

# CRS Report for Congress

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## The Americans with Disabilities Act and Emergency Preparedness and Response

Nancy Lee Jones  
Legislative Attorney  
American Law Division

### Summary

The Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq., provides broad nondiscrimination protection for individuals with disabilities in employment, public services, and public accommodations and services operated by private entities. Although the ADA does not include provisions specifically discussing its application to disasters such as Hurricane Katrina, its nondiscrimination provisions are applicable to emergency preparedness and responses to disasters. For example, this would mean that emergency planning should include individuals with disabilities and that emergency shelters should be accessible to individuals with disabilities. In order to further the goals of the ADA, President Bush issued an Executive Order on July 22, 2004 relating to emergency preparedness for individuals with disabilities and establishing the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities. The Department of Homeland Security (DHS) issued its Nationwide Plan Review Phase 2 Report, which includes a discussion of people with disabilities and emergency planning and readiness. The National Council on Disability has also issued recommendations on emergency preparation and disaster relief relating to individuals with disabilities. Legislation has also been introduced to address the needs of individuals with disabilities in emergency planning and relief. This CRS report will be updated as appropriate.

### The Americans with Disabilities Act

**Statutory Language.** The ADA has as its purpose “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”<sup>1</sup> Interest in emergency preparedness, including how to assist individuals with disabilities during emergencies, has increased as a result of the terrorist attacks of September 11, 2001; the devastation caused by Hurricanes Katrina, Rita, and

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<sup>1</sup> 42 U.S.C. §12101(b)(1). For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Nancy Lee Jones.

Wilma; and the specter of pandemic influenza.<sup>2</sup> Although the ADA does not specifically mention disasters, its provisions are broad and would provide nondiscrimination protection.

The definitions in the ADA, particularly the definition of “disability,” are the starting point for an analysis of rights provided by the law. The term “disability,” with respect to an individual, is defined as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”<sup>3</sup> This definition has been the subject of numerous cases brought under the ADA, including major Supreme Court decisions that have limited its scope.<sup>4</sup>

Title I of the ADA provides that no covered entity shall discriminate against a qualified individual with a disability because of the disability in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; and other terms, conditions, and privileges of employment.<sup>5</sup> Title II of the ADA provides that no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.<sup>6</sup> “Public entity” is defined as state and local governments, any department or other instrumentality of a state or local government, and certain transportation authorities. Thus, emergency services operated by a state or local government cannot discriminate against individuals with disabilities. Title III provides that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.<sup>7</sup> Entities that are covered by the term “public accommodation” are listed in the statute and include, among others, hotels, restaurants, theaters, auditoriums, laundromats, museums, parks, zoos, private schools, day care centers, professional offices of health-care providers, and gymnasiums.<sup>8</sup>

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<sup>2</sup> For a general discussion of disaster related issues, see CRS Report RS22235, *Disaster Evacuation and Displacement Policy: Issues for Congress*, by Keith Bea. Although it is beyond the scope of this report to discuss financial assistance provided to individuals with disabilities, it should be noted that P.L. 109-82, the Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005, provides for certain reallocations of grants under the Rehabilitation Act of 1973 to assist individuals with disabilities affected by these disasters. In addition, some funds have been made available under the Older Americans Act. See CRS Report RS22252, *Older Americans Act: Disaster Assistance for Older Persons After Hurricane Katrina*, by Carol O’Shaughnessy.

<sup>3</sup> 42 U.S.C. § 12102(2).

<sup>4</sup> For a more detailed discussion of the definition, see CRS Report RL33304, *The Americans with Disabilities Act (ADA): The Definition of Disability*, by Nancy Lee Jones.

<sup>5</sup> 42 U.S.C. §12112(a).

<sup>6</sup> 42 U.S.C. §§12131-12133.

<sup>7</sup> 42 U.S.C. §12182.

<sup>8</sup> 42 U.S.C. §12181.

**Department of Justice Guide.** The Department of Justice has observed that “one of the most important roles of local government is to protect their citizenry from harm, including helping people prepare for and respond to emergencies. Making local government emergency preparedness and response programs accessible to people with disabilities is critical part of this responsibility. Making these programs accessible is also required by the ADA.”<sup>9</sup>

The Department of Justice has issued an ADA guide for local governments regarding making community emergency preparedness and response programs accessible to people with disabilities.<sup>10</sup> This guide provides action steps for

- planning for emergencies (solicit and incorporate input from people with different types of disabilities);
- notification for individuals with disabilities when there is an emergency (provide ways to inform people who are deaf or hard of hearing of an impending disaster);
- evacuation of individuals with disabilities (adopt policies to ensure community evacuation plans enable individuals with disabilities to safely self-evacuate or to be evacuated);
- sheltering of individuals with disabilities (survey shelters and remove barriers, invite representatives of group homes and other individuals with disabilities to meet regarding shelter planning, adopt procedures to ensure individuals with disabilities are not separated from their service animals, ensure that a reasonable number of emergency shelter have back-up generators and a way to keep medications refrigerated, and adopt procedures to provide accessible communication for people who are deaf or hard of hearing); and
- issues involved in returning individuals with disabilities to their homes (arrange for accessible housing if housing or ramps have been destroyed).

**FEMA Guidance.** Title III of the ADA prohibits discrimination against individuals with disabilities in public accommodations. This prohibition in part requires that physical facilities be accessible if they are newly constructed or altered in a manner that affects the usability of the facility.<sup>11</sup> Any public accommodations that are rebuilt or significantly altered as a result of damage during a disaster must comply with the ADA’s requirements for accessibility. Similarly, facilities that are rebuilt by states and localities (covered by Title II of the ADA) must also comply with the ADA’s requirements for accessibility.<sup>12</sup>

The Federal Emergency Management Agency (FEMA) issued guidance on October 26, 2000, for determining the eligibility of costs for federally required ADA access

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<sup>9</sup> See [<http://www.usdoj.gov/crt/ada/emergencyprep.htm>]. This requirement would be under Title II of the ADA, which covers state and local governments.

<sup>10</sup> *Id.*

<sup>11</sup> 42 U.S.C. §12183; 28 C.F.R. §§36-401 — 36.407.

<sup>12</sup> 42 U.S.C. §12132; 28 C.F.R. §§35.149 — 35.151.

compliance associated with Public Assistance (PA) grants.<sup>13</sup> The PA program authorizes FEMA to fund the cost of repairing or replacing a public or private nonprofit facility. The ADA guidance provides that a new facility receiving FEMA funding and constructed as a replacement facility must be designed and constructed to be readily accessible to and usable by individuals with disabilities. Similarly, when ADA-relevant repairs are made to any area of an existing facility, they must be done to meet the needs of individuals with disabilities. FEMA will fund compliance with “reasonable ADA requirements in a new facility” and fund ADA relevant repairs to existing facilities with certain limitations. For example, funding for providing an accessible path of travel to a repaired area may not exceed 20% of the total cost associated with the repair of the primary function area. It should also be noted that some states and localities have imposed additional accessibility standards. FEMA notes that costs of additional state and local requirements may be eligible on a case-by-case basis if they are found reasonable.

## **Nationwide Plan Review Phase 2 Report**

The Conference Report on the DHS Appropriations Act of 2006 directed the Secretary of DHS to report on the status of catastrophic planning in all 50 states and the nation’s 75 largest urban areas.<sup>14</sup> DHS issued its report on June 16, 2006, and included a section on “special needs” populations, defined as including individuals with disabilities. The report concluded that although progress was being made, “substantial improvement is necessary to integrate people with disabilities in emergency planning and readiness.”<sup>15</sup> The report found that few plans recognized the legal obligations imposed by the ADA. Specific problems were identified regarding evacuation and transportation, communication and emergency public information, and sheltering and health services.<sup>16</sup>

## **Executive Order 13347**

President Bush issued an executive order on July 22, 2004, entitled “Individuals with Disabilities in Emergency Preparedness.”<sup>17</sup> This executive order states that its policy is “to ensure that the Federal Government appropriately supports safety and security for individuals with disabilities in situations involving disasters, including earthquakes, tornadoes, fires, floods, hurricanes, and acts of terrorism...” Federal agencies are to consider the needs of individuals with disabilities in their emergency plans; to encourage this consideration in state, local, and tribal governments and private organization emergency planning; and to facilitate cooperation among federal, state, local, and tribal

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<sup>13</sup> See [[http://www.fema.gov/government/grant/pa/9525\\_5.shtm](http://www.fema.gov/government/grant/pa/9525_5.shtm)].

<sup>14</sup> H.Conf. Rept. 109-241, 109<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2005). In a speech from New Orleans on September 15, 2005, President Bush ordered DHS to undertake a review of emergency plans in every major U.S. city.

<sup>15</sup> U.S. Department of Homeland Security, *Nationwide Plan Review Phase 2 Report* 41 (June 16, 2006).

<sup>16</sup> *Id.* at 46-47.

<sup>17</sup> See [<http://www.whitehouse.gov/news/releases/2004/07/20040722-10.html>]. In his statement on the 14<sup>th</sup> anniversary of the ADA in 2004, President Bush noted this executive order as one of the ways the administration had worked to foster the goals of the ADA. See [<http://www.whitehouse.gov/news/releases/2004/07/20040726-5.html>].

governments and private organizations. The Executive Order also established the Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities (ICC) within the Department of Homeland Security, which coordinates the implementation of the policies and submits an annual report. The annual report for 2005<sup>18</sup> noted several highlights from the ICC's work, including the creation of a disability preparedness resources center website,<sup>19</sup> new guidance on the ADA's requirements, workplace emergency preparedness guidelines for federal emergency planners, and an emergency transportation website.<sup>20</sup> The Emergency Preparedness in the Workplace Subcommittee of the ICC issued a report that provides guidelines for emergency plans for federal agencies. This report is meant to serve as a starting point for federal agencies as they reevaluate and strengthen their Occupant Emergency Plans (OEPs).<sup>21</sup>

## National Council on Disability

The National Council on Disability (NCD), an independent federal agency responsible for gathering information on the development and implementation of federal laws, policies, programs, and initiatives that affect individuals with disabilities, issued a report on emergency preparation and disaster relief relating to individuals with disabilities.<sup>22</sup> This report provides recommendations of what the federal government should do to “build a solid and resilient infrastructure that will enable the government to include the diverse populations of people with disabilities in emergency preparedness, disaster relief, and homeland security programs.” The primary focus of the report is on the work of the Directorate of Emergency Preparedness and Response (which includes FEMA)<sup>23</sup> and the Office for Civil Rights and Civil Liberties (CRCL) both in the Department of Homeland Security, and the work of the Federal Communications Commission (FCC). It also includes a discussion of the experiences of individuals with disabilities with disasters, and the role of community-based organizations. The report makes several recommendations, including the following:

- CRCL should regularly issue guidance for state and local emergency planning departments to reinforce their legal obligations to comply with the ADA;
- CRCL should conduct compliance reviews to identify weaknesses and problems in complying with the ADA; and

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<sup>18</sup> See [[http://www.dhs.gov/interweb/assetlibrary/CRCL\\_IWDEP\\_AnnualReport\\_2005.txt](http://www.dhs.gov/interweb/assetlibrary/CRCL_IWDEP_AnnualReport_2005.txt)].

<sup>19</sup> See [<http://www.dhs.gov/disabilitypreparedness>].

<sup>20</sup> See [<http://www.dotcr.ost.dot.gov/asp/emergencyprep.asp>].

<sup>21</sup> Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities, Subcommittee on Emergency Preparedness in the Workplace, *A Framework of Emergency Preparedness Guidelines for Federal Agencies*, at [<http://www.dol.gov/odep/pubs/ep/preparing.htm>]. It should be noted that the ADA does not cover the executive branch or the U.S. Postal Service; these entities are covered by section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

<sup>22</sup> See [[http://www.ncd.gov/newsroom/publications/2005/saving\\_lives.htm](http://www.ncd.gov/newsroom/publications/2005/saving_lives.htm)].

<sup>23</sup> For a detailed discussion of this directorate, see CRS Report RL33064, *Organization and Mission of the Emergency Preparedness and Response Directorate: Issues and Options for the 109<sup>th</sup> Congress*, by Keith Bea.

- the Department of Homeland Security should develop and offer technical assistance and guidance materials for grantees about their ADA and section 504 legal obligations and compliance strategies.<sup>24</sup>

The Congressional Bipartisan Disabilities Caucus, the National Council on Disabilities, and the National Organization on Disability, among others, held a congressional briefing on November 10, 2005, entitled “Emergency Management and People with Disabilities: Before, During and After.” This briefing included discussions of responsibilities for emergency management, disaster planning, and rebuilding as well as other issues.<sup>25</sup>

## Proposed Legislation

Several legislative proposals have been designed to address the needs of individuals with disabilities in emergency planning and relief efforts. The most detailed of these proposals are S. 2124, 109<sup>th</sup> Cong., which was introduced by Senator Harkin, and its companion bill, H.R. 4704, 109<sup>th</sup> Cong., introduced by Representatives Langevin, Weldon and Ramstad. These bills would amend the Homeland Security Act, 6 U.S.C. §316, to create the position of disability coordinator, whose responsibilities would include working with state, local, and federal government authorities regarding the needs of individuals with disabilities in emergency planning requirements and relief efforts. S. 2124 and H.R. 4704 also would amend the Stafford Act, 42 U.S.C §§5174 and 5122, to require accessible temporary housing and to create incentives to increase the accessibility of replacement housing. In addition, the bills would require a Government Accountability Office (GAO) study on the extent to which emergency shelters are accessible to individuals with disabilities.

Senator Obama introduced S. 1685, which would require the Department of Homeland Security to ensure that each state provide detailed and comprehensive information regarding its pre- and postdisaster plans for evacuating individuals with special needs, including individuals with disabilities.<sup>26</sup> This information would include plans for the provision of food, water, and shelter.

H.R. 3815, introduced by Representative Thompson, would amend the Homeland Security Act, 6 U.S.C. §317, to require coordination with state, local, and federal governments in preparing or improving community evacuation plans, especially those for individuals with special needs. The bill would also encourage individuals to establish personal plans.

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<sup>24</sup> The NCD has also issued a report specifically addressing the needs of individuals with mental disabilities. See “The Needs of People with Psychiatric Disabilities During and After Hurricanes Katrina and Rita: Position Paper and Recommendations,” [<http://www.ncd.gov/newsroom/publications/2006/peopleneeds.htm>]

<sup>25</sup> For a transcript of this briefing, see [[http://www.ncd.gov/newsroom/publications/2005/transcript\\_emergencymgt.htm](http://www.ncd.gov/newsroom/publications/2005/transcript_emergencymgt.htm)].

<sup>26</sup> For a more detailed discussion of evacuation issues, see CRS Report RS22235, *Disaster Evacuation and Displacement Policy: Issues for Congress*, by Keith Bea.