

**DISABILITY LAW:
CASES, MATERIALS, PROBLEMS (5th Edition)
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Chapter 2. WHO IS PROTECTED UNDER THE LAWS?

B. DEFINING DISABILITY

[1] Statutory Definitions

Page 36, after the definition of Disability under the Americans with Disabilities Act, add the following:

On May 24, 2011, the Equal Employment Opportunity Commission Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act, Amended, became effective. See [58 Fed. Reg. 16978-17017](#) (March 25, 2011), [29 C.F.R. Part 1630](#). This applies specifically to employment, but is probably important guidance on the definition of disability as it would apply to Title II and Title III of the ADA and to the Rehabilitation Act. The regulations make clear that the purpose of the ADAAA is to make it easier for persons with disabilities to gain protection under the ADA and the Act should be interpreted to give the broadest coverage possible. [29 C.F.R. Part 1630.1\(c\)](#) (4).

[2] Prong One: A Physical or Mental Impairment that Substantially Limits A Major Life Activity

Page 61, add to Note 7:

For regulatory guidance on the issue of rules of construction, see [29 C.F.R. § 1630.1\(c\)](#).

Page 68, add to Note 3:

For the regulatory clarification on the definition of disability, see [29 C.F.R. § 1630.2\(g\)\(1\)\(i\)-\(iii\)](#).

Page 63, add to Note 11:

For the regulations, see [58 Fed. Reg. 16978-17017](#) (March 25, 2011), [29 C.F.R. Part 1630](#).

Page 68, add the following to the Notes and Questions:

7. The EEOC regulations pursuant to the ADAAA provide clarification regarding both mitigating measures ([29 C.F.R. § 1630.2\(j\)](#)) (and major life activities ([29 C.F.R. § 1630.2\(i\)](#))). It also provides guidance about the term “substantially limits.” [20 C.F.R. § 1630.2\(j\)](#).

[3] Prong Two: A Record of Such an Impairment

Page 70, add text to end of the section:

The regulations under the ADAAA clarify what is meant by “record of.” See [29 C.F.R. § 1630.2\(k\)\(1\)](#).

[4] Prong Three: Being “Regarded As” Having Such an Impairment

Page 72, add to Note 1:

For the regulatory clarification on the definition of “regarded as,” see [29 C.F.R. § 1630.2\(g\)\(3\)](#) and [1630.2\(l\)](#).

NOTES ON OTHER ISSUES CONCERNING DEFINITION OF DISABILITY

Page 75, add to Note 5.

The EEOC’s Notice of Proposed Rulemaking states that the ADAAA is not retroactive (9/29/09).

Chapter 3. EMPLOYMENT

A APPLICABILITY OF TITLE I OF THE AMERICANS WITH DISABILITY ACT AND THE REHABILITATION ACT

[1] Which Employers are Covered?

Page 93, add to Note 3:

3. (*after the third paragraph*) The regulations on the definition of “record” of a disability make clear that whether an individual has a record of a disability should

be construed broadly “to the maximum extent possible and should not demand extensive analysis.” A person will be considered to have a record of a disability if he or she has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having a disability. Persons with a record of a disability are entitled, under some circumstances, to a reasonable accommodation. *See* [29 C.F.R. Part 1630.2\(k\)](#).

[29 C.F.R. Part 1630.2\(l\)](#) establishes the regulations for determining whether a person will be “regarded as” having a disability. [29 C.F.R. Part 1630.15\(f\)](#) establishes how an employer may prove a defense to a “regarded as” claim that the impairment or perceived impairment is transitory and minor.

[2] Applicability of The Three-Prong Definition of Disability to Employment

Page 95, after the first sentence, add:

[29 C.F.R. Part 1630.1\(c\)](#) states that in general this part does not apply a lesser standard than that imposed by Title V of the Rehabilitation Act of 1973 or its regulations.

Page 96-98, add to Notes and Questions:

3. *(p. 96, after the first paragraph)* The regulations list a number of impairments that in most if not all cases will substantially limit a major life activity. The regulations state that depressive disorder and bipolar disorder substantially limit the major life activity of brain function. [29 C.F.R. Part 1630.2\(g\)\(3\)\(iii\)](#).
6. *(p. 97)* The regulations state that HIV substantially limits immune function. [29 C.F.R. Part 1630.2\(g\)\(3\)\(iii\)](#). *See* [Horgan v. Simmons, 2010 U.S. Dist. LEXIS 36915 \(N.D. Ill. 2010\)](#) (concluding that the plaintiff’s allegation that he was HIV positive was sufficient to withstand defendant’s motion to dismiss because if proven, plaintiff was a person with a disability under the ADAAA because HIV substantially limits immune function).
8. *(top of p. 98)* The regulations state that an employer may not use a qualification standard for uncorrected vision unless the employer can prove that the qualification is job related and consistent with business necessity. [29 C.F.R. Part 1630.10](#)

Page 100, following the end of the carryover paragraph from p. 99 add:

[29 C.F.R. Part 1630.16](#) gives a list of permitted activities for an employer.

Page 107, add the following:

3. *(end of third paragraph)* The regulations state that HIV substantially limits immune function. [29 C.F.R. Part 1630.2\(g\)\(3\)\(iii\)](#).

[b] Working Overtime

Page 162, add at the end of this section:

See also, Hoffman v. Carefirst of Fort Wayne, Ind., 2010 U.S. Dist. LEXIS 90879 (N.D. Ind. 2010) (holding that there were genuine issues of material fact concerning whether the plaintiff's illness that was in remission was a disability and whether the employer failed to grant a reasonable accommodation when it insisted that the plaintiff work at least eight hour days with three hours of commuting).

Page 181, add the following to Notes and Questions:

(end of note 1, p. 182) The regulations state that diabetes substantially limits endocrine function. [29 C.F.R. Part 1630.2\(g\)\(3\)\(iii\)](#).

Page 214, add the following to Notes, immediately before Note 2:

[29 C.F.R. Part 1630.16\(d\)](#) states that it is not a violation of the Act for employers to prohibit or impose restrictions on smoking in places of employment.

Chapter 4 PUBLIC ACCOMMODATIONS

C MODIFICATION OF POLICIES, PRACTICES, AND PROCEDURES

Page 300, add to the end of Note 1:

On July 23, 2010, the Department of Justice issued final regulations on service animals. The regulations became effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). These regulations amend both Title II and Title III regulations. Service animals are defined as those individually trained to do work or perform tasks for the benefit of an individual with a disability (including a psychiatric disability). [28 C.F.R. § 35.104](#) and § 36.104. The only other animal where reasonable accommodations may have to be considered are miniature horses, and the regulations specify guidance on when accommodating such animals would be appropriate. [28 C.F.R. § 35.136\(i\)](#) and § 36.302(c)(9). The regulations relating to service animals clarify what animals are protected, when service animals may be removed, provisions relating to the care and supervision of such animals, inquiries that can be made about them, and where such animals can have access. [28 C.F.R. § 35.136](#) and § 36.302(c).

Page 302, add to the end of Note 5:

On July 23, 2010, the Department of Justice issued final regulations finalizing ADA regulations, including regulations on the use of mobility devices, including Segways®. The regulations became effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). These regulations amend both Title II and Title III regulations. See [28 C.F.R. § 35.137](#) and § 36.311. Entities are allowed to consider the type, size, weight, and speed of the device, the volume of pedestrian traffic, the facility's design and operation, and risk factors. Further requirements clarify what kind of inquiries can be made in making such a modification.

D ARCHITECTURAL BARRIERS

[1] Covered Facilities

On July 23, 2010, the Department of Justice issued final regulations under the ADA on a number of matters, including some architectural barrier issues, effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. The Final Rules amend [28 C.F.R. Parts 35](#) and 36. The regulations address ticketing for accessible seating in sports and similar arenas, residential housing provided by state and local governmental entities and access requirements, and detention and correction facility access issues for new construction and alterations. The new regulations also provide new design standards for new construction and alterations for access in recreation areas (including amusement rides, boating facilities, exercise machines and equipment, fishing piers and platforms, golf facilities, miniature golf, play areas, swimming pools) and in public facilities (including detention and correctional facilities, judicial facilities, and residential dwelling areas).

These regulations allow entities that complied with the 1991 design standards to have a “safe harbor” for existing facilities. The safe harbor exemption is found in the regulations. [28 C.F.R. §§ 35.150](#)(b)(2); 35.151(b)(4)(ii)(C), 36.304(d)(2).

Page 309, add to Note 1:

Effective March 15, 2011, both the Title II and Title III regulations ensure ticketing for accessible seating in stadiums and arenas. [28 C.F.R. § 35.138](#) and § 36.302(f). The revised regulations also clarify requirements for new construction of stadium style theater spaces. This section also requires for other assembly area seating and dispersal of seats. [28 C.F.R. § 35.151](#)(g).

[2] Accessibility Requirements

[a] Alterations

Page 316, add to Note:

There have been a number of cases addressing the issue of whether sidewalks, curbs and parking lots are services under Title II of the ADA. The federal circuits are currently split on that issue. The Fifth Circuit views them as facilities not programs and services. See *Frame v. City of Arlington*, [616 F.3d 476](#) (5th Cir. 2010). The Second, Third, Sixth and Ninth Circuits have taken a broader view and would include sidewalks, curbs, and parking lots within Title II definition of programs and services. *Barden v. City of Sacramento*, [292 F.3d 1073](#) (9th Cir. 2002); *Johnson v. City of Saline*, [151 F.3d 564](#) (6th Cir. 1998); *Innovative Health Systems Inc. v. City of White Plains*, [117 F.3d 37](#) (2d Cir. 1997); *Yeskey v. Commonwealth of Pennsylvania Department of Corrections*, [118 F.3d 168](#) (3d Cir. 1997). See LAURA ROTHSTEIN & JULIA ROTHSTEIN, *DISABILITIES AND THE LAW* § 6:15 (2009) (citing cases).

[c] New Construction

Page 326, add to Note 2:

Effective March 15, 2011, both the Title II and Title III regulations ensure ticketing for accessible seating in stadiums and arenas. [28 C.F.R. § 35.138](#) and § 36.302(f). The revised regulations also clarify requirements for new construction of stadium style theater spaces. This section also requires for other assembly area seating and dispersal of seats. [28 C.F.R. § 35.151\(g\)](#).

G TELECOMMUNICATIONS

*Page 348, add text at the end of the section before the **Problem**:*

Department of Justice final regulations under the ADA relating to telecommunications became effective March 15, 2011. See [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. New provisions provide guidance regarding a use of an automated-attendant system (such as voice mail and messaging) and require the system to provide effective real-time communication with individuals using auxiliary aids and services, including TTYs or other FCC-approved relay systems. [28 C.F.R. § 35.161](#).

[3] Internet and Other Web-Based Communications

Page 349, add to Notes:

The complexity of ensuring access in the internet has been the subject of ongoing debate and discussion. Litigation has addressed the issue, but not definitively in terms of whether websites are public accommodations, what is required in terms of access, and who might have standing to bring actions. It can be expected that there will be federal guidance on these issues at some point in the future. Information on proposed regulations with respect to website communication and other issues can be found at www.ada.gov.

H ENFORCEMENT

[1] Americans with Disabilities Act

Page 351, add text to the end of the section:

A growing body of case law addresses the issue of standing to bring Title III claims for violations of access requirements. With varying results, courts have considered factors such as proximity of the location to the residence, previous patronage, and intent to return. See LAURA ROTHSTEIN & JULIA ROTHSTEIN, *DISABILITIES AND THE LAW* § 6:17 (2009) (listing cases).

Chapter 5 GOVERNMENTAL SERVICES AND PROGRAMS

D ARCHITECTURAL BARRIERS

[1] Application of the Architectural Barriers Act, the Rehabilitation Act, and the Americans with Disabilities Act

Page 366, add text before last paragraph in the section:

As of March 15, 2011, Department of Justice regulations clarify new requirements relating to design of certain types of facilities. See [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. The Final Rules amend [28 C.F.R. Parts 35](#) and 36. The regulations address design of residential housing provided by state and local governmental entities and access requirements, and new construction and alterations of detention and correction facilities. The regulations also provide design standards for new construction and alterations for access in recreation areas (including amusement rides, boating facilities, exercise machines and equipment, fishing piers and platforms, golf facilities, miniature golf, play areas, swimming pools) and in public facilities (including detention and correctional facilities, judicial facilities, and residential dwelling areas).

E LICENSING PRACTICES

[2] Professional Licensing

Page 378, add to Notes:

The Ninth Circuit decision in *Enyart v. National Conference of Bar Examiners*, [630 F.3d 1153](#) (9th Cir. 2011), allowed a preliminary injunction in a case where a bar applicant was denied computer accommodations that she had used during law school and for the California bar exam. The court noted that the technology that allowed for an enlarged screen should be considered as to whether it would “best ensure” that the test reflects the aptitude or achievement of the applicant instead of the impairment. The court noted that advances in technology should be taken into account.

Department of Justice regulations, effective March 15, 2011, address the documentation requirements for obtaining accommodations on examinations. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). If documentation is required, it should be reasonable and limited to the need for the modification, accommodation or auxiliary aid or services requested. [28 C.F.R. § 36.309](#).

F MASS TRANSIT

Page 389, add to text before Problem:

An interesting case addressed issues of access on subway lines. In *Disabled in Action of Pennsylvania v. Southeastern Pennsylvania Transportation Authority*, [635 F.3d 87](#) (3d Cir. 2011) a summary judgment was affirmed in a claim by an advocacy group that Title II ADA required accessibility in a subway station where a stairway and escalator were altered. The case recognized that different circuits have different views of what constitutes an alteration under Title II of the ADA.

H ACCESS TO JUSTICE

[2] Criminal Justice System

Page 402, add text before Problems:

Department of Justice ADA regulations effective March 15, 2011, include several provisions affecting the criminal justice system. These include provisions relating to the new construction and alteration of detention and correctional facilities and inclusion of accessible design, [28 C.F.R. § 35.151\(k\)](#), and integrated housing as appropriate and visitation rights. [28 C.F.R. § 35.152](#). [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III).

Chapter 6 HIGHER EDUCATION

A NONDISCRIMINATION IN HIGHER EDUCATION

[1] The Rehabilitation Act of 1973

Page 416, add to text at the end of the section:

For a retrospective of the evolution of disability discrimination law in the context of higher education, see Laura Rothstein, *Higher Education and Disability Discrimination: A Fifty Year Retrospective*, 36 JOURNAL OF COLLEGE & UNIVERSITY LAW 843 (2010).

[2] The Americans with Disabilities Act

Page 417, add to text at the end of the section:

On May 24, 2011, the Equal Employment Opportunity Commission Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act, Amended, became effective. See [58 Fed. Reg. 16978-17017](#) (March 25, 2011), [29 C.F.R. Part 1630](#). This applies specifically to employment, but is probably important guidance on the definition of disability as it would apply to Title II and Title III of the ADA and to the Rehabilitation Act, including higher education.

B ADMISSIONS

[2] Standardized Testing and Other Evaluation

Page 448, add to Note 1:

The Ninth Circuit decision in *Enyart v. National Conference of Bar Examiners*, [630 F.3d 1153](#) (9th Cir. 2011), allowed a preliminary injunction in a case where a bar applicant was denied computer accommodations that she had used during law school and for the California bar exam. The court noted that the technology that allowed for an enlarged screen should be considered as to whether it would “best ensure” that the test reflects the aptitude or achievement of the applicant instead of the impairment. The court noted that advances in technology should be taken into account. Although this case involved a bar exam rather than admissions to a higher education program, it is probable that courts would apply a similar interpretation.

[3] Identifying and Documenting the Disability

Page 455, add to NOTES:

3. Department of Justice regulations, effective March 15, 2011, address the documentation requirements for obtaining accommodations on examinations. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). If documentation is required, it should be reasonable and limited to the need for the modification, accommodation or auxiliary aid or services requested. [28 C.F.R. § 36.309](#).

C THE ENROLLED STUDENT

[2] Modifications of Requirements

Page 480, add to NOTES:

On July 23, 2010, the Department of Justice issued final regulations finalizing ADA regulations, including regulations on service animals. The regulations became effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. Service animals are defined as those individually trained to do work or perform tasks for the benefit of an individual with a disability (including a psychiatric disability). [28 C.F.R. § 35.104](#) and § 36.104. The only other animal where reasonable accommodations may have to be considered are miniature horses, and the regulations specify guidance on when accommodating such animals would be appropriate. [28 C.F.R. § 35.136\(i\)](#) and § 36.302(c)(9). The regulations relating to service animals clarify what animals are protected, when service animals may be removed, provisions relating to the care and supervision of such animals, inquiries that can be made about them, and where such animals can have access. [28 C.F.R. § 35.136](#) and § 36.302(c). While these regulations address issues involving students in the public aspect of a higher education experience, they do not directly apply to student housing or student employment settings. This clarification has not yet been issued by any regulatory agency.

There have been a number of cases involving requirements students use electronic readers. The 2009 suits filed by the National Federation of the Blind involved using electronic reading devices that lack accessible text-to-speech function alleging that requiring use in certain classrooms is discriminatory. Settlements in some of these cases have resulted in agreements not to require such devices unless access to devices with substantially equivalent ease of use for students with visual impairments can be provided. 2009 WL 3352332 (D. Ariz. 2009).

[3] Architectural Barrier Issues

Page 489, add to NOTES:

On July 23, 2010, the Department of Justice issued final regulations under the ADA on a number of matters, including some architectural barrier issues. These regulations became effective on March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September

15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. The Final Rules amend [28 C.F.R. Parts 35](#) and 36. The regulations address ticketing for accessible seating in sports and similar arenas, residential housing provided by state and local governmental entities and access requirements. The Americans with Disabilities Act regulations under both Title II and Title III also apply to the new construction or alteration housing at places of education. [28 C.F.R. § 35.151\(f\)](#) & § 36.406(e).

[4] Behavior and Conduct Issues

Page 497, add to NOTE 2:

For a discussion of issues, see Laura Rothstein, *Disability Law Issues for High Risk Students: Addressing Violence and Disruption*, 35 JOURNAL OF COLLEGE & UNIVERSITY LAW 691 (2009). For a discussion of behavior issues related to the current students, see Laura Rothstein, *Millennials and Disability Law: Revisiting Southeastern Community College v. Davis*, 34 JOURNAL OF COLLEGE & UNIVERSITY LAW 169 (2007).

7 EDUCATION

C NONDISCRIMINATION AND REASONABLE ACCOMMODATION UNDER SECTION 504 OF THE REHABILITATION ACT AND THE AMERICANS WITH DISABILITIES ACT

[2] Substantive Application

Page 575, add to NOTE:

The definitional changes of “disability” resulting from the ADA Amendments Act of 2008, as discussed in Chapter 2, make it more likely that some students will be covered than might have been the case previously. This has not been a major issue in the education context, but it could be a factor in situations such as asthma, chronic illness, and some learning and related disabilities.

8 HOUSING

C REASONABLE ACCOMMODATION

[3] Accommodations for Assistance or Service Animals

NOTE

*Page 624, add after **PROBLEMS**:*

On July 23, 2010, the Department of Justice issued final regulations on service animals. The regulations became effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. Service animals are defined as those individually trained to do work or perform tasks for the benefit of an individual with a disability (including a psychiatric disability). [28 C.F.R. § 35.104](#) and § 36.104. The only other animal where reasonable accommodations may have to be considered are miniature horses, and the regulations specify guidance on when accommodating such animals would be appropriate. [28 C.F.R. § 35.136](#)(i) and § 36.302(c)(9). The regulations relating to service animals clarify what animals are protected, when service animals may be removed, provisions relating to the care and supervision of such animals, inquiries that can be made about them, and where such animals can have access. [28 C.F.R. § 35.136](#) and § 36.302(c).

While these regulations only apply to Title II and Title III of the ADA, they may serve as guidance for Fair Housing Act cases. Charging fees for animals will require care in determining when a waiver might be required as a reasonable accommodation. See *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 42 Nat'l Disability L. Rep. ¶ 280 (D.N.D. 2011) in which there was no clear explanation about when fees applied.

D STRUCTURAL BARRIERS

Page 624, add to text after first paragraph in section:

On July 23, 2010, the Department of Justice issued regulations effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. The Final Rules amend [28 C.F.R. Parts 35](#) and 36. Included in the revisions are provisions requiring accessible design for new construction and alterations of residential housing in places of education, [28 C.F.R. § 35.151](#)(f) & § 36.406(e), residential dwellings for individual sale operated by public entities, [28 C.F.R. § 35.151](#)(j), and places of lodging, [28 C.F.R. § 36.406](#)(c). Additional requirements specify that places of lodging where guest rooms are not owned by the entity that owns, leases, or operates the overall facility and physical features of the guest room interiors are not subject to certain barrier removal requirements. [28 C.F.R. § 36.304](#)(g)(4). New regulations also provide that for public accommodation buildings subject to historic preservation requirements, where physical access would threaten or destroy the historic significance, alternative methods of access should be provided. [28 C.F.R. § 36.405](#). Additional provisions address housing in social service centers such as group homes, halfway houses, shelters, and similar establishments that provide temporary or other sleeping accommodations. [28 C.F.R. § 35.151](#)(e) & § 36.406(d).

E LEAST RESTRICTIVE ENVIRONMENT AND INDEPENDENT LIVING

Page 632, add to Notes:

As more housing for senior citizens and individuals with mobility impairment becomes available, issues related to use of motorized vehicles are increasingly arising.

On July 23, 2010, the Department of Justice issued final regulations finalizing ADA regulations, including regulations on the use of mobility devices, including Segways®. The regulations were published in the Federal Register on September 15, 2010 and became effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. See [28 C.F.R. § 35.137](#) and § 36.311. Entities are allowed to consider the type, size, weight, and speed of the device, the volume of pedestrian traffic, the facility's design and operation, and risk factors. Further requirements clarify what kind of inquiries can be made in making such a modification. While these regulations do not specifically apply to housing, they may be considered in addressing these issues in a housing context.

Chapter 9 HEALTH CARE AND INSURANCE

B. NONDISCRIMINATION IN HEALTH CARE SERVICES

Page 674, add to Notes:

4. President Obama signed into law in March 2010, the Patient Protection and Affordable Care Act. Attorneys General of several states have joined to bring lawsuits claiming that the Act is unconstitutional because of the provision that requires Americans to buy health insurance. A few courts have held that the law is unconstitutional while others have upheld its constitutionality. The issue will likely be settled in the Supreme Court.

C ARCHITECTURAL BARRIERS AND REASONABLE ACCOMMODATION

Page 699, add to Note 1.

On July 23, 2010, the Department of Justice issued final regulations effective March 15, 2011. [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed.](#)

[Reg. 56,236-358](#) (September 15, 2010) (Title III). The regulations amend both Title II and Title III regulations. One of the issues addressed in the revised regulations is the obligation regarding effective communication. The new regulations provide that the obligation extends to companions of individuals with disabilities. The guidance addressed the need to make an individualized assessment based on nature, length, and complexity of the communication and the context. Individuals with disabilities should generally be consulted about the type of aid, but the public accommodation ultimately has the decision so long as it is effective. The regulations clarify that an individual is not required to bring another individual to interpret nor rely on an adult accompanying the individual to interpret. Exceptions are allowed in appropriate emergency situations. [28 C.F.R. § 35.160](#) and § 36.303(c). The Title II regulations further specify requirements regarding public entities using video remote interpreting services including quality of the equipment and interpreters and qualifications of users of the technology. [28 C.F.R. § 35.160\(d\)](#).

Page 700, add to Notes:

4. Department of Justice ADA regulations, effective March 15, 2011, amend both Title II and Title III regulations. Included in the revised regulations are provisions relating to physical design generally and specifically to dispersal of accessible patient bedrooms in medical care facilities, [28 C.F.R. § 36.406\(g\)](#). [75 Fed. Reg. 56,164-236](#) (September 15, 2010) (Title II) and [75 Fed. Reg. 56,236-358](#) (September 15, 2010) (Title III).

Other provisions give guidance regarding use of automated-attendant system (such as voice mail and messaging) and requires that systems must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs or other FCC-approved relay systems. [28 C.F.R. § 35.161](#).