussion on imposing mandatory financial penalties
- If there is discussion on not suspending riders for no-shows not under their control
- If there is discussion on the process of suspending riders

Onsite, discuss the no-show process with the recipient.

- Verify that any suspensions are a result of a "pattern or practice" of missing scheduled trips. Note whether the recipient relies on a simple percentage, which does not establish a pattern or practice for infrequent riders.
- Verify that any suspensions are "for a reasonable period of time." Note whether suspensions reset on a "rolling" basis after each "offense", imposing longer suspensions as a default.
- Verify that the recipient does not impose a financial penalty as part of a no-show policy, including charging the fare for the no-show trip.
- Verify that only no-shows under the rider's control are counted against the rider.
- Verify that before suspending service, the recipient notifies the individual in writing that it proposes to suspend service, providing the specific basis for the proposed suspension and the proposed sanction.
- Verify that the recipient provides the individual an opportunity to be heard and to present information.
- Verify that the suspension is stayed pending the outcome of the appeal.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it suspends riders for an unreasonable amount of time (consult with the FTA Office of Civil Rights as needed). The recipient is deficient if it suspends riders without establishing that

the rider has a pattern or practice of missing scheduled trips (consult with the FTA Office of Civil Rights as needed). The recipient is *not* deficient if it does not suspend riders and has no policy for doing so.

DEFICIENCY CODE ADA-CPT5-1: Unreasonable no-show suspension

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit a procedure for suspending riders for a reasonable amount of time.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit a procedure for suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit evidence that it is no longer suspending paratransit riders for missing scheduled trips.

The recipient is deficient if it imposes an involuntary financial penalty for no-shows.

DEFICIENCY CODE ADA-CPT5-2: Financial penalty imposed for no-shows

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit documentation that it has ceased the assessment of financial penalties for no-shows and notified the public of this policy change.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit a procedure for accepting payment for missed trips in lieu of suspension only if voluntarily agreed to by the passenger.

The recipient is deficient if it counts no-shows not under the rider's control toward suspension.

DEFICIENCY CODE ADA-CPT5-3: Suspension based on no-shows not under rider control

SUGGESTED CORRECTIVE ACTION: The recipient must submit a procedure for only counting no-shows under the rider's control toward the suspension.

The recipient is deficient if it does not notify the rider of the pending suspension in writing and provide the specific basis for it, does not offer the opportunity for the rider to appeal or does not stay the suspension pending the outcome of the appeal.

DEFICIENCY CODE ADA-CPT5-4: Insufficient no-show suspension procedures

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit an appeals process that notifies the rider of the suspension in writing, specifically indicating the basis of the proposed suspension and the proposed sanction.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit an appeals process that provides the rider an opportunity to be heard.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit an appeals process that stays the suspension pending the outcome of the appeal.

GOVERNING DIRECTIVE

49 CFR 37.125 ADA paratransit eligibility: Process

- (i) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.
 - (1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
 - (2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
- (ii) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.
 - (1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.”
 - (2) Before suspending service, the entity shall take the following steps:
 - (i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.
 - (ii) Provide the individual an opportunity to be heard and to present information and arguments;
 - (iii) Provide the individual with written notification of the decision and the reasons for it.
 - (3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

ADA-CPT6. Does the recipient place limits on the availability of service to ADA paratransit eligible individuals?

BASIC REQUIREMENT

Recipients shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals.

APPLICABILITY

Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

The US DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pick-ups, missed trips, or excessively long trips). “Pattern or practice” in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the entity, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision.

Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, entities should have a definition of ADA trip denial, missed trip (i.e., trip missed by the entity), on-time performance, and excessively long trip. The entity's definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) and late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Entities are required to plan and budget for 100 percent of demand for next-day service. The entity may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow entities to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the entity cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity's inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the "return" trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

The entity may not limit the number of trips an individual will be provided. For example, the entity cannot have a policy of no more than four trips per day. Accordingly, the entity cannot set a minimum or maximum number of trips for an eligible individual. Similarly, policies limiting the number of trip requests per telephone call are considered restrictive.

The entity may not use what amounts to a waiting list. Although it may not be called a waiting list, placing callers' names on a list when the schedules are full and informing them they will be contacted if space becomes available would constitute a prohibited waiting list. Similarly, telling callers the schedules are full and suggesting they call back later to see if space becomes available would be a waiting list.

Entities may accept a trip request during a reservation call and internally schedule the trip later (within the pickup window communicated to the rider at the time of reservation), which are often referred to as confirmed but unscheduled trips.

Entities should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, entities must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Entities should track service for ADA trips separately from non-ADA trips.

INDICATORS OF COMPLIANCE

- a. *Where the recipient cannot provide a trip at the requested time, does the recipient negotiate trip times so that trips are scheduled within one hour before or after an individual's desired departure time?*
- b. *Does the recipient appropriately categorize denials?*
- c. *Does the recipient restrict the number of trips an eligible individual will be provided?*

- d. *Does the recipient limit the availability of service by using any kind of waiting list?*
- e. *Does any operational pattern or practice significantly limit the availability of service to eligible individuals?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service reservations and scheduling. Review the rider guide or other customer information and reservation procedures. Note references to negotiating eligible trip requests within the one-hour window, and the handling and documentation of potential trip denials. Verify that the recipient does not limit the number of trips an individual will be provided. Verify that the recipient does not use what amounts to a waiting list. Note how the recipient logs its reservations, pickup times, and scheduled trips.

Onsite, discuss if the entity tracks a trip as a denial if it cannot be scheduled no more than one hour before or after the desired departing time, even if a rider accepts the trip. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, determine if the agency tracks that as two denials. (If the rider accepts the "return" trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

Onsite, discuss with the recipient how it ensures it does not have capacity constraints. Review reports from the reservation and scheduling software, if available. If not available, discuss with the recipient how it schedules trips, for example, in 15- or 30-minute blocks, and review with the recipient driver manifests for a recent day with higher than average ridership, typically a day in the beginning of the month, to see if there are indications of late trips, missed trips or excessively long trips. Evaluate data on trip denials, on-time performance, missed trips, and excessively long trips for the past year and the current year for any operational pattern or practice that has the effect of limiting availability such as trip denials, late pickups, missed trips or excessively long trips. If data indicate no pattern or practice of capacity constraints and the recipient does not collect or analyze data to ensure that capacity constraints do not develop, document such as an issue of concern for FTA awareness.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not schedule trips at the requested time and does not negotiate trips within one hour before or after an individual's desired departure time.

DEFICIENCY CODE ADA-CPT6-1: ADA complementary paratransit scheduling deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation, such as updated public information and scheduling procedures, that demonstrates that it negotiates trips within one hour before or after an individual's desired departure time.

The recipient is deficient if rides scheduled outside the hour before-or-after scheduling window are not tracked as denials, even when a rider accepts the trip. The recipient is deficient if it does not track as two denials when one leg of a roundtrip cannot be reserved and the rider declines both trips.

DEFICIENCY CODE ADA-CPT6-2: ADA complementary paratransit service denial tracking deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit documentation, such as updated scheduling procedures, that rides scheduled outside the hour before-or-after scheduling window are tracked as denials.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit documentation, such as updated scheduling procedures, that declined roundtrips are tracked as two denials when one leg of the trip cannot be reserved.

The recipient is deficient if it restricts the number of trips an eligible individual will be provided.

DEFICIENCY CODE ADA-CPT6-3: ADA complementary paratransit service restricted for eligible individuals

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation, such as updated public information and scheduling procedures, demonstrating that it has eliminated restrictions on the number of trips.

The recipient is deficient if it restricts the availability of trips using any type of waiting list.

DEFICIENCY CODE ADA-CPT6-4: ADA complementary paratransit service waiting lists

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation, such as updated public information and revised scheduling procedures, demonstrating that it has eliminated the use of waiting lists or practices that amount to waiting lists.

The recipient is deficient if it demonstrates an operational pattern or practice that significantly limits the availability of complementary paratransit service.

DEFICIENCY CODE ADA-CPT6-5: Limits or capacity constraints on ADA complementary paratransit service

SUGGESTED CORRECTIVE ACTION: The recipient must submit a plan to eliminate an operational pattern or practice that creates ADA complementary paratransit capacity constraints.

The recipient is deficient if it does not have a mechanism in place for monitoring, tracking, and verifying indicators of capacity constraints sufficient to indicate that denials experienced by riders are not due to an operational pattern or practice that significantly limits the availability of ADA paratransit service.

DEFICIENCY CODE ADA-CPT6-6: Inability to demonstrate lack of capacity constraints through available tracking data.

SUGGESTED CORRECTIVE ACTION: Submit evidence that aggregate data on paratransit performance is being monitored on a regular and ongoing basis for indications of systemic capacity constraints

GOVERNING DIRECTIVE

49 CFR 37.131 Service criteria for complementary paratransit

(a) Response time.

- (1) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time."

- (b) *Capacity constraints.* The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:
- (1) Restrictions on the number of trips an individual will be provided;
 - (2) Waiting lists for access to the service; or
 - (3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.
 - (i) Such patterns or practices include, but are not limited to, the following:
 - (A) Substantial numbers of significantly untimely pickups for initial or return trips;
 - (B) Substantial numbers of trip denials or missed trips;
 - (C) Substantial numbers of trips with excessive trip lengths.
 - (ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.
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ADA-CPT7. Does the recipient monitor service provided under contract or other arrangement or relationship, by another entity on the recipient's behalf, for compliance with the US DOT ADA paratransit regulations?

BASIC REQUIREMENT

ADA complementary paratransit service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) by a taxi company, transportation network company, or other private entity, as well as service provided by another public entity must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY

Recipients who contract out or otherwise rely on another entity to provide all or a portion of their complementary paratransit service. Note that the DOT ADA regulations apply equally to "pilot" programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER

When a public entity enters into a contractual or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) with another public or private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the service provided meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself. Where an entity relies on another public entity to provide paratransit service on its behalf, the entity remains responsible for meeting the requirements of 49 CFR part 37 Subpart F. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the private entity operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met.

For example, if a transit operator relies on a taxi company or transportation network company (TNC) or other private entity to provide a portion of its paratransit service, it must ensure that all paratransit-eligible

riders, including wheelchair users, receive service according to the paratransit service criteria. See preceding questions for a more detailed explanation of each requirement.

It should be noted that many transit operators are engaging the services of a taxi company, TNC or other private entity to provide what they describe variously as “premium” or “non-ADA” service. While there is no such thing as “non-ADA service”, such “premium” services would be regarded as demand-response and would be required to meet the requirements for equivalent service. This service is evaluated under ADA-GEN5 in the Americans with Disabilities Act (ADA) – General section of this workbook.

INDICATOR OF COMPLIANCE

- a. *If a recipient enters into a contract or other arrangement or relationship with a private entity for all or a portion of its ADA complementary paratransit service or relies on any other public entities to provide the service, does the recipient ensure that the service provided meets the ADA complementary paratransit requirements as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER

Review contracts and other agreements to ascertain if the recipient communicated ADA requirements, including contracts to provide eligibility services and agreements with supplemental transportation providers such as taxi overflow service. Review contract management procedures to understand how the recipient will ensure the contractor complies with the requirements. Review monitoring procedures and documentation for monitoring activities conducted during the review period to note if ADA requirements were reviewed.

Onsite, discuss the recipient's tracking, monitoring, and reporting procedures for all contractor functions, including eligibility. Review oversight files for the contractor(s) and entity(ies) to be visited during the site visit to determine if the program is implemented in accordance with the agreement. Discuss ADA complementary paratransit policies and procedures with the contractor(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that service provided through contracted or other arrangements or relationships with private entities complies with ADA complementary paratransit service requirements.

DEFICIENCY CODE ADA-CPT7-1: Insufficient oversight of contractors/other private entities providing ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of implementation of procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

Governing Directive

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

ADA-CPT8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

BASIC REQUIREMENT

ADA complementary paratransit service provided by subrecipients must be comparable to fixed-route service.

APPLICABILITY

Recipients with subrecipients that operate fixed-route service

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to ensure that subrecipients adhere to all relevant ADA complementary paratransit requirements. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the subrecipient operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met. Where a state provides Section 5311 funds to a subrecipient that is private nonprofit to operate a fixed-route service, the requirement to provide complementary paratransit applies to this service.

See preceding questions for a more detailed explanation of each requirement. The US DOT ADA regulations contain no exemptions for “pilot” or demonstration projects.

INDICATOR OF COMPLIANCE

- a. *Does the recipient monitor subrecipients for ADA complementary paratransit service as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER

Review subrecipient agreements to ascertain if the recipient communicated ADA requirements, including training requirements, to the subrecipient as part of the contractual obligations. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements to determine how the recipient monitors that the ADA requirements are met. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited. Discuss ADA complementary paratransit policies and procedures with the subrecipient(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that its subrecipients comply with ADA provision of service requirements.

DEFICIENCY CODE ADA-CPT8-1: Insufficient oversight of subrecipients for ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: The recipient must submit specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of implementation of specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.

Governing Directive

49 CFR 200.332 Requirements for pass-through entities

A pass-through entities must:

Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

- (1) Review financial and performance reports.
- (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.
- (3) Issue a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA?
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?
- Are any oversight review, investigation or audit findings currently open?