

Disability Civil Rights; ADA/Sec.504 and Olmstead

Provided by



Independent Living Center of Southern California, Inc.

A non-profit agency for persons with disabilities since 1976

Presenter
Kurt Baldwin

Training Objectives

to gain understanding in the basics of

- interacting with people with disabilities
- providing meaningful access to medical services for people with disabilities
- the laws and regulations that frame our conduct in providing medical services for people with disabilities
- historical context

Overview

- Independent Living
- Americans with Disabilities Act Requirements for Architectural Access
 - Route of travel (from Public Transit)
 - Facility Access
- Integration Mandate of Title II of the Americans with Disabilities Act
- Reasonable Modification of Policies
- Effective Communication/Auxiliary Aids and Services
- Access to Medical Services
- Disability Etiquette.

Independent Living, Accessibility, and Accommodation

Independent Living

- self-determination and
- equal opportunities.

Independent Living Center of Southern California

- We are;
 - Consumer controlled, private non-profit
 - One of the first Centers established by California in 1976
 - Independent Living Centers are now in every State and Territory in the U.S. and in most Countries
 - Serving a large geographic area including; Glendale, Burbank, the San Fernando Valley, and Santa Clarita; Northern Los Angeles County, including the Antelope Valley

Why Civil Rights

Benign Neglect, Discomfort, Pity, and Patronizing Behavior

- 50s and 60s,
 - Polio, War Veterans with Disabilities
 - First accessible design standards A1117.1 (advisory)
- 70s and 80s,
 - ABA/UFAS and Section 504 of the Rehabilitation Act
 - By the close of the 80s almost 9 million residents of Los Angeles County
- 90s and 2000s
 - Americans with Disabilities Act, Fair Housing Amendments Act

Types of barriers encountered by people with disabilities today

- **Architectural**

- how builders apply standards, readily achievable barrier removal in existing buildings, maintenance of access, i.e. sidewalks and curbcuts

- **Transportation**

- Bus and bus stop accessibility issues, Parking, Access Services; service area, long trips, eligibility, timeliness, and making reservations

- **Communication**

- ASL Interpreters, alternate format materials

- **Accommodations (flexibility in rules)**

- Service Animals, Appointment Time

- **Attitudinal**

- Assumptions and stereotypes

CMS recognizes that successful person-centered care requires;

- Physical access to buildings, services, and equipment
- Flexibility in scheduling and processes.
- Access to contracted providers that demonstrate their commitment and ability to accommodate the physical access and flexible scheduling needs of their enrollees.

Definition of Disability and Direct Threat

- Three Pronged Definition
 - Physical or Mental Impairment that Substantially Limits a Major Life Activity or Major Bodily Function
 - Record of Disability
 - Regarded as a Person with a Disability
- Direct Threat
 - may exclude an individual, if that individual poses a direct threat to the health or safety of others that cannot be mitigated by appropriate modifications in the public accommodation's policies or procedures, or by the provision of auxiliary aids.
- Regulation of Smoking is allowed

Architectural Accessibility

- Route of travel from Public Transit
- Facility Access “from the boundary of the site”
 - Floor or Ground Surfaces
 - Changes in Level
 - Turning Space
 - Clear Floor or Ground Space
 - Knee and Toe Clearance
 - Protruding Objects
 - Reach Ranges
 - Operable Parts

Architectural Accessibility

- Additional Scoping requirements for specific uses i.e. restrooms, doors reception counters etc.
- New Construction/Existing Facilities.
 - Title III Readily Achievable Barrier Removal in Existing Facilities.
 - Alternate Accessible entrances

Additional ADA and Section 504 Requirements

- Title II/Sec 504: ...when viewed in its entirety, the program is readily accessible to and usable by people with disabilities
- Designation of responsible employee.
- Adoption of grievance procedures

About Olmstead and the ADA Most Integrated Setting Mandate

- Lois Curtis and Elaine Wilson, who had mental illness and developmental disabilities, were being housed in the State-run Georgia Regional Hospital for several years following their initial medical treatment and statements from mental health professionals that both were ready to move to community based services.

Curtis and Wilson filed suit under the Americans with Disabilities Act (ADA) for release from the hospital.

Tommy Olmstead, Commissioner, Georgia Department of Human Resources argued the hospital needed to be full to be economically efficient, providing community based services would “fundamentally alter” the State’s activity and that the State was already using all available funds to provide services to other persons with disabilities.

June 22, 1999,

- The United States Supreme Court held that unjustified segregation of persons with disabilities constitutes discrimination in violation of the Americans with Disabilities Act.
- The Court held that public entities must provide community-based services to persons with disabilities when
 - Such services are appropriate;
 - The affected persons do not oppose community-based treatment; and
 - Community-based services are a reasonable accommodation

The Supreme Court explained that its holding "reflects two evident judgments."

- "Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life."
- "Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

Olmstead affirms that the ADA/sec. 504 require;

- That programs, and activities are delivered in the most integrated setting appropriate to the needs of people with disabilities
- Most integrated means people with disabilities will interact with nondisabled persons to the fullest extent possible
- Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the ADA.

Olmstead affirms that the ADA/sec. 504 require;

- Programs may not be provided through separate or different, unless the separate programs are necessary so the program is equally effective for people with disabilities.
- Even when separate programs are available, people with disabilities still have the right to choose to participate in the regular program.
- A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that;
 - have the effect of discrimination against people with disabilities or
 - have the purpose or effect of defeating or substantially impairing the objectives of the program being delivered to people with disabilities

Flexibility in scheduling and processes.

Reasonable Modification in Policies

- Must make modifications in policies unless:
 - Modification would fundamentally alter nature of activities or services

Types of Reasonable Modifications

- Appointment time
- Reminders
- Allowing PCA in Exam Room
- Service Animals

CMS also requires effective communication including;

- Providing interpreters for those who are deaf or hard of hearing and
- Accommodations for members with cognitive limitations, and
- Interpreters for those who do not speak English.

Effective Communication

- Communicating with people with disabilities must be as effective as communicating with others
- Auxiliary aids and services must be provided unless it would result in a fundamental alteration or undue financial and administrative burdens

Effective Communication

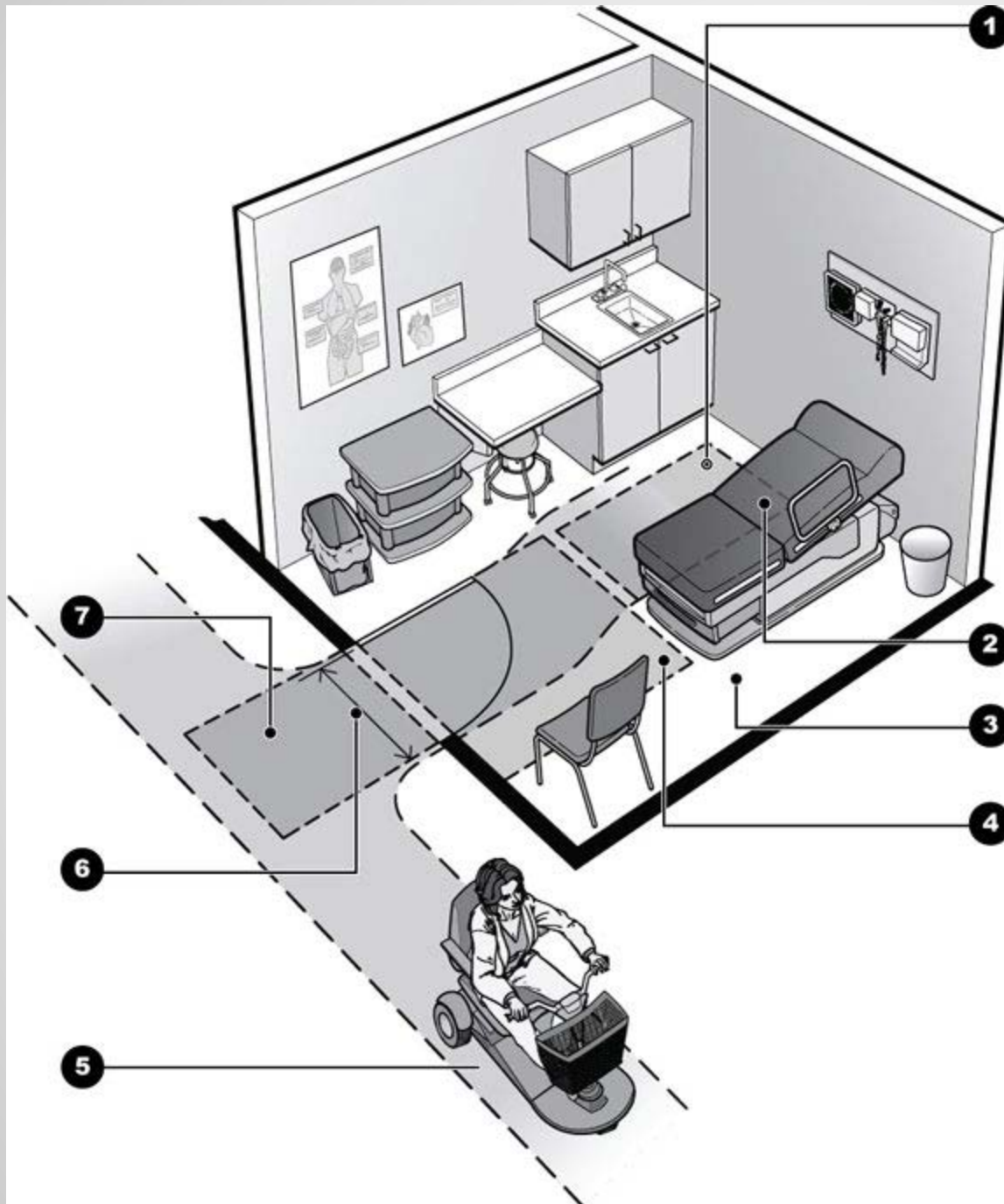
- Procedure for claiming Fundamental Alteration or undue financial and administrative burdens:
 - Decision must be made by high official with budgetary authority after considering all the resources available for use
 - Decision must be documented in writing with the reasons for reaching that conclusion.
 - And take any other action that would not result in fundamental alteration or undue financial and administrative burdens but would nevertheless ensure that, to the maximum extent possible persons with disabilities receive the benefits and services of the program or activity.

Types of Auxiliary Aids and Services

Qualified interpreters, Assistive listening systems, Decoders Open and closed captioning, TTY's, etc. Qualified readers, Audio recordings, Braille materials, Large print materials, Materials on computer disk, etc. Speech synthesizers, Computer terminals, Communication boards, etc. Acquisition or modification of equipment or devices

Access to Medical Services

- ADA and Section 504 require full and equal access to health care services and facilities

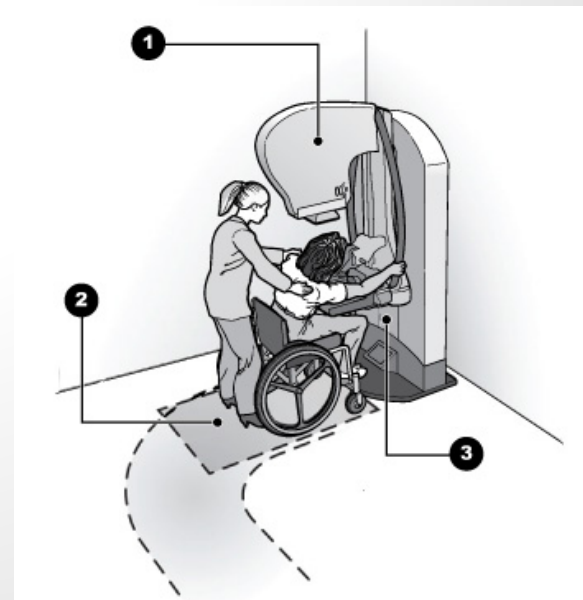
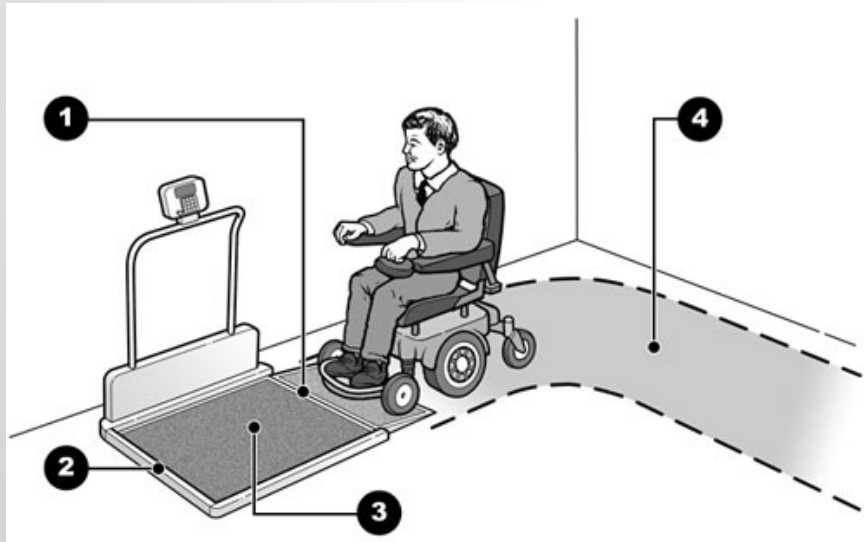
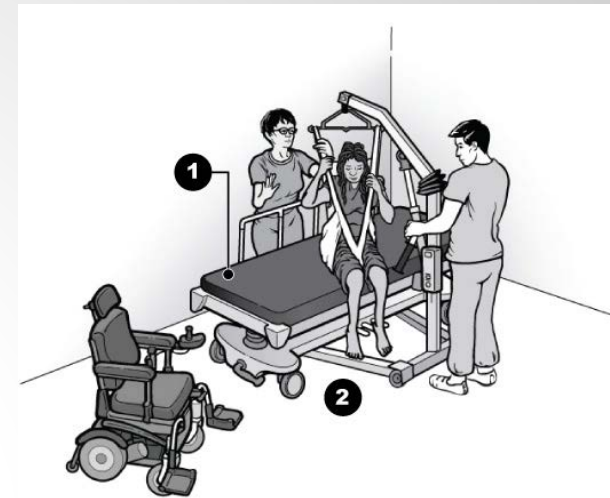
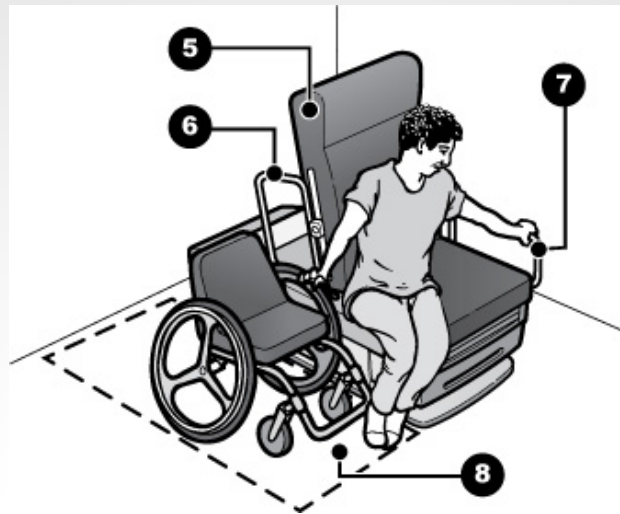


1. A clear floor space, 30" X 48" minimum, adjacent to the exam table and adjoining accessible route make it possible to do a side transfer.
2. Adjustable height accessible exam table lowers for transfers.
3. Providing space between table and wall allows staff to assist with patient transfers and positioning. When additional space is provided, transfers may be made from both sides.
4. Amount of floor space needed beside and at end of exam table will vary depending on method of patient transfer and lift equipment size.
5. Accessible route connects to other accessible public and common use spaces.
6. Accessible entry door has 32" minimum clear opening width with door open 90 degrees.
7. Maneuvering clearances are needed at the door to the room.

Note: Additional clear floor space can be provided by moving or relocating chairs, trash cans, carts, and other items.

The Rehabilitation Act: Section 510

- The Affordable Care Act amend the Rehabilitation Act to address access to medical diagnostic equipment, including
 - examination tables and chairs,
 - weight scales,
 - x-ray machines and other radiological equipment,
 - mammography equipment



The Rehabilitation Act: Section 510

- The MDE standards establish minimum technical criteria that will allow patients with disabilities independent entry to, use of, and exit from medical diagnostic equipment to the maximum extent possible.
- Section 510 does not authorize the Access Board to issue scoping provisions for medical diagnostic equipment.

Attitudes and Language

- The First Rule is to Always Use “Person” First – with Descriptors After
- Placing the name of the disability before the term "person" or "people", focuses on the disability which takes away from the humanity of the person.
- Use Person First Language:
 - to avoid perceived and subconscious dehumanization,
 - to internalize the idea of a disability as a secondary attribute, not a characteristic of a person's identity

Actions

<https://www.unitedspinal.org/disability-etiquette/>

- Always speak directly to the person with a disability, not to his companion, aide or sign language interpreter.
- Don't make assumptions or decisions about someone's ability to participate in any activity, ask the person.
- Respond graciously to requests for assistance. When people who have a disability ask for an accommodation, it is not a complaint.

Actions

- **Be sensitive about physical contact**
 - Avoid patting a person on the head or touching his wheelchair, scooter or cane. People with disabilities consider their equipment part of their personal space.
 - You should not push or touch a person's wheelchair; unless asked to do so
 - Don't lean over someone in a wheelchair to shake another person's hand or ask a wheelchair user to hold coats.

Actions

- Ask before you help
 - People who use canes or crutches need their arms to balance themselves, so never grab them. People who have limited mobility may lean on a door for support as they open it. Pushing the door open from behind or unexpectedly opening the door may cause them to fall. Even pulling out or pushing in a chair may present a problem. Always ask before offering help.
- When talking with a person in a wheelchair or scooter for more than a few minutes, sit in a chair whenever possible

Action

- Identify yourself before you make physical contact with a person who is blind.
 - Tell him your name and your role if it's appropriate, such as security guard, usher, case worker, receptionist or fellow student.
 - And be sure to introduce him to others who are in the group, so that he's not excluded.
 - If you have changed your facility (i.e., rearranged the furniture) notify people who are blind of the changes
 - People who are blind need their arms for balance, so offer your arm—don't take his—if he needs to be guided. (It is however appropriate to guide a blind person's hand to a banister or the back of a chair to help direct him to a stairway or a seat.)

Action

- People who are deaf rely on ASL to communicate and may or may not understand the English language. The majority of late deafened adults however do not communicate with sign language, and do use English.
- For people with speech impairments give the person your full attention. Don't interrupt or finish the person's sentences. If you have trouble understanding, don't pretend to understand. Just ask him to repeat.
- For people with intellectual disabilities speak in clear sentences, using simple words and concrete—rather than abstract—concepts. Help her understand a complex idea by breaking it down into smaller parts.
 - Don't use baby talk or talk down to people who have developmental disabilities. Remember that the person is an adult and, unless you are informed otherwise, can make their own decisions.

Action

- People with psychiatric disabilities may at times have difficulty coping with the tasks and interactions of daily life. Most people with psychiatric disabilities are not violent. One of the main obstacles face is the attitudes that people have about them.
- Relax. Don't be embarrassed if you happen to use accepted common expressions such as "See you later" or "Got to be running along" that seem to relate to the person's disability.

Resources

Access To Medical Care For Individuals With Mobility Disabilities

http://www.ada.gov/medicare_mobility_ta/medcare_ta.htm

Checklist for Readily Achievable Barrier Removal

<http://www.adachecklist.org/checklist.html>

Section 510 recommendations

<http://www.access-board.gov/guidelines-and-standards/health-care/about-this-rulemaking/advisory-committee-final-report/5-recommendations>

Disability Etiquette Handbook

<https://www.unitedspinal.org/disability-etiquette/>

Physician Tool Kit

http://www.calduals.org/wp-content/uploads/2016/08/PhysicianToolkit_82216.pdf