



## **Americans with Disabilities Act**

### **Self-Evaluation and Transition Plan**

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## **1. PURPOSE**

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As a local government entity and recipient of federal funds, Perry County is committed to complying with Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and other federal and state statutes and regulations that require Perry County to provide programs, services, activities, and facilities that are accessible to persons with disabilities. This Perry County Americans with Disabilities Act Self-Evaluation and Transition Plan (referred to as the Plan) has been developed to assist Perry County in identifying policy, programmatic, and physical barriers to accessibility and provide guidance in developing solutions for their modification or removal. This Plan is intended to be a living document that will be updated at least every three years to track ongoing progress and achievements toward compliance.

## **2. LEGAL BACKGROUND**

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### **CIVIL RIGHTS ACT OF 1964**

The Civil Rights Act of 1964 was a forerunner to the Americans with Disabilities Act (ADA). It outlaws discrimination based on race, color, religion, sex, and national origin in federally funded programs and in public accommodations and employment. While the law didn't specifically apply to persons with disabilities, it served as a framework for future legislation.

### **ARCHITECTURAL BARRIERS ACT OF 1968**

The Architectural Barriers Act of 1968 (ABA) was the first federal law addressing civil rights for people with disabilities. It marks one of the first efforts to ensure access to the built environment. The ABA requires buildings constructed by the federal government or with federal funding be accessible to people with disabilities. By passing the ABA, Congress intended the federal government to set an example for state and local governments and for private industry.

### **REHABILITATION ACT OF 1973**

The Rehabilitation Act of 1973 was the first act to address the notion of equal access of people with disabilities through the removal of architectural, employment and transportation barriers. Section 501 of the Rehabilitation Act focused on the federal government's hiring practices, prohibiting employment discrimination against individuals with disabilities in the federal sector. Section 502 created the Architectural and Transportation Barriers Compliance Board to enforce standards set under the Architectural Barriers Act of 1968, which required that facilities designed, built, altered, or leased with funds supplied by the federal government be accessible to the public. Section 503 prohibited federal contractors and subcontractors from discriminating in employment against individuals with disabilities, and required these employers to take affirmative action to recruit, hire, promote, and retain these individuals. Section 504 prohibited discrimination on the basis of physical and mental handicaps in programs receiving federal

funds. Section 504 also extended this prohibition to federal contractors and their subcontractors.

### **SECTION 504 OF THE REHABILITATION ACT**

Section 504 of the Rehabilitation Act of 1973, as amended, codified as *29 U.S.C. § 701 et seq* (United States Code, Title 29, Sections 701-796l of Chapter 16), states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The term “program or activity” includes all of the operations of a department, agency, special purpose district, or other instrumentality of a state or local government, or the entity to which a state or local government distributes such assistance.

Agencies that provide federal financial assistance have Section 504 regulations that apply to their programs and to the entities that receive federal aid. Requirements common to these regulations include reasonable accommodation for employees with disabilities, program accessibility, effective communication with people who have hearing or vision disabilities, and accessible new construction and alterations.

### **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990**

The Americans with Disabilities Act (ADA) of 1990, codified as *42 U.S.C. § 12101 et seq*, is the nation's first comprehensive civil rights law addressing the needs of people with disabilities, prohibiting discrimination in employment, public services, public accommodations, and telecommunications. The ADA is divided into five titles: Title I is designed to help people with disabilities access the same employment opportunities and benefits available to people without disabilities. Title II prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of state and local government (“public entities”). Title III prohibits private places of public accommodation such as hotels and restaurants from discriminating against individuals with disabilities. Title IV requires telephone and Internet companies to provide services that allow individuals with hearing and speech disabilities to communicate over the telephone. Title V contains miscellaneous provisions relating to the ADA as a whole.

### **TITLE II OF THE ADA**

Title II of the Americans with Disabilities Act of 1990 is built upon the foundation laid by Section 504 of the Rehabilitation Act of 1973, and it extends the prohibition of discrimination to all programs and activities of state and local governments regardless of whether they receive federal financial assistance. Title II is divided into two parts. Subtitle A covers all programs, services, and activities of state and local government and is enforced by regulations issued by the Department of Justice (DOJ). Subtitle B contains requirements for public transportation systems and is enforced by regulations issued by the Department of Transportation (DOT). The DOJ’s Title II regulations are listed under 28 CFR Part 35, and the DOT’s Title II regulations are listed under 49 CFR part 27.

## **AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT (ADAAA) OF 2008**

The Americans with Disabilities Act Amendments Act (ADAAA) of 2008 was signed into law and became effective on January 1, 2009. It made significant changes to the ADA's definition of "disability" that broadens the scope of coverage. It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes. The EEOC is the agency that enforces Title I of the ADA (employment discrimination).

### **3. WHO IS PROTECTED**

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#### **DEFINITION OF DISABILITY**

The ADA's definition of disability has three parts. A person only has to meet one of the parts to be covered. The definition applies to a person who:

1. has a physical or mental impairment that substantially limits one or more major life activities; or
2. has a history or record of a physical or mental impairment that substantially limited one or more major life activities; or
3. is regarded as having an impairment, whether the person has the impairment or not.

When the ADA was first passed into law, federal courts were very strict in determining which employees met the ADA's definition of a "disability", resulting in the dismissal of many cases. A series of court decisions made it increasingly difficult to qualify for the law's protections. The Americans with Disabilities Act Amendments Act (ADAAA) was passed to remedy this problem. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals:

1. It provides that the ADA definition of "disability" must both be more "flexible" and "broadly construed."
2. It expands the list of "major life activities."
3. It provides that courts can no longer consider whether "mitigating measures," such as medication or assistive technology, reduce the impact of impairment on an individual.
4. It states that diseases that are "episodic" or in remission may still be "disabilities."
5. It provides that employees who claim they are "regarded as" disabled can now make an ADA claim, even if the "perceived" disability does not impact a major life activity.

#### **MAJOR LIFE ACTIVITIES**

In the past, there was some debate over what activities were considered "major life activities" for ADA purposes. One of the most contentious issues was whether someone with a medical condition that only affected internal functions such as diabetes, cancer and heart disease would be covered. The ADAAA cleared up the confusion by stating that

bodily functions are indeed major life activities. "Major life activities" include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. "Major bodily functions" include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

### **EXCLUSIONS**

Excluded from the definition of disability are: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

### **ILLEGAL USE OF DRUGS**

A public entity may withhold services or benefits from a person who is currently engaging in the illegal use of drugs. A public entity should review carefully all the facts surrounding its belief that an individual is currently taking illegal drugs to ensure that its belief is a reasonable one. It's important to note that a person with a history of drug use who has been successfully rehabilitated or someone who is participating in a drug rehabilitation program and currently not engaging in the illegal use of drugs is protected.

### **WHAT IT MEANS TO BE QUALIFIED**

The definition of "qualified" has two forms.

1. For determining participation in programs, services and activities, a person is qualified if the person meets the essential eligibility requirements for the receipt of services or participation in programs.
2. For purposes of employment, a person is qualified if the person is able to perform the essential functions of the job with or without reasonable accommodation.

The "essential eligibility requirements" for participation in many activities is minimal. Most public entities provide information about their programs, activities, and services upon request. In such situations, the only "eligibility requirement" for receipt of such information would be to request it. Under other circumstances, the "essential eligibility requirements" may be more specific.

### **DIRECT THREAT**

A person who poses a direct threat to the health or safety of others is not "qualified." A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by modification of policies, practices, or procedures, or by the auxiliary aids or services. The determination of direct threat must be based on objective factual evidence and an individualized assessment of the person. Factors include: 1) The nature, duration, and severity of the risk; 2) The probability that the potential injury will actually occur; and, 3) Whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.

## **4. PERRY COUNTY'S ADA REQUIREMENTS**

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### **DESIGNATE A RESPONSIBLE EMPLOYEE (ADA COORDINATOR)**

A public entity that employs 50 or more employees is required to designate at least one responsible employee to coordinate ADA compliance, commonly referred to as “ADA Coordinator.” The designated person should be familiar with the state or local government’s structure, activities and employees and have knowledge of the ADA and other laws and regulations addressing the rights of people with disabilities. Job functions of the ADA Coordinator include:

- Interacting and consulting with staff, boards and commissions on the ADA.
- Developing and distributing public notice about ADA compliance.
- Coordinating requests for auxiliary aids and services and reasonable modifications of policies, practices and procedures.
- Responding to general inquiries from the public.
- Training staff on ADA requirements.
- Developing a grievance procedure.
- Investigating complaints.
- Conducting a self-evaluation.
- Developing and maintaining a transition plan.
- Coordinating on-going compliance.

### **PUBLISH NOTICE OF RIGHTS AND PROTECTIONS**

All public entities, regardless of size, are required to disseminate information to applicants, participants, beneficiaries, and other interested persons to inform them of their rights and protections afforded by the ADA and related regulations and applicability to the public entity’s services, programs, and activities. Methods used to comply with this requirement include:

- Posting the notice on the public entity’s website.
- Posting the notice at facilities.
- Publishing the notice in local newspapers.
- Broadcasting the notice in public service announcements on local radio stations and television stations.
- Including the notice in program and activity handouts.
- Posting the notice on social media websites.

### **ESTABLISH A GRIEVANCE PROCEDURE**

A public entity with 50 or more employees is required to establish and publish a grievance procedure providing prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II and related regulations. The grievance procedure

should include a detailed description of the procedures for submitting a grievance, a review process that allows for appeal, reasonable time frames for review and resolution of the grievance, and good record-keeping for all complaints submitted and documentation of steps taken toward resolution.

### **PERFORM A SELF-EVALUATION**

All public entities are required to perform a self-evaluation which is a comprehensive review of all programs, activities, and services operated by the public entity. All facilities where programs are operated by or for the public entity must also be included in the self-evaluation. To conduct a self-evaluation, a public entity must do the following:

- Identify all programs, activities, and services and their locations.
- Determine whether employees and officials are familiar with the public entity's ADA obligations.
- Determine whether employees and officials know how to arrange for auxiliary aids and services to ensure that communication with people with disabilities is as effective as others
- Review service, activity, and program's policies and procedures to determine whether they ensure an equal opportunity for people with disabilities to participate and benefit.
- Survey facilities and determine whether there are physical barriers to access programs. If non-structural changes should be made, include them in the action plan. If structural changes are needed, include them in the transition plan.

### **DEVELOP A TRANSITION PLAN**

Public entities with 50 or more employees are required to develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities. There are limits to a public entity's program access obligations. Structural changes are not required where other solutions are feasible. A key concept stated in *28 CFR Part 35.150* is that public programs and services, when viewed in their entirety, must be accessible to people with disabilities, but not all facilities must necessarily be made accessible. A public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. An entity is not required to take any action that would result in a fundamental alteration in the nature, service, program, or activity, or result in undue financial and administrative burdens. In those circumstances, a public entity has the burden of proving that compliance would result in such alteration or burdens.

Regulations require that a transition plan consist of the following:

1. A list of the physical barriers that limit the accessibility of programs, activities, or services.
2. The methods to remove the barriers and make the facilities accessible.
3. The schedule to get the work completed.
4. The name of the official(s) responsible for the plan's implementation.

If a public entity has responsibility or authority over streets, roads, or walkways, the transition plan must also include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the ADA, including state and local government offices and facilities.

### **INVOLVE THE PUBLIC**

A public entity must provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation and development of the transition plan. A public entity with 50 or more employees is required to maintain on file the self-evaluation for three years and make it available for public inspection. The transition plan must also be made available for public inspection.

## **5. PERRY COUNTY'S ADA RESPONSIBILITIES**

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### **PROVIDE EQUAL OPPORTUNITY**

People with disabilities must have an equal opportunity to participate in a public entity's programs, services and activities in the most integrated manner appropriate. A public entity must make reasonable modifications in policies, practices or procedures when the modifications are necessary to assure that persons with disabilities have an equal opportunity, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. People with disabilities must not be treated in a different or inferior manner. There are circumstances where it is appropriate to establish programs, services and activities that are specifically for people with disabilities. However, a public entity may not deny participation in "regular" programs, services and activities. A public entity may not use eligibility criteria that screen out or tend to screen out people with disabilities unless the eligibility criteria are necessary to participate in the program, service or activity. Requirements that are necessary for safe operation of a program, service or activity are allowed, but they must be based on a current, objective assessment of the actual risk, not on the assumptions, stereotypes, or generalizations about people with disabilities.

### **ALLOW USE OF SERVICE ANIMALS**

Generally, public entities must modify their policies, practices, or procedures to permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go. Service dogs can be trained to guide a person who is blind, alert a person who is deaf, pick up items for a person who uses a wheelchair, and alert and protect a person who is having a seizure. When it is not obvious what a service dog provides, staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. A person with a disability cannot be asked to remove his or her service animal from the premises unless the dog is out of control and the handler does not take effective action to control it, or the dog is not housebroken. When there is a legitimate reason to ask that a service animal be

removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

Some people with disabilities use miniature horses rather than dogs because they live longer, have peripheral vision, and are permitted in religions where dogs are not acceptable. Covered entities by the ADA must modify their policies to permit miniature horses where reasonable. Assessment factors to consider include whether the miniature horse is housebroken, whether the miniature horse is under the owner's control, whether the facility can accommodate the miniature horse's type, size, and weight, and whether the miniature horse's presence will not compromise legitimate safety requirements for safe operation of the facility.

#### **ALLOW USE OF MOBILITY AIDS**

A public entity must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids in any areas open to pedestrian use. Most people are familiar with manual and power wheelchairs and electric scooters used by people with mobility disabilities. Other power-driven mobility devices (OPDMD) such as Segways and golf cars are now being used. In deciding whether an OPDMD can be accommodated, many assessment factors may be considered including the type, size, weight, dimensions, and speed, and whether legitimate safety requirements can be established to permit the safe operation of the OPDMD.

#### **COMMUNICATE EFFECTIVELY**

The ADA requires that Title II entities communicate effectively with people who have communication disabilities and uses the term "auxiliary aids and services" to refer to the ways to communicate with people who have communication disabilities. For example, people who are deaf or have hearing loss may be provided with a qualified notetaker, a qualified sign language interpreter, or assisted listening device. People who are blind or visually impaired may need material in Braille, in large print, or material capable of being read by a screen-reading program. People who have speech disabilities may need to communicate using a qualified speech-to-speech transliterator or by exchanging written notes. In some situations, public entities communicate with someone other than the person who is receiving their goods or services - for example, the parent of a child. Such people are referred to as "companions," and in those cases, covered entities are required to provide effective communication for companions who have communication disabilities. Historically, many covered entities have expected persons to bring a family member or friend to interpret for them. The ADA places responsibility directly on the covered entities to provide effective communication. A covered entity can rely on a companion to interpret only in an emergency situation or when the individual requests it.

#### **DO NOT PLACE SURCHARGES**

Public entities may not place a surcharge on individuals with disabilities for the costs associated with providing auxiliary aids or services. When choosing an aid or service, Title II entities are required to give primary consideration to the choice of aid or service requested by persons who have communication disabilities. Entities must honor their choices unless they can demonstrate that another equally effective means of

communication is available, or that the use of the means chosen would result in a fundamental alteration or in an undue burden.

#### **PROVIDE AN ACCESSIBLE WEBSITE**

The Internet is dramatically changing the way that public entities serve the public. People with disabilities use assistive technology such as screen readers, text enlargement software, and programs that enable them to control the computer with their voice, eyes or nose. Access problems occur when websites are not designed with these people in mind. If websites are not accessible, people with disabilities are denied equal access. The Department of Justice developed a publication that lists two resources to provide guidance for developers designing accessible web pages: (1) Section 508 Standards which federal agencies must follow for new web pages, and (2) Web Content Accessibility Guidelines (WCAG) published by the World Wide Web Consortium (W3C).

#### **BE PREPARED FOR EMERGENCIES**

Making sure that people with disabilities have full access to state and local government emergency preparedness and response programs is a critical part of ADA obligations. Plans should include the needs of people who use mobility aids, people who use oxygen or respirators, people who are blind or who have low vision, people who are deaf or hard of hearing, people who have a cognitive disability, people with mental illness, and those with other disabilities. Issues that have the greatest impact on people with disabilities include notification, evacuation, emergency transportation, refrigeration of medication and back-up power, locations of accessible emergency shelters, service animals, and access to information.

#### **ENSURE THAT EXTERNAL ORGANIZATIONS COMPLY**

Title II general nondiscrimination requirements apply whether a public entity provides the program, service or activity itself or contracts with another entity to do so. Over the past several years, many government services have been privatized. In these cases, a public entity must make sure that those with whom they contract to provide services uphold the same level of obligation as the public entity itself.

## **6. PERRY COUNTY'S EMPLOYMENT RESPONSIBILITIES**

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Title II prohibits all public entities, regardless of the number of employees, from discriminating against an employee on the basis of disability in any aspect of the employment relationship. This includes job advertisements, the application process, hiring, testing, medical exams, compensation, benefits, and all other employment-related activities. The enforcing agency for the ADA regarding employment is the Equal Employment Opportunity Commission (EEOC).

## **IDENTIFY ESSENTIAL FUNCTIONS OF THE JOB**

Sometimes it is necessary to identify the essential functions of a job in order to know whether an individual with a disability is “qualified” to do the job. Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. According to the EEOC, even though the ADA does not require an employer to develop or maintain job descriptions, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence in determining essential functions along with other relevant factors.

## **PROVIDE REASONABLE ACCOMMODATIONS**

ADA regulations define the term “reasonable accommodation” as modifications or adjustments to a job, the work environment, or the way in which things are usually done that enables a qualified individual with a disability to enjoy an equal employment opportunity, to attain the same level of performance, or to enjoy equal benefits and privileges of employment as are available to an average similarly-situated employee without a disability. Examples include making facilities accessible, part-time or modified work schedules, job restructuring, job reassignment, provision of auxiliary aids and services, and acquiring or modifying equipment. When an individual with a disability requests an accommodation, the appropriate accommodation may be obvious, and if not, the employer should include the applicant or employee in choosing an appropriate accommodation. Although the majority of accommodations are not costly, an employer need not provide a requested accommodation if an alternative, less costly but equally effective means of accommodation is available. It is not necessary to provide an accommodation if it imposes an undue hardship on the employer. Among the factors to be considered in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer's size, financial resources and the nature and structure of its operation.

## **ADVERTISE EFFECTIVELY**

The Equal Employment Opportunity Commission (EEOC) advises employers to include information about the essential functions of the job in job announcements, advertisements, and other recruitment notices because specific information about essential functions will attract applicants who have appropriate qualifications, including individuals with disabilities. The law requires an employer to post a notice describing the federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, disability or genetic information. The "EEO is the Law" poster, prepared by the Equal Employment Opportunity Commission, summarizes these laws and explains how an employee or applicant can file a complaint.

## **REVIEW APPLICATION FORMS**

Application forms must be reviewed to ensure that only permissible questions are being asked. The format of an application form may also create barriers for persons with certain disabilities. Public entities should anticipate requests for applications in different formats such as large print or Braille or be able to provide assistance in completing an application,

if requested. The site where applications are received and/or completed may also present barriers and therefore should be included in the public entity's assessment of structural barriers to accessibility.

#### **CONDUCT INTERVIEWS PROPERLY**

Interview sites must be evaluated to ensure that they are accessible. The content of interviews must be reviewed and, if necessary, standardized to ensure that questions asked of applicants are related to employment ability and employment history. People conducting interviews with no ADA and disability awareness training could potentially put public entities at risk of violating ADA regulations resulting in charges of disability discrimination.

#### **UNDERSTAND PROCEDURES FOR TESTS AND MEDICAL EXAMS**

Job tests are also regulated by the ADA. Applicants should be notified ahead of time if it will be necessary to take a test to demonstrate their ability to perform tasks so that they can request a reasonable accommodation if needed. If the job test screens out, or tends to screen out, individuals based on disability, the test must be revised to be solely job-related and consistent with business necessity.

After a job offer is made, but never before, employers may require that an applicant take a medical examination if everyone who will be working in the job category must also take the examination. The employer may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, the employer must be able to show that the reasons for exclusion are job related and necessary for conduct of the business. The employer must also be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions. The ADA does not require or prohibit testing employees for illegal use of drugs. Any information obtained from such tests that indicates a condition other than whether the individual is currently engaging in illegal use of drugs, such as the presence of a prescription medication to control a particular disability, must be treated as confidential medical information. An employer may conduct voluntary medical examinations and inquiries as part of an employee health program (such as medical screening for high blood pressure, weight control, and cancer detection), providing that participation in the program is voluntary, information obtained is kept confidential, and the information is not used to discriminate against an employee. All information obtained from post-offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files and must be treated as a confidential medical record.

## **7. BUILDING ACCESSIBILITY GUIDELINES AND STANDARDS**

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#### **UNITED STATES ACCESS BOARD**

Several years after the Architectural Barriers Act of 1968 (ABA) became law, Congress determined that a central agency was needed to take charge of enforcing the ABA and to

develop accessibility standards. Section 502 of the Rehabilitation Act created the United States Access Board, originally called the Architectural and Transportation Barriers Compliance Board. The Access Board is responsible for developing accessibility guidelines for the design, construction, and alteration of facilities to ensure that they are readily accessible to and usable by individuals with disabilities.

In 1982, the Access Board published accessibility guidelines for buildings and facilities subject to the Architectural Barriers Act ABA, called the “**Minimum Guidelines and Requirements for Accessible Design**.” This was the first comprehensive set of accessibility requirements established by the federal government. These guidelines served as the basis for standards to enforce the ABA, known as the “**Uniform Federal Accessibility Standards (UFAS)**.” After the Americans with Disabilities Act was signed into law, the Access Board’s mission was greatly expanded. The guidelines needed to address not only federally funded buildings, but also the wide range of facilities in the private and public sectors covered by the ADA. The Access Board published the “**ADA Accessibility Guidelines (ADAAG)**” on the first anniversary of the ADA, July 26, 1991. Like UFAS, ADAAG contains detailed design requirements for accessibility in new construction and alterations. The Department of Justice (DOJ) adopted ADAAG as the basis of its enforceable standards (“**1991 Standards**”) on the same day, which made compliance with the requirements mandatory under the ADA. Several weeks later, the Access Board followed up with its ADA guidelines for transportation vehicles and facilities which were adopted by the Department of Transportation. On July 23, 2004, the Access Board completed a comprehensive review and update of ADAAG. It also jointly updated its ABA Accessibility Guidelines to establish a consistent level under both the ADA and the ABA. Provisions were updated so that the guidelines continued to meet the needs of people with disabilities and keep pace with technological innovations. On September 15, 2010, the DOJ published revised regulations that adopted revised, enforceable accessibility standards called the **2010 ADA Standards for Accessible Design (“2010 Standards”)** and permitted the 1991 Standards to be used until March 14, 2012. On March 15, 2012, the 2010 Standards became the enforceable standards for new construction, alterations, program accessibility, and barrier removal.

### **SAFE HARBOR**

Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards are not required to be modified in order to comply with the requirements in the 2010 Standards. A public entity is only required to modify elements to comply with the 2010 Standards if it is planning an alteration to those elements. The safe harbor provision does not apply to elements in existing facilities that were not included in the 1991 Standards but are now regulated by the 2010 Standards. Those elements must satisfy the 2010 Standards to the extent readily achievable.

### **UNDUE BURDEN**

There is no “grandfather clause” in the ADA that exempts older facilities. However, the law strikes a careful balance between increasing access for people with disabilities and

recognizing the constraints many public entities face. It allows entities confronted with limited financial resources to improve accessibility without excessive expense. Structural changes are not required where other solutions are feasible. However, where other solutions are not feasible, structural changes are required. The term undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, the following factors are to be considered:

1. The nature and cost of the action needed;
2. The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
3. The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
4. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
5. If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

The decision that compliance would result in such alteration or burdens must be made by the head of a public entity after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

### **DETENTION AND CORRECTIONAL FACILITIES**

The Department of Justice issued revised ADA Title II regulations which took effect on March 15, 2011. These regulations affect the obligations of Title II entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or part, including private correctional facilities. The revised regulations state that public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, 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 public entity. Inmates or detainees must be housed in the most integrated setting appropriate to the needs of the individuals. This means there needs to be housing in all security classifications and/or program levels of a facility. Qualified inmates or detainees with disabilities should also have access to all programs to which they would otherwise be entitled, including educational, vocational, work release, employment, and religious programs, whether mandatory or voluntary. New construction and alterations of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards, effective March 12, 2012, with some exceptions (28 CFR Part 35.151(k)).

## **HISTORIC PRESERVATION**

Buildings that are eligible for listing in the National Register of Historic Places or designated as historic under state or local law are not required to take any action that would threaten or destroy the historic significance of the property. Alterations to historic properties shall comply to the maximum extent feasible. If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided, such as using audio-visual materials to depict a portion of the property or assigning persons to guide individuals into or through portions of the property that cannot otherwise be made accessible.

## **8. PUBLIC RIGHTS-OF-WAY (ROW) GUIDELINES**

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Facilities used by pedestrians include sidewalks, walkways, curb ramps, shared use paths, crosswalks, signals for crossing streets, and signs. The ADA Accessibility Guidelines (ADAAG) published by the Access Board were mainly developed for buildings and site work and were not easily applicable to sidewalks, street crossings, and related pedestrian facilities in the public right-of-way. Similarly, Section 504 standards did not offer guidance appropriate for rights-of-way construction. The Access Board established the Public Rights-of-Way Access Advisory Committee (PROWAAC) to assist in developing additional provisions and special application sections for public rights-of-way. A draft **Public Rights-of-Way Accessibility Guidelines (PROWAG)** was issued by the Access Board based on the Committee's report. Several years of updates and comment periods regarding these guidelines followed. Presently, the most recent proposed PROWAG is in the rulemaking stage, and once these guidelines are adopted by the Department of Justice, they will become enforceable standards under Title II of the ADA. In the meantime, jurisdictions must continue to design and construct new and altered pedestrian facilities that are accessible to and usable by people with disabilities. The proposed PROWAG has been identified by the Department of Transportation (DOT) as the current best practice in accessible pedestrian design under the Federal Highway Administration's Federal-aid (504) regulation.

## **9. PERRY COUNTY'S ADA COMPLIANCE EFFORTS**

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### **DESIGNATE AN ADA COORDINATOR**

The Perry County Commissioners have designated an ADA Coordinator identified in **Appendix A**, and they have made available the name and contact information to all County departments and to the public.

## **PROVIDE NOTICE TO THE PUBLIC**

Perry County has developed a *Notice of Nondiscrimination Under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 (ADA Notice)* which is signed by the Commissioner President, posted in all County-owned buildings, and published on Perry County's website, [www.perrycounty.in.gov](http://www.perrycounty.in.gov). The ADA Coordinator's name and contact information are listed on the notice.

Perry County also publishes a *Notice of Nondiscrimination* annually in the local newspaper which includes statements from both the ADA Notice and Perry County's Title VI Notice of Nondiscrimination. All Perry County Departments and employees have been given copies of these notices and policies, and they are instructed to review them and sign an acknowledgement indicating that they have read and will abide by them. The ADA Notice, Title VI Notice of Nondiscrimination, notice published in the newspaper, and employee acknowledgement are listed in **Appendix B**.

## **DEVELOP A GRIEVANCE POLICY AND PROCEDURE**

Perry County has developed a Grievance Policy and Procedure and Grievance Form which provide easy-to-understand instructions regarding how to file and submit a grievance. These documents provide the ADA Coordinator's contact information and instruct the person completing the forms to contact the ADA Coordinator if assistance is needed. They are published on the County's website, and all County Departments have a file copy.

Departments have also been instructed on how to assist complainants if they wish to file a grievance. The ADA Coordinator will keep a complaint log of all formal grievances. A copy of the Grievance Policy and Procedure, Grievance Form, and Complaint Log are in **Appendix C**.

## **PERRY COUNTY DEPARTMENTS AND FACILITIES**

Perry County departments and staff provide programs, services, and activities that are accessible to the public. A list of departments and the facilities where programs and services are provided to the public are in **Appendix D**.

## **SELF-EVALUATION OF PROGRAMS, SERVICES, ACTIVITIES, POLICIES, AND PRACTICES**

Departments and staff were given self-evaluation questionnaires to gain a better understanding of their knowledge about ADA requirements and responsibilities, and to determine if their programs, services, activities, policies, and practices have the potential to discriminate against persons with disabilities. The self-evaluation questionnaires and their findings are listed in **Appendix E**.

## **SELF-EVALUATION OF FACILITIES**

The "ADA Checklist for Existing Facilities" is based on current ADA Accessibility Guidelines (ADAAG) and 2010 ADA Standards for Accessible Design (2010 Standards). The checklist contains four priorities recommended for planning readily achievable barrier removal projects:

- Priority 1: Accessible entrance into the facility
- Priority 2: Access to goods and services
- Priority 3: Access to rest rooms
- Priority 4: Any other measures necessary.

Perry County uses the ADA Checklist for Existing Facilities (**Appendix F**) to evaluate its facilities and will use and follow the ADAAG and 2010 Standards for new construction and alterations of its facilities. The most recent findings of facilities self-evaluations and photos are listed in **Appendix G**.

### **SELF-EVALUATION OF PUBLIC RIGHTS-OF-WAY**

Perry County is mainly a rural county of which about one-third is protected land, mostly consisting of the Hoosier National Forest which is under the jurisdiction of the U.S. Department of Agriculture. A majority of the rights-of-way (ROW) and pedestrian facilities in Perry County are in public areas of the Hoosier National Forest, along state highways under jurisdiction of the Indiana Department of Transportation (INDOT), or along streets under the jurisdiction of Tell City, Cannelton and Troy. Other than curbs, sidewalks and pedestrian crossings identified at its facilities, there are only a few other areas in Perry County where curbs or sidewalks have been identified and are listed in **Appendix H**.

Perry County and the Highway Department will use and follow current ADA Accessibility Guidelines (ADAAG) and Public Rights-of-Way Accessibility Guidelines (PROWAG) as guidelines and best practices for the design of accessible features on new construction and alterations of public ROW and pedestrian facilities.

### **PUBLIC INVOLVEMENT**

Perry County's website displays a statement that invites the public to provide comment on any ADA-related issues by either contacting the ADA Coordinator or attending a Commissioners' meeting. Perry County has also established an **ADA Steering Committee** to provide input, guidance and recommendations to the ADA Coordinator and Commissioners regarding barrier removal planning. The ADA Steering Committee consists of Perry County officials, staff from various departments, and at least one individual with a disability or from an organization representing individuals with disabilities. The Steering Committee meets at least once every three years to evaluate progress made and make recommendations to the plans for future compliance. Public notice of meetings is also given to encourage participation and comments. Public notices of meetings and any documentation pertaining to public involvement will be kept on file by the ADA Coordinator and are listed in **Appendix I**.

### **ACTION PLAN**

Although having an Action Plan is not a requirement, it is a helpful tool to assist in efforts to remove non-structural barriers to accessibility. After reviewing self-evaluations, findings, and taking into consideration input received from Perry County's ADA Steering Committee and the public, Perry County's Action Plan (**Appendix J**) lists the tasks to be completed over the next three years.

### **TRANSITION PLAN**

Perry County's Transition Plan (**Appendix K**) lists a schedule of structural barriers to be removed over the next three years. This Plan results from reviewing self-evaluations of facilities, findings, input received from Perry County's ADA Steering Committee and the public, and taking into account funding availability and potential future funding approved by the Perry County Council.

### **PROGRESS AND UPDATES**

Perry County's ADA Coordinator maintains a timeline of ADA compliance (**Appendix L**) which summarizes the progress made toward barrier removal. The ADA Coordinator keeps the Commissioners, County Departments, ADA Steering Committee, and the public informed of progress and updates by updating the Timeline, Action Plan, Transition Plan, and other applicable sections of this Plan at least once every three years.