Americans with Disabilities Act (ADA) and Mobility Aids

What is a mobility aid?

A mobility aid is a device that assists a person with a disability in moving around. Examples include, but are not limited to, manual or power wheelchairs and electric scooters.

Department of Justice Guidance on Mobility Aids

The Department of Justice issued rules in 2011 on the use of mobility aids in public places. The rules require covered entities, which include state and local governments and places of public accommodation, such as stores and restaurants to allow people with disabilities to use mobility aids unless the device cannot be accommodated because of legitimate safety requirements.

Where can mobility aids be used?

Generally, the Department of Justice rules allow individuals to use mobility aids to accommodate a disability in public places. Both manual and power wheelchairs can be used wherever the public can go. Other Power-Driven Mobility Devices (OPDMDs), such as electric scooters, can potentially have restrictions, but facilities are to accommodate them to the extent possible. Large facilities, such as shopping malls, stores with wide aisles, and public parks can likely accommodate OPDMDs. Even if a facility can generally accommodate OPDMDs, they can still be restricted in certain areas of a facility due to safety concerns. For example, an electric scooter may be restricted in a narrow, constricted area, but allowed in a wider area. Some facilities, such as a small convenience store may restrict certain OPDMDs, if the facility cannot safely accommodate them. The facility must still serve the individual in an alternative manner.

Determining Whether an OPDMD can be Accommodated

The Department of Justice guidance identified several factors to consider when determining whether an OPDMD can be accommodated in a particular facility.
The factors to consider are:

- The type, size, weight, dimensions, and speed of the device.
- The facility's volume of pedestrian traffic.
- The facility's design and operational characteristics.
- If legitimate safety requirements can be established to permit the safe operation of the mobility aid in the specific facility.
- If the use of the mobility aid creates a substantial risk of serious harm to the immediate environment, natural or cultural resources, or poses a conflict with federal land management laws and regulations.

The guidance requires covered entities to consider whether a OPDMD can be safely accommodated rather than creating arbitrary rules to disallow mobility aids used for disabilities.

Determining Whether a Device is a Mobility Aid

The Department of Justice guidance allows entities to ask for credible assurance a device is used for a disability. Individuals may provide state-issued disability parking placards, cards, or state-issued proof of disability as credible assurance, which must be accepted. A verbal statement from the individual the device is used for a disability must also be accepted as credible assurance unless the person is observed doing something that contradicts the assurance such as running or jumping. Being able to walk short distances would not contradict credible assurance, as the device may be needed for long distances or other situations.

Mobility Aids in North Dakota

Under NDCC § 51-24-01, North Dakota state law defines "assistive technology device as "any item, piece of equipment, or product system that a consumer purchases or accepts transfer of in this state and which is used to increase, maintain, or improve the functional capabilities of individuals with disabilities." The statute lists manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility or positioning of an individual as possible assistive technology devices.

Some municipalities in North Dakota have passed local ordinances placing restrictions on devices such as electric bicycles, motorized scooters, and electric scooters. Restrictions are typically related to speed of the device and whether it is allowed on the sidewalk. For more information, see the resources below.

If a mobility device is used for a disability, the ADA generally allows the device to be used where the general public is allowed to go, including on the sidewalk. There may be restrictions if the device is a safety risk, but a typical mobility device should be permitted to assist with mobility for a person with a disability.

Resources

ADA Guidance on Mobility Devices:
https://www.ada.gov/resources/opdmds/#other-power-driven-mobility-devices.

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