



# DES Administrative Policy

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## DES 1-01-12

### Americans with Disabilities Act – Title II:

### Non-Discrimination on the Basis of Disability for Programs, Services, and Activities

#### I. POLICY STATEMENT

This policy provides information on the Department of Economic Security's (DES or Department) policy of non-discrimination on the basis of disability in its programs, services, and activities under Title II of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

This policy communicates to the public and to all DES employees, volunteers, trainees, and other persons who are part of the DES 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 DES's programs, services, and activities.

#### II. APPLICABILITY

This policy applies to all DES employees, volunteers, trainees, and other persons who are part of the DES workforce. Additional requirements are outlined in this policy for DES managers to resolve complaints and to address contractors and grantees that provide DES programs, services, or activities.

Title II of the ADA applies to the programs and services of all state and local governments and their agencies and departments. It applies when programs and services are being provided directly by DES or its Divisions or are being provided by grantees or contractors. DES shall ensure that grantees and contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA and this ADA policy

Section 504 applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its cash assistance, SNAP, Medicaid, child care, and other programs, all DES programs, services, and activities shall comply with Section 504. DES grantees and

contractors whose services are funded with federal financial assistance shall also comply with Section

504. Because of the nearly identical language and requirements in these two laws, this policy shall treat them the same, and a reference to the ADA shall include a reference to Section 504.

This policy supersedes those sections of Division program manuals when they are inconsistent with this policy. However, this policy does not supersede policies or manuals which, pursuant to other federal or state laws, provide rights or benefits greater than those required by Title II of the ADA or Section 504. Where multiple laws apply, DES shall apply whichever law provides the most rights or benefits.

Failure to comply with this policy may result in disciplinary action up to and including dismissal and/or legal action.

### **III. PROCEDURES**

This policy is supported by Departmental procedures, which identify how action related to this policy will be conducted, including responsibilities, time frames, and required actions. To view this procedure, access the link below.

DES 1-01-12-01 Americans with Disabilities Act (ADA) Title II Procedures

### **IV. AUTHORITY**

Americans with Disabilities Act (ADA) of 1990

Americans with Disabilities Act Amendments Act of 2008 (eff. January 1, 2009) Section 504 of the Rehabilitation Act of 1973

45 CFR Part 84, Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance

28 CFR Part 35, Nondiscrimination on the basis of disability in state and local government services (as amended by the final rule published on September 15, 2010)

### **V. DEFINITIONS**

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.

Auxiliary Aids and Services: Includes:

1. Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with

hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

2. Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions.

Companion: A family member, friend, or associate of the individual seeking access to a DES service, program, or activity, who along with the individual is an appropriate person with whom the program should communicate.

Customer: Any person who applies for, receives, or participates in a DES program, service, or activity.

DES Report of Discrimination: A complaint by anyone alleging an act of disability discrimination by the Department in violation of Title II or Section 504 including the failure to provide a reasonable modification and retaliation for exercising rights under the ADA and Section 504. The investigation of these complaints is conducted by the Department ADA Coordinator or Division-level Coordinator or designee and is resolved internally to 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: The term “disability” means, with respect to an individual:

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. A record of such impairment; or
3. Being regarded as having such impairment.

An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under the ADA because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. The term “being regarded as having

such impairment” does not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

“Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Physical or mental impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. It also means any mental or psychological disorder. It also includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase “physical or mental impairment” does not include homosexuality or bisexuality.

The term “disability” does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania, or pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable modifications or auxiliary aids or services; or learned behavioral or adaptive neurological modifications. The positive effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

Existing Facility: A facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under the ADA regulations.

Facility: All or any portion of buildings, structures, sites, complexes, equipment, rolling

stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Fundamental Alteration: A change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

Grantee: A person or entity who has received a grant from the Department to provide services to individuals.

Individual with a Disability: Means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Oral Presentation: A verbal presentation by an individual who reads written text out loud and interprets a document to an individual 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.

Other Power-Driven Mobility Device: Any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices (EPAMDs), such as the Segway®PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of the ADA.

Program: Means an administrative area within the Department including areas designated as “programs” and any program, service, or activity administered by or operated by DES contractors and grantees.

Programs, Services, or Activities: Sometimes collectively referred to as “program” or “programs” used in this policy, include any DES program, service, or activity whether within DES or administered or operated by a contractor or grantee.

Qualified Individual with a Disability: An individual with a disability who, with or without reasonable modifications or 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, services, or activities provided by a public entity, including DES.

Qualified Interpreter: An interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Qualified interpreters include, for example, sign language interpreters, oral translators, and cued-language translators.

Qualified Reader: A person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Reasonable Modification: DES will make reasonable modifications in the 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. A modification of policies, practices, or procedures made to a program, service, or activity is one that allows an individual with a disability the opportunity to participate equally in the program, service, or activity or benefit from the service. An example of a reasonable modification includes, but is not limited to, modifying a Department policy or procedure such as allowing a Jobs participant with a disability to engage in work activities that are not countable in the federal work participation rate. The term “reasonable modification” in this Policy includes “modification.”

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, service, or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.”

Service Animal: Any dog, and in some instances a miniature horse, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Teletext Typewriters (TTY): A freestanding piece of equipment that runs over a telephone line or through a computer modem to communicate with deaf or hard of hearing individuals. The person with a TTY can communicate by typing a message that is transmitted in text format to another TTY. If the caller and the call recipient both have a TTY, they can communicate directly. If only one party has a TTY, the parties communicate through a voice relay operation, which has a TTY, and reads the typed messages to the party without a TTY, and types into a TTY for the party without a TTY. Relay operator services are free and can be accessed by dialing 7-1-1.

Video Remote Interpreting (VRI) Service: An interpreting service that uses video conferencing technology over dedicated lines or wireless technology offering high-

speed, wide-bandwidth video connection that delivers high-quality video images.

Wheelchair: A manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor locomotion.

## **VI. STANDARDS**

### **A. General**

1. 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. DES shall provide reasonable modifications when necessary to avoid discrimination.
2. DES shall not, directly or through contractual, licensing, 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 in accordance with law.
  - a. DES shall not use methods of program administration that have a discriminatory effect on individuals with disabilities.
  - b. DES shall not use eligibility criteria that unlawfully screen out individuals with disabilities.
3. DES shall not assess a charge or fee to an individual with a disability to cover the cost of measures required to provide the individual with the non-discriminatory treatment required by this policy.
4. DES may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, DES must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.
5. Nothing in this policy prohibits the Department from providing benefits or services to individuals with disabilities beyond those required by law.

### **B. Who Is Protected?**

#### 1. Individuals with Disabilities

The ADA and Section 504 protect 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 provided by DES or its contractors.

An individual need not meet the definition of a disability under the Social Security Supplemental Security Income (SSI), Social Security Disability Income (SSDI), or Veterans Administration (VA) programs, or other disability benefits programs to qualify as an individual with a disability under the ADA or Section 504.

## 2. Individuals with Substance Abuse Problems

- a. Alcoholism is an impairment under the ADA. If it substantially limits a major life activity, it is a disability under the ADA.
- b. An individual with a past history of engaging in the illegal use of drugs or alcohol, who is not currently engaged in the illegal use of drugs or alcohol and who (i) has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully, (ii) is participating in a supervised rehabilitation program, or (iii) is erroneously regarded as engaging in such alcohol or drug use, is protected by the ADA.
- c. "Current use" is the illegal use of controlled substances that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.
- d. The Department shall not exclude an individual from a program, provide lesser treatment, or deny an equal opportunity to participate in and benefit from programs on the basis that the individual has a history of illegal use of drugs, if the individual is currently participating in or has successfully completed a supervised drug rehabilitation program and is not currently engaging in illegal drug use. This policy statement is not intended to preclude program staff from developing and/or carrying out case plans designed to protect children or vulnerable adults.

## 3. Other Individuals Protected

- a. The ADA protects people who have a past history of a disability, if they are being discriminated against based on that past history.
- b. The ADA protects people who are wrongfully perceived as having disabilities, if the program, service, or activity makes decisions on the basis of that perception.
- c. In addition, the ADA prohibits discrimination against individuals that do not have disabilities themselves, but have a known relationship or association with individuals who have disabilities such as family members or friends.

### **C. Who Shall Comply with the ADA and Section 504?**

1. Title II of the ADA applies to the programs and services of all state and local



governments and their agencies and departments, such as DES. It applies when programs and services are being provided directly by DES or its Divisions, and when those programs and services are being provided by contractors or grantees, such as employment services contractors, and contractors providing Child Protective Services, HCBS Waiver Services, and Developmental Disability Division services. When DES programs are provided by contractors, it is the responsibility of the Department to ensure that contractors understand their obligations under the ADA, inform individuals about their rights under the ADA, and comply with the ADA.

2. Section 504 of the Rehabilitation Act (“Section 504”) applies to all of the operations of a department or agency of a state or local government that receives federal financial assistance. As DES receives federal funds for its TANF, SNAP, Medicaid, child care, and other programs, all DES programs and services shall comply with Section 504. DES contractors whose services are funded with federal financial assistance shall also comply with Section 504. Section 504 also applies to federal agencies such as the Social Security Administration, Veteran’s Administration, and other federal agencies.
3. The ADA and Section 504 have overlapping requirements. For the sake of simplicity, this policy shall refer to the ADA, but Section 504 has similar requirements.

#### **D. Administrative Responsibilities**

The Department shall have an agencywide Department ADA Coordinator and Division-level ADA Coordinators.

##### 1. Department ADA Coordinator

- a. The Director or designee shall appoint an agencywide Department ADA Coordinator responsible for administering Departmentwide compliance with the ADA, Section 504, and other state and federal disability discrimination laws.
- b. The Department ADA Coordinator shall:
  - i. Oversee ADA compliance in all DES Divisions;
  - ii. Oversee Division-level ADA Coordinators;
  - iii. Assist and oversee the resolution of ADA grievances. This oversight shall include ensuring that written results of any grievance are provided to the person with a disability;
  - iv. Review all ADA grievances filed regarding DES programs to identify trends that require changes in policies and practices, and ensure that such changes are made;
  - v. Assist Division-level ADA Coordinators in developing Division

and program-specific training on the ADA; and

- vi. Have the authority to require those within DES programs, services, or activities and Divisions to modify policies and practices to accommodate the individual with a disability.

## 2. Division-level ADA Coordinators

Division-level ADA Coordinators shall:

- a. Oversee ADA compliance in all programs, services, or activities in their Division;
- b. Assist DES programs, services, or activities within their Division in meeting their obligations under the ADA;
- c. Assist DES programs, services, or activities in their Division to review written rules and policies as well as practices to identify and modify those that may have a discriminatory effect, or adopt specific procedures for modifying those rules, policies, and practices for people with disabilities when necessary;
- d. Investigate and review any proposed denial of a reasonable modification request by a Department employee or supervisor prior to issuance of the written decision. Upon confirmation of the denial decision, the Division-level ADA Coordinator is responsible for ensuring a written notice of denial of reasonable modification is sent to the individual with a disability in a format to ensure effective communication is accomplished;
- e. Review all ADA grievances filed regarding Division programs, services, or activities to identify trends that require changes in policies and practices, and ensure that such changes are made;
- f. Assist Division programs, services, or activities in developing program-specific training on the ADA; and
- g. Have the authority to require those within the DES Division to make changes in policies and practices, and to accommodate individuals with a disability.

## 3. Division Responsibilities

In addition to program requirements identified in the policy, specific Divisional responsibilities include, but are not limited to:

- a. The Division of Business and Finance Office of Procurement shall ensure that all DES contracts to provide services to individuals, and all contracts for programs, services, or activities receiving federal financial assistance, require the party with whom DES is contracting to comply with the ADA and Section 504 as required by law;

- b. The Division of Business & Finance Operations Support Services shall facilitate obtaining forms and publications in alternative formats when requested by or on behalf of individuals with disabilities, or by a DES Program or Division;
- c. The Office of Communications shall assist Division-level ADA Coordinators, DES programs, services, or activities, and the Department ADA Coordinator to ensure that materials are provided in alternative formats that are accessible to people with disabilities when needed;
- d. The Training and Development Administration (TDA) shall work with all DES Divisions and programs, services, or activities to develop ADA training materials that are tailored to the particular DES program, service, or activity, and review any training materials developed by the program, service, or activity;
- e. The Division of Business and Finance Office of Facilities Management shall be responsible for oversight of physical accessibility of program sites in which DES programs, services, or activities are delivered. This oversight includes:
  - i. Ensuring new construction complies with accessibility guidelines;
  - ii. Ensuring building modifications are made in compliance with the ADA; and
  - iii. Negotiating accessibility issues when renewing leases, including assigning responsibility for accessibility matters between the landlord and tenant, as appropriate.

**E. Eligibility Criteria: Programs, Services, or Activities May Not Exclude or Screen Out Individuals with Disabilities**

1. DES shall not exclude qualified individuals with disabilities from DES programs, services, or activities on the basis of disability if they meet the program's essential eligibility requirements, with or without Reasonable Modification of rules, policies, or procedures, or the provision of auxiliary aids and services. DES shall apply nonessential program, service, or activity rules in a flexible manner for people with disabilities when necessary to avoid denial of equal and meaningful access to programs.
2. DES shall 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. Anyone with questions as to this criteria should consult their Division-level ADA coordinator.
3. When there is a barrier to eligibility or participation that is related to the

applicant's disability and the program, service, or activity's eligibility criteria, the program, service, or activity should apply the reasonable modification provisions of this policy. See Section VI.I.

4. DES programs, services, and activities for individuals with a particular type of disability cannot exclude individuals simply because they have an additional disability.
5. DES may not exclude persons with disabilities from activities based solely on the preference of other participants.
6. DES may impose legitimate safety requirements even if they screen out individuals with disabilities.
  - a. Safety standards shall be applied to all individuals or participants.
  - b. The safety screening requirements shall be based on actual risk, not on speculation, stereotypes, or generalizations about individuals with disabilities or on presumptions about what a class of individuals with disabilities can or cannot do.
  - c. DES inquiries about particular disabilities shall be limited to matters necessary to implement the safety standards.

**F. Individuals with Disabilities Shall Be Given Services in the Most Integrated Settings**

DES shall provide services, programs, and activities to individuals with disabilities in the most integrated setting appropriate to meet their needs within the context of the program, service, or activity being administered.

Unnecessary segregation of people with disabilities violates the ADA and this policy.

1. The Department shall ensure that alternative methods of providing program access do not result in unnecessary segregation.
2. Programs that provide for placement and levels of care including institutional and community placements providing programs in integrated settings requires consideration of the range of facilities that are available and the individual's care and treatment needs.
3. Providing program and placement services in integrated settings shall take into account the individual's preferences, and the type of services that shall best fit the individual's needs that are then available, and shall be consistent with the access, reasonable modification, and communication requirements in this policy.
4. DES will allow a qualified individual with a disability the opportunity to participate in services, programs, or activities, despite the existence of permissibly separate or different programs or activities.

## **G. Ensuring Access to Programs, Services, or Activities to Individuals with Disabilities**

1. DES shall ensure that each program, service, or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
2. Nonessential program rules shall be applied in a flexible manner for individuals with disabilities when necessary to avoid denial of equal and meaningful access to programs, services, or activities.
3. If an individual with a disability meets the essential requirements of a program (such as income, resource, or immigration requirements), reasonable modifications in other program rules and procedures shall be made to ensure an equal and meaningful opportunity to participate and benefit.
4. Regarding existing facilities, new constructions and alterations, DES shall comply with applicable law and this policy.
  - a. The Department may comply with program accessibility requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its services, programs, and activities readily accessible to and usable by individuals with disabilities.
  - b. DES is not required to make each of its existing facilities accessible to and usable by individuals with disabilities, DES is also not required to take actions regarding existing facilities that would result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, DES shall 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.

## **H. Identifying Individuals with Disabilities**

1. Many DES customers have some type of disability. In some cases, these disabilities have not yet been diagnosed. Although the relevance of an individual's disability depends on the nature of the program, service, or activity and nature and severity of the individual's limitations, disability shall often be relevant to one or more of the following:
  - a. Eligibility for the program, service, or activity itself;
  - b. Content of the individual's service plan;
  - c. Applicability of different program rules or benefits;

- d. Need for reasonable modifications in programs and services.
2. Programs, services, or activities in which having a disability is a program requirement shall ensure that the needed information is gathered in a manner that ensures the individual an opportunity to participate in the program with no unnecessary delays or unneeded burdensome activities.
3. Programs, services, or activities in which having a disability is not a program requirement, but having a disability may impact the person's ability to effectively participate in the program, service, or activity, shall offer individuals the opportunity to voluntarily disclose disabilities.
4. DES programs, services, or activities cannot require an individual to disclose a disability even though the decision to not disclose a disability may have consequences for the individual.
  - a. If an individual wants to apply for a benefit, program, or service in which a disability is an eligibility requirement, the individual shall disclose, and to the extent required by the program, document the existence, nature, and severity of the disability. If an individual refuses to provide this information, the program can find the individual ineligible for benefits or services;
  - b. For programs, services, or activities in which a disability is not an eligibility requirement, employees cannot require an individual to disclose or document a disability as a condition of receiving benefits. Nor can the program, service, or activity deny benefits or services to the individual on the basis that a person failed or refused to disclose a disability or provide documentation of a disability.
5. The individual's case record shall include, but is not limited to:
  - a. Identification of any known physical or mental impairment that affects or that may affect the ability to comply with program requirements;
  - b. Data that includes if a determination was made that an individual has a physical or mental disability and if a modification is needed on an ongoing basis.
  - c. An individual's request for a reasonable modification (even if the individual did not refer to the ADA or to reasonable modifications when making the request); whether the modification request was granted or denied; and the appropriate reasons;
  - d. Offers of reasonable modification made by employees and the outcome of the offers;
  - e. The anticipated duration that the modification will be needed;
6. If the record indicates that a disability may exist, employees shall review the individual's case record and case notes for more information, including the

type of disability that the individual has and the type of modification needed.

## I. Reasonable Modification

### 1. Right to Reasonable Modification

DES shall provide individuals with disabilities with reasonable modifications when necessary to have an equal and meaningful opportunity to participate in and benefit from DES programs, services, or activities.

DES shall make reasonable modifications to policies, practices, or procedures of a program, service, or activity at no cost to the individual with a disability 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 alteration or undue burden are discussed in Section N. of this policy.

### 2. Requesting Modifications

Individuals with disabilities have a right to ask DES programs, services, or activities for reasonable modifications.

- a. Requests for reasonable modifications may be made verbally or by completing a *Request for Effective Modification to Participate in a Program, Service or Activity (J-930-A)* form. The employee receiving a verbal request shall document the request by completing a Reasonable Modifications form. Programs, services, or activities cannot require individuals to use or sign forms to make requests or waive a right for reasonable modifications.
- b. When a Department employee becomes aware that an individual has a disability that is causing the individual to have difficulty accessing services or participating in a program, service, or activity, the employee shall advise the individual that he or she may request a reasonable modification and shall offer assistance, as appropriate.
- c. Individuals with disabilities have the right to accept or request a reasonable modification that was previously offered and declined.

### 3. Granting Modification Requests

Employees who interact with individuals shall have the responsibility and the authority to provide reasonable modifications to individuals with disabilities and shall be trained in applicable procedures to ensure requests are resolved in a reasonable and timely manner.

### 4. Documentation and Disability for Modifications and Interim Modifications

- a. Department employees shall not require documentation of an obvious disability unless:

- i. The modification sought is a deferral from a programmatic requirement;
  - ii. The program and the individual with a disability disagree about what type of modification would meet the needs of the individual with a disability, and documentation from the individual would explain why a modification offered by a program would not meet the needs of the individual; or;
  - iii. There is a question of what modification is appropriate.
- b. The requested documentation shall verify the disability and its relationship to the barrier to eligibility or participation, and how the requested modification would reduce or eliminate the barrier to permit the individual to meet essential eligibility or participation requirements.
- c. Documentation of the existence of a disability 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.
- d. Only the information related to the disability generating the need for accommodation may be requested.

#### 5. Time Frame to Provide Reasonable Modifications

- a. Modifications shall be provided in time to avoid discrimination. The time period depends on factors, including but not limited to, the type of modification requested and the consequences to the individual of failing to provide it immediately.
- b. Where feasible, Department staff should encourage persons who may need modification to request them in advance. This encouragement may include advising persons how to request needed modification.
- c. DES shall begin to accommodate the individual with a disability while gathering documentation when the individual with a disability:
  - i. Is unlikely to have such documentation with him or her because it is an initial appointment to apply for benefits and the individual with a disability had no reason to know that he or she should bring documentation;
  - ii. Does not have documentation for disability-related reasons (e.g., the individual with a disability has severe mental disability, and as a result of the disability, denies that a disability exists);
  - iii. Does not have a regular treatment provider and has no



present means to obtain medical or mental health appointments, examinations, and tests necessary to obtain documentation (e.g., the individual with a disability is not yet receiving Medicaid);

- iv. Needs a modification immediately, and failure to provide the modification immediately shall result in discrimination or would result in denial of an equal opportunity to obtain benefits or services;
- v. Needs a modification to participate in a program, but has not been evaluated for a disability.

#### 6. Modifications Needed on an Ongoing Basis

DES programs, services, or activities shall ensure that modifications needed on an ongoing basis are provided on that basis, so that a person with a disability does not have to request the same modifications each time it is needed.

#### 7. Individuals with Disabilities Cannot Be Required to Accept Modifications

Individuals with a disability shall not be required to accept a modification, service, opportunity, or benefit provided under this policy and cannot be excluded from programs, services, or activities because they refused a modification. If, however, as a result of refusing it, an individual with a disability does not fulfill program, service, or activity requirements, the program, having advised the individual with a disability of the consequences of the refusal and the continued refusal of the individual with a disability, can take action against the individual with a disability on the basis that the individual with a disability does not comply with program requirements.

#### 8. Reasonable Modification Available Regardless of Whether a Disability is Apparent

The appearance or lack of appearance of a disability shall not be a factor in determining whether the Department shall provide a reasonable modification. Department employees not trained in determining disability modification or modification shall not make determinations on the need of clients requesting these services.

#### 9. Denial of Requests for Reasonable Modification

Divisions and programs shall only make a determination to deny a request for reasonable modification after consulting with the Division-level Coordinator. If the division or program area denies a request for a modification, the Division-level Coordinator shall ensure that a written notice is sent to the individual. This notification, the Reasonable Accommodation/Modification Decision, OEO-1003A, shall include in the denial notice an explanation for why the modification request is being denied, or why the program decided to offer a modification other than the

one that was requested. The notice should also identify any alternative modifications that are offered. The written notice of denial shall also inform the individual how to file an ADA grievance.

#### 10. No Requirement to Provide Personal Devices

This policy does not require a program, service, or activity to provide individuals with disabilities with any personal devices unless they are customarily provided to the individuals participating in the program, service, or activity. In some instances, the Department may choose to provide equipment or services of a personal nature as an alternative to providing another type of modification.

### **J. Communications (Including Auxiliary Aids and Services and Telecommunications)**

DES shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

#### 1. Auxiliary Aids and Services

- a. DES programs, services, or activities shall provide appropriate auxiliary aids and services, including, but not limited to, sign language interpreters, where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a DES service, program, or activity.
- b. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.
- c. In determining the type of auxiliary aid or service necessary, DES shall give primary consideration to the request of the individual with a disability. To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in a way that protects the privacy and independence of the individual with a disability.
- d. DES shall not require an individual with a disability to bring another individual to interpret for him or her.
- e. DES shall not rely on a person accompanying an individual with a disability to interpret or facilitate communication except (1) in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or (2) where the person accompanying the individual is an adult and the individual with a disability specifically requests that the

accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

- f. Programs, services, or activities may either have qualified interpreters on staff or use contract service providers that interpret on an as-needed basis.
- g. Video Remote Interpreting (VRI) Services. Department staff may choose to provide qualified interpreters via VRI services but only if the VRI provides (1) real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) a clear, audible transmission of voices; and (4) adequate set-up and operation without unduly delay.

## 2. Telecommunications

- a. DES may use several options for communicating by telephone with deaf and hard of hearing individuals, including Teledex typewriters (TTY), Video Relay Services, and Video Interpreting Services. The ADA Title II Procedures (DES 1-01-12-01) provide guidance on the use of each of these services.
- b. DES shall respond to telephone calls from a telecommunications relay services in the same manner that it responds to other telephone calls.
- c. As DES develops and installs automated-attendant systems, including, but not limited to, voice mail and messaging, or an interactive voice response system for receiving and directing incoming telephone calls, those systems shall take into account the needs of persons who may use auxiliary aids and services.
- d. Department staff shall take into account the needs of persons with hearing or hearing impairments when program guidelines require participants to make telephone calls.

## 3. E-mail Communications

E-mail may be an effective way to communicate with individuals with disabilities. Programs that use e-mail to communicate with clients must ensure that employees check and respond to such messages within strict time frames.

4. Notice to Individuals and the Public about Effective Communication with Individuals with Disabilities

DES shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities, and about the methods by which the program, service, or activity communicates with individuals with disabilities, the fact that auxiliary aids and services are available, and how to request them. For example, information is provided in posters at DES program sites, as well as consumer education materials that individuals can take home with them. Programs can meet the obligation to provide this notice by including information about effective communication in consumer education materials that provide information about other ADA rights. If the program has a TTY number, the number shall be included in notices, brochures, and other written materials that include a voice telephone number for the program.

5. Web Site Accessibility

DES will provide access to DES material to individuals with disabilities that is as effective as access provided to individuals without disabilities.

6. Scope of DES Duties

DES is not required to take any action relating to this section on Communications 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 DES personnel believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, DES has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the DES Director or 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 Communications policy would result in such an alteration or such burdens, DES 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 DES provides.

**K. Disability-Related Non-Compliance with Program, Service, or Activity Requirements**

Department employees shall take into account the potential impact of known disabilities when making a finding of willfulness or intent to refuse to comply with programmatic requirements. The Department shall offer reasonable modification when the modification will allow the individual with a disability to comply.

1. Department staff shall be sensitive to the conditions that some individuals

with disabilities have that make it difficult to meet DES program, service, or activity requirements, including attending appointments, complying with program notices, gathering documents, engaging in work activities, or complying with other program, service, or activity requirements.

2. Department staff shall take into account the needs of participants who, although do not have disabilities, may be caring for a family member who is disabled. Reasonable modification may be required in these instances to enable an individual to participate in program activities and still be able to provide required care for the disabled family member.

## **L. Service Animals**

1. Generally, DES shall permit the use of a service animal by an individual with a disability.
2. DES staff may ask an individual with a disability to remove a service animal from the premises if either of the following exist:
  - a. The animal is out of control and the animal's handler does not take effective action to control it. To be under control, a service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).
  - b. The animal is not housebroken.
3. If DES excludes a service animal, DES shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.
4. DES is not responsible for the care or supervision of a service animal.
5. DES staff may make two inquiries to determine whether an animal qualifies as a service animal. DES may ask (1) if the animal is required because of a disability and (2) what work or task the animal has been trained to perform. DES shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, DES may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
6. Individuals with disabilities shall be permitted, without related fees or charges, to be accompanied by their service animals in all areas of DES's facilities where members of the public, participants in services, programs or

activities, or invitees, as relevant, are allowed to go. Where DES normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

7. DES shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. In determining whether reasonable modifications can be made to allow a miniature horse into a specific facility, DES shall consider: the type, size, and weight of the miniature horse and whether the facility can accommodate these features; whether the handler has sufficient control of the miniature horse; whether the miniature horse is housebroken; and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

#### **M. Mobility Devices**

Where and when building and personal safety concerns are not raised, the following shall be adhered to:

1. DES shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
2. DES shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility devices, unless DES can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that DES has adopted.
3. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under section (2) above, the Department shall consider such factors as the type, size, weight, dimensions, and speed of the device; the facility's volume of pedestrian traffic; the facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if required by the user); whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the facility, or poses a conflict with other existing laws or regulations.
4. Department staff shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
5. Department staff may ask a person using another power-driven mobility

device to provide a credible assurance that the mobility device is required because of the person's disability, such as a valid, state-issued, disability parking placard or card, or other state-issued proof of disability. In lieu of a valid, state-issued disability parking placard or card, or state-issued proof of disability, DES shall accept a reasonable verbal statement from the individual or their companion.

**N. Fundamental Alteration or Undue Administrative or Financial Burden**

1. When a fundamental alteration of a program, service, or activity, or undue financial or administrative burden would occur by providing program access, the Department shall take such action to provide program access that will not result in a fundamental alteration of the program, service, or activity, or result in an undue financial or administrative burden. DES 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.
2. Any denial of a request for access, auxiliary aids, or services, or request for reasonable modification of policy due to a finding of fundamental alteration or undue administrative or financial burden, shall be in writing with the reason for denial provided by the responsible division. Notice of denials resulting from a grievance review shall be provided by the Department ADA Coordinator.

**O. Direct Threat**

1. DES is not required to permit an individual to participate in or benefit from its services, programs, or activities when that individual poses a direct threat to the health or safety of others.
2. In determining whether an individual poses a direct threat to the health or safety of others, DES must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

**P. Illegal Drug Use**

1. DES shall not discriminate on the basis of illegal drug use against an individual who is not currently engaging in illegal drug use.
2. DES shall 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.
3. Department programs, services, or activities may 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.
4. An individual 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 individual has a disability due to another condition. However, the Department reserves both the right and the responsibility to develop prudent service plans and to implement applicable decisions regarding the safety and welfare of vulnerable children and adults.

**Q. Discrimination on the Basis of Association**

1. DES shall 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.
2. An individual who experiences discrimination by association has the right to file a report of discrimination or a grievance with DES, file a discrimination complaint with the appropriate federal or state designated agency, or to file a lawsuit.

**R. Protection against Retaliation**

1. The ADA protects individuals who exercise their rights under the ADA or assist others in exercising their rights under the ADA from retaliation. "Exercising rights" under the ADA include requesting reasonable modifications. 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, discriminated, or retaliated against in any way.
2. Individuals who believe they have experienced retaliation after exercising their rights under the ADA, including those who exercise their rights by requesting a reasonable modification have the right to file a discrimination complaint and/or a lawsuit.



3. The Department ADA Coordinator or designee shall investigate allegations of retaliation against individuals with disabilities or others protected under this policy.

**S. Release of Information**

If a DES Division believes there is a need to share information about an individual's disability with any entity outside of the Division, the program shall follow applicable federal and state law and Department policy regarding any such disclosure.

**T. Notice of Rights**

DES programs and services shall provide individuals, and members of the public with information about their rights under the ADA:

1. DES offices in which individuals are served shall display an approved poster or flyers that highlight individual rights under the ADA, and a "We Can Help You" notice;
2. The Department shall provide information to explain rights of applicants and recipients in relation to services for those with disabilities. The information shall be made available where information about DES programs and services are available.
3. Employees shall read and explain the information to the individual whenever an applicant or recipient for DES programs or benefits has a disability that interferes or may interfere with the ability to read and/or understand written material.

**U. Grievance Policy and Procedures**

1. Right to File a Grievance

Persons who feel they or someone in their care has been discriminated against in violation of Title II of the ADA or Section 504, or discriminated against on the basis of disability regarding DES programs, services, or activities, may file an ADA grievance by contacting the Department ADA Coordinator.

2. Notice of Right to File a Grievance

- a. Individuals shall be informed of their right to file such grievances by posters or flyers in program waiting rooms and fliers distributed to individuals.
- b. Posters or fliers shall include contact information (name, address, and phone and fax numbers) for the Department ADA Coordinator.
- c. Notices informing individuals that the request for a reasonable modification or modifications has been denied shall contain

information about how to file an ADA grievance with DES.

### 3. Methods of Filing a Grievance

Individuals may file a grievance by phone, in writing, or on a grievance form. Programs shall inform anyone seeking to file a grievance that they are entitled to help with completing the form, if needed. Grievants who wish to file by phone should be directed to the Department ADA Coordinator who will take down the information over the phone and provide the person filing the grievance with a copy of the form or other document describing the grievance, so that the person filing the grievance can review it and make changes if necessary. Alternate formats shall be provided if needed as a modification regarding the grievance process.

### 4. Deadline for Deciding ADA Grievances

The Department ADA Coordinator, as applicable, shall investigate and resolve a grievance as soon as possible and in any event within 15 business days after receipt of the grievance. A decision shall be provided to the grievant in writing.

### 5. Appeal

The Department ADA Coordinator shall notify any grievant who indicates they are not satisfied with the grievance decision that they may appeal to the federal entity responsible for the program from which the action originated. The Department ADA Coordinator shall offer assistance in identifying the appropriate federal entity.

### 6. Record Keeping Requirements for ADA Grievances

All ADA grievances shall be documented to include: the name of the grievant, the grievance, the date of the grievance, the investigation, and resolution of the grievance, and any documents concerning the grievance.

## **V. Monitoring**

All DES programs, services, or activities monitor compliance with the ADA in DES or contracted programs, services, and activities. Monitoring shall take place on a regular and ongoing basis, including, but not limited to:

1. A review of a sample of case records of individuals with disabilities to determine whether disabilities were properly identified, modification requests recorded, and modifications provided in a timely fashion;
2. A periodic review of all of the ADA grievances filed with a DES Division regarding the program, service, or activity, to identify patterns of problems that may need to be addressed through policy changes, and ensure that grievances were resolved in a timely fashion;
3. Analysis of customer data to identify trends that may indicate a need for

policy and program changes (e.g., to see whether individuals with disabilities are losing or being denied benefits and services to a greater extent than others);

- a. Interviews with front line employees to test their familiarity with ADA obligations and modification procedures;
- b. Customer interviews to see whether they are satisfied that their disabilities were accommodated.

## **W. Training**

DES will provide training to employees to facilitate their understanding of DES responsibilities under the ADA, this policy, its supporting procedure and where appropriate, program-specific guidance.

## **X. Contractors and Grantees**

1. When DES procures services by contract, grant, or intergovernmental agreement (IGA), DES shall include requirements in contracts and IGAs that contractors, grantees, or governmental entities under IGA shall comply with Title II and Section 504, in addition to other applicable civil rights laws.
2. All procured contracts, grants, or IGAs shall also include provisions for DES to periodically review contractors for compliance with Title II and Section 504.
3. Primary responsibility for adopting policies and procedures to provide non-discriminatory access by an individual or the public to a service, program, or activity administered by DES lies with DES.