

Access for All: Strengthening Communities Through ADA Compliance



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The Mission and Vision of MDCR

Mission: “To eliminate unlawful discrimination through enforcement, education, engagement, and equity.”

Vision: “To secure the full enjoyment of civil rights guaranteed by law and the Constitution through the elimination of unlawful discrimination.”

The Constitutional Mandate of MDCR

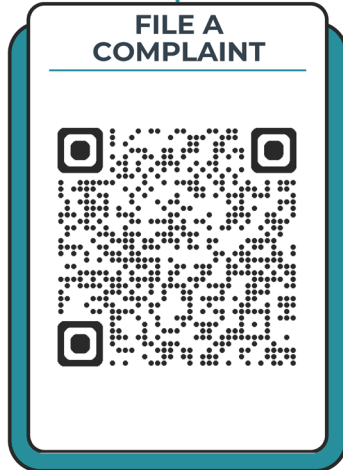
- **In 1964, Michigan became the first state in the nation to include civil rights protections in its constitution.** Article 5, Section 29 calls on the Michigan Civil Rights Commission to “...investigate alleged discrimination against any person because of race, religion, color or national origin in the enjoyment of the civil rights guaranteed by law...” The Michigan Civil Rights Commission is an 8-member body appointed by the governor.
- **The Michigan Department of Civil Rights was created in 1965 to carry out the work of the Commission.** Passage of the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act further clarified the specific protections guaranteed under Michigan law.

MDCR Divisions and Services

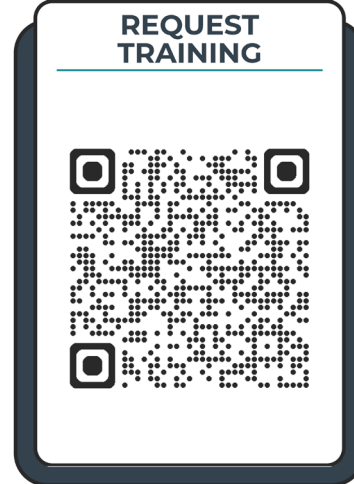
- Executive Office
- Finance and Management Services
- Development, Innovation and Access
- Strategic Initiatives and Public Information (Special Projects, Communications, Fund Development)
- Enforcement (Reconsideration, Office of Legal Affairs, Investigations)
- Disability Rights and Compliance (ADA Compliance, Division on Deaf, DeafBlind and Hard of Hearing, Contract Compliance and FOIA)
- Community Engagement and Education

File a complaint in person, over the phone or online

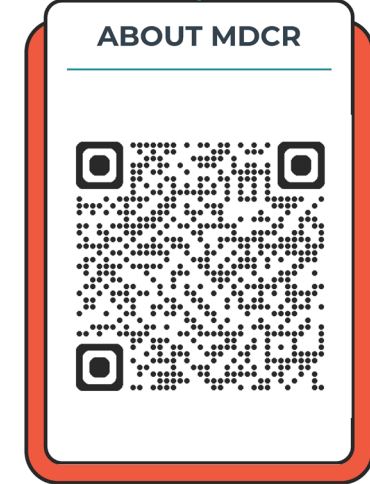
- In Person: visit our offices in Lansing, Detroit, Grand Rapids, Flint or Marquette
- Call 800-482-3604
- Online: Visit our website Michigan.gov/MDCR or email MDCRServiceCenter@michigan.gov or MDCRInfo@michigan.gov.



[File a complaint](#)



[Request training](#)



[Learn more about MDCR](#)

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Session Agenda

- Federal Disability Rights Laws
- State Disability Rights Law
- A Closer Look at Disability
- Reasonable Modification
- Effective Communication
- Program Access
- Questions

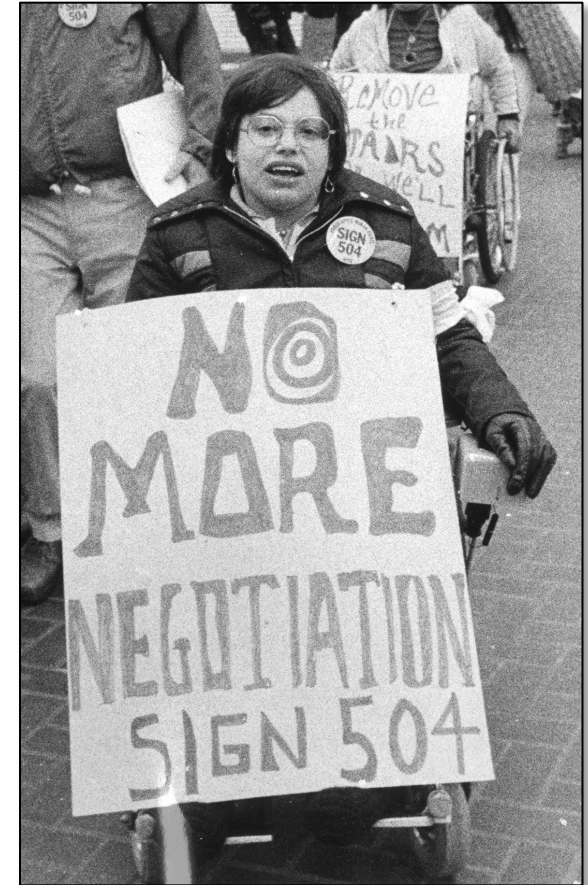
Federal Disability Rights Laws

The Rehabilitation Act of 1973

Section 504: Prohibits disability discrimination by federal executive agencies and federal fund recipients.

Retaliation

Prohibited against individuals exercising their rights under the Rehabilitation Act or assisting others in doing so



The Americans with Disabilities Act of 1990

The Americans with Disabilities Act (ADA) mandates that no qualified individual with a disability shall be:

- Excluded from participation;
- Denied benefits, goods, or services;
- Denied access to programs or activities; or
- Subjected to discrimination because of disability status

Retaliation

Prohibited against individuals exercising their rights under the ADA or assisting others in doing so

The Americans with Disabilities Act (ADA)

The ADA contains titles which prohibit disability discrimination by the following entities regardless of federal funding:

- **Title I:** Employers with 15 or more employees
- **Title II:** State or local government departments and agencies
- **Title III:** Places of public accommodation

ADA Requirements for Title II Entities

Non-discrimination against individuals with disabilities in the provision of public services

- **Reasonable Modification** of policies, practices and procedures when necessary to afford equal access to programs, services and activities
- **Effective Communication** that ensures people with disabilities can receive/ convey information as effectively as those without disabilities
- **Program Access** to services that are provided in the most integrated setting including:
 - Web-based programs and services
 - Architectural standards in new construction and alterations of buildings
 - Relocation of programs and services in inaccessible, older buildings

Administrative Requirements

State and local government with 50 or more employees must:

- **Establish of a grievance procedure** for the prompt and equitable resolution of any alleged violations.
- **Designate a responsible employee** to coordinate compliance with Title II of the ADA for that entity. This person is often referred to as an ADA Coordinator.

State Disability Rights Law

Persons with Disabilities Civil Rights Act of 1976

The Persons with Disabilities Civil Rights Act (PWDCRA) specifies that a person with a disability must be reasonably accommodated for purpose of employment, public services and public accommodations.

- Prohibits retaliation against an individual for exercising rights under PWDCRA or assisting others in doing so



Persons with Disabilities Civil Rights Act

PWDCRA is broken down into 6 Articles as follows:

- Article 1—General Definitions
- Article 2—Employment
- Article 3—Public Accommodations/Public Service
- Article 4—Education
- Article 5—Housing
- Article 6—Retaliation Provisions, Rights of Claimants, and Damages

Places of Public Service Defined

According to PWDCRA, a place of public service refers to facilities, programs and services operated by state and local government entities.

[Persons with Disabilities Civil Rights Act](#)

Prohibited Conduct

Under PWDCRA, public entities shall not:

- Deny an individual the full and equal enjoyment of public services due to a disability or use of adaptive devices or aids
- Post or distribute public statements, advertisements, and signs that discriminate against individuals with disabilities

NOTE: This only applies when the disability is unrelated to the individual's ability to utilize and benefit from the public entity's programs and services.

What is a Disability Under the PWDORA?

“Disability” is defined as one or more the following:

1. A determinable physical or mental characteristic of an individual, which may result from:
 - disease
 - injury
 - congenital condition of birth
 - functional disorder
2. A history of a determinable physical or mental characteristic
3. Being regarded as having a determinable physical or mental characteristic

A Closer Look at Disability

What is a Disability Under the ADA?

“Disability” is defined as:

1. A physical or mental impairment that substantially limits one or more of an individual’s major life activities;
2. A record of such an impairment; or
3. Being regarded as having such an impairment

Disability Types

- **Cognitive**
- **Hearing**
- **Mobility**
- **Vision**
- **Self-care**
- **Independent living**

Common for people to experience multiple disabilities simultaneously, often referred to as co-occurrence or comorbidity.

View references at: [Disability and Health Data System \(DHDS\) Overview](#)

1. Physical or Mental Impairment



One or more impairments

- Physical
- Mental

Substantially limits

- Compared to general population

One or more major life activities

- Includes major bodily functions

Major Life Activities and Bodily Functions

Major Life Activities:

- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Non-exhaustive list

Major Bodily Functions:

- Immune system
- Normal cell growth
- Digestive system
- Brain function
- Respiratory system
- Endocrine system
- Non-exhaustive list

Mitigating Measures

The positive effects of mitigating measures (medication, assistive devices, etc.) may not be used when determining whether someone has a disability

- **Exception:** Ordinary eyeglasses or contact lenses



Episodic Impairments

Impairments that are episodic or in remission could be considered disabilities if they substantially limit a major life activity when active



Epilepsy



Chronic Cancers



Asthma

2. Record of An Impairment

Record of Such an Impairment protects individuals with a history of a disability, whether they are currently substantially limited in a major life activity

- **Examples:**

- History of cancer, heart disease, or other debilitating illness
- Illness that is either cured, controlled or in remission
- Erroneous classification of an intellectual or learning disability

Alcoholism and Drug Addiction

Alcohol Use Disorder:

- Current alcohol use disorder: Covered (if it substantially limits major life activities)
- Record/History of: Covered

Drug Addiction:

- Current illegal/illicit drug use: NOT Covered
- Record/History of: Covered

3. Regarded as Having An Impairment

Regarded as Having an Impairment covers any of the following:

1. Individuals who have an impairment that is not substantially limiting but they are perceived as such
2. Individuals whose impairments are only substantially limiting because of the attitudes of others
3. Individuals that do not have any impairment but due to subjective perception, they are regarded as if they had an impairment

Example: Prominent scar or birthmark

This prong provides protection against discrimination based on stereotypes or assumptions about disability

Transitory and Minor

An impairment is not considered a disability under the "regarded as" prong if it is both transitory and minor.

- **Transitory:** lasting 6 months or less
- **Minor:** does not substantially limit a major life activity

Examples:

- Broken finger, broken bones that healed within two months
- Seasonal flu
- Sprained ankle
- Short-term stomach virus
- Mild concussion (with full recovery)

Reasonable Modifications

Title II Requirement: Reasonable Modifications

Reasonable Modifications: Title II entities have an affirmative duty to make changes to policies, practices, and procedures when necessary to ensure equal access for persons with disabilities

Examples:

- Allow a service animal in a “no-pets” park
- Allow an individual to bring a support person to complete an application
- Allow the use of a mobility device on a walking path
- Allow food consumption at a public pool

The ADA requires equal opportunity but does not guarantee an equal result

Modification Requests

- **No specific words**

- No specific words are required so listen to what the person is saying
- Must specify the request is due to a disability, unless obvious

- **No timeframe**

- A member of the public may make a request at any time

- **No writing requirement**

- Requests can be verbal and are not required to be made in writing



Reasonable Modification Considerations

Requests must be reasonable

- Will it fundamentally alter the program or services?
- Will it impose an undue hardship?
- Will it compromise safety?

Modifications must be effective

- Does the modification allow for equal opportunity

Modifications are case-by-case

- Tailor it to the requestor

Lawful Limitations on Modifications

Fundamental Alteration: The modification would fundamentally alter the nature of the program, service, or activity

Undue Hardship: Significant duty or expense

- **Remember:** This is based upon the budget for the public entity, not just a specific department or agency

Direct Threat: A significant risk to the health or safety of others exists and cannot be eliminated by a reasonable modification

Not Qualified: Customer cannot participate in or benefit from the program or service offered, with or without a modification

Reasonable Modifications and the Interactive Process

Whenever a public entity receives a modification request from an individual with a disability, the “Interactive Process” should be initiated.

Interactive Process: A collaborative dialogue between a public entity and a customer who has a disability. This dialogue is to determine reasonable modifications that would permit the customer equal access to participate in programs, services, and activities offered to the public.

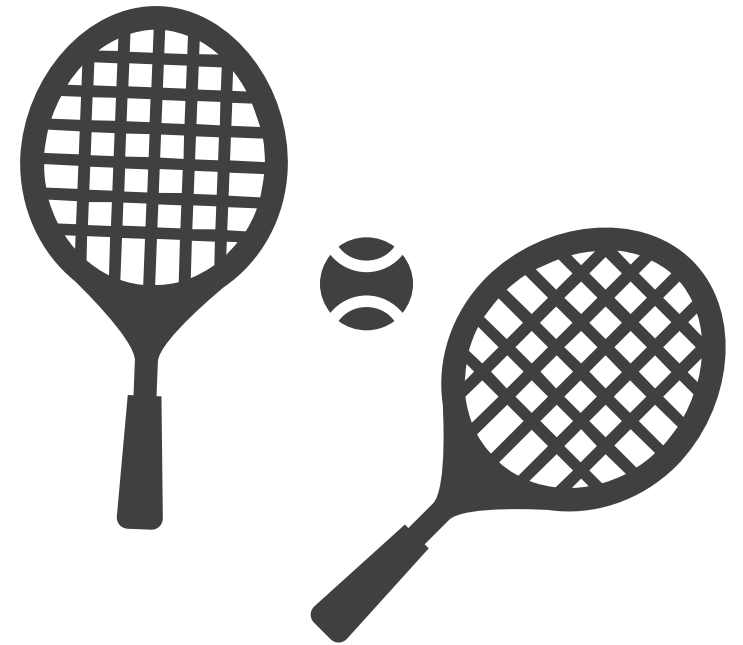
The Interactive Process

Requires dialogue and cooperation on both sides to assess the request

- Requests must be initiated by the person with the disability

Requests must be addressed within a reasonable timeframe and in a “good faith” manner

- Both parties must engage in the process and act in good faith



Interactive Process Overview

1. **Request:** Comes from the person with the disability
2. **Initial Response:** Acknowledge the request
3. **Gather Information:** If necessary, ask for clarification
4. **Determine Modification:** Must be reasonable and effective
5. **Implement:** Maintain medical confidentiality; need-to-know basis
6. **Re-Evaluate/Feedback:** Was the accommodation effective?

Effective Communication

Title II Requirement: Effective Communication

Effective Communication: Communication that ensures people with disabilities can receive/ convey information as effectively as those without disabilities.

- Allows equal opportunity for individuals with disabilities to participate in and benefit from public programs and services
- Applies to the presentation and exchange of information
- May require providing auxiliary aids and services

Auxiliary Aids and Services

Auxiliary Aids and Services: Any resources needed to provide effective communication and ensure verbal or written information is accessible to and usable by individuals with disabilities

- Primary consideration should be given to the individual's request

Auxiliary Aids and Services Examples

- Qualified Interpreters (Not friends/family)
- Assistive Listening Devices
- Audible or Electronic Formats
- Captioning
- Braille
- Large Print
- Notetakers
- Oral Instructions
- Qualified Readers

Always consider the nature, length and complexity of the communication

Fees

Entities cannot charge for the cost of providing auxiliary aids and services, barrier removal, alternatives to barrier removal and/or other modifications that provide an equal opportunity to people with disabilities.

Program Access

Title II Requirement: Program Access

Program Access: Title II entities have an affirmative duty to ensure that programs, services, and activities are accessible to the public. This would include:

- Web-based programs and services
- Architectural standards in new construction and alterations of buildings
- Relocation of programs and services in inaccessible, older buildings

Web-based Programs and Services

Title II requires that Web-based Programs and Services be accessible to the public.

- U.S. Department of Justice published a rule in May 2024 that makes [Web Content Accessibility Guidelines \(WCAG\)](#) 2.1 Level AA a required standard for government entities
- **WCAG:** A set of principles, guidelines, and measurable criteria to create and maintain accessible digital materials. The Criteria is categorized into three tiers: A (barely inclusive), AA (generally inclusive), and AAA (the most inclusive)

[Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities](#)

Architectural Standards

- Under Title II, state and local governments are required to follow specific architectural standards in the design and construction of new buildings and when altering existing ones.
- These standards cover various elements such as accessible routes, parking, restrooms, doors, elevators, and other features.
- There are several factors to consider when determining which standards apply. To learn more please visit: [ADA Standards for Accessible Design](#)

Relocation of Programs

If structural changes to an existing building are not feasible, or would be an undue burden, state and local governments must achieve program accessibility through other means, such as:

Relocation: Moving a program or service to an accessible location.

Providing assistance: Training staff to assist individuals with disabilities in accessing the program, service, or activity.

Alternate methods: Offering other methods to ensure equal opportunities for participation.

Alternatives should facilitate integrated participation whenever possible.

[The ADA, Structural Accessibility, and Existing Buildings](#)

Questions

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