



How to Apply the American's with Disabilities Act – John Caden, SR Smith LLC Presentation from the 2011 World Aquatic Health™ Conference

The signing of the American's with Disabilities Act in 1990 has affected different people in different ways. To be sure, the law created new opportunities for people with disabilities, removing the architectural and social barriers that have prevented them from enjoying the same privileges of living in the United States as able-bodied citizens. For owners and managers of facilities that are regulated by the ADA, enacting this law has created a host of challenges in both interpreting and implementing these regulations. Architects, designers, and engineers have had to reshape their visions and begin to embrace a new concept called universal design.

In addition, this legislation has spawned a new type of disability advocate, the professional plaintiff. Armed with tape measures, inclinometers, and a set of ADA regulations, this group has promoted a barrier-free society through instigating litigation and lodging complaints. Last year, the Department of Justice published a revision to the original ADA regulations. This revision clarified a number of ambiguities and modified some of those initial regulations. In addition, this revision addressed a number of elements that were omitted in the 1991 regulations, including aquatic facilities.

The purpose of this presentation is to help aquatics professionals to plan for and implement a strategy that will help them meet these new requirements. This type of proactivity will hopefully remove any anxiety associated with ADA compliance and also insulate facilities against exposure from any punitive remedies that may result from complaints instigated by these professional plaintiffs.

Brief History of ADA Regulations

The Americans with Disabilities act was signed into law on July 26, 1990. The roots of this legislation actually extend back to the 1960's when non-discrimination laws were initially passed that affected race and gender. The challenge with eliminating discrimination against people with disabilities is that much of this discrimination is in the form of physical barriers that prevent a person from gaining access to a place, so they can be discriminated against.

The problem was trying to identify and remove the physical barriers that would create the discrimination. If there was a physical barrier for the place, the person wouldn't even have the opportunity to get discriminated against. If they couldn't get into a building, they couldn't apply for a job. If they couldn't get into a store, they couldn't be discriminated against by not being able to be admitted there.

The monumental task of trying to decide how to do this was given to a government department called the US Access Board. The access board is comprised of engineers, architects, and designers and they came up with what "accessibility" actually means. They determine how wide doorways have to be, how steep a slope has to be, what number of parking places in a parking lot have to be accessible, and the percentage of hotel rooms that have to be accessible. The access board passed along their guidelines to the Department of Justice around 1990 and these guidelines became the regulations that were issued in 1991. The 1991 regulations introduced things like curb cuts, handicap parking places, accessible hotel rooms, etc.

Somewhere in the mid-90's, the access board began to work on revisions to the 1991 guidelines. They began to consider other areas, which included access requirements for swimming pools. In September 2003, the access board published the Americans with Disabilities Act accessibility guidelines for swimming pools. This document is commonly referred to as ADAG 2004. When they originally released it, these guidelines were just that, guidelines. The idea was that eventually they would become regulations but they wanted to get this information on the street so that designers and architects could start

building to these standards. The revision to the ADA was signed into law July 26, 2010, which, coincidentally was the 20th anniversary of the original ADA law. They were published in the federal register on September 15, 2010 and that's actually the trigger point for implementation. The regulations went into effect on March 15, 2011 and full compliance will be required by March 15, 2012.

Who Does the ADA Regulations Affect?

- The ADA regulations are divided into a number of sections or titles.
- Title I refers to discrimination in the workplace.
- Title II and Title III are relevant to our industry.
- Title II lists the requirements for local and state government facilities. This includes things like park & recreation departments and public schools. The federal government is exempt from the ADA. Federal government facilities are regulated by the Rehabilitation Act of 1973.
- Title III facilities are privately-owned public accommodations. These include facilities such as hotels, community centers, and private pools.

Who Does the ADA Regulations Not Affect?

Facilities that are not governed by the ADA include places like private homes, apartments, condominiums, HOAs, and private clubs. The rule of thumb for these types of facilities is that if they restrict the use of their facility to members or owners and their guests, then they are exempt from the ADA. However, if any of these facilities ever provide public accommodation, then they would lose that exemption. For example, if an apartment complex sold memberships to the pool to people who live outside of the apartment complex, they would then fall under the purview of ADA. If a condominium operated as a hotel, it would be considered to be a hotel and would fall under the purview of ADA. Homeowners associations are exempt as long as they restrict use of their pools to homeowners that live in that community and their guests. If they host swim meets, for example, to outside subdivisions or other HOAs, then they would fall under the ADA jurisdiction. If a private club rents its facility for private outings to outside organizations, it would fall under ADA requirements.

How Do We Make Pools Accessible?

- Pool Lifts - Swimming pool lifts are mechanical devices that provide access to a pool. Pool lifts can be fixed or portable, battery-powered or pressure-powered, but they do give the most economical and easiest way to retrofit a pool for accessibility.
- Sloped Entries - Sloped entries are similar to ramps that are used on dry land. They are expensive to install but virtually maintenance-free once they are in place.
- Transfer Walls - Transfer walls, or low walls, allow a user to transfer from a wheelchair onto the top of the wall and then rotate and pivot into the water. You see transfer walls being used quite a bit with spas.
- Accessible Stairs - Accessible stairs provide assisted pool entry for someone who is entering the pool from a standing position. These types of stairs have railings on both sides to provide support as the individual enters and exits the pool.
- Transfer Systems - Transfer systems are a combination of a transfer wall and accessible stairs. A person transfers from a wheelchair to the top platform and then transfers either up or down the steps to get in and out of the pool. Obviously, transfer systems require strong transfer skills.

The size and type of pool determines how many means of access are required. For large swimming pools with an outside perimeter of 300 linear feet or more, two means of access are required. One of those means of access must be either a swimming pool lift or sloped entry. These are considered primary means of access for swimming pools.

The other types of means of access can be any of the five. You can have two swimming pool lifts, a pool lift, and a transfer wall or a sloped entry and stairs. But you cannot have a transfer wall and stairs. You have to have at least one of either a pool lift or a sloped entry on a large pool.

For smaller pools (those under 300 linear feet of pool wall), one primary means of access is required and it must be either a swimming pool lift or a sloped entry. Spas and wading pools have different access requirements. These are detailed in the compliance guide which will be discussed later.

What is Scoping?

In situations where there are a number of elements that are affected by the regulations, the term used to determine the percentage of those elements that need to be accessible is called scoping. For example, scoping determines the percentage or number of parking places that would need to be designated as handicap parking places in a parking lot. It also is used to determine the number of hotel rooms that would have to be accessible.

The access board purposely did not include scoping provisions for pools in the regulations. Essentially, this means that every pool has to be accessible. However, there is a scoping provision for spas that are used in a cluster (close together). In that case, five percent, or at least one of the spas has to be accessible.

What is Safe Harbor?

Safe harbor is the ADA term for grandfathering. If accessibility requirements for an element that were originally defined in the 1991 regulations were changed in the 2010 revision, that element would not need to meet the 2010 standard until a major renovation occurs. This is called “safe harbor.” For example, under the 1991 regulations, the rules for a parking lot were that for every eight accessible parking places, one of them had to be a van space. The 2010 revision mandates that 1 out of 6 accessible parking places have to be a van space. If you have a parking lot that complies with the 1991 regulations, you don’t have to do anything until your regularly-scheduled restriping and repaving.

If an element was not included in the 1991 regulations but is now included in the 2010 regulations, there is no safe harbor. That is the case with swimming pools. There were no regulations for swimming pools in 1991, but there were in 2010. Swimming pools do not have a safe harbor, and all swimming pools have to be accessible by March 15, 2012.

Implementation Strategy

Once the requirements of the 2010 revision are understood, we can begin an implementation strategy to prepare a facility to meet the responsibilities. Develop a plan that lays out a timetable for an implementation. The implementation should be well documented and kept on file at your facility. Once the commitment has been made to provide accessible pools, programs should be expanded and marketed to attract new swimmers to your facility. The steps to develop an implementation strategy are outlined below.

Step 1 - Barrier Removal Analysis: This process includes determining if your facility falls under ADA jurisdiction, auditing each body of water, and reviewing existing means of access. To assist with this process, SR Smith LLC developed a handy [swimming pool compliance guide](#). This document will walk a person through the analysis of the aquatic facility.

- a) Follow the table in section 1 to identify the description that best suits your facility. If your facility doesn’t fall under ADA jurisdiction, you don’t have to do anything else.
- b) In section 2, you will identify each type of body of water within your facility. Once identified, this chart will pair the type of pool with the type of access means required. If one of your bodies of water happens to be a swimming pool, move along to the next page. There is a grid that will help determine the size of your pool. You can sketch out your pool inside this grid and use the graphical representation of your pool to calculate the length of its perimeter. Then, use the table in section 2 to determine the required number of access means based on the size of your pool.
- c) Section 3 helps review any means of access that already exist at your facility. There is a separate section for each individual means of access. These sections present the requirements for each means of access in a clear table format. The solution column suggests remedies if the existing means of access do not comply with the requirements for each type of device. Each of these should be reviewed to ensure that any and all existing means of access within the facility meet the prescribed requirements.
- d) Once this is complete, list all the barrier removal issues and determine if the required modifications are “readily achievable.”

What is “Readily Achievable?” - *Readily achievable* means “able to be accomplished without much difficulty or expense.”

The decision on whether or not a modification is *readily achievable* is the responsibility of the owner of the facility. Although this determination is subjective, rulings that followed the 1991 regulations do give some guidance on barrier removal modifications that are considered to be *readily achievable*.

Examples of Readily Achievable Elements:

- Ramps leading into buildings
- Accessible parking places
- Accessible bathroom and toilet partitions

Using this same interpretation for swimming pools, consider the cost of the modifications compared to the total cost of the facility. If you look at the cost, for example, of the swimming pool lift, it's relatively minor considering the cost of the entire facility. Making swimming pools accessible using a pool lift would be considered to be *readily achievable*.

Examples of Elements not Readily Achievable:

- Existing wading pool with a flat bottom. The 2010 regulations require wading pools to have a sloped entry that extends into the deepest part of the wading pool. Using a portable ramp for this probably isn't a good idea because it will become a safety hazard for children running through the wading pool. However, in order to re-grade the wading pool to provide the proper slope would probably cost as much as building the pool in the first place. This type of modification would not be considered *readily achievable* and it would not be required.
- A spa located in a nook back behind a wall or in a really narrow area (frequently seen in health clubs). It would be almost impossible to put any kind of means of access to make that spa accessible without tearing down walls or redoing the whole floor plan. That type of modification, again, would not be *readily achievable* and it would not be required.

Once you have finished with your analysis and have a clear understanding of what needs to be done to remove barriers in your facility, you will be ready to develop your implementation plan.

Step 2 - Implementation Plan: The implementation plan is the most important component of preparing to create an accessible environment for your aquatic facility. It allows you to see the scope of your responsibilities under the ADA regulations in a big picture overview. It will help shield you against any punitive remedies in the event that there is ever a complaint lodged against your facility.

1. Outline your plan of action.
2. Set up a timetable to implement your plan and order any equipment or issue any work orders for construction work that needs to be done.
3. Train your staff so they will be familiar with your plan.

Once you've decided what you're going to do, the next step is to put these activities into a concise, yet complete, plan of action. This plan of action should include the results of your barrier removal analysis, which modifications you will perform, an outline of any additional staff training, and a timetable for executing your plan.

Your plan should describe any new policies and procedures that will be initiated as part of your accessibility program. These procedures can include a revised check-in policy for swimmers entering your pool or instructions for setting up a pool lift and providing assistance for swimmers that use the lift. It is essential that all of these activities be thoroughly documented in written format and kept on file in your facility. This is not a requirement, but it is an easy way to show that your facility has been proactive in addressing the ADA regulations.

Step 3 - Acquire the Means of Access: Whichever means of access you decide to purchase, be sure that it results in a facility that meets the guidelines.

Remember this formula: C=P+I. Compliance is a combination of the product that meets the requirements plus an installation that meets the requirements. A product that meets the requirements may not always provide a compliant installation. ADA compliance is a partnership of the individual facility and the chosen means of access. Not every means of access is always going to result in an accessible facility. For example, zero depth entries have been considered to be ADA compliant. But, unless the slope meets the stated requirements and required handrails are in place, that facility won't have an ADA compliant installation. The same holds true with swimming pool lifts. A swimming pool lift that will provide an ADA compliant installation to one pool may not do so for another pool.

Most manufacturers and contractors have procedures in place to help ensure that the product that you purchase is going to work for your pool. Be sure to provide measurements and other information about your pool, so they can make sure they sell you a product that will work for your facility.

Step 4 - Train Your Staff: Once your equipment is ordered and installed, it is vitally important that your staff be trained to operate it. It makes a lot of sense to review all of your barrier removal modifications with your staff. Let them know the steps the facility has taken to create an accessible environment and the reasons for doing so. Be careful to review any revised policies and procedures and ensure that your staff understands and follows them. It can never hurt to provide some sensitivity training as well so that your staff is comfortable in working with people that are disabled.

Implementation Complete – Now What?

Programming

Most pools already have programming for specific groups, such as activities for children, swim teams, and aquatic exercise. These activities are what actually drive people to your pool. Now that your pool is accessible, what kind of programming can you add that will leverage this new feature and attract new swimmers to your pool? Market your accessibility. People with disabilities comprise 18% of our population, and they have disposable income. Here are some ideas that can help you get started on this type of expansion program.

- Contact local aquatic therapists, physical therapists, and rehab specialists and seek their advice on the types of programs that they think your facility could provide for people with disabilities.
- Contact the Special Olympics and the Paralympics to see if you can provide some assistance for this group of athletes.
- Contact centers for independent living to let them know of the programming available
- Many wounded veterans returning from the Middle East can take part in more robust programs such as scuba training. Contact local veterans' groups and let them know of this type of a program in your facility. Don't limit your accessibility programming to just people in wheelchairs.
- Seniors can benefit greatly from the effects of being in the water, whether they are lap swimmers or they just walk back and forth across the pool. Water provides buoyancy, relieves pressure on joints, gives a light cardio workout, and is safe because they don't have to worry about falling.
- Use local news media and free advertising to let people know about the activities at your facility

All of these activities will increase the number of people coming to your pool, now that your pool is accessible.

Keep Equipment Maintained

Remember that a facility is required to keep any equipment used to provide accessibility in proper working condition. It is important that you set up an effective and easy maintenance program. This is something that can either be performed by a team member or through a local service company. Whichever you choose, it is important to make sure that your equipment is working at all times.

Resources

- Department of Justice - www.ada.gov - This site answers questions and provides contact information via the ADA assistance line where you can actually speak to an analyst in the department.
- The Association of Pool & Spa Professionals (APSP) – www.theapsp.org – APSP is the swimming pool industry trade association and their website contains a significant amount of helpful information about ADA issues. There is a downloadable [FAQ sheet](#) to assist with questions.