

Wednesday
December 22, 2010

THE BERKELEY DAILY PLANET

FRONT PAGE NEWS OPINION COLUMNISTS ARTS & EVENTS THE WEEK FULL TEXT

Columns

Senior Power: How Does the ADA Define Disability?

By Helen Rippier Wheeler

Tuesday December 21, 2010 - 08:29:00 PM

ADA stands for the Americans with Disabilities Act, last revision in July. The Act has a three-part, controversial definition of *disability*. Under the ADA, a person with a disability has a physical or mental impairment that substantially limits one or more major life activities, OR has a record of such an impairment, OR is regarded as having such an impairment.

What does the ADA require? : (1) Access and (2) freedom from discrimination.

ADA is part of the U.S. Department of Justice (DOJ), which is also charged with safeguarding the rights of service members and veterans. ADA has its own website. Other federal agencies with ADA responsibilities include [Employment](#) (EEOC), [Public Transportation](#) (DOT), [Telephone Relay Service](#) (FCC), [Proposed Design Guidelines](#) (Access Board), Education (ED), [Health Care](#) (HHS), [Labor](#) (DOL), [Housing](#) (HUD), [Parks and Recreation](#) (DOI), and [Agriculture](#) (USDA).

A *physical impairment* is defined by ADA as "any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic [relating to blood] and lymphatic, skin, and endocrine." A comprehensive list of all the diseases or conditions that are covered would be impossible to provide.

Some people feel that the wording is so vague that a person with any "minor" problem could file a frivolous lawsuit for easy money. Someone with a stiff neck, for example, could neglect certain job duties while hiding behind the ADA. It is difficult to categorize objectively health problems as "major" and "minor."

Many people live with "[invisible disabilities](#)," problems not apparent to an observer because the person may not require an apparatus such as a wheelchair or cane, and he or she may not be in any obvious pain. However, these health issues can create serious obstacles for the person who lives with them. Certain kinds of heart and muscle conditions greatly limit a person's mobility.

There are mental and emotional problems that may not be visible but pose real challenges for those who live with them. An effort to protect the rights of only those with "major" disabilities while overlooking the "less" disabled could create real problems for people considered "not sufficiently disabled."

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Are senior citizens "disabled" -- legally disabled? After all, they are likely to experience physical limitations that accompany old age and which handicap them. Does so called elder abuse legislation protect them, especially in senior housing and nursing facilities? (Mere yelling at and threatening a senior citizen by staff may be rejected as "cause" by police.)

What, if anything, is signified by display at senior facilities of the wheelchair logo, variously referred to as the *disabled*, *disability*, or *handicapped* logo?

It supposedly declares access by, and provisions for, disabled tenants and seniors with "certain disabilities." (Try to find out what *they* are!) In my opinion, buildings that lack such conventions as interior handrails on both sides of corridors on all floors are not accessible to seniors.

Hearing loss is a major public health problem globally. More than 28 million Americans between the ages of 60 and 74 deal with this loss. Age-related hearing loss (ARHL) is one of the four most prevalent chronic conditions in the elderly. The U.S. Department of Housing and Urban Development (HUD)'s "summary information" about Section 8 senior housing tenants asks "Y" or "N" regarding *mobility impairment*, *hearing impairment*, and *visual impairment*. Despite the high prevalence of hearing impairment, the biological basis of age-related hearing loss is unknown.



**XXX Olympiad Starry Plough
2012 – The Sitting Competition**
Sunday, September 30, 2012 4:00 pm to 7:00 pm
Starry Plough, 3101 Shattuck Avenue Berkeley, CA
Benefit for the Stand Up for the Right to Sit Down Coalition
\$5 to \$50 Sliding Scale – Come and compete! Go for the gold!
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Research published in the December 2010 issue of *Otolaryngology – Head and Neck Surgery* suggests that low serum levels of folic acid among elderly people are significantly associated with hearing loss in high frequencies.

Seventy-three year old Jane Fonda's latest *Workout* DVD is aimed at seniors. Her new series emphasizes low-impact exercise over intense aerobics. Motor scooters for senior citizens, disabled persons, and disabled senior citizens are also big business.

Two seats at the front of the bus and two seats in the front of the first light rail car are designated as priority seats for the disabled and seniors. Federal law requires that operators request non-disabled to vacate priority seating when needed. Have you ever seen *senior and disabled priority seating* enforced?

The [Commission on Disability](#) advises the Berkeley City Council about policy, budget, programs and accessibility issues of importance to Berkeley citizens with disabilities. The Commission is said to offer a public forum for members of the community to raise issues of concern and to act as an advocate to make Berkeley more accessible for all people with disabilities. The City's Disability Compliance Program and the Commission on Disability can be reached at: TEL: (510) 981-6342 TTY: (510) 981-6345 email: pchurch@ci.berkeley.ca.us. There was a time when the Commissions on Age and on Disability worked together closely.

All this reminds me to post my POLST on the refrigerator! Stands for Physician Orders for Life-Sustaining Treatment.

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Common misconceptions about the ADA include that it requires businesses to change their standards, or to be overly accommodating of people with physical or mental challenges to the point of losing profit. This legislation is intended to target employers who will not hire, or make their offices accessible to, qualified people with disabilities. It does not require employers to change job descriptions.

Most of us believe that our medical and other health information is private and should be protected, and we want to know who has this information. The Privacy Rule, a Federal law, gives you rights over your health information and sets rules and limits on who can look at and receive your health information. The Privacy Rule applies to all forms of individuals' protected health information, whether electronic, written, or oral. The Security Rule, a Federal law that protects health information in electronic form, requires entities covered by HIPAA to ensure that electronic protected health information is secure.

The Office for Civil Rights enforces the HIPAA Privacy Rule. HIPAA permits disclosure of POLST to other health care professionals as necessary. HIPAA stands for Health Information Privacy something something.

The world's first organization run by and for people with disabilities, the Center for Independent Living (CIL), founded in 1972, supports disabled people in their efforts toward independence. CIL encourages people with disabilities to make their own choices and works to open doors in the community to full participation and access for all. The CIL Berkeley office has moved to and partners with the Ed Roberts Center, 3075 Adeline Street, Suite 100, Berkeley 94703.

The Ed Roberts Campus is a nonprofit corporation formed by seven organizations that joined together to plan and develop a universally designed, transit-oriented campus located at the Ashby BART Station in south Berkeley. It opened in November 2010. Center for Accessible Technology is a partner in the [Ed Roberts Campus](#) (ERC). Others include the Center for Independent Living and the Disability Rights, Education and Defense Fund.

Disability-wise, the primary concern of most businesses and government agencies is "compliance" – compliance with the ADA -- getting into and staying in compliance. The Disability Compliance Program of the City of Berkeley coordinates efforts to ensure that people with disabilities have access to City programs and services. "The program is in the Department of Public Works and oversees the City's efforts to comply with all applicable federal, state and local laws."

The Berkeley Public Library describes its "Resources for People with Disabilities" at www.berkeleypubliclibrary.org. They include extended services [loans], home delivery services [outreach], closed captioned videos, and large print books.

Alameda County Social Services' In-Home Supportive Services (IHSS) program is a federal, state, and locally funded program designed to provide assistance to those eligible aged, blind, and disabled individuals who, without this care, would be unable to remain safely in their own homes.

International & Local news:

The **Elder Justice Coalition** achieved a significant part of its mission when Congress passed the Elder Justice Act and President Obama signed it into law on March 23rd. (See 2010's Elder Justice Coalition Year-End Report.) This culminated a more than seven year legislative effort spearheaded



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by the work of the Coalition. The new law (P.L. 111-148) authorizes \$777 million over 4 years for the most comprehensive and coordinated federal response to the growing problem of elder abuse, neglect and exploitation.

Compassion & Choices fosters awareness of, and support for, end-of-life choices through education, advocacy and such practical resources as its End-of-Life Consultation Program. It has earned Charity Navigator's "4 Star" rating for the care with which it manages its funds and donations. "Good to Go" planning guides are provided at its website. Compassion & Choices is regarded by some as a Hemlock Society successor. To strengthen the protection of advance directive, it has developed an addendum to its standard document which clarifies that admission to a religiously-affiliated facility does not imply consent to care mandated by its religious policies.

In a little noticed action last spring, the Obama administration instructed Medicare providers to develop clear and enforceable rules to ensure every Medicare patient's advance directives are honored. California and New York have laws to require physicians proactively to give their terminally ill patients full, uncensored information about all of their health care choices—palliative care, hospice care, suspended treatment. The Palliative Care Information Act in New York State takes effect in April 2011. A similar law in California, the Right to Know End-of-Life Options Act, passed in 2008, lacks specific enforcement guidelines. Also in New York, the Family Health Care Decisions Act empowers patient-designated surrogates to make medical decisions in the event that a patient cannot make their own. This will further strengthen the odds that a patient's health care directive will be honored.

Boomers & Beyond is a section of The City of Albany's Recreation & Community Services current catalog listing January, February, March and April walking events for ages 50 and older. They are well organized and (page 32) are FREE!

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