

13. AMERICANS WITH DISABILITIES ACT (ADA) COMPLEMENTARY PARATRANSIT

PURPOSE OF THIS REVIEW AREA

Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. "Comparability" is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

QUESTIONS TO BE EXAMINED

1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?
2. Does the recipient's paratransit eligibility determination process meet ADA complementary paratransit service requirements?
3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?
4. Does the recipient's paratransit service meet the ADA complementary paratransit service requirements?
5. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?
6. Does the recipient place any limits on the availability of service to ADA paratransit eligible individuals?
7. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another entity on the recipient's behalf, for compliance with 49 CFR Part 37, Subpart F?
8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Paratransit rider's guide
- Paratransit application form
- Operations, dispatch, scheduling or reservation procedures
- Sample notification letter templates for conditional eligibility, temporary eligibility, and denials
- Sample notification letter templates for conditional eligibility, temporary eligibility, and denials
- ADA complementary paratransit service contracts
- Oversight tools for service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement), including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For contracts or other arrangements, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis
- Copies of contracts or other agreements, or terms of other relationships (including, but not limited to, awards, subawards or cooperative agreements) with private entities to operate ADA complementary paratransit service

- Oversight tools for subrecipients, including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For subrecipients, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis

Note that it is possible for paratransit guides and information to point to general ADA deficiencies covered in the previous section. For example, while the paratransit guide may be the only place that a requirement for boarding direction or service animal harnesses is found, that does not make it a paratransit-specific deficiency. Use the deficiency codes in the ADA General section for these types of deficiencies, if found. The two ADA sections are designed to work together.

Recipient Follow-up

- Service denials for the past three years by year
 - Travel times for the past three years by year
 - Missed trips for the past three years by year
 - Telephone hold time performance for reservations lines for the past three years by year
 - No-show policy (If any)
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ADA-CPT1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?

BASIC REQUIREMENT

Public operators of a fixed route system must provide paratransit as a complement to the fixed-route system.

APPLICABILITY

Public operators of a fixed-route system (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

Each public operator of a fixed-route system (bus and rail) is required to provide complementary paratransit. The requirement to provide complementary paratransit service does not apply to commuter bus or commuter rail, as defined by 49 CFR 37.3, or to university service as discussed in 49 CFR 37.25.

Commuter bus service is fixed-route bus service characterized by service predominately in one direction during peak periods, with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, no attempt to comprehensively cover a service area, limited purposes of travel or a coordinated relationship to another mode of transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an institution of higher education would be required to have a formal arrangement with the transit operator to provide service on the institution’s behalf.

INDICATORS OF COMPLIANCE

- a. *If the recipient is a public operator of fixed-route service other than commuter rail or*

commuter bus service, is complementary paratransit service provided?

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website to determine whether the recipient operates fixed-route service (other than commuter bus or commuter rail service). Any recipients who indicate that they only operate commuter bus service should be examined more closely to ensure that the service meets the definition of commuter bus found in 49 CFR 37.3 and discussed in Appendix D.

Any recipient that operates only route-deviation service, which is regarded as demand-response service, should be examined more closely to determine whether the service provides for route deviation for all passengers on the same terms (see question ADA-GEN10).

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it is a public operator of a fixed-route system (other than commuter bus or commuter rail) and does not provide paratransit as a complement to the fixed-route system.

DEFICIENCY CODE ADA-CPT1-1: Failure to provide complementary paratransit

SUGGESTED CORRECTIVE ACTION: The recipient must submit a plan with milestones for implementing paratransit as a complement to its fixed-route service according to the criteria described in 49 CFR Part 37, subpart F.

GOVERNING DIRECTIVE

49 CFR 37.3 Definitions

Commuter bus service means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

Commuter rail transportation means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

49 CFR 37.25 University transportation systems

- (a) Transportation services operated by private institutions of higher education are subject to the provisions of this part governing private entities not primarily engaged in the business of transporting people.
- (b) Transportation systems operated by public institutions of higher education are subject to the provisions of this part governing public entities. If a public institution of higher education operates a fixed route system, the requirements of this part governing commuter bus service apply to that system.

49 CFR 37.121 Requirement for comparable complementary paratransit service

- (a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

- (b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart. The requirement to comply with §37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.
- (c) Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

49 CFR Part 37 Appendix D Section 37.3 Definitions

The definition of “commuter bus service” is important because the ADA does not require complementary paratransit to be provided with respect to commuter bus service operated by public entities. The rationale that may be inferred for the statutory exemption for this kind of service concerns its typical characteristics (e.g., no attempt to comprehensively cover a service area, limited route structure, limited origins, and destinations, interface with another mode of transportation, limited purposes of travel). These characteristics can be found in some transportation systems other than bus systems oriented toward work trips. For example, bus service that is used as a dedicated connector to commuter or intercity rail service, certain airport shuttles, and university bus systems share many or all of these characteristics. As explained further in the discussion of subpart B, the Department has determined that it is appropriate to cover these services with the requirements applicable to commuter bus systems.

ADA-CPT2. Does the recipient’s paratransit eligibility determination process meet ADA complementary paratransit service requirements?

BASIC REQUIREMENT

ADA complementary paratransit service must be provided to ADA eligible individuals.

APPLICABILITY

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

DETAILED EXPLANATION FOR REVIEWER

Each entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. The entity must process a completed application within 21 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service on the 22nd day until and unless the entity denies the application.

Individuals may be ADA paratransit eligible on the basis of a temporary, conditional or permanent disability. The entity is not required to implement conditional eligibility.

Applicants given conditional or temporary eligibility must be given a written decision conveying the determination and information on the right to an appeal. The written determination denying eligibility and those granting less than unconditional eligibility cannot just state that it has been determined that the applicant can use fixed-route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed-route transit is not sufficient. The reasons must specifically convey the evidence in the matter and relate it to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant cannot be required to submit a written appeal, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that this written notice be filed within 60 days of the denial of a person’s application. The process must include an opportunity to be heard to present information and “separation of authority” between those

hearing the appeal and those that made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.

The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

Eligibility for complementary paratransit is directly related to the functional ability of individuals with disabilities to use fixed-route transit services. Eligibility is not based on a diagnosis or type of disability. Individuals with the same diagnosis or disability can have very different functional abilities to use fixed-route services. Similarly, eligibility is not based on the type of mobility aids that individuals use. Use of a wheelchair does not imply automatic eligibility, for example, since many individuals who use wheelchairs are able to use fixed-route services for many or all of their trips. Nor is ADA paratransit eligibility based on age, income or whether or not individuals can drive or have access to private automobile transportation.

The entity may request basic personal identifying information on its application forms, such as name, date of birth and home address. Collection of other information, such as income or personal vehicle ownership, must be clearly optional; the entity is deficient if it uses such information as a basis for determining paratransit eligibility. A process by which applications collecting such additional information are rejected as "incomplete" is an indication that the information is not optional and has become a part of the eligibility process. Note that entities that have system-wide policies requiring all children under a certain age to travel with an adult (for fixed-route transit as well as complementary paratransit) may apply these policies to eligibility determinations for children.

The entity may note as part of its eligibility process whether or not the applicant travels with a personal care attendant (PCA) but may not establish a process to "approve" travel with a PCA. A PCA is someone designated or employed specifically to help the eligible individual meet his or her personal needs. Those needs may or may not include assistance involving the transportation process; most functions performed by a PCA do not involve travel. The entity may not involve itself in the selection of an individual's PCA nor seek to "approve" persons serving as PCAs. The entity may not require an individual indicating that s/he travels with a PCA to always travel with a PCA, or deny service based on the absence of a PCA for a particular trip or trips. The entity may not require the individual to be accompanied by the same PCA.

INDICATORS OF COMPLIANCE

- a. *Are eligibility decisions made within 21 days of receipt of a complete application? If an application is not processed within 21 days, is presumptive eligibility granted on the 22nd day until and unless the application is denied in writing?*
- b. *Does the recipient give to persons who are denied eligibility or given conditional or temporary eligibility a written notice with specific reasons for the decision?*
- c. *Are applicants notified of the right to an appeal? Do applicants have at least 60 days to appeal? Does the process include an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it? If a decision is not made within 30 days of completing the appeal process, is paratransit service provided until and unless a decision to deny the appeal is issued?*

- d. *Do the eligibility criteria include inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training? For application forms that include such information, will the application be rejected if it is “incomplete”?*

- e. *As part of the eligibility process, does the recipient seek to approve persons serving as PCAs? Does it require individuals who note they travel with a PCA to always travel with a PCA? Does it require a rider’s PCA to provide assistance with boarding, disembarking or the transportation process? Does it require riders using PCAs to always be accompanied by a PCA, or by the same PCA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service. Review information provided to the public that describes the ADA complementary paratransit services and the eligibility process.

Onsite, discuss with the recipient how the application progress is documented, processed, and monitored, and how eligibility determinations are made. Spot check recent application files and the determination letters issued to ensure that the recipient processed them within 21 calendar days and whether notification was timely. If not, determine whether and how applicants are informed that they can schedule and use the ADA paratransit service on the 22nd day until such time that the application is denied.

Review template certification letters. Onsite, review a sample of recent application files and determination letters for denial of eligibility, conditional eligibility, and temporary eligibility. Reasons provided must specifically reference transit-related functional skills. The reasons must specifically convey the evidence in the matter and relate it to the applicant's functional abilities.

Review public information that describes the ADA complementary paratransit services and the eligibility process and template certification letters to determine how applicants are notified of the right to an appeal. Verify that at least 60 days are provided to the applicant to request an appeal. Determine if the notice requires an applicant to submit a written justification prior to the appeal hearing, as this would constitute a prohibited unreasonable administrative burden.

Review appeal procedures to verify that the appeals process provides for separation of functions; that is, separation of authority between any individuals hearing the appeal and any individuals who made the original decision to deny eligibility or grant conditional or temporary eligibility. Verify that the applicant is provided an opportunity to be heard; an applicant may waive the in-person hearing and proceed on the basis of a written presentation. Verify that written appeals are not required (though notification of intent to appeal can be required in writing). Verify that transportation is provided when decisions have not been made within 30 days of completing the appeal process; the recipient is not required to provide ADA complementary paratransit pending the determination of the appeal. Review a sample of appeal files to verify documentation and timely processing and notification.

Review paratransit application form(s) and procedures for inappropriate eligibility factors such as income, ability to drive, vehicle ownership, access to other transportation, the results of travel training, or applicant's address. If application forms or procedures contain such factors, determine if they are used as eligibility criteria or in determining completeness of the form or if applications are rejected if this information is not provided.

Review the paratransit application form(s) for questions regarding PCAs. Review public information that describes the ADA complementary paratransit services and the eligibility process for requirements regarding PCAs.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not grant presumptive eligibility for applications not processed within 21 days of receipt of a complete application.

DEFICIENCY CODE ADA-CPT2-1: Presumptive eligibility deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit a procedure for granting presumptive eligibility for applications not processed within 21 days until and unless the recipient denies the application.

The recipient is deficient if it does not provide the specific reasons for granting less than unconditional eligibility.

DEFICIENCY CODE ADA-CPT2-2: Eligibility letter deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit a procedure for stating the specific reason for granting less than unconditional eligibility and evidence of its implementation.

The recipient is deficient if it does not have an eligibility appeals process. The recipient is deficient if its deadline for filing an appeal is shorter than 60 days. The recipient is deficient if it requires the applicant to submit a written justification prior to the appeal hearing. The recipient is deficient if the appeals process does not provide for an opportunity to be heard, separation of functions or written notification of the decision and the reason for it. The recipient is deficient if it does not provide paratransit service within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

DEFICIENCY CODE ADA-CPT2-3: Eligibility appeals process not properly implemented

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit an eligibility appeals process.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit an eligibility appeals process that provides for at least 60 days to file an appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit an eligibility appeals process that does not require the applicant to submit a written justification prior to the appeal hearing.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit an eligibility appeals process that provides for an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it.

SUGGESTED CORRECTIVE ACTION 5: The recipient must submit an eligibility appeals process that provides the applicant with paratransit service when the appeal decision is not made within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

The recipient is deficient if its eligibility determination considers inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training, or applicant address.

DEFICIENCY CODE ADA-CPT2-4: Eligibility criteria deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit a revised eligibility process that eliminates the inappropriate factors.

The recipient is deficient if its eligibility process includes “approval” of the use of a PCA. The recipient is deficient if it requires individuals who note that they travel with a PCA to always travel with a PCA. The recipient is deficient if it requires a rider’s PCA to provide assistance with boarding, disembarking or with the transportation process. A recipient is deficient if it requires riders using PCAs to always be accompanied by the same PCA.

DEFICIENCY CODE ADA-CPT2-5: Personal care attendant deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit revised eligibility procedures that do not purport to “approve” the use of a PCA, only record whether or not the rider travels with a PCA.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit revised eligibility procedures that do not condition the accommodation of an eligible rider’s PCA upon the eligible rider always traveling with a PCA.

SUGGESTIVE CORRECTIVE ACTION 3: The recipient must submit revised eligibility procedures that do not condition the accommodation of a PCA upon the PCA providing assistance with boarding, disembarking, or the travel process.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit revised eligibility procedures that do not condition the accommodation of a PCA upon the applicant always traveling with the same PCA.

GOVERNING DIRECTIVE

49 CFR 37.125 ADA paratransit eligibility: Process

Each public entity required to provide complementary paratransit service by §37.121 of this part shall establish a process for determining ADA paratransit eligibility.

- (c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.
- (d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.
- (g) 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.
 - (3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

- (i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR9

Transit systems are free to suspend in-person assessments and use a remote or paper process for eligibility determinations. The DOT ADA regulations at 49 CFR 37.125 do not require in-person assessments for paratransit eligibility, and in fact do not specify how the eligibility process should work. Because a paper or virtual process is not typically as effective in assessing functional ability accurately, a transit system also may decide to be overly broad in who they find eligible, and then reassess during regular recertification sometime in the future. Note that because applicants would be presumptively eligible after 21 days under 49 CFR 37.125(c) if their applications are not processed, a transit system may wish preemptively to offer presumptive eligibility for the duration of the COVID-19 public health emergency, subject to reevaluation once the public health emergency ends. Complete suspension of the eligibility process is not permitted, because 49 CFR 37.131(f)(2) specifically prohibits the use of wait lists to access the service.

ADA-CPT3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?

BASIC REQUIREMENT

ADA complementary paratransit service must be provided to out-of-town visitors.

APPLICABILITY

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

DETAILED EXPLANATION FOR REVIEWER

Paratransit service must be provided to visitors on the same basis as it is provided to local residents. "On the same basis" means under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either. Complementary paratransit service must be provided to visitors if:

1. The visitor can present documentation from his or her "home" jurisdiction's ADA complementary paratransit system that he or she is eligible. The local provider will give "full faith and credit" to the identification card or other documentation issued by the other entity.
2. The visitor can present, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional) and, if required by the local provider, proof of visitor status (i.e., proof of residence somewhere else). Once the documentation is presented, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed-route transit system, that is, the local provider cannot require functional testing.

Determining whether a visitor is entitled to service should be a fairly simple and quick process enabling the visitor to contact the host agency to learn what is required to obtain service and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described above, entities are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. The Federal Transit Administration (FTA) envisions this as a process that can often be completed the same day or no more than one day later.

The entity is required to provide service for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during that 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

INDICATORS OF COMPLIANCE

- a. *Does the recipient accept documentation of eligibility from the visitor issued to the visitor by the visitor's home jurisdiction?*
- b. *Does the recipient provide service to visitors whose disability is apparent or who provide documentation of disability?*
- c. *Does the recipient provide service to visitors for at least 21 days within a 365-day period?*
- d. *Does the recipient process visitors' service requests within the same day or not more than one day later?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service for visitors. Review information provided to the public that describes the ADA complementary paratransit services and the process for providing service to visitors to determine whether the recipient:

- Accepts documentation of eligibility provided by the visitor from the visitor's home jurisdiction
- Provides service to persons who provide documentation of disability
- Provides service to visitors who seek service in person and whose disability is apparent without requesting additional information beyond proof of residency
- Processes requests for service from visitors within the same day or not more than one day later

Onsite, discuss with the recipient how paratransit service is provided to visitors. Agencies are expected to accept this documentation directly from the individual and not require that the documentation be provided directly from the individual's home transit agency. The recipient may request documentation of residency.

Evaluate whether the recipient provides any combination of 21 days of service during a 365-day period beginning with the visitor's first use of the service, rather than a continuous 21-day period commencing from the first use. The recipient may require the visitor to apply for eligibility to receive additional service beyond the 21 days. Onsite, discuss with the recipient how many days of service is provided to visitors.

Discuss with the recipient how long it takes to process requests for service from visitors. Sample the files for requests received in the past year.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not accept documentation of eligibility issued by the visitor's home jurisdiction.

DEFICIENCY CODE ADA-CPT3-1: Home jurisdiction eligibility documentation not accepted or not accepted directly from the visitor