

A Recommendation for Emergency Shelter Planning

2015

A Legal Framework: The Americans with Disabilities Act and Emergency Planning



Photo Source: Clackamas County Emergency Management



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EXECUTIVE SUMMARY

INTRODUCTION:

Clackamas County Emergency Management plans to integrate access and functional needs into its emergency planning, with a focus this year on emergency shelters. The Department of Justice has found emergency plans lacking across the nation over the past decade, specifically in how plans address the needs of people with disabilities, a subgroup of people with access and functional needs. Plaintiffs challenging the practices of emergency planning for people with disabilities have relied on the protections under the Rehabilitation Act of 1973 (RA) and the Americans with Disabilities Act of 1990 (ADA). This white paper reviews how the RA and ADA litigation has affected emergency management, and more specifically emergency shelter planning. This paper provides recommendations that Clackamas County Emergency Management can use to integrate access and functional needs into its planning process. The goal of this white paper is to go beyond what the law requires of emergency planners towards the piloting of promising emergency management practices which further equity, accessibility, and, ultimately, whole community safety in Clackamas County.

LEGAL FRAMEWORK AND REVIEW:

Section 504 of the RA and Title II of the ADA mandate equal access to programs, equal physical access, and equal access to effective communication in public entities for people with disabilities. These protections have resulted in settlements ensuring people with disabilities the right to communicate with 911/emergency responders, to access emergency evacuation plans, to access transportation, to access emergency shelters, and to access signage/communications within emergency shelters.

Additionally, RA and ADA structural reform litigation has been brought against entire jurisdictions in the United States. These cases have been broader in scope and impacted larger segments of the population than ever before. The resulting settlements from these cases provide guidance on how the Department of Justice has interpreted the responsibilities of governments in emergency planning on a national scale.

RECOMMENDATIONS:

(1) Integrate people with subject matter expertise into emergency planning; (2) Formally assess Clackamas County emergency shelter accessibility to inventory capability; and (3) Use the C-MIST function based framework in emergency planning and needs assessment.

GLOSSARY OF KEY TERMS

ADA Americans with Disabilities Act of 1990

ASL American Sign Language

CART Communication Access Real-time Translation

C-MIST Communication, Maintain Health, Independence, Safety Support Services, and Transportation

EOC Emergency Operations Center

FAST Functional Assessment Service Team

DHS Department of Homeland Security

DOJ Department of Justice

FEMA Federal Emergency Management Agency

MOU Memorandum of Understanding

RA Rehabilitation Act of 1973

RDPO Regional Disaster Preparedness Organization

ABSTRACT

This white paper reviews litigation which has relied on protections under the Rehabilitation Act of 1973 (RA) and the Americans with Disabilities Act of 1990 (ADA) to change how emergency planners address the needs of people with disabilities in the United States. The following litigation review includes cases against individual agencies as well as high impact structural reform litigation brought by the legal center Disability Rights Advocates. This litigation review serves to provide a set of recommendations and promising practices to integrate access and functional needs into Clackamas County Emergency Management planning. This review and recommendations are especially relevant as Clackamas County Emergency Management prepares to write its inaugural shelter plan and as the Regional Disaster Preparedness Organization (RDPO) plans to integrate access and functional needs into emergency planning across the Portland, Oregon region. Recommendations include the establishment of a Functional Assessment Service Team (FAST) program, completing a formal survey of emergency shelter accessibility to inventory Clackamas County capability, and using the C-MIST function based framework for emergency planning.

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FIGURE 1: FEMA MEETING WITH DISABILITY ADVOCATES (2/20/13)

I. INTRODUCTION

The following white paper reviews litigation which has relied on the protections under the Rehabilitation Act of 1973 (RA) and the Americans with Disabilities Act of 1990 (ADA) to inform Clackamas County Emergency Management on how the RA and the ADA have impacted emergency planning across the United States. This white paper begins with definitions of disability as well as access and functional needs and introduces the legal framework of the RA and the ADA. The paper then reviews RA/ADA-emergency management litigation both against individual agencies as well as structural reform litigation. The paper concludes with recommendations that Clackamas County Emergency Management can immediately implement to ensure that it fully and actively integrates people with disabilities and people with access and functional needs into its emergency planning process.



FIGURE 2: AMERICAN RED CROSS SHELTER IN MINOT, FEMA.GOV

II. BACKGROUND: KEY DEFINITIONS AND LEGAL FRAMEWORK

Language is a powerful force which has the ability to change how people, issues, and laws are perceived by the public. The following definitions and legal framework provide the basis and common language for this white paper, but are not intended to limit how Clackamas County Emergency Management engages with the community throughout its planning process.

PEOPLE WITH ACCESS AND FUNCTIONAL NEEDS AND PEOPLE WITH DISABILITIES

People with access and functional needs include people who have economical or transportation needs; are pregnant; have chronic medical conditions; have pharmacological dependency; don't read; have limited English proficiency; have physical sensory, behavioral, mental health, intellectual, developmental, and cognitive disabilities; are older adults with and without disabilities; and are children with and without disabilities and their parents (FEMA, DHS, November 2013). A person who has an access and/or functional need is not in a fixed state of being. Access and functional needs are contextual and dynamic.

In July of 2015, the Department of Homeland Security defined access and functional needs accommodation as, "circumstances that are met for providing **physical, programmatic, and effective communication access** to the whole community by accommodating individual

requirements through universal accessibility and/or specific actions or modifications” (Department of Homeland Security, 2015). See Appendix A for an extended definition of access and functional needs accommodation. Clackamas County Emergency Management plans to integrate access and functional needs into its planning process to create universal accessibility in its emergency shelters for the whole community (FEMA, DHS, November 2013).

The RA and ADA solely protect people with disabilities, a subgroup of people with access and functional needs. For the purpose of an RA and ADA litigation review, this white paper must narrow its focus to the needs of people with disabilities in relation to emergency planning. However, the recommendations at the conclusion of this paper will also address the integration of people with access and functional needs along with people with disabilities into Clackamas County emergency planning.

This paper will use the ADA definition of disability for the purposes of the following litigation review, although there are many other ways to define, talk about, and think about the concept of disability. According to Section 12103 of the ADA, the term “disability”, with respect to an individual, means **a physical or mental impairment that substantially limits one or more major life activities** of such individual, **a record of such an impairment**, or **being regarded as having such an impairment**. Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working (ADA, 1990).

THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act prohibits discrimination against people with disabilities by recipients of federal funding (See Appendix B for more information):

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... (RA, 1973).

The 1985 Supreme Court case *Alexander v. Choate* interpreted section 504 of the RA as requiring that people with disabilities be provided with meaningful access, “The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the **meaningful access** to which they are entitled” (Alexander v. Choate, 1985). The “meaningful access” definition which emerged from this interpretation created standards of “**reasonable accommodation**” which the court defined



FIGURE 3: REHABILITATION ACT OF 1973, SIT-IN DEMONSTRATION

as modifications that “concretely benefit people with disabilities **without compromising the ‘essential nature’ of the programs in question**” (Weibgen, 2015, p. 2416). Public entities, through this interpretation, must go as far as programmatically and economically feasible to provide equal access to people with disabilities.

THE AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act of 1990 broadened the scope of the RA to non-federal agencies. Specifically, Title II of the ADA prohibits a public entity from excluding a person with a disability (See Appendix C for more information):

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, 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 such entity (ADA, 1990).



FIGURE 4: ACCESS AND FUNCTIONAL NEEDS PICTOGRAM

This law affects a broad array of emergency management functions. Overall, ADA compliance applies to emergency management in preparation, notification, evacuation, transportation, sheltering, recovery, decontamination processes, and points of distribution (POD) areas. The ADA requires integration of people with disabilities in emergency programs, services, and activities whenever possible. Finally, the ADA requires that the above measures and accessibility requirements be provided at no additional charge to people with disabilities.

Title III of the ADA also applies to emergency management through public accommodations requirements, specifically in emergency evacuation plans and emergency shelters:

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense... (U.S. Department of Justice, 2009).

The RA and ADA provide the legal framework and protections which plaintiffs have relied upon to challenge the emergency management practices of individual entities, public agencies, and entire jurisdictions through structural reform litigation.

III. CASES CHALLENGING PRIVATE ENTITIES

The following section analyzes court cases relying on the protections of the RA and the ADA to challenge private entities or individual agencies/departments in response to their emergency planning, or lack thereof. While these cases did not reform the system, they provide insight into how the court has interpreted the ADA's mandate of programmatic, physical, and effective communication accessibility in emergency planning.

ACCESSIBILITY: EFFECTIVE COMMUNICATION

The court enjoined the City of New York from removing street alarm boxes that “provided deaf individuals with an effective, accessible means of directly reporting emergencies to 911 from the street” (Civic Ass’n of the Deaf of New York City, Inc. v. Giuliani, 1997). The court found that under the RA and the ADA, deaf individuals had the right to communicate with emergency services and that removing the street boxes would “deny access to effective communication” (Weibgen, 2015, p. 2418). The City argued that public telephones were an equally-accessible alternative to the street alarm boxes to report emergencies. The court rejected this claim because deaf individuals could not use the public telephones to report the type or the location of the emergency as they were able to with the street alarm boxes.

Another court case which addressed the right of people with disabilities to equal access to effective communication resulted when a deaf woman was unable to communicate with emergency services when she contacted 911. The court found that under the ADA, the City of New Braunfels was required to grant people with disabilities, “the same opportunity as non-disabled individuals to converse with emergency responders” (Salinas v. City of New Braunfels, 2008). This ruling also defined the parameters of communication as both the act of receiving as well as the act of imparting information (Weibgen, 2015, p. 2419).

ACCESSIBILITY: PHYSICAL ACCESS

Students with disabilities filed a class action lawsuit against the University of California, Berkeley under the ADA's physical access mandate, citing physical access barriers to buildings on campus (Gustafson v. University of California-Berkeley, 2004). The case cited lack of accessible emergency evacuation plans for people with disabilities in University buildings. In the

settlement, the University agreed to designate emergency waiting areas for people with disabilities on every floor of every campus building with accessible two-way communication systems, develop and implement formal evacuation policies distributed yearly to people with disabilities, provide signage and maps in each building indicating safe evacuation routes for people with disabilities, provide at least one evacuation chair for each campus building, implement a training program about evacuating people with disabilities, and institute a tracking system to identify people with disabilities who may need additional assistance in the case of an emergency evacuation (Weibgen, 2015, p. 2420).



FIGURE 5: UNIVERSITY OF CALIFORNIA, BERKELEY CAMPUS

Another case which relied on the ADA requirement of equal physical access to emergency evacuation plans was a lawsuit against a Marshalls store in Silver Spring, Maryland (*Savage v. City Place Ltd. P'ship*, 2004). The case was brought by a person who used a wheelchair who, along with other customers with access and functional needs, was unable to evacuate the mall when a fire alarm went off because the power to the mall escalator and elevator had been shut down. The group was forced to wait in the interior of the mall for an hour, at which point they were told the alarm was false. The court not only found Marshalls out of compliance with Title II of the ADA, but also Title III of the ADA, which addresses architectural standards in public accommodations (Weibgen, 2015, p. 2421). In the settlement, Marshalls agreed to create accessible evacuation plans and routes for people with disabilities, train all current and future staff in assisting customers in locating and using accessible emergency evacuation routes, create accessible signage directing customers to accessible emergency evacuation routes, and work with accessible design and emergency management consultants to implement its revised emergency evacuation procedures. Marshalls implemented the settlement agreement in all of its 700 stores in 42 states and Puerto Rico.

Another case relying on the ADA's physical access requirement for people with disabilities resulted when an individual who used a wheelchair was forced to crawl upstairs to attend a hearing in a Tennessee courthouse (*Tennessee v. Lane*, 2004). This case was notable because the Supreme Court found that a state could be sued for failing to provide equal access under the ADA (Camara, Winter 2009, p. 11).

A final court case addressing physical access in emergency plans involved the emergency evacuation procedures of a school district (Shirey ex rel. Kyger v. City of Alexandria Sch. Bd., 2000). In this case a student with a mobility impairment was left alone in a school building when their middle school was evacuated due to a bomb threat. The parents complained, prompting the School Board to develop a plan which designated the library as a “safe area” for students with disabilities. During a subsequent fire drill, the student was left alone in the library, which is when the child’s parents filed a lawsuit. The court found that because the School Board had already “developed and implemented a reasonable emergency plan”, that it had fulfilled its requirements for accessible emergency planning for people with disabilities under the ADA (Weibgen, 2015, pp. 2421-2). Critics of the decision argue that the court’s narrow interpretation of the ADA shifted its protection from actual safe evacuation during emergencies to simply access to safe evacuation procedures (Weibgen, 2015, p. 2422).

IV. STRUCTURAL REFORM LITIGATION

Attorneys at Disability Rights Advocates have brought class action lawsuits and other high-impact litigation using the RA and the ADA to challenge emergency planning and emergency management at a systemic level in the United States. Disability Rights Advocates is a leading non-profit disability rights legal center run by and for people with disabilities. The following cases are notable because entire jurisdictions were found in non-compliance with the RA and the ADA (See Appendix D for structural reform litigation timeline). This review focuses on the emergency shelter aspects of the case complaints and settlements in order to support Clackamas County Emergency Management in its emergency shelter planning process.



FIGURE 6: SAN FRANCISCO BAY AREA, EARTHQUAKE PROBABILITY MAP 2003-2032, USGS.GOV

OAKLAND: CFILC v. CITY OF OAKLAND

In 2007, Disability Rights Advocates filed a class action lawsuit against the City of Oakland on behalf of people with disabilities. The complaint cited that the City of Oakland had failed to “sufficiently plan to meet the unique needs of people with disabilities during an emergency”, thus denying people with disabilities equal access to Oakland’s shelter facilities, programs, and services (California Foundation for Independent Living Centers (CFILC), et al. v. City of Oakland, et al., 2010). Specific to emergency shelters, the complaint cited the City’s lack of a current mass care or shelter plan as detrimental to people with disabilities. The complaint also cited the City’s lack of a database of potential shelters with current

and comprehensive accessibility information, an inventory of shelter supplies, or arrangements with community-based organizations, pharmacies, or providers of medical supplies and equipment. Finally, the complaint cited inaccessible shelter facilities, specifically inaccessible shelter entrances, paths of travel, bathrooms, showers, signage, and parking.

The case was settled in 2010. The City of Oakland agreed to create a Functional Needs Annex, ensure the availability of 20 emergency shelters, designate a Shelter Functional Needs Coordinator in each shelter, use an accessible emergency notification system, and use GIS (Geographic Information System) to assist first responders with identifying the location of persons who may require accessible transportation services.

LOS ANGELES: CALIF v. CITY OF LOS ANGELES

In a 2011 landmark ADA-emergency management case brought against the City of Los Angeles, the court found that “...the City’s emergency preparedness program as a whole failed to provide people with disabilities with ‘meaningful access’ to emergency services” (Weibgen, 2015, p. 2423) under Section 504 of the RA and Title II of the ADA. The complaint cited that the City discriminated against people with disabilities through its lack of emergency planning for their unique needs. More specifically, the complaint cited the City’s lack of “provisions to notify people with auditory impairments or cognitive disabilities of an emergency, or evacuate, transport, or temporarily house individuals with disabilities during or immediately following an emergency or disaster” (Communities Actively Living Independent & Free (CALIF), et al. v. City of Los Angeles, et al., 2011). The complaint cited that while certain departments had been delegated the task of addressing the needs of people with disabilities during emergencies, these departments neither had plans to specifically address the needs of people with disabilities nor assessed whether they actually had the capability to perform their delegated responsibilities in the event of an emergency.

The Los Angeles case is notable because it began to set standards for what “meaningful access” meant at the city-level for emergency planning for people with disabilities,

By describing the required elements of a preparedness plan, finding the City’s plan as a whole to be noncompliant with regard to people with disabilities, and directing the City’s independent expert to assist with revisions to all components of the City’s plans, the court suggested that *‘meaningful access’ requires cities to ensure that each of the fundamental components of an emergency plan address the unique needs of people with disabilities* (Weibgen, 2015, p. 2425).

The court ruling in this case impacted emergency planning in many ways. First, the court rejected reliance on personal planning as relieving a city’s obligation for formal plans to address the needs of people with disabilities. Second, the court rejected the delegation of responsibility of emergency planning for people with disabilities to individual agencies or departments. Third, the court found that a **lack of action** could also violate the RA and ADA,

...because individuals with disabilities require special needs, the City disproportionately burdens them through its facially neutral practice of administering its program in a manner that fails to address such needs (Weibgen, 2015, p. 2424).

Finally, the court created nine essential components that effective emergency preparedness plans must include to address the needs of people with disabilities (See Appendix E for complete list of the Nine Essential Components). These nine essential components were used again by Disability Rights Advocates in its case challenging New York City's emergency planning, however in that case the court chose not to use this framework to evaluate New York City's emergency services (Weibgen, 2015, p. 2456).

In the settlement, the City of Los Angeles agreed to revise its emergency plans to include people with disabilities and to hire an independent expert to assist with the process. Disability Rights Advocates also negotiated with the County of Los Angeles, broadening the scope of people with disabilities affected by the ruling and settlement agreement.

NEW YORK CITY: BCID v. MAYOR BLOOMBERG

In the most comprehensive ADA-emergency management litigation to date, the court found that people with disabilities had the right of equal access to any emergency services provided to non-disabled people

(Brooklyn Center for Independence of the Disabled (BCID), et al. v. Mayor Bloomberg, et al., 2015). Specifically

related to shelters, the complaint cited lack of information provided about accessible shelters, dangerous/makeshift ramps into accessible shelters, inadequate shelter signage, inaccessible shelter

bathrooms, and locked accessible components of shelters (without access to keys) during times of emergency such as during Hurricanes Irene and Sandy.



FIGURE 7: WHITE HOUSE CONFERENCE WITH FEMA AND DHS IN PREPARATION FOR HURRICANE SANDY

The complaint also cited lack of City engagement with communities throughout its emergency planning process,

As a result, persons with disabilities know very little or nothing of the City's emergency plans. They do not know, for instance, how they will be notified, how and if they will be evacuated, which shelters are accessible, how and if they will be transported and what assistance, if any, they will receive (Brooklyn Center for Independence of the Disabled (BCID), et al. v. Mayor Bloomberg, et al. , 2015).

In total, the court found that the City's emergency plan failed to accommodate people with disabilities in its evacuation procedures, shelter plans, canvassing services, post-disaster resource distribution, outreach and education regarding availability of accessible resources, and communication. The 2015 settlement resulted in seven separate Memorandums of Understanding (MOUs) which included the establishment of a high-level Office of Emergency Management position addressing the needs of people with disabilities and a disability community advisory panel to provide continuous feedback in the emergency planning process.

Specific to sheltering, the City agreed to the following actions by September 2017:

- A minimum of 60 accessible emergency shelters (separate from the 8 Special Medical Needs Facilities currently maintained by the City) with the capacity to shelter approximately 120,000 people with disabilities in the event of an emergency.
- Every accessible shelter will have accessible signage, provide for backup power, refrigeration, power strips, and a way-finding kit to assist people with disabilities in utilizing the shelter.
- The City's reserve supplies will include sufficient numbers of raised toilet seats, accessible cots, mobility aids (canes, crutches, manual wheelchairs), basic medical supplies, and extension cords.
- CART or ASL interpretation services will be provided at every accessible facility.
- Conduct a formal survey of facilities using, among other tools, the Department of Justice's ADA Toolkit for Emergency Shelters and FEMA's guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters.
- Accessible transportation to shelters.



FIGURE 8: AN ADA GUIDE FOR LOCAL GOVERNMENTS, WWW.ADA.GOV

- Accurate/Accessible information about accessible shelters (information provided through multiple means and formats).
- Training for all levels of shelter staff to provide meaningful access and support for people with disabilities and people with functional and access needs.
- Conduct a shelter needs analysis to determine the capacity and geographic distribution sufficient to meet the anticipated need for meaningful access to emergency shelters for people with disabilities.
- Use a qualified firm with experience in architectural accessibility for people with disabilities to conduct any surveys of the selected sites the City proposes to use.

WASHINGTON, D.C.: UNITED SPINAL ASS'N V. THE DISTRICT OF COLUMBIA

The most recent structural reform ADA-emergency management case was filed in September of 2014 against the District of Columbia. This complaint followed a similar pattern of past structural reform cases. This complaint, however, highlighted that the District of Columbia's lack of adequate emergency planning for people with disabilities was "particularly egregious" due to standards already enumerated for emergency planning through past litigation in Oakland, Los Angeles, and New York City (United Spinal Association, et al. v. The District of Columbia, et al., 2014). This new wrinkle of argument in the plaintiffs' complaint suggests that the court may be quicker to rule against jurisdictions that have ignored recent RA and ADA emergency management litigation in their emergency planning process.

V. RECOMMENDATIONS

The following emergency shelter plan recommendations come from two sources. The first is FEMA's course, "Integrating Access and Functional Needs into Emergency Planning" where Marcie Roth, Director of FEMA's Office of Disability Integration and Coordination, reinforced the need to include access in every part of the planning process through universal accessibility and whole community planning (FEMA, DHS, November 2013). The second source is the Center for Independence of the Disabled, New York (CID-NY), a non-profit run for and by people with disabilities. CID-NY was extremely active in the structural reform litigation in New York City, *BCID v. Mayor Bloomberg*, and has written extensively on emergency planning for people with disabilities (CID-NY, 2015). The recommendations are divided into a three-part strategy: (1) integrate people with subject matter expertise into Clackamas County Emergency Management's planning process through a FAST program, (2) formally assess Clackamas County emergency shelters' accessibility and inventory capability, and (3) integrate access and functional needs into emergency planning through the C-MIST framework.

INTEGRATE PEOPLE WITH SUBJECT MATTER EXPERTISE

- **TASK FORCE:** Clackamas County has already initiated the creation of an emergency management task force. These individuals represent and include people with functional and access needs that can provide subject matter expertise to inform Clackamas County Emergency Management mitigation, preparedness, response, and recovery.

- **FAST:** Many regions have developed FAST (Functional Assessment Service Team) programs. FAST members can be from government agencies, nonprofit organizations, and service providers. FAST members are deployed when a request is made by the Emergency Operations Center (EOC) and complement shelter staff in meeting the needs of all people. Each FAST member has various expertise in areas such as signage and accessibility, setup for mobility, identification of potential needs, and helping to locate necessary resources. See the document “Recommendations Supplement” for more information on the FAST program.



FIGURE 9: FAST PROGRAM

ASSESS CLACKAMAS COUNTY EMERGENCY SHELTER ACCESSIBILITY AND CAPABILITIES

- **FORMAL ASSESSMENT:** All settlements from the ADA structural reform litigation to date have required jurisdictions to identify, inventory, and increase the number of accessible shelters for people with disabilities. FEMA recommends using a checklist document created by June Isaacson Kailes, Associate Director of the Center for Disability and Health Policy at Western University of Health Sciences (Isaacson Kailes, Checklist for Integrating People with Disabilities and Others with Access and Functional Needs into Emergency Preparedness, Planning, Response & Recovery, 2014). This checklist document will allow Clackamas County to evaluate and inventory its current capability for accessible emergency shelters, identify areas that need the most attention, set priorities, and continually assess progress towards those priorities. The checklist evaluates each item/area as: sufficient (completely addressed, formal mechanisms), partially sufficient (partially addressed, informally addressed, under development, being updated), not sufficient (not addressed, may be addressed in other policies and procedures, but there is no evidence that this element is addressed), promising practice (potential good practices or models that may benefit other jurisdictions), unsure, and not applicable.
 - ***EXAMPLES OF EMERGENCY SHELTER CHECKLIST ITEMS:***
 - Accessible entrances, access routes, showers, and feeding areas
 - Backup power and recharging sites for people who need to recharge durable medical equipment
 - Emergency shelter staff training
 - Privacy needs of people with disabilities as well as people with access and functional needs

- Methods for locating, procuring, and storing necessary consumable and durable medical equipment
 - Cots that are designed for easier transfer from a wheelchair and are generally easier to access for people with mobility disabilities
- **COMMUNITY INVOLVEMENT IN FORMAL ASSESSMENT:** Ensuring universal accessibility often requires people who have personal experience with access barriers to physically assess a shelter to identify possible physical access barriers. Task force and FAST program members can provide expertise in assessment of Clackamas County emergency shelters as well as the inventory process. Clackamas County Emergency Management can also initiate other recruitment efforts during its formal shelter assessment process. The time of an emergency will be too late to plan for accessibility.

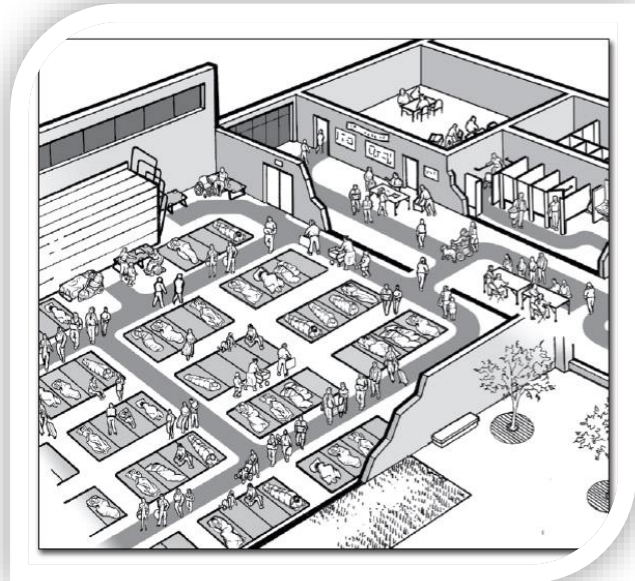


FIGURE 10: AN ADA GUIDE FOR LOCAL GOVERNMENTS, WWW.ADA.GOV




PLAN WITH C-MIST FUNCTION BASED FRAMEWORK

FEMA recommends emergency planners use the C-MIST framework to address the RA and the ADA mandates of accessibility. Modifications made for people with disabilities have often segregated people with disabilities under the term “special needs.” C-MIST moves away from this segregating concept by focusing on functional needs categories,

A functional support framework provides for commonalities in planning among a large array of impairment types. This framework provides a way to operationalize support for functional needs and activity limitations that may be the same, even though the impairments may be very diverse. Asking ‘What is needed to maintain functional C-MIST?’ avoids making inappropriate assumptions about what an individual does or does not need (Isaacson Kailes & Enders, Moving Beyond "Special Needs": A Function-Based Framework for Emergency Management and Planning, 2007, p. 233).

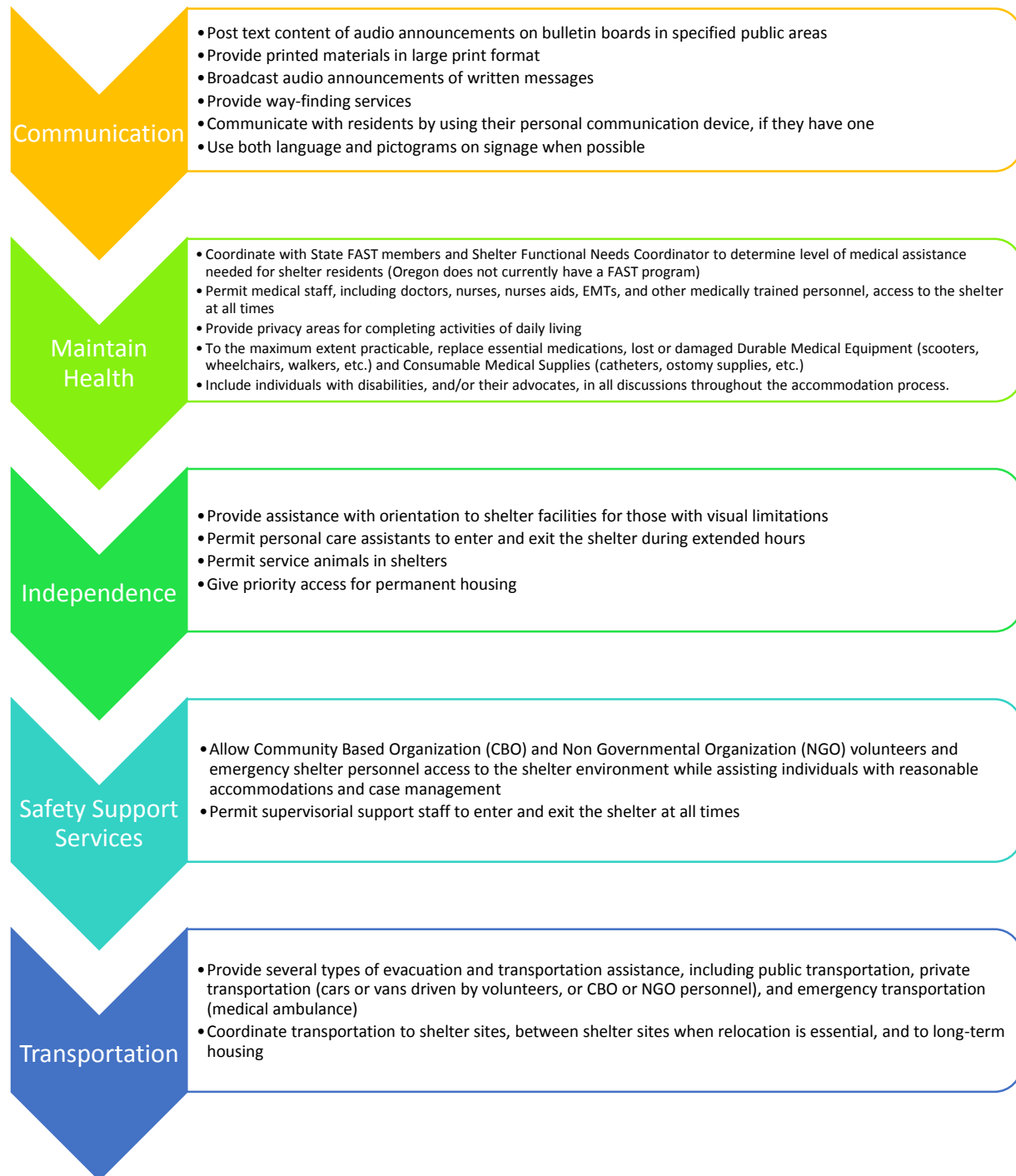
The five functional categories of C-MIST include: **C**ommunication, **M**aintaining Health, **I**ndependence, **S**afety Support Services, and **T**ransportation. Humans are dynamic and have intersectional identities, as such, one person may have multiple functional access needs (Purdy).

The National Health Center for Disaster Medicine & Public Health at the Uniformed Services University of the Health Sciences provides definitions and examples of the C-MIST framework functional categories:

C-MIST CATEGORY	DEFINITION	EXAMPLES
 <p>Communication</p>	<p>Individuals with communication needs may have limited or no ability to speak, see, hear, or understand. During an emergency, people with communication needs may not be able to hear announcements, see signs, understand messages, or verbalize their concerns.</p>	<p>Examples of people with communication needs include people who:</p> <ul style="list-style-type: none"> • Are deaf or hard of hearing • Communicate via American Sign Language • Have limited English proficiency • Are blind or have low vision • Have cognitive or physiological limitations
 <p>Maintaining Health</p>	<p>During an emergency, people may be separated from family or caregivers. These individuals may require personal assistance services (PAS) or personal care assistance.</p>	<p>Examples of activities of daily living that may require PAS include eating, bathing, dressing, grooming, transferring, storage of medications requiring refrigeration, and toileting.</p>
 <p>Independence</p>	<p>Preparedness planning requires ensuring that people who are able to function independently if they have their assistive devices or equipment are not separated from their durable medical equipment or service animals and have access to a power source for battery-powered assistive devices.</p> <p>During planning it is importance to be cognizant of</p>	<p>Examples of devises/equipment/technology for maintaining independence include:</p> <ul style="list-style-type: none"> • Mobility aids (wheelchairs, walkers, canes, crutches) • Communication aids (hearing aids, communication boards, computerized communication device)

	<p>the wide range of older adults with access and functional needs. For example, two individuals with the same diagnosis or what appears to be the same condition may have difference access and functional needs.</p>	<ul style="list-style-type: none"> • Medical equipment (catheters, oxygen, syringes, medications, consumable medical supplies) • Service animals (animals specifically trained to perform tasks to assist people with disabilities such as guide dogs)
<p>Safety Support Services</p>	<p>During a disaster or emergency, some people with psychiatric conditions (such as dementia, Alzheimer’s disease, schizophrenia, or severe mental illness), addiction problems, or traumatic brain injury may become anxious due to transfer trauma. While some individuals are able to function well, others require services and support. People with disabilities are the most knowledgeable about their own needs and healthcare, and emergency responders should ask people with disabilities what they need.</p>	<p>Consideration should be given to the following:</p> <ul style="list-style-type: none"> • People with dementia, an intellectual disability, or autism are especially susceptible to chaos (i.e. loud noises, flashing lights, crowds) and emotional trauma • Inform others of the person with dementia’s condition as appropriate • Do your best to stay calm, persons with dementia, an intellectual disability, or autism will respond to your emotional tone
<p>Transportation</p>	<p>People who may require transportation support due to access and functional needs include some individuals with:</p> <ul style="list-style-type: none"> • Disabilities, age restrictions, temporary injury, poverty, legal restriction, no access to a vehicle 	<p>Examples of preparedness planning for individuals with transportation needs include coordination for the provision of accessible vehicles and drivers as well as ensuring the availability of fuel and vehicles that can safely transport medical devices or equipment such as oxygen.</p>

The City of Oakland developed a training in the implementation of the C-MIST framework for emergency shelters which provides helpful examples for each functional category:



VI. CONCLUSION

Clackamas County Emergency Management has the opportunity to move beyond basic civil rights law compliance towards universal accessibility for whole community planning that integrates access and functional needs. Director of FEMA's Office of Disability Integration and Coordination Marcie Roth uses the analogy of baking a cake. Emergency management must

bake access and functional needs into the emergency planning cake, rather than

layering access and functional needs on top of the cake as frosting at the end of the cake-baking process. Frosting access and functional needs into the emergency planning cake at the tail end (as a separate part) leaves critical concerns out of the conversation during the planning process, resulting in less effective plans. As Clackamas County Emergency Management prepares to create its emergency shelter plan it must fully bake access and functional needs into its entire planning process by continuing to build relationships with community members and professionals with subject matter expertise, formally assessing the shelters it plans on using during emergencies, and creating plans using a C-MIST function based framework.



FIGURE 11: CLACKAMAS COUNTY 36 PIT FIRE

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VIII. APPENDICES

APPENDIX A: ACCESS AND FUNCTIONAL NEEDS ACCOMMODATION EXTENDED DEFINITION, DHS

APPENDIX B: SECTION 504 OF THE REHABILITATION ACT OF 1973

APPENDIX C: TITLE II AND TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990

APPENDIX D: TIMELINE OF STRUCTURAL REFORM LITIGATION

APPENDIX E: NINE ESSENTIAL COMPONENTS FOR EFFECTIVE EMERGENCY PREPAREDNESS PLANS

APPENDIX A

ACCESS AND FUNCTIONAL NEEDS ACCOMMODATION

Department of Homeland Security Approved Definition, Jul 2015

TERM: Access and Functional Needs Accommodation

SYNONYM: Access and Functional Needs

DEFINITION: circumstances that are met for providing physical, programmatic, and effective communication access to the whole community by accommodating individual requirements through universal accessibility and/or specific actions or modifications

EXTENDED DEFINITION: includes assistance, accommodation or modification for mobility, communication, transportation, safety, health maintenance, etc.; need for assistance, accommodation or medication due to any situation (temporary or permanent) that limits an individual's ability to take action in an emergency

ANNOTATION: When physical, programmatic, and effective communication access is not universally available, individuals may require additional assistance in order to take protective measures to escape to and/or from, access either refuge and/or safety in an emergency or disaster, and/or may need other assistance, accommodations or modifications in an emergency or disaster through pre-planning by emergency management, first response agencies and other stakeholders or in sheltering or other situations from notification and evacuation, to sheltering, to return to pre-disaster level of independence.

Individuals having access and functional needs may include, but are not limited to, people with disabilities, older adults, and populations having limited English proficiency, limited access to transportation, and/or limited access to financial resources to prepare for, respond to, and recover from emergency.

Federal civil rights law and policy require nondiscrimination for certain populations, including on the bases of race, color, national origin, religion, sex, age, disability, English proficiency, and economic status. Many individuals with access and functional needs are protected by these provisions.

SOURCE: PPD-8 Access and Functional Needs Working Group 2014

APPENDIX B

REHABILITATION ACT OF 1973, SECTION 504

Department of Justice, Civil Rights Division, A Guide to Disability Rights Laws

SECTION 504

Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.

Each Federal agency has its own set of section 504 regulations that apply to its own programs. Agencies that provide Federal financial assistance also have section 504 regulations covering 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. Each agency is responsible for enforcing its own regulations. Section 504 may also be enforced through private lawsuits. It is not necessary to file a complaint with a Federal agency or to receive a "right-to-sue" letter before going to court.

For information on how to file 504 complaints with the appropriate agency, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)

(800) 514-0383 (TTY)

APPENDIX C

AMERICANS WITH DISABILITIES ACT OF 1990, TITLE II AND III

Department of Justice, Civil Rights Division, A Guide to Disability Rights Laws

ADA TITLE II: STATE AND LOCAL GOVERNMENT ACTIVITIES

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

State and local governments are required to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. Public entities are not required to take actions that would result in undue financial and administrative burdens. They are required to make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination, unless they can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity being provided.

Complaints of title II violations may be filed with the Department of Justice within 180 days of the date of discrimination. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department may bring a lawsuit where it has investigated a matter and has been unable to resolve violations. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

www.ada.gov

(800) 514-0301 (voice)
(800) 514-0383 (TTY)

Title II may also be enforced through private lawsuits in Federal court. It is not necessary to file a complaint with the Department of Justice (DOJ) or any other Federal agency, or to receive a "right-to-sue" letter, before going to court.

ADA TITLE II: PUBLIC TRANSPORTATION

The transportation provisions of title II cover public transportation services, such as city buses and public rail transit (e.g. subways, commuter rails, Amtrak). Public transportation authorities may not discriminate against people with disabilities in the provision of their services. They must comply with requirements for accessibility in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner, and, unless it would result in an undue burden, provide paratransit where they operate fixed-route bus or rail systems. Paratransit is a service where individuals who are unable to use the regular transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations. Questions and complaints about public transportation should be directed to:

Office of Civil Rights
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue, Room E54-427
Room 9102
Washington, D.C. 20590

www.fta.dot.gov/ada

(888) 446-4511 (voice/relay)

ADA TITLE III: PUBLIC ACCOMMODATIONS

Title III covers businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Public accommodations are private entities who own, lease, lease to, or operate facilities such as restaurants, retail stores, hotels, movie theaters, private schools, convention centers, doctors' offices, homeless shelters, transportation depots, zoos, funeral homes, day care centers, and recreation facilities including sports stadiums and fitness clubs. Transportation services provided by private entities are also covered by title III.

Public accommodations must comply with basic nondiscrimination requirements that prohibit exclusion, segregation, and unequal treatment. They also must comply with specific requirements related to architectural standards for new and altered buildings; reasonable modifications to policies, practices, and procedures; effective communication with people with hearing, vision, or speech disabilities; and other access requirements. Additionally, public accommodations must remove barriers in existing buildings where it is easy to do so without much difficulty or expense, given the public accommodation's resources.

Courses and examinations related to professional, educational, or trade-related applications, licensing, certifications, or credentialing must be provided in a place and manner accessible to people with disabilities, or alternative accessible arrangements must be offered.

Commercial facilities, such as factories and warehouses, must comply with the ADA's architectural standards for new construction and alterations.

Complaints of title III violations may be filed with the Department of Justice. In certain situations, cases may be referred to a mediation program sponsored by the Department. The Department is authorized to bring a lawsuit where there is a pattern or practice of discrimination in violation of title III, or where an act of discrimination raises an issue of general public importance. Title III may also be enforced through private lawsuits. It is not necessary to file a complaint with the Department of Justice (or any Federal agency), or to receive a "right-to-sue" letter, before going to court. For more information, contact:

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

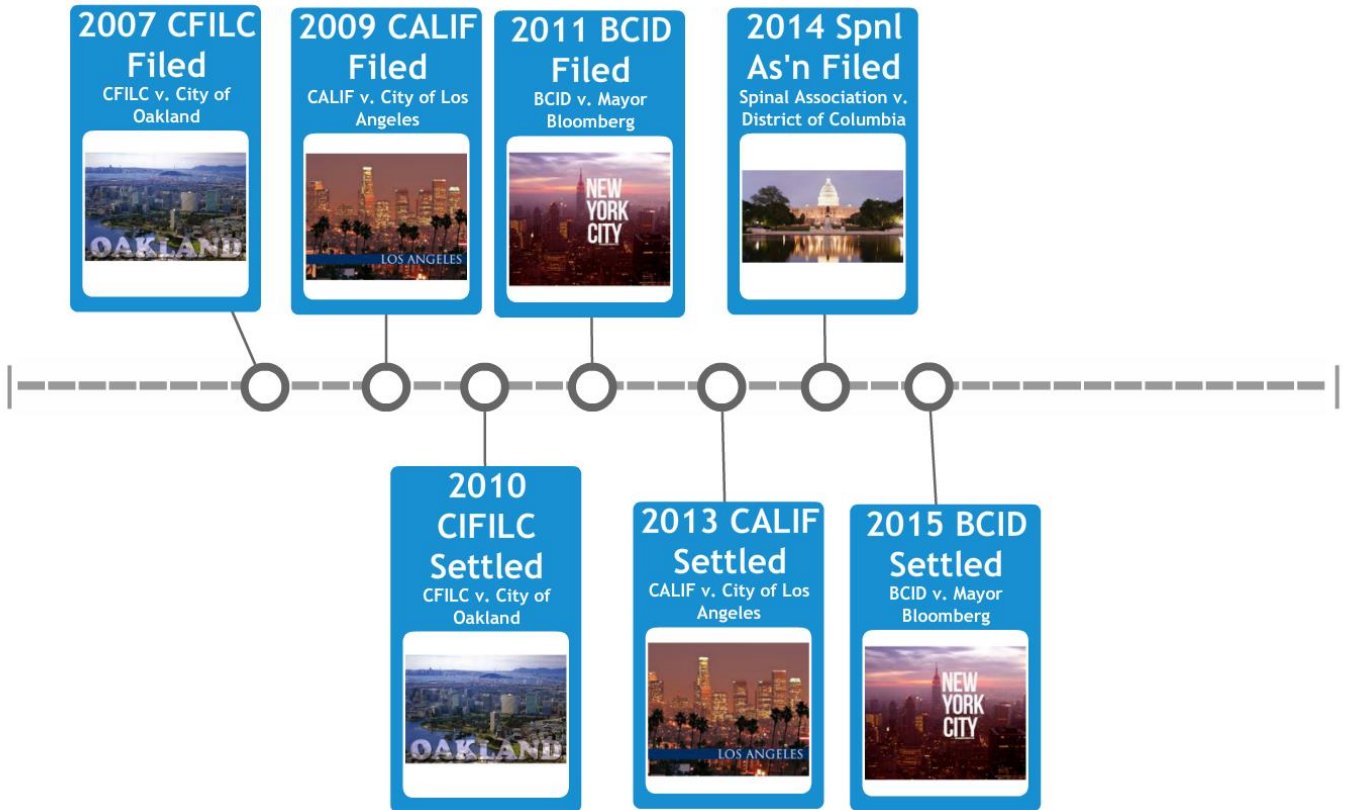
www.ada.gov

(800) 514-0301 (voice)
(800) 514-0383 (TTY)

APPENDIX D

TIMELINE OF STRUCTURAL REFORM LITIGATION

The following timeline shows when the major structural reform cases were filed and when they were finally settled. All of the cases took 3-4 years to settle, with the exception of the most recent complaint filed against the District of Columbia, which has yet to be settled.



APPENDIX E

NINE ESSENTIAL COMPONENTS OF AN EFFECTIVE EMERGENCY PREPAREDNESS PROGRAM

Communities Actively Living Independent & Free (CALIF) v. City of Los Angeles

1. An emergency preparedness program must include the development of comprehensive emergency plans. Such plans must address both specific types of emergencies (e.g., hurricanes) and/or address specific procedures (e.g., evacuation) during emergencies.
2. An emergency preparedness program must include assessments of the efficacy of emergency plans. This requires exercises and drills simulating various emergencies and may require public participants.
3. An emergency preparedness program must include advanced identification of the needs that will arise and resources available to meet those needs during an emergency.
4. An emergency preparedness program must provide plans for public notification and communication prior to, during, and after emergencies.
5. An emergency preparedness program must provide policies or procedures concerning the concept of "sheltering in place." When evacuation to shelters is either inappropriate or impossible.
6. An emergency preparedness program must include plans to provide shelter and care for individuals forced to evacuate their homes during emergencies. Public schools are commonly used as shelters. Care at such shelters includes food, water, sleeping areas, bathroom facilities and medical attention, if necessary.
7. An emergency preparedness program must plan to provide assistance with evacuation and transportation.
8. An emergency preparedness program must include plans for provision of temporary housing when evacuees cannot return to their homes.
9. An emergency preparedness program must have plans for the provision of assistance in recovery and remediation efforts after an emergency or disaster.