

Policy

Policy Title:	Non-Discrimination on the Basis of Disability for Programs, Services and Activities				
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DHS Director or Deputy Director

02/01/2006

Approved By: (Authorized Signer Name)

Date Approved:

Overview

Description: Establishes a Department policy of non-discrimination in the provision of DHS programs, services 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. Because of the nearly identical language and requirements in these two laws, this policy will treat them the same, and a reference to the ADA will include a reference to Section 504.

Purpose/Rationale: Communicates to all Department of Human Services (DHS) employees, volunteers, trainees, and other persons who are part of the DHS workforce that individuals with disabilities shall not be excluded from participation in, be denied the benefit of, or be subjected to discrimination in any of its programs, services and activities.

Applicability: This policy applies to all DHS employees, volunteers, trainees, and other persons who are part of the DHS workforce. Additional requirements are outlined in this policy and accompanying procedures for DHS Managers to resolve complaints and to address contractors that provide DHS programs, services or activities.

Failure to Comply: Failure to comply with this policy may result in disciplinary and/or legal action.

Policy

1. General

- a. No qualified individual with a disability shall, 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.
- b. DHS will not, directly or through contractual or other formal or informal arrangements, on the basis of disability: deny a qualified person with a disability the opportunity to participate in a service, program or activity to receive the benefits or services offered.
- c. DHS 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 Director or designee shall appoint a DHS ADA Coordinator responsible for administering Department-wide compliance with the Americans with Disabilities Act (ADA) and other state and federal disability discrimination laws.
 - A. The DHS ADA Coordinator is responsible for identifying, developing, disseminating and coordinating resources to assist the Department in its compliance efforts.

- B. The DHS ADA Coordinator is responsible for ascertaining 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 DHS ADA Coordinator develop 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 DHS Office.
- b. The DHS ADA Coordinator is responsible for developing and coordinating a department-wide training curriculum on disability laws and services.
- c. The DHS ADA Coordinator chairs and provides oversight to the ADA Committee, ensuring compliance throughout all programs and clusters.
 - A. The Assistant Director for each cluster or designee shall appoint an individual as a Cluster Civil Rights Liaison responsible for ensuring program compliance with the Americans with Disabilities Act and other state and federal non-discrimination laws and shall insure that all individuals appointed to this duty are sufficiently trained and have been allotted appropriate time to carry out this duty as part of their job performance which shall be evaluated annually.
 - B. Cluster Civil Rights Liaison shall act as liaisons between their respective Cluster, the appropriate federal regulatory agency, interested partners, other groups concerned with compliance and with the DHS ADA Coordinator.
 - C. Each Cluster Civil Rights Liaison is responsible for providing technical advice, support and guidance to staff on the provision of reasonable modifications, auxiliary aids and services to clients, client applicants, and members of the public.
 - i. Each Cluster Civil Rights Liaison or designee is responsible for developing specific cluster related policy, procedures and informational material on the availability of Reasonable Modifications for clients, client applicants and members of the public.

3. Contractor's Compliance

When DHS utilizes contractors (and their agents or subcontractors) and governmental entities under intergovernmental agreement (and their subcontractors) to deliver services, programs or activities that are subject to Title II of the ADA or Section 504 of the Rehabilitation Act, the following policy shall apply.

- 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 DHS lies with DHS. When DHS knows that a qualified individual has a disability, DHS will make reasonable efforts to 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 DHS procures services by contract or intergovernmental agreement (IGA), DHS will –:
 - A. Use criteria in the procurement of services that will result in access to services by 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. DHS program managers are responsible for specifying ADA/Section 504 compliance requirements in contracts and IGAs for services, programs or activities that are provided in whole or in part by contractors or their agents or subcontractors or

governmental entities under IGA. The program manager may consult with the DHS or program-specific Civil Rights Liaison. Examples of contract or IGA issues may include, but are not limited to:

- A. If a contract or IGA includes responsibility for the conduct of public meetings, hearings or public events, the contract or IGA should require the contractor or governmental entity under IGA to comply with DHS policy for using ADA accessible sites.
- B. If a contract or IGA includes responsibility for providing client services, the contract or IGA should require the contractor or governmental entity under IGA to provide services, programs and activities that when viewed in its entirety, are readily accessible to and usable by individuals with disabilities.
- C. If a contract or IGA requires a contractor or governmental entity to develop or to distribute written materials to individuals, the contract should identify whether the contractor or governmental entity, or DHS, will make such materials available in alternate formats, which may include access to DHS alternate format contractor services (if available), or contract or IGA reimbursement to supply such materials. When the contractor will also have access to protected health information about individuals with disabilities, the program manager should consult with the procurement officer about compliance with Health Insurance Portability and Accountability Act (HIPAA).
- D. If a contract or IGA requires a contractor or governmental entity to provide services that include communication to clients, the contract or IGA should identify whether the contractor or governmental entity, or DHS, will provide qualified interpreters or auxiliary aids and services, which may include access to DHS contractors providing such interpreters or auxiliary aids and services (if available), or contract or IGA reimbursement to supply such interpreters or auxiliary aids and services. (If the contractor will provide interpreters who have access to protected health information about individuals with disabilities, the program manager should consult with the procurement officer about HIPAA compliance.
- E. If the contractor or governmental entity under IGA will be communicating with DHS clients or the public who are individuals with speech or hearing impairments by telephone, the contract or IGA should require the contractor or governmental entity to provide access via text telephone (TTY), and require that staff must be trained in how to use the device.
- F. If one or more contractors or governmental entities under IGA provide a service, program or activity in a location that is not physically accessible to persons with physical disabilities (e.g., second floor office in a building with no elevator or inaccessible restrooms), the program manager should have a plan for making that service, program or activity available to an individual with a disability at an alternate location, either with such contractor or governmental entity or with an alternative contractor or governmental entity. The contract or IGA should require the contractor or governmental entity to inform the program manager about physical access limitations and should describe how alternate program services, programs or activities that are accessible may be provided.
- G. The program manager should determine whether the contractor or any subcontractor or governmental entity under IGA will be required to display posters or other materials providing information to DHS clients, client applicants and the public about the availability of auxiliary aids and services and the legal rights of individuals with disabilities.

- d. DHS should conduct periodic review of contractors and their subcontractors and governmental entities under IGA to evaluate compliance with ADA and Section 504 requirements.
- e. Contractors and their subcontractors and governmental entities under IGA and their subcontractors must be required to cooperate with DHS if a complaint is filed. The contractor or governmental entities must provide information to DHS upon request. DHS should provide a copy of the result of an investigation to the contractor or governmental entity.
- f. The contract or IGA should include authority for DHS to act if the contractor or its subcontractors or governmental entity or its subcontractors violates the ADA or Section 504. For example, the contract or IGA may authorize DHS to notify the contractor or governmental entity of the noncompliance and request corrective action. The contract or IGA should reserve the right to take immediate action for discrimination by a contractor or its subcontractor or governmental entity, if warranted. Actions may include but are not limited to amending or terminating the contract or IGA.

4. Integrated Settings

- a. DHS 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, services or activities provided in an office or community setting – Services are provided in integrated settings when DHS complies with the access, reasonable modification, and communication requirements in this policy.
 - B. 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 take into account available resources and allocation methodologies that promote fair and equitable access among similarly situated qualified individuals with disabilities in all areas of the State.
 - C. Providing program and placement services in integrated settings should take into account 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.
 - D. DHS 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.
 - E. 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 DHS. (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 such a court order. Questions about compliance with a court order may be directed to the Program Manager or the Department of Justice.

5. Eligibility Criteria

- a. DHS will not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provisions of goods and services.
- b. An applicant is a "qualified" individual with a disability if he or she can meet the essential eligibility requirements for the program, service or activity with or without

Reasonable Modification of rules, policies or procedures, or the provision of auxiliary aids and services.

- c. 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. DHS may impose legitimate safety requirements even if they screen out individuals with disabilities.
 - i. The safety screening requirements must be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or on the basis of 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 DHS inquiries must be limited to matters necessary to implement the safety standards.

6. Reasonable Modifications

- a. DHS 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 he or she 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 he or she may make a request for reasonable modification and offer assistance, if appropriate, in making the request.
- d. However, caseworkers, counselors and service contractors should not make assumptions or apply stereotypes about whether a person 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 DHS employee receiving a request verbally shall document the request by completing a Reasonable Modification form.
- f. Department programs are responsible for implementing program-specific Reasonable Modification policies and procedures for individuals with Disabilities. See #2 (c) C. When a DHS program has developed program-specific procedures for requesting Reasonable Modification, those policies and procedures should be used.
- g. When there is no existing program Reasonable Modification policy, or when a program is developing a Reasonable Modification Policy, Program Managers (and the Civil Rights Cluster Liaison, 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 create the barrier and what action is being requested to address that barrier.
- h. In situations when the requested modification is difficult to implement or if there is a question whether the modification is appropriate to address the barrier to eligibility or participation, DHS may seek documentation of a disability from a physician or appropriate licensed professional. The solicited documentation must verify the disability and its relationship to the barrier to eligibility or participation, and how the requested modification will reduce or eliminate the disability to permit the individual with a disability to meet essential eligibility or participation requirements.
 - A. Documentation is considered sufficient if it confirms the existence of the disability, the permanent or temporary nature of the disability, and the functional limitations caused by the disability. Only the information related to the disability generating the need to be accommodated may be requested; other medical documentation is irrelevant.
 - i. Medical or other documentation is considered current if it is less than three years old.
 - ii. The medical documentation may be older than three years if it is determined to appropriately represent the individuals need for Reasonable Modification.
 - B. The Reasonable Modification request will be reviewed on a case-by-case basis and shall involve an interactive process with the requester to develop alternatives to the policy, practice or procedure.
 - C. Notification will be made to the requester within 15 working days following the receipt of medical or other supporting documentation. If the denial is based on a determination that the requested modification would fundamentally alter the nature of the program, service or activity or cause undue financial or administrative burden, that decision must be made in accordance with this policy, Section 15, and the initial notification should be clearly labeled as a "Preliminary Notification Subject to Review".
- i. A two-person Reasonable Modification Review Team will review all denied Reasonable Modification requests. An adequate number of Reasonable Modification Review Teams shall be established in each service delivery area ensuring the business requirements are met.
 - A. Individuals will be notified of the Reasonable Modification Review 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.
- j. 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.
- k. Nothing in this policy requires an individual with a disability to accept a modification, service, opportunity, or benefit provided under this policy that the individual decides not to accept.
- l. This policy does not require a program, service or activity, except as authorized under existing programs, to provide individuals with disabilities with personal devices such as wheelchairs; individually prescribed devices such as prescription eyeglasses or

hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting or dressing.

7. Surcharge

DHS will not assess a charge or fee to an 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

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

A. DHS will not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination.

B. DHS will not establish requirements for programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

9. Ensuring Program Accessibility for Individuals with Disabilities

a. DHS will ensure each program, service or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

A. DHS 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.

i. This requirement applies to features and equipment that provide architectural and physical access, such as parking, elevators, lifts, ramps and accessible routes and the relocation of movable obstacles such as trash cans and recycle barrels that from time to time block access.

ii. This requirement applies to communication features and equipment, including but not limited to, Text Telephones (TTY) and auditory and visual signals.

iii. DHS will maintain at least one TTY per office building to provide an opportunity for direct communication. Additional TTY's will be obtained on an as-needed basis.

B. Program Managers have the responsibility to ensure that an adequate number of DHS staff are trained on the proper operation of TTY as well as all other equipment that individuals with disabilities may use.

C. In accordance with State and Federal Building Requirements the DHS facility manager will use and maintain signs to clearly designate all available exits from all buildings. The DHS facility manager will provide signage at all inaccessible entrances of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance for a facility.

D. The DHS facility manager will provide for the maintenance and operation of all alarms by testing alarms on a semi-annual basis.

10. Public Meetings, Hearings and Events Must be Accessible

a. DHS 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 para transit in cities 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:

- A. "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) at least _____ business days prior to the event."
- c. All DHS-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). Available formats are: large print, Braille, audio tape recording, electronic format and oral presentation."

11. Communication Accessibility

- a. DHS 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, unless it would result in a fundamental alteration of the program or an undue financial or administrative burden.
- b. DHS will provide individuals with disabilities the opportunity to request the auxiliary aids and services or alternate format of their choice unless it can be demonstrated that the choice would result in a fundamental alteration or an undue burden in which case, an alternative effective means of communication will be used, if it exists.
 - A. All DHS 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 a DHS employee know or Telephone, Fax or TTY 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 DHS 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). 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.
- c. If the written material would be altered or would not be as effective or that an undue financial burden would result by creating it in the selected format the recipient will be consulted by DHS and will be given the opportunity to select another format that will ensure effective communication. A decision to deny a request for an alternate format on the basis of fundamental alteration or undue burden must be made in compliance with Section 15 of this policy.
- d. DHS employees communicating with clients by correspondence or providing clients with written materials such as handbooks or information material are responsible for determining the client's requested need for alternate format. Employees who do not have access to client screens should contact their Civil Rights Liaison or the Governor's Advocacy Office to determine if the client has requested alternate format communication.

- e. If DHS uses a contractor to develop alternate formats and if the contractor will have access to protected health information about the individual with a disability, the contract should address mandatory compliance with HIPAA.

12. Sign Language Interpreters

- a. DHS has the responsibility to provide qualified sign language interpreters when necessary to provide effective communication.
 - A. The use of anyone such as a client's friend, family member or a DHS employee who is not a qualified sign language interpreter will be considered only on a short-term or temporary emergency basis when:
 - i. The need is immediate and there is no time to secure the services of a qualified interpreter; or
 - ii. There will be an unreasonable delay in providing services.
- b. When using interpreter services that involves or may involve the use or disclosure of protected health information, DHS may use an interpreter without the individual's authorization if:
 - A. The qualified interpreter is a member of the DHS workforce;
 - B. The qualified interpreter (not part of the DHS workforce) is a business associate (or works for a business associate under contract with DHS); or
 - C. The interpreter is a family member, close friend or other individual identified by the individual as his or her interpreter for the situation.

13. Web Page Accessibility

DHS will work with the Oregon Department of Administrative Services, Information Resources Management Division (IRMD), which controls the functions and design of the DHS Website, to assure that clients, client applicants and members of the public with disabilities have access to DHS Web material that is as effective as access provided to individuals without disabilities. DHS is not required to purchase computers for individuals or to pay for Internet or other computer access services for an individual.

14. Service Animals

- a. Service animals include any guide dog, signal dog, or other animal individually trained to provide assistance to individuals with disabilities.
 - A. Companion animals are not considered to be service animals.
 - B. Service animals are allowed to enter all DHS offices, institutions and programs to assist clients, client applicants, employees and the public with accessibility.
 - C. Service animals are not required to be licensed or certified and are not required to wear special identity collars or harnesses.

15. Fundamental Alteration or Undue Burden

- a. When a fundamental alteration of the program, service or activity or undue financial or administrative burden would occur by providing program access the Department will provide program access to the point where the program becomes fundamentally altered or experiences an undue burden. DHS may achieve access by:
 - A. Providing services, activities and programs in facilities that are accessible to individuals with disabilities.
 - B. Transferring programs, services and activities from any building that becomes temporarily or permanently inaccessible to an alternate location that is accessible.
 - C. Modifying when reasonable, the structure of a facility to ensure that individuals with disabilities have access to programs, services and activities.
 - D. Making a Reasonable Modification of the policies and procedures, or providing auxiliary aids and services within available resources.
- b. Any denial of a request for access, an auxiliary aids or services or request for Reasonable Modification of policy due to a finding of fundamental alteration or undue

burden must be in writing with the reason(s) for denial provided by the DHS Director's office or designee.

- A. The denial must be accompanied by a written statement of the reasons for reaching that conclusion.
 - i. Individuals denied access, auxiliary aids or services or request for Reasonable Modification of policy have the right to file a Report of Discrimination within 60 days of the decision or with the appropriate federal regulatory agency within 180 days.
- B. If DHS determines that denial is required, it shall 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 of the program, service or activity.

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 accepted level through the provision of auxiliary aids and services or through reasonably modifying policies, practices or procedures, that person is not considered a qualified individual with a disability and may be excluded from DHS programs services or activities.
- b. 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 actually occur, and,
 - C. Whether reasonable modifications of policies, practices or procedures will lower or eliminate the risk.

17. Illegal Drug Use

- a. DHS will not discriminate on the basis of 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. DHS 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. It is not discrimination for a program to adopt reasonable policies related to drug testing, that are designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in the current illegal use of drugs.
- d. A client with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under this policy unless the client has a disability due to another condition.

18. Self-Evaluation and Transition Plan

- a. During the first quarter of every even-numbered year, each Civil Rights Liaison or designees will review all aspects of their program operation to evaluate the effectiveness of policies and practices in achieving the objectives of this policy. The Civil Rights Liaisons will 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. Findings of this review, along with a transition plan establishing the timeframes necessary to correct problems identified in the review, are to be forwarded to the DHS ADA Coordinator by April 30 of every even-numbered year.
 - A. DHS staff is expected to continually monitor and report to management any identified discriminatory policies and practices of program operations.

- B. DHS Management will take immediate corrective action, whenever possible, to eliminate discriminatory policies and procedures.
- c. During the first quarter of every odd-numbered year, the Civil Rights Cluster Liaison or designee will monitor and review building accessibility to ensure that clients, client applicants and members of the public with disabilities have equal access. The Civil Rights Liaisons will 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.
 - A. Findings of this review, and a transition plan with the timeframes correcting any issues of inaccessibility identified in the review, are to be forwarded to the DHS Facility Administrator, Facility Manager assigned to the Service Delivery Area and the DHS ADA Coordinator by April 30, of every year.
 - B. DHS staff are expected to continually monitor and report to management any change in the physical environment that reduces or eliminates equal access to DHS buildings.

19. Discrimination on the Basis of Association

- a. DHS will not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members, friends, or any other individual.
- b. An individual who experiences discrimination by association has the right to file a Report of Discrimination with DHS, file a discrimination complaint with the appropriate federal designated agency or to file a lawsuit.

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 shall 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 discrimination complaint and/or a lawsuit.
 - i. The DHS ADA Coordinator or designee will investigate allegations of retaliation against individuals with disabilities or the entities protected under this policy.

21. Reports of Discrimination filed with the Department of Human Services

- a. Department programs may develop program-specific complaint or non-discrimination policies and procedures when necessary to comply with applicable federal regulations or requirements.
- b. All DHS funded programs must comply with applicable federal regulations and requirements.
 - A. A client or client applicant or specific class of individuals or their representative(s) may file a Report of Discrimination on the basis of disability with the Department.
 - i. Food Stamp clients shall have 180 days to file discrimination complaints. The investigation and resolution of Discrimination complaints filed by Food Stamp clients is the responsibility of the Department of Agriculture, Food and Nutrition Program. For all other programs, a Report of Discrimination should be filed within 60 calendar days of the date of the alleged discrimination.
 - ii. A Report of Discrimination may be made verbally or in writing and should contain information describing the alleged discrimination and the name and address of the individual(s) filing the report. Clients are permitted but not required to use DHS 0170 or its successor for the purposes of reporting written discrimination complaints. The Report of Discrimination

- should include the date of the alleged violation of the policy or law and possible remedies.
- iii. Individuals are entitled to receive assistance if requested from DHS staff with filing a written or verbal Report of Discrimination if their disability impairs their ability to file the report.
 - c. The ADA Coordinator or Civil Rights Investigator will investigate claims of discrimination and will issue a Letter of Determination within 40 calendar days of receiving the Report of Discrimination.
 - d. The Complainant may appeal the decision to the Civil Rights Review Board (CRRB) within 30 calendar days of receiving the Letter of Determination.
 - e. This ADA complaint process is not the exclusive means for a client or client applicant to raise concerns or make complaints about ADA compliance issues.
 - A. For example, a client or client applicant who files for an administrative hearing may also file a customer service complaint or a Report of Discrimination with DHS, or a discrimination complaint with the appropriate designated Federal program.
 - B. DHS staff responsible for responding to the customer service complaint or administrative hearing shall notify the ADA Coordinator when a complaint or hearing will raise issues related to ADA compliance. The ADA Coordinator and DHS staff will consult with each other in order to address the ADA compliance issue in a manner that is consistent with this policy.

22. Federal Discrimination Complaint Filed with a Designated Federal Agency

- A. A client or client applicant or a specific class of individuals or their representative may file a discrimination complaint alleging discrimination on the basis of disability with a designated federal agency.
 - i. Complaints filed with the Federal government must be filed within 180 days of the date of the alleged discrimination.
 - ii. Complaints should be in writing and contain information describing the alleged discrimination and the name and address of the individual(s) filing the complaint. The complaint should include the date of the alleged violation of the policy or law and possible remedies.
- B. Discrimination Complaints can also be forwarded to one of the federal programs listed below:

For Food Stamp Clients:

US Department of Agriculture
Office of Civil Rights
Food & Nutrition Service, Western Region
90 Seventh Street, Suite 10-100
San Francisco, CA. 94103
Toll-free Voice: 1-888-271-5983
TTY: 1-800-735-2922

For Vocational Rehabilitation Clients:

US Department of Education
Office of Civil Rights
915 Second Avenue, Room 3310
Seattle, WA. 98174-1099
Voice: 1-206-220-7900
TTY: 1-206-220-7907

For all other Programs:

Department of Health & Human Services
Office for Civil Rights, Region X
2201 Sixth Avenue, M/S RX-11
Seattle, WA 98121-1831
Toll Free Voice: 1-800-368-1019
TTY: 1-206-615-2296

23. Right to Review for Clients of Child Welfare and Contract Providers

All complaints received by the ADA Coordinator from contract providers, protective service regulated and court ordered clients will be forwarded to the Child Welfare Program for resolution.

24. Integrated Response by the Department

All DHS programs, upon receiving notice of a discrimination complaint being filed with any designated federal agency or lawsuit, shall notify and forward a copy of the notice to the Department's ADA Coordinator.

25. Employee Training

DHS will provide periodic training to employees to facilitate their understanding of DHS responsibilities under federal and state civil rights laws and regulations, and this policy, governing the delivery of programs, services and activities.

Procedure(s) that apply:

[DHS-010-005-01, Filing a Client Complaint or Report of Discrimination](#)

[DHS-010-005-02, Scheduling a Sign Language Interpreter and Real-Time Captioner](#)

[DHS-010-005-03, Ordering Documents in Alternate Format](#)

[DHS-010-005-04, Requesting Reasonable Modifications by Client Applicants, Clients and Members of the Public](#)

[DHS-010-005-05, Usin the Oregon Telecommunications Relay Service](#)

Form(s) that apply:

DHS 0170, Client Complaint or Report of Discrimination: (PDF: [English](#), [Spanish](#), [Russian](#))

DHS 0170A, Review of Client Complaint: ([Word](#)) ([PDF](#))

DHS 0171, Client Comment: (PDF: [English](#), [Spanish](#), [Russian](#))

DHS 0173, Request for ADA Reasonable Modifications ([PDF](#))

Definition(s):

See [Common Terms](#) for all department-wide support services policies

Americans with Disabilities Act (ADA): A comprehensive Federal law passed in 1990 that prohibits discrimination on the basis of disability in employment, programs and services provided by state and local governments; goods and services provided by private companies; commercial facilities; telecommunications and transportation.

This policy only addresses Title II, which applies to programs, services and activities provided by state and local government.

An Individual with a Disability: The ADA utilizes a three-pronged definition of disability. For the purposes of the ADA, an individual with a disability is one who:

- 1) has a physical or mental impairment that substantially limits one or more major life activity; or
- 2) has a record or history of such an impairment; or
- 3) is perceived or regarded as having such an impairment

Auxiliary Aids and Services: Includes a wide range of services and devices for ensuring effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary depending on the needs of the individual with the disability and the length and complexity of the communication. The continuing improvements in technology will likely result in the development of new auxiliary aids. Examples of auxiliary aids and services include but are not limited to:

- Auxiliary Aids that may be used by individuals who are blind, visually impaired or learning disabled include: audiotape recordings, Brailled materials, large-print text, note takers, electronic format and oral presentation.
- Auxiliary Aids that may be used by individuals who are deaf or hard of hearing include: qualified interpreters, note takers, real time captioning, telephone handset amplifiers, video captioning, interactive writing, communicating through keyboarding, Text Telephones, Voice Carry-Over Assistive Listening devices, written and electronic communication.

- Auxiliary Aids that may be used by individuals with speech disabilities include: Speech to Speech Relay, Hearing Carry-Over (Text Telephones), speech synthesizers, communicating through keyboard.

Civil Rights Review Board: A panel of DHS employees appointed by the Director that reviews the decisions made by the DHS ADA Coordinator or the Civil Rights Investigator on discrimination complaints filed with the Department.

Direct threat: A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids and services.

Disability: As defined by the ADA a disability is a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

DHS Report of Discrimination: A complaint by a client, client applicant or member of the public alleging an act of discrimination by the Department. The investigation of these complaints is conducted by the DHS ADA Coordinator or Civil Rights Investigator and is resolved internally to the Department.

Federal Discrimination Complaint: A complaint by a client, client applicant or member of the public filed with a Federal Civil Rights Program alleging an act of discrimination by a public entity.

Oral Presentation: A verbal presentation by an individual who reads written text out loud and interprets a document to a client, client applicant or member of the public. The reader is familiar with the content of the document and is able to effectively answer questions about the document.

Protected Health Information: Any individually identifiable health information, whether oral or recorded in any form or medium that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition or an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax documents and all oral communications, or any other form, i.e., screen prints of eligibility information, printed e-mails that have identified individual's health information, claim or billing information, hard copy birth or death certificate.

Qualified Interpreters: The Americans with Disabilities Act defines a qualified sign language interpreter as one who is able to interpret effectively, accurately, and impartially, both expressively and receptively, using any necessary specialized vocabulary.

Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Reasonable Modifications: A modification of policies, practices or procedures made to a program or service that allows an individual with a disability to participate equally in the program or benefit from the service.

Rehabilitation Act – Section 504: Federal law passed in 1973 that states "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."

Service Animals: An animal, as referenced under the Americans with Disabilities Act, including guide dogs, signal dogs, or other animals trained to assist an individual with a disability. A Service Animal is not a pet or companion. Animals are considered service animals under the ADA regardless of whether they have been licensed or certified by a state or local government and are not required to use any special harness, lead, leash or jacket.

Undue financial burden: Significant difficulty, expense or impact on the Department when considered in light of factors set forth in the policy and as defined by the Americans with Disabilities Act.

Reference(s):

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* 28 CFR 35.106-164
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.

ORS 659A.103

DHS Administrative Rules Chapter 407, Division 005 - Prohibiting Discrimination Against Individuals with Disabilities

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Keywords:

(List keywords here that might be used by someone to search for this policy on the internet)

