



# ADA+ Rights Workshop

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PEOPLE'S CDC

MAY 8, 2023

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# Relevant Federal Law

- ADA - Titles II and III
  - Section 504
  - Section 1557 of the Affordable Care Act
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# What protections do these laws provide?

## From Disability Rights California:

“Considered together, Title II and III of the ADA, Section 504, and Section 1557 require that covered entities provide individuals with disabilities:

- **Full and equal access** to their health care services and facilities;
- **Reasonable modifications** to policies, practices, and procedures when necessary **to make health care services accessible**; and,
- **Effective communication**, including auxiliary aids and services, such as the provision of sign language interpreters or written materials in alternative formats.<sup>12</sup>
- However, refusing to provide a person with a disability full and equal physical access or a modification is not a violation under Title II and III of the ADA, Section 504, or Section 1557 if the building or service’s alteration would result in an “undue burden” to the covered entity. <sup>13</sup> The covered entity may assess whether the modification needed or requested is reasonable by determining if it would be a **fundamental alteration in the program that would result in significant difficulty or expense.**

[Emphasis added]

## Who qualifies for an accommodation in medical settings under the ADA?

- **People with a disability**

Under the ADA, a disabled person is “a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.” Source: ada.gov

- **People who live with or take care of someone with a disability**

- **CDC List of Conditions which makes someone “high-risk” for COVID is very long, includes “physical inactivity” “former smoker” “Mood disorders, including depression”**

## Considerations and Caveats

- **Accommodations must be “reasonable”**
  - Must not fundamentally alter the nature of the service
  - Must not pose an “undue financial burden” on the service provider
  - Universal Masking is a cheap intervention
  
- **Title II and III**
  - Public hospitals (i.e., hospitals run and funded solely by the government) are covered under Title II of the ADA.
  - Private hospitals are covered under Title III of the ADA.

# Federal Courts Upheld Masking Accommodations - The More We Demand it, the More Precedence We Will Have



Des Moines Register

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## Iowa must permit school districts to require masks in some cases, court rules; Iowa to appeal

Story by William Morris, Des Moines Register • No...

"Under (the May 2021 Iowa law), a disabled student may request a reasonable accommodation that requires masks to be worn by teachers, aides, other students, and anyone else near or interacting with the disabled student to allow the disabled student making the request to safely and readily access their school and in-person learning," Pratt ruled. "Any school district receiving such an accommodation request must consider it just as they would any other request for a reasonable modification made under the (Americans with Disabilities Act) or the Rehabilitation Act."

Source: [MSN story now archived on archive.org](#)

# Blanket Bans on Requesting Masks Violate the ADA

## Mass General Hospital's Policy Violates the ADA - It Is Illegal

### Frequently Asked Questions

Why is the mask mandate being lifted at Mass General Brigham?



I'd prefer to wear a mask at my appointments. Can I continue to mask?



Should I wear a mask if I have symptoms?



I'd be more comfortable if my doctor, nurse, or other care provider wore a mask. Can I ask them to?



No. You cannot ask staff members to wear a mask because our policies no longer require it. Our system is adhering to current public health recommendations.

## Examples of Accommodations for Airborne Virus

- For medical office staff and/or healthcare providers to wear N95 masks/respirators
- To not encounter another unmasked person for duration of healthcare visit
- Use separate entrance so that you will not encounter unmasked people
- Earlier or later appointments to avoid crowded waiting rooms
- Virtual appointments, if they are not prohibitive to providing adequate care
- Testing before and after procedures
  - The CDC has just eliminated the requirement for hospitals to report testing data
- Having staff put a mask on you immediately after surgery

Source: Vermont Center for Independent Living Training and Health Care and the Americans With Disabilities Act | ADA National Network



# Examples of Accommodations for Airborne Virus

- Private transport with a masked driver (Medicaid or shuttle)
- Having ambulatory services provide care at home (vaccines, blood draws, infusions, etc.)
- Doing check in from the car and waiting in the car until you are called into the appointment
- Having outside visits with a PCP
- Receiving masked services in the parking lot (e.g., vaccines, testing)
- Being granted an appointment before the space is open to the general public
- Being granted a private room with a closed door and only masked staff entering (e.g., infusion suite, in-patient, recovery)

# Suggested Language for an Accommodations Request

“Because I have a medical condition that, according to the CDC, makes me high risk for severe COVID outcomes, my functional limitation is that I can only participate in indoor spaces which require universal masking and adequate ventilation matching at least twelve (12) air changes per hour as recommended by the American Society for Healthcare Engineering”

“I am requesting disability accommodations for a functional limitation where I require universal masking in indoor spaces”

“I care for a person who is high risk for severe COVID outcomes. I request reasonable accommodations in the form of universal masking during my entire visit to your facility”

# How to make a request

- You can request at point of service - but it is best to do it ahead of time.
- It can be verbal or in writing - Writing is best, because this gives you evidence for a complaint
- It is helpful to mention the ADA and to use the words “functional limitation” and “reasonable accommodation, as protected by the ADA”
- You do not need to disclose your disability - unlike employment or education accommodations, they are not supposed to ask for medical documentation.

**(adapted from VT Center for Independent Living)**

## What has worked

- Call in advance and be confident and firm, ask to speak with Clinic Director or ADA officer. Call to follow up as well the morning of your appointment
- Put everything in writing. Ask the center confirm your request in writing.
- Write to Clinic Leadership, CC Hospital's General General Coun
- Provide regional ADA center contact info, or State Disability Law Center
- Be polite, confirm and thank.

**(adapted from VT Center for Independent Living and Erin Dahl's Covid Inclusion Times Facebook Page)**

## Notes

- General Counsels are not there to help you; their job is to protect the hospital from lawsuits while still adhering to the bare minimum of federal law
- Your accommodation request will be granted if the General Counsel determines the risk of a lawsuit outweighs benefit of denying the request

# Peer Support - Helping Each other Get Access Needs

- The accommodations process is designed to be vague and as a result it isolates individual disabled people, burdening us with securing accommodations and dealing with possible retaliation
- We can change this by fighting for a better law and enforceable regulations that guarantees, and funds everyone's diverse access needs
- We can help our disabled peers with “less spoons” by calling, emailing on each others behalf.

## Ways to do Peer Support - Do things Together!

- Create a group which is CC'd along with accommodations requests
- Offer to make info-gathering and follow-up calls or do other accommodations-seeking tasks on behalf of people with less spoons
- Together Request a meeting with Disability Law Centers, Hospital administrators and counsel, Department of Public Health, etc.
- (we're sure there are more creative ways – tell us!)

# Get Support / Complain (together) if you are denied

- File Complaints:
  - Department of Justice
  - Office for Civil Rights
  - State Office of Human Rights
  - State Office of Developmental Disability Protection
  - State Attorney General
- Support
  - Disability Law Center
  - Disability Advocacy Groups



## More Resources

People's CDC Resource on ADA adapted from Erin Dahl's COVID Inclusion Times Facebook Page

Covid Times Inclusion Facebook Page

Vermont Center for Independent Living Training on ADA

UC Access Now Demandifesto

UC Justice Coalition Safe Workplaces Now

# Template for Airborne Virus Accommodations Request

**Re: Request for Reasonable Accommodation for (Your Name)**

Dear (Name of General Counsel):

I am a patient at (Hospital Name).

Because I have [or care for a loved one that has] a medical condition that, [according to the CDC](#), makes me high risk for severe COVID outcomes, I am requesting reasonable accommodations as guaranteed by the Americans with Disabilities Act for safe healthcare, pursuant to my right to “full and equal access” to health care services under federal law (28 C.F.R. § 35.151 (Title II); 28 C.F.R. Part 36, Subpart D (Title III)). I request:

1. A guarantee that I will not encounter a single unmasked person for the duration of my visit, including other visitors, hospital staff;
2. To wait in my car or outside until called;
3. To use an entrance that is not used by unmasked people;
4. All of my providers wear an N95 mask at all times in my presence;
5. Additional air ventilation provided for my visit, I am happy to bring my own HEPA purifier to assist with this;
6. I will be seen, treated, and in post-op in a private room which I will not share with any other patient. I request that this room be cleaned by only masked staff, and that an air purifier be run for 30 minutes before I enter.
7. All providers who see me will certify that they have not tested positive for COVID nor been exposed to COVID in the past ten days, and complete a COVID symptom screening
8. If I am operated on, I request that I remain masked if possible, and if not, that a mask be put on me immediately following my procedure.

I would appreciate a written response to this letter. Please confirm how you will be able to meet my request. Please contact me if you have any questions about my request. Thank you very much.

Respectfully,  
(Your name)

# Template Letter

*Adapted from Requesting a Reasonable Accommodation with Template Letter - Equip for Equality*

DATE (Month Day, Year)

METHOD OF DELIVERY (Email/U.S. Mail/Hand Delivered, etc.)

General Counsel

Hospital Address

**Re: Request for Reasonable Accommodation for (Your Name)**

Dear (Name of General Counsel):

I am a patient at (Hospital Name).

I am writing to request that you provide \_\_\_\_\_(list accommodation needed here) as a reasonable accommodation under the ADA. I have a disability that puts me at high risk for \_\_\_\_\_ (contracting/developing complications from/death from) COVID-19 and this accommodation would allow me to obtain health care in a safe environment, pursuant to my right to “full and equal access” to health care services under federal law (28 C.F.R. § 35.151 (Title II); 28 C.F.R. Part 36, Subpart D (Title III)).

Please contact me if you have any questions about my request. I would appreciate a written response to this letter. Thank you very much.

Respectfully,  
(Your name)