



June 12, 2024

**SUBMITTED ELECTRONICALLY** via [regulations.gov](https://www.regulations.gov)

The Honorable Pete Buttigieg  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: ITEM Coalition Comments re Proposed Rule on Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs (DOT-OST-2022-0144)/(RIN 2105-AF14)**

Dear Secretary Buttigieg:

The undersigned members of the Independence Through Enhancement of Medicare and Medicaid (“ITEM”) Coalition Steering Committee appreciate the opportunity to provide comments to the U.S. Department of Transportation (“DOT” or “Department”) in response to the Proposed Rule entitled, *Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs* (“Proposed Rule”). Ensuring transportation, including air travel, is safe and accessible for individuals with disabilities is a top priority for the ITEM Coalition and we commend the Department for their continued and dedicated work in this space.

The ITEM Coalition is a national consumer- and clinician-led coalition advocating for access to and coverage of assistive devices, technologies, and related services for persons with injuries, illnesses, disabilities, and chronic conditions of all ages. Our members represent individuals with a wide range of disabling conditions, as well as the providers who serve them, including individuals with limb loss and limb difference, spina bifida, multiple sclerosis, spinal cord injury, brain injury, stroke, paralysis, cerebral palsy, hearing, speech, and visual impairments, myositis, and other life-altering conditions.

Despite the fact that the Air Carrier Access Act (“ACAA”)<sup>1</sup> was passed over 37 years ago, people who use mobility devices are repeatedly and continuously subjected to significant risk of injuries during air travel. In this Proposed Rule, the Department is proposing a number of material policy changes to strengthen implementation of the ACAA to address these significant challenges faced by individuals with disabilities using wheelchairs. Specifically, the Department is proposing changes to its (i) standards for all accessibility services, (ii) time requirements for certain accessibility services, (iii) violation presumptions, (iv) notification requirements, (v) timing and service standards for wheelchair transportation issues, (vi) enhanced training, and (vii) improvements to on-board wheelchair (“OBW”) standards. While the ITEM Coalition is

---

<sup>1</sup> Air Carrier Access Act, 49 U.S.C. § 41705 (1986)

supportive of each of these proposals included in this Proposed Rule, our comments are consumer-focused and specifically limited to the proposals around mishandling of wheelchairs and mobilities aides, as well as timing and service standards for wheelchair transportation issues.

## **I. Mishandling Wheelchairs, Mobility Aids, and Other Assistive Devices as a Per Se Violation**

The mishandling of mobility devices can lead to numerous issues, including fear of flying, lost wages, loss of independence, physical injuries, and costly, lengthy repairs or waits for replacements. The burdens and expenses associated with mishandled mobility devices extend further, resulting in additional medical costs due to the use of ill-fitting loaner wheelchairs, the need to pay for caregivers or rely on others due to lost independence, and the inability to fully perform employment responsibilities, leading to lost wages. Additionally, the passenger may suffer a loss of dignity while navigating the frustrating and sometimes demeaning process of filing claims for mishandled devices and awaiting repairs or replacements. Airlines are generally required to return wheelchairs, other mobility aids, and assistive devices in the condition in which they were received. When complaints are filed for damaged mobility devices, airlines often acknowledge the violation of the ACAA. Therefore, the ITEM Coalition is supportive of the Department's proposal and believes it is reasonable to consider the mishandling of wheelchairs or other assistive devices as a per se violation.

### *Definition of Mishandled*

The Department is proposing to define "mishandled" as "lost, delayed, damaged, or pilfered," consistent with the definition for checked baggage. However, the ITEM Coalition must clearly note that assistive devices are not equivalent to baggage. When baggage is lost or delayed, a passenger may experience some minor inconveniences, including delayed access to personal items or a return trip back to the airport to retrieve the baggage once it is located. In contrast, when a wheelchair or assistive device is lost, delayed, damaged, or pilfered, the consequences are much more severe. Wheelchairs are medically necessary to address health conditions that limit mobility and meet the functional needs of each individual. Therefore, the Department must not only provide a clear and concise definition of the term "mishandled" in the final rule, but also offer clear guidance on determining when an assistive device is considered "lost" or "delayed."

### *Obligation to Notify Passengers of Their Rights*

The Department is also proposing that when carriers mishandle wheelchairs or mobility devices, they have an obligation to inform passengers of their rights and options. Specifically, the DOT is proposing to require carriers to immediately notify passengers of their rights to: (1) file a claim with the airline; (2) receive a loaner wheelchair from the airline with specific customizations; (3) select a preferred vendor for repairs or replacement of a damaged device, if desired; and (4) have access to a Complaints Resolution Official ("CRO") and be provided with information on how to contact the CRO.

It is critical that the Department mandate that carriers notify passengers of their rights when a wheelchair or mobility device is mishandled, as passengers may not be aware of these rights.

The ITEM Coalition notes that notifications must be effectively communicated, both orally and in writing, in plain language, and in a manner accessible and understandable to the passenger. To ensure effective communication, airline personnel may need to provide auxiliary aids and services necessary to communicate effectively with passengers with disabilities. All personnel—whether they are employees of carriers or contracted service providers—must be properly trained on passengers' rights, effective communication with passengers with disabilities, the claims process, and the associated paperwork and forms.

Carriers often require passengers to report damage and file a claim before departing the airport. However, passengers may be unaware of the damage to their wheelchair or mobility device until after leaving the airport, or they may only discover the damage when the device is returned, if it was returned after they left the airport. The ITEM Coalition encourages the Department to adopt a reasonable timeframe—specifically, fifteen days after the passenger's arrival or the return of the mobility device, whichever is later—for filing a claim. Additionally, we believe that carriers should not require passengers to file claims only at the airport, especially if the damage was discovered after leaving or upon the device's return. Instead, carriers should implement policies and procedures that allow passengers to file claims in an accessible manner without adding additional accessibility barriers, such as by phone or online.

## **II. Prompt Repair or Replacement of Lost, Damaged, or Destroyed Wheelchairs**

Damaged and lost wheelchairs or mobility assistive devices subject passengers with disabilities to discriminatory treatment, as they tend to face higher safety risks than those without disabilities. Failing to promptly repair or replace a passenger's wheelchair or mobility device not only endangers their health and safety, but also impacts passenger's dignity and independence, particularly if they experience safety risks, medical complications, and additional expenses.

While delays may sometimes be due to circumstances beyond the carriers' control, some delays—and the associated risks to passengers—could be mitigated if passengers have options when their mobility device is damaged or destroyed. The ITEM Coalition supports the Department's statement in the Proposed Rule that passengers should have options when a carrier mishandles their mobility device to reduce safety risks, and we agree that all repairs and replacements must be prompt, with an expeditious timeline. The requirement for prompt repairs and replacements can also be met by allowing passengers to choose their preferred vendor, which the Department is proposing in this Proposed Rule. This enables passengers to select the option that best protects their safety and dignity while also potentially reducing the burden on the carrier's vendor.

Under current policy, when a carrier damages or loses a wheelchair or mobility device, the passenger must file a claim at the airport and is then given the contact information for the carrier's contractor, who will assess the damage. This contractor, employed by the carrier, then determines the extent of the damage, which parts may need to be repaired or replaced, and whether the entire mobility device needs to be replaced. Passengers must use the carrier's contractor and do not have the option for the carrier to reimburse a vendor of their choice. Additionally, passengers are generally not consulted on whether a part or the entire wheelchair

should be repaired or replaced. The ITEM Coalition believes it is critical that a comprehensive damage assessment be conducted as quickly as possible to prevent further delays in the repair or replacement process. Allowing passengers to choose their own assessment, repair, or replacement company or vendor could help streamline this process. This should also include allowing passengers to switch their choice if there are unforeseen delays with their chosen vendor or the carrier's contractor.

### *Incurred Costs During the Repair and Replacement Process*

When a carrier mishandles a passenger's wheelchair or mobility device, resulting in additional costs, the carrier must be responsible for these expenses. Just as passengers are entitled to provable direct or consequential damages for mishandled luggage, they must also be entitled to provable direct or consequential costs for the damage or loss of their wheelchair or mobility device. These costs could include additional medical services needed due to using a loaner wheelchair that is not as customized as their personal device, medical supplies or services required when the passenger experiences limited function and safety without their personal wheelchair, lost wages due to functional limitations, additional personal care services such as hiring a caregiver or a family member taking leave from work to assist with activities of daily living, more expensive transportation if the passenger cannot use their usual mode of transport without their personal mobility device, and any other direct and consequential incurred costs. The ITEM Coalition supports the Department's proposal to set a reasonable standard for coverage based on the restriction of mobility and independence. However, this should be a sufficient dollar amount to ensure the passenger's safety while waiting for the return of their personal device or an equivalent replacement.

### **III. Loaner Wheelchair Accommodations**

The safety, health, well-being, and dignity of passengers with disabilities must always be the highest priority for carriers. For power wheelchair users, loaner wheelchairs are unlikely to fully meet the functional and safety needs of their customized, medically prescribed wheelchairs. However, this does not absolve carriers from providing a loaner wheelchair or other accommodation that can reasonably meet equivalent functional mobility needs and ensure the passenger's safety.

If no other accommodation is available, the carrier must provide loaner wheelchairs until repairs or replacements are complete. The carrier should also offer passengers the option to choose another accommodation that better suits their functional mobility needs and guarantees their safety, with the cost covered by the carrier if the loaner wheelchair is insufficient. The ITEM Coalition agrees with the Department that carriers must consult with the passenger to determine the necessary accommodation. It is imperative that the Department ensures that all accommodations, whether a loaner wheelchair or another option, must meet the passenger's functional needs to the maximum extent possible and ensure their safety.

\*\*\*\*\*

We appreciate your consideration of these comments. Should you have any further questions regarding this letter, please contact the ITEM Coalition Co-Coordination at

[Peter.Thomas@PowersLaw.com](mailto:Peter.Thomas@PowersLaw.com) or [Michael.Barnett@PowersLaw.com](mailto:Michael.Barnett@PowersLaw.com) or by calling 202-466-6550.

Sincerely,

**The Undersigned Members of the ITEM Coalition Steering Committee**

ALS Association  
Christopher and Dana Reeve Foundation  
Spina Bifida Association  
Team Gleason  
United Spinal Association