

The background of the slide is a solid teal color. Scattered across this background are several blue surgical masks, some partially visible and some more fully shown. The masks have white elastic ear loops and a pleated design. The text is centered in the middle of the image.

Unmasking the ADA

Face Mask Policies & Accommodations

The top of the slide features a teal background with a white stethoscope and two blue surgical masks. The title 'Americans with Disabilities Act' is written in a large, black, serif font across the top.

Americans with Disabilities Act

Americans with Disabilities Act

Enacted in 1990

Amended in 2010

A wide-ranging civil rights law that prohibits discrimination based on disability.

Title II of the ADA – Local Govt.

- No otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in programs, services or activities sponsored by a public entity. This means we have to provide equal access to :

- » Programs
- » Facilities
- » Activities
- » Services



Mask Policies Under Title II



Many State, Local & Federal agencies have mandatory mask policies. Mandates are legal and enforceable and individuals without a disability can be denied services if they refuse. These persons are not covered by the ADA.

However

- If someone claims they have a disability that prevents compliance they are asking for an accommodation and you have a duty to help them make that request.
- Listen for verbal cues “My doctor said” “I have breathing problems” “They make me panic” vs...
- “Aint no one tellin me what I gotta wear, I got RIGHTS!

Common Types of Mask Disabilities

- Respiratory – Asthma COPD
- Mental – PTSD, Claustrophobia
- Condition – Autism, Cerebral Palsy
- Mouth or Breath Assisted Technology
- Hearing – Deaf & Hard of Hearing



Use an Accommodation Form or Checklist

- Ask services the patron is seeking that they need an accommodation for
- Ask what accommodation they are asking for
- Only ask for more information if you can't accommodate based on what you have
- For short term accommodations don't ask for documentation
- Don't ask if the patron is "disabled"

Prove it! Or Don't....

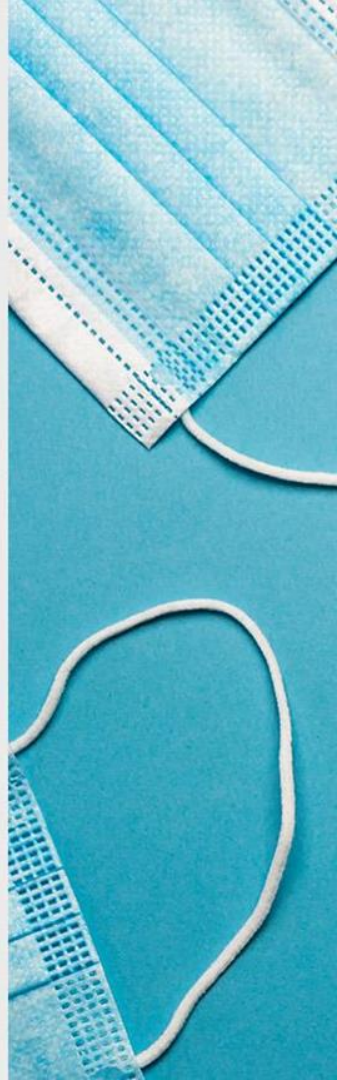
- The DOJ and other federal agencies with enforcement authority have not provided specific guidance about whether we can or cannot ask for medical documentation about a person's inability to wear a face mask due to a disability.
- Generally, guidance from the DOJ has not allowed asking for documentation for accommodations at businesses where interactions are brief, such as grocery stores or pharmacies. The more brief the interaction, the more brief the question should be.

So what is this accommodation thing?

- An accommodation in this setting is a **reasonable modification** to a face mask policy so that the person with the disability can participate in, or benefit from, the programs offered or goods and services that are provided.
- Focus on how to provide goods or services to a customer with a disability in an equal manner.
- The nature of the accommodation should be commensurate with the activity or service.

Reasonable Accommodation Examples

- Allow a person to wear a scarf, loose face covering, or full face shield instead of a face mask
- Allow curbside pick-up or no contact delivery in a timely manner.
- Allow a person to wait in a car for an appointment and enter the building when called or texted to limit mask time.
- Offer appointments by telephone or video calls.
- Offer to serve a patron outside
- Offer remote delivery of documents



Recent Accommodation Litigation

Bunn v. Nike, Inc. (June 2020) San Francisco Superior Court, Class action settlement for customers who are deaf or hard of hearing. The suit claimed that Nike's policy requiring all retail employees to wear face masks violated the ADA. In the settlement, Nike agreed to make the following changes to address the issues for customers who are deaf or hard of hearing: (1) reasonable modifications to policy, practice, and procedure by requiring employees to wear transparent face masks to provide effective communication; (2) providing guidance to employees about accommodating customers; and (3) posting signs at store entrances notifying customers they can request additional assistance.

Pletcher v. Giant Eagle Inc. (Oct 2020) Sixty-nine plaintiffs filed a class action suit claiming Giant Eagle Groceries were in violation of the ADA by denying access to customers who claimed they could not wear a face mask due to their disabilities. U.S. District Court determined that the store's face mask policy was a correct interpretation of the Department of Health's order that face masks are to be worn in public spaces and that those who cannot wear a face mask may instead wear a face shield. Giant Eagle noted in their defense that they had in place other modifications to policy and practice consistent with ADA Title III to accommodate customers with disabilities

When is it O.K. to Say No

- Fundamental Alteration – A patron asks you to deliver materials when you don't offer home delivery.
- Undue Burden – A patron asks you to open early for him so no one else is there staffing problems could create an undue burden.
- Direct Threat – Significant risk to the health or safety of others that cannot be mitigated by a change in policy. Be sure this is based on individual risk assessments and not generalizations.

Handling & Responding

- Designate at least one person, and a back-up, who are authorized to receive and review requests for reasonable modifications.
- The decision-maker for a state or local government agency is the head of the public agency or their designee
- After receiving a request, talk with the individual with a disability to learn why the person needs to modify the face mask policy and to find a solution that meets ADA requirements
- Decisions should be made in a timely manner.
- Document Interactions, deny in writing and keep copies.

A teal background featuring medical supplies: a white surgical mask, a white stethoscope, and a white tube. The items are arranged in a way that suggests a clinical or healthcare setting.

Best Practice Tips

- Prepare a list of possible alternatives to a face mask/cloth face covering policy that you can share with people with disabilities who request a reasonable modification to your policy.
- Have a written procedure for employees to follow regarding requests.

Resources

- **Fact Sheet:** Healthcare & Face Coverings: Reducing Communication Barriers for Deaf and Hard of Hearing Patients
Source: ADA National Network, Northwest ADA Center (adata.org)
- **Fact Sheet:** Face Coverings and Businesses: Balancing the ADA with Public Health During COVID-19
Source: Northwest ADA Center (nwadacenter.org)
- **FAQs:** The ADA, Small Business and Face Masks
Source: Great Plains ADA Center (gpadacenter.org)
- **ADA Today Podcast:** COVID-19, Face Mask Policies and ADA Title II and III
Source: Mid-Atlantic ADA Center (adainfo.org)
- **Webinar Archive:** Face Coverings and the ADA – Application of ADA Title III
Source: ADA Audio Webinar Series: Great Lakes ADA Center (accessibilityonline.org)