The Americans With Disabilities Act of 1990

On July 26, 1990, Congress passed the Americans With Disabilities Act of 1990 (Public Law 101-336), which prohibits discrimination against people with disabilities. This legislation represents progress in providing people with disabilities greater access to employment, public transportation, telecommunications, restaurants, museums, and other facilities and services that the general public uses daily. However, the extent to which this legislation will benefit people with disabilities depends on how it is implemented. This article will summarize the content of the act and discuss ways in which occupational therapists can work to promote its effectiveness.

The Americans With Disabilities Act begins with a description of the policy issue. It notes that 43,000,000 Americans have one or more physical or mental disabilities, including speech and hearing disabilities, and that these people have been subject to discrimination in major areas of life. Following the statement of the policy issue, the legislation's purpose is explained:

1. To eliminate discrimination against persons with disabilities;
2. To provide enforceable standards that address such discrimination;
3. To ensure that the federal government plays a central role in enforcing standards; and
4. To establish regulations for employers, public transportation systems, telecommunications systems, and public accommodations to end discrimination against persons with disabilities.

The areas addressed in the legislation are employment, transportation, telecommunications, and public accommodations. The term public accommodations will be explained later, but basically it refers to all of the goods and services provided by private businesses and organizations, from barber shops to hotels. The full intent of the legislation is specified within each title of the act.

Title I. Employment, states that no employer can discriminate against persons with disabilities in regard to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; or other terms, conditions, and privileges of employment. Rather, employers are required to adapt their work environment or procedures to enable them to hire persons with disabilities. Such adaptations, according to the legislation, could include job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of examinations, training materials, or policies; provision of qualified readers or interpreters; and other similar adaptations.

Title II. Public Services, addresses public transportation operated by public entities such as a city authority. Because they buy, lease, or restore vehicles, public transportation systems must provide that their vehicles are accessible to persons with disabilities, including those that use wheelchairs. In addition, they must continue to provide, or must establish, special transportation. Eventually, people with disabilities should have access to the transportation that the general public uses as well as special transportation.

Title III deals with public accommodations and services operated by private businesses and organizations. These services include transportation systems operated for public use. Public accommodations include places of lodging, such as hotels; establishments serving food, such as restaurants and bars; places of exhibition or entertainment, such as theaters; service establishments, such as doctors' offices or laundromats; places for recreation, such as gyms or golf courses. Public accommodations also includes stores, schools, social service agencies, and public transportation stations. The law states that no person, because of a disability, can be discriminated against in the full and equal enjoyment and use of these types of public places. As was the case for employers, these establishments must make the necessary adaptations to accommodate people with disabilities.

Title IV discusses telecommunications for persons with hearing or speech impairments. The law states that all persons with hearing or speech impairments should be available to them a telecommunications relay service, which makes it possible for them to communicate with a hearing person by wire or radio in a manner that is functionally equivalent to the ability of persons who do not have hearing or speech impairments.

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Title V concerns miscellaneous provisions of the legislation, granting protection against harassment for persons implementing the legislation, clarifying the relationship of this act to other laws, and explaining that technical assistance is available for the implementation of this law.

The requirement that employers and private establishments make necessary modifications to accommodate people with disabilities does not hold if the employer, public transportation system, or private operator shows that making modifications would be an undue financial hardship (e.g., in the case of a very small business) or is not possible because of other organizational factors. The legislation lists the factors that would be considered in determining undue hardship or mitigating organizational factors. However, because they are considerations and not mandatory criteria, it appears that determinations will be made on a case-by-case basis.

Federal legislation addresses implementation by directing which federal agencies are responsible for developing regulations for each of the titles of the Americans With Disabilities Act: for Title I, the Equal Employment Opportunity Commission, working with the Office of Federal Contract Compliance; for Title II, the Secretary of Transportation, working with the Architectural and Transportation Barriers Compliance Board; for Title III, the Architectural and Transportation Barriers Compliance Board; and for Title IV, the Federal Communications Commission. (The sections within Title V are to be implemented primarily by the agencies responsible for the other four titles.) The Office of the Attorney General will participate in developing regulations for all of the titles, either coordinating agency work or overseeing it. The regulations must be issued within 1 year of the enactment of the act, which was on July 26, 1990.

Under Titles II and IV, the legislation also specifies content that must be in the regulations. Under Title II, regarding publicly operated transportation systems, the regulations must require that special or paratransit systems be planned and established for persons with disabilities within 18 months of the enactment of the act.

Under Title IV, regarding telecommunications, the legislation also requires that the regulations establish guidelines and procedures for telecommunications relay services, stipulate 24 hr operation, and require relay operators to maintain the confidentiality of calls and complete access to the service.

Federal legislation usually does not include plans for how implementation will occur on the local level, for example, by individual organizations and businesses. These details of implementation are planned and carried out by the multitude of organizations and businesses that are affected by the legislation. Regarding the Americans With Disabilities Act, each organization and business must apply the federal regulations to their operation; they must determine in what way their facilities or services are inaccessible to people with disabilities and how they can change them to make them accessible. In view of the number of organizations and businesses affected by the Americans With Disabilities Act, the complexity of the implementation process is apparent.

This complexity, particularly the unknown factors about the structure and resources of every organization and business involved, is the reason why it is not feasible for federal legislation to include detailed plans for implementation. This does not represent a flaw, but it is a vulnerable aspect of legislation, thus raising the possibility that, in the implementation process, the legislation will be rendered ineffective. Some organizations will misunderstand the regulations or intent of the law, some simply will not manage the process well; and still others may not agree with the legislation and will do as little as possible to carry it out. Thus, the best intentions expressed in legislation can fail. On the other hand, strong advocates of the act can do much to monitor the implementation process on several levels and to participate in making it effective. Occupational therapists can participate in the implementation of the Americans With Disabilities Act in several ways.

Under Title III, the Office of Technology Assessment is required to conduct a study (to be completed within 3 years of enactment of the act) to determine the access needs of persons with disabilities and to the most cost-effective methods of providing such service. To conduct the study, the Office of Technology Assessment is to establish an advisory committee consisting of operators and manufacturers of over-the-road buses, persons with disabilities, and others who have technical expertise in assessing access needs or methods of providing services, including manufacturers of boarding assistance equipment and devices. Occupational therapists could provide input to this advisory committee or might be able to become members of the committee as technical experts. However, such a committee appointment requires a direct invitation from the Office of Technology Assessment or a solicited invitation. In either case, this would most likely occur at the national level, through the American Occupational Therapy Association (AOTA), because it requires credibility, contact, and influence with appropriate staff in the Office of Technology Assessment. If occupational therapy cannot be represented on the committee, it is possible to monitor the published reports of the Office of Technology Assessment and to give written comment.

A very influential part that occupational therapists can play in implementing this act is to comment on the regulations that the federal agencies previously named will be developing within the year. The regulations will be published in the Federal Register, which is available at some libraries, or they can be obtained by contacting the particular federal agency and requesting them. Public hearings are also held on the regulations, and occupational therapists could present testimony at those hearings. Again, this is best accomplished by an organized, representative group of occupational therapists, such as the state associations. A state association could work alone, in collaboration with other state associations, or possibly with consultation from the AOTA. If a federal agency receives comments from several states, then these comments can have an impact.
The state occupational therapy associations could also observe those organizations and businesses that are required to comply with the regulations and could offer technical advice and information on the nature of disabilities, the limitations they present, and ways that facilities and services could be adapted. One example of this, albeit one implemented by individual therapists rather than by a state occupational therapy organization, is embedded in the study conducted by McClain and Todd (1990). The authors provided follow-up information to food stores regarding their wheelchair accessibility deficiencies as identified through a survey. The result was that 25% of the 20 stores surveyed made changes, making the stores more accessible. This paper illustrates "that occupational therapists can be effective advocates for accessibility and thus provide a vital link to productive living for persons in wheelchairs" (p. 487).

If occupational therapists choose to actively participate in implementing this act, they must be knowledgeable about the legislation and the regulations. State associations or other local occupational therapy organizations should read the legislation and then get the information to their members.

Finally, occupational therapists must be aware of the opportunities that become available in their communities for people with disabilities. They must inform their patients of these opportunities and how to take advantage of them.

In summary, The Americans With Disabilities Act is very recent legislation and the time is appropriate for occupational therapists to become involved. Occupational therapists have the skills and special knowledge needed to adapt the environment and make access easier for people with disabilities; thus, they have much to contribute to the implementation of this legislation.

References