

Operational Policy

Policy title:	Non-Discrimination on the Basis of Disability		
Policy number:	ODHS OHA 010-005		
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Approved:	Fariborz Pakseresht		

Purpose

Communicates to all Oregon Department of Human Services (ODHS) employees, contractors, volunteers, trainees, and other individuals who are part of the ODHS workforce that qualified individuals with disabilities will not be excluded from participation in, be denied the benefit of, or be subjected to discrimination in any of its programs, services and activities.

Description

Establishes a Department policy of non-discrimination in the provision of Oregon Department of Human Services (ODHS) services, programs, and activities on the basis of disability in accordance with Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973. Insert description here

Applicability

This policy applies to ODHS and OHA subject individuals as identified by rule including specific contractors and all staff: employees, volunteers, trainees, and interns.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. General

- a. No qualified individual with a disability will, on the basis of disability, be discriminated against, be excluded from participation in, or be denied the benefits of the services, programs or activities of the Department.
 - A. ODHS will not, directly or through contractual or other formal or informal arrangements, on the basis of disability: deny a qualified individual with a disability the opportunity to participate in a service, program or activity to receive the benefits or services offered.
 - B. ODHS will ensure that individuals with disabilities are not, based on their disability, denied the opportunity to participate on planning or advisory

boards.

2. Administrative Responsibilities

- a. The ODHS Director or the Program Director will appoint a program designee responsible party for administering Department or program-wide compliance with the Americans with Disabilities Act (ADA) and other state and federal disability discrimination laws.
 - A. The ODHS program designee is responsible for identifying, developing, disseminating and coordinating resources to assist the Department and programs in ADA compliance efforts.
 - B. The ODHS program designees are responsible for ensuring that a process exists within each program to provide auxiliary aids and services and Reasonable Modifications to rules, policies and practices for clients, client applicants and members of the public who are qualified individuals with disabilities.
 - i. The ODHS program designees will ensure that posters and other materials providing information to clients, client applicants and the public about the availability of auxiliary aids and services and the legal rights that individuals with disabilities have through state and federal disability laws.
 - ii. Posters and other materials will be displayed in public viewing areas within each ODHS Office.
- b. The ODHS program designees are responsible for developing and coordinating a department-wide training curriculum on disability laws and services.
- c. The ODHS program designees should periodically report to the ODHS and program directors to communicate compliance throughout all programs.

3. Contractor's Compliance

When ODHS utilizes contractors (including their agents or subcontractors) and governmental entities under intergovernmental agreement to deliver services, programs or activities, those contractors are subject to Title II of the ADA or Section 504 of the Rehabilitation Act.

- a. Primary responsibility for adopting policies and procedures to provide non-discriminatory access by a client or the public to a service, program or activity administered by ODHS lies with the Department. When ODHS is made aware that a qualified individual has a disability, ODHS will refer or authorize services to be provided by a service contractor or governmental entity whose service, program or activity is accessible to that individual.
- b. When ODHS procures services by contract or intergovernmental agreement (IGA), ODHS will –:
 - A. Use criteria in the procurement of services that will result in access to services by qualified individuals with disabilities.
 - B. Include requirements in contracts and IGAs that contractors or governmental entities under IGA must comply with Title II of the ADA and Section 504 of the Rehabilitation Act, in addition to other civil rights laws.
 - C. Consider that contractors may be subject to Title III of the ADA as a public accommodation.

4. Integrated Settings

- a. ODHS will provide services, programs and activities in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities within the context of the program being administered.
 - A. Programs that provide for placement and levels of care including institutional

and community placements. Providing services, programs or activities in integrated settings requires consideration of the range of facilities that are available and the individual's care and treatment needs. ADA integration responsibilities related to placement decisions may consider available resources and allocation methodologies that promote fair and equitable access among similarly situated qualified individuals with disabilities in all areas of the State.

- B. Providing program and placement services in integrated settings should consider the individual's preferences, and the type of services that will best fit the individual's needs that are then available, and consistent with the access, reasonable modification and communication requirements in this policy.
- C. ODHS will not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- D. The delivery of integrated services for certain populations may be the subject of a court order that imposes certain mandated procedures to be followed by ODHS (for example, adults with developmental disabilities may be subject to the *Staley* settlement agreement). This policy should be applied in a manner that is consistent with court orders. Questions about compliance with a court order may be directed to the Program Manager or the Department of Justice.

5. Eligibility Criteria

- a. ODHS will not apply eligibility criteria or standards that screen out or tend to screen out a qualified individual with a disability or a class of individuals with disabilities from fully and equally enjoying any services, programs and activities, unless such criteria can be shown to be necessary for the provisions of services, programs and activities.
- b. An individual with a disability is qualified if they meet the essential eligibility requirements of a service, program, or activity, with or without the provision of reasonable modifications, the provision of appropriate auxiliary aids and services, or the removal of architectural and communication barriers. When there is a barrier to eligibility or participation that is related to the applicant's disability and the program's eligibility criteria, the program should apply the Reasonable Modification policy.
 - A. The preferences of other clients or participants may not be used to justify criteria that would exclude or segregate individuals with disabilities.
 - B. ODHS may impose legitimate safety requirements even if they screen out individuals with disabilities when:
 - i. The safety screening requirements must be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or based on presumptions about what a class of individuals with disabilities can or cannot do.
 - ii. Safety standards must be applied to all clients or participants, and ODHS inquiries must be limited to matters necessary to implement the safety standards.

6. Reasonable Modifications

- a. ODHS will make Reasonable Modifications to policies, practices or procedures of a

program, service or activity when the modifications are necessary to avoid discrimination based on disability unless the modification would fundamentally alter the nature of the program, service or activity or create an undue administrative or financial burden. Fundamental alteration or undue burden are discussed in section 15 of this policy.

- b. Whenever an individual indicates difficulty in accessing or participating in a program, service or activity due to a disability, the Department caseworker, counselor or contractor will advise the individual that they may make a request for reasonable modification and offer assistance with making that request.
- c. If the caseworker, counselor or service contractor knows that the individual has a disability that is causing the individual to have difficulty accessing services or participating in a program, service or activity, the individual should be advised that they may make a request for reasonable modification and offer assistance, if appropriate, in making the request.
- d. Caseworkers, counselors and service contractors should not make assumptions or apply stereotypes about whether an individual has a disability, or on the basis of presumptions about what a class of individuals with disabilities can or cannot do.
- e. Requests for Reasonable Modifications may be made verbally or by completing a Request for Reasonable Modifications form. The ODHS employee receiving a request verbally will document the request by completing a Reasonable Modification form. The process for requesting a reasonable modification should not be overly formalized as to prevent the intent of this policy. Individuals may initiate the request in any number of written, verbal, and nonverbal ways and caseworkers, counselors, and service contractors are responsible for identifying and accepting such a request.
- f. Department programs are responsible for implementing any program-specific Reasonable Modification policies and procedures for individuals with Disabilities.
- g. When there is no existing program-specific Reasonable Modification policy, or the policy does not instruct how to proceed in the specific, Program Managers (and the program designee, if applicable) should consider the following:
 - A. Reasonable Modification is appropriate when there is a connection between an individual's disability and the barrier to eligibility or participation in a program, service or activity.
 - B. First consideration should be given to address barriers using existing program resources. Existing program resources include but are not limited to applying the program access and communication access components of this policy.
 - C. Program staff are to collaborate with the individual to identify the specific program, policy or practice that is alleged to have created barriers and what actions are being requested to address those barriers.
- h. A decision that compliance with a reasonable modification would result in such alteration or burdens must be made by the program director or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity will take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity. A program-specific team will review all denied Reasonable Modification requests. will
 - A. Individuals will be notified of the team's decision within 15 working days of the

initial denial or within 15 working days following receipt of medical or other supporting documentation. The review may result in the request being approved, approved with alternative modifications or denied.

- B. Individuals denied or provided with an inadequate alternate to the requested Reasonable Modification have the right to file a Report of Discrimination with the Department of Human Services within 60 days of the initial decision or with the appropriate federal regulatory agency within 180 days.
- i. Nothing in this policy prohibits the Department from providing benefits or services to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required.
- j. Nothing in this policy requires a qualified individual with a disability to accept a modification, service, opportunity, or benefit provided under this policy that the individual decides not to accept.

7. Surcharge

ODHS will not assess a charge or fee to a qualified individual with a disability or any group of individuals with disabilities to cover the costs of measures required to provide the individual with the non-discriminatory treatment required by this policy.

8. Licensing and Certification

1. ODHS will not discriminate against a qualified individual with a disability, on the basis of disability in the granting of licenses and certificates.

2.

9. Ensuring Program Accessibility for Individuals with Disabilities

- a. ODHS will ensure each program, service or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
 - A. ODHS facility managers are responsible for maintaining in operable and working condition all relevant features and equipment required to be readily accessible to and usable by individuals with disabilities.
 - B. ODHS Program Managers have the responsibility to ensure that staff working directly with the public are trained on the proper operation of TTY, translation, or preferred relay options as well as all other equipment that individuals with disabilities may use.

3.

10. Public Meetings, Hearings and Events Must be Accessible

- a. ODHS will ensure that meetings, trainings, conferences, hearings, workshops and other events developed or co-hosted by the Department are barrier-free and meet structural and communication accessibility requirements of this policy. The Department will make every effort to locate the above events on routes accessible by public or mass transit in areas where that is available.
- b. Printed notices and announcements of Department-sponsored events should contain language to notify individuals with disabilities that auxiliary aids and services are available at no cost. The following statement must be used:

"Accommodations are available that allow individuals with disabilities to participate in and access this scheduled event. To request an accommodation for this event, please contact: (Name and Telephone Number, Fax or TTY or preferred relay option) at least ___ business days prior to the event."
- c. All ODHS-initiated public meeting agendas and minutes must contain the following statement:

"This document can be obtained in an alternate format for individuals with disabilities upon request by contacting: (Name and Telephone Number, Fax, or TTY or preferred relay option). Available formats are large print, Braille, audio tape recording, electronic format and oral presentation."

11. Communication Accessibility

- A. ODHS will provide auxiliary aids and services or alternate format communication to individuals with disabilities where necessary to ensure an equal opportunity to participate in, and enjoy the benefits of, a service, program or activity. This includes alternative formats and translation services, such as sign language interpreters. All ODHS applications must prominently display a notice that the written material is available in an alternate format. This notice should be placed when possible, at the beginning of the application.
 - i. "Upon request, this application will be furnished in an alternate format accessible to individuals with disabilities. Available alternate formats include large print, Braille, audio tape recording, electronic format and oral presentation. To make a request, let an ODHS employee know or Telephone, Fax or TTY or preferred relay option at your request."
- B. All client and client applicants must be informed orally and in writing at the time of the first face-to-face contact that they may request documents in an alternate format.
- C. All ODHS publications (brochures, booklets, newsletters, bulletins, progress, quarterly statistical and performance reports) must contain the following statement.
 - i. "Upon request this publication can be furnished in an alternate format for individuals with disabilities by contacting: (Name and Telephone Number, Fax or TTY or preferred relay option). Available formats are large print, Braille, audio tape recording, electronic format and oral presentation."
 - ii. The custodian of the publication should be listed as the contact for individuals requesting alternate format.

12. Use of Interpreters and Interpretation Services

- a. ODHS will not require an individual with a disability to bring another individual to interpret for them.
 - b. A client may use his/her own interpreter when the client specifically requests that adult interpreter be used, the adult agrees, and it is not inappropriate.
 - c. ODHS will only rely on a minor child to interpret or facilitate communication in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
- 4.

13. Public Information Accessibility

ODHS will work with the Oregon Department of Administrative Services (DAS), ODHS-OHA Office of Information Services (OIS), and ODHS Public Affairs, which collectively control the functions and design of the ODHS web presence, to assure that clients, client applicants and members of the public with disabilities have access to ODHS web material that is as effective as access provided to individuals without disabilities.

14. Service Animals

- A. Service animals are dogs that are individually trained to do work or

perform tasks for people with disabilities. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

- B. Service animals are allowed to accompany qualified people with disabilities in all areas of the facility where the public is allowed to go.
- C. Service animals are not required to be licensed or certified and are not required to wear special identity collars or harnesses.
- D. When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task the dog has been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

5.

15. Fundamental Alteration or Undue Burden

This policy does not require ODHS to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel or contractors working on behalf of ODHS believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, ODHS has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the program director or their designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, ODHS will take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

6.

16. Direct Threat

- a. When an individual poses a direct threat, defined as a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the Department's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services.
- b. An ODHS determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. The determination of direct threat to the health and safety of others must be based on an individualized assessment relying on current medical evidence, or the best available objective evidence that shows:
 - A. The nature, duration and severity of the risk,
 - B. The probability that a potential injury will occur, and,
 - C. Whether reasonable modifications of policies, practices or procedures will lower or eliminate the risk.

7.

17. Illegal Drug Use

- a. ODHS will not discriminate based on illegal use of drugs against an individual who is not engaging in current illegal use of drugs, except if required under federal or state law.

- b. ODHS will not deny health services or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current use of drugs, if the individual is otherwise entitled to such services. However, a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
- c. Nothing in this policy will be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

8.

18. Self-Evaluation

- a. The Department or program designees will periodically review all aspects of their program operation to evaluate the effectiveness of policies and practices in achieving the objectives of this policy. They should seek input from the Department's advisory groups and others as appropriate to ensure that feedback from the public is a part of this review process.
- b. ODHS staff are expected to continually monitor and report to program management any identified discriminatory policies and practices of program operations.

9.

19. Discrimination on the Basis of Association

ODHS will not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. An individual who experiences discrimination by association has the right to file a Report of Discrimination with ODHS or file a discrimination complaint with the appropriate federal designated agency.

10.

20. Protection Against Retaliation

- a. Individuals who exercise their rights under the ADA or assist others in exercising their rights are protected from retaliation. An individual who has filed a complaint, testified or participated in any manner in the investigation of any complaint will not be intimidated, threatened, coerced, or discriminated or retaliated against in any way.
 - A. Individuals who experience retaliation resulting from exercising rights under the ADA have the right to file a Report of Discrimination with ODHS or file a discrimination complaint with the appropriate federal designated agency.
 - B. The ODHS Discrimination Investigator or Human Services Ombuds will investigate allegations of retaliation against individuals with disabilities or the entities protected under this policy.

11.

21. Reports of Discrimination filed with ODHS and Federal Agencies

Department programs may develop program-specific complaint or non-discrimination policies and procedures when necessary to comply with applicable federal regulations or requirements. Reports of discrimination, even those resolved by program staff, should be forwarded to the ODHS Discrimination Investigator for review and documentation.

- a. All federally funded ODHS programs must comply with applicable federal regulations and requirements.

12.

22. Employee Training

ODHS will provide periodic training to employees to facilitate their understanding of ODHS responsibilities under federal and state civil rights laws and regulations, and this policy,

governing the delivery of programs, services and activities.

References

[ODHS-010-005-01, Filing a Client Complaint or Report of Discrimination](#)
ODHS-010-005-02, Scheduling a Sign Language Interpreter and Real-Time Captioner [ODHS-010-005-03, Ordering Documents in Alternate Format](#)
ODHS-010-005-04, Requesting Reasonable Modifications by Client Applicants, Clients and Members of the Public
[ODHS-010-005-05, Using the Oregon Telecommunications Relay Service](#)

Forms referenced

[DHS 0299HR Hearing Request](#)
[DHS 0300HRE \(employee\), Notice of Final Fitness Determination](#)
[DHS 300HRV \(volunteer\), Notice of Final Fitness Determination](#)
[DHS 300HRC \(contractor\), Notice of Final Fitness Determination](#)
MSC 301 HR Background Request
MSC 301 HRC Background Request - Contractor only
MSC 0258 Fingerprint Card

Related policies and processes

ODHS 0170, Client Complaint or Report of Discrimination: (PDF: [English](#), [Spanish](#), [Russian](#)) ODHS 0170A, Review of Client Complaint: ([Word](#)) ([PDF](#))
ODHS 0171, Client Comment: (PDF: [English](#), [Spanish](#), [Russian](#)) ODHS 0173, Request for ADA Reasonable Modifications ([PDF](#))

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Policy history

Keywords

Insert keywords here

Keywords should be designed to help individuals locate this policy when they need it.

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