

DEPARTMENT OF HUMAN SERVICES

CHAPTER 407 DIVISION 005

PROHIBITING DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES

407-005-0000

Purpose

These rules (407-005-0000 through 407-005-0030) establish a Department policy of non-discrimination on the basis of disability in accordance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0005

Definitions

The following definitions apply to rules 407-005-0000 through 407-005-0030:

(1) "Alternate Format Communication" means printed material converted to a communication style that meets the accessibility needs of individuals with disabilities to achieve "effective communication." The types of alternate format that the Department offers include but are not limited to: large print, Braille, audiotape, electronic format (E-mail attachment, diskette, or CD-ROM) and oral presentation.

(2) "Americans with Disabilities Act" is a comprehensive federal law passed in 1990, which 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. The ADA was

crafted upon a body of existing legislation, particularly the Rehabilitation Act of 1973 (Section 504), which states that no recipient of federal financial assistance may discriminate against qualified individuals with disabilities solely because of a disability. (Public Law 101-336)

(3) “An Individual with a Disability” means an individual who:

(a) has a physical or mental impairment that substantially limits one or more major life activities; or

(b) has a record or history of such an impairment; or

(c) is regarded as having such an impairment.

(4) “Auxiliary Aids or Services” mean devices or services that meet the accessibility needs of individuals with hearing, cognitive or speech impairments to achieve “effective communication.” The types of auxiliary aids and services that DHS offers include but are not limited to: qualified sign language interpreters, text telephone (TTYs), oral presentation, notetakers and communication through computer keyboarding.

(5) Department means the “Department of Human Services.”

(6) “Report of Discrimination” means a report filed with the Department by a client, client applicant or specific class of individuals or their representative(s) alleging an act of discrimination by the Department or a Department contractor, their agents or subcontractors, or a governmental entity under intergovernmental agreement with the Department, regarding delivery of Department services, programs or activities that are subject to Title II of the ADA or Section 504 of the Rehabilitation Act.

(7) “Federal Discrimination Complaint” means a complaint by a client, client applicant or specific class of individuals or their representative(s) filed with a federal agency alleging an act of discrimination by a public entity.

(8) “Qualified Individual with a Disability” means an individual who 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.

(9) “Direct threat” means 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. 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.

(10) “Reasonable Modifications” means 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.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0010

Non-discrimination

(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. In providing any benefit or service, DHS may not, directly or through contractual or other arrangements, on the basis of a disability deny a qualified individual the opportunity to participate in a service, program or activity or to receive the benefit or services offered. DHS will not discriminate against a qualified individual with a disability, on the basis of disability in the granting of licenses and certificates.

(2) The Department will provide services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities within the context of the program being administered. For purposes of this section, “Integrated Setting” means a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

(3) The Department will not require a qualified individual with a disability to participate in services, programs, or activities that are separate or different, despite the existence of permissibly separate or different programs or activities.

(4) The Department will not apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability from fully and equally enjoying any goods or services, unless such criteria can be shown to be necessary for the provision of those goods and services or is determined by the Department to be a legitimate safety requirement.

(5) The Department will ensure each program, service or activity, including public meetings, hearings and events, when viewed in the entirety, is readily accessible to and usable by individuals with disabilities. For purposes of this section, accessible means the ability to approach, enter, operate, participate in, and/or use safely and with dignity by a person with a disability.

(6) Nothing in these rules prohibits the Department from providing benefits or services to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by law.

(7) Nothing in these rules requires an individual with a disability to accept a modification, service, opportunity, or benefit provided under these rules that the individual decides not to accept.

(8) The Department 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. Although the Department shall determine which aid or format, if any, can be

provided without fundamental alteration or undue burden, primary consideration should be given to the choice of the requestor.

(9) Except as authorized under specific programs, the Department is not required to provide personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature.

(10) The Department 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.

(11) The Department will not deny individuals the opportunity to participate on planning or advisory boards based on their disability.

(12) The Department will not discriminate against individuals that do not have disabilities themselves, but have a known relationship or association with one or more individuals who have disabilities.

(13) The Department's 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.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0015

Illegal Drug Use

(1) Except as provided in subsection (2) of this rule, OAR 407-005-0000 through 407-005-0030 does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The Department will not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current used 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) A program 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) A client with a psychoactive substance use disorder resulting from current illegal use of drugs is not considered to have a disability under OAR 407-005-0000 through 407-005-0030 unless the client has a disability due to another condition.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0020

Reasonable Modifications

(1) The Department will make Reasonable Modifications to policies, practices or procedures of a program, services 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.

(2) When providing program access to a qualified individual with a disability would cause a fundamental alteration of the program, service or activity or undue financial or administrative burden, the Department will, to the extent

the benefit of the program, service or activity can be achieved, provide program access to the point at which the program becomes fundamentally altered or experiences an undue burden.

(3) Alternate Format communication is considered to be within the scope of reasonable modifications.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0025

Requesting a Reasonable Modification

(1) To request a reasonable modification to a Department program, service or activity a client applicant, client or public member must submit to program staff a request for a reasonable modification to the applicable program. Requests may be made verbally or by completing the Request for Reasonable Modification form.

(2) Upon receipt of a request for modification the Department will:

(a) Determine whether additional documentation regarding the claimed disability is needed and request such documentation;

(b) Within fifteen (15) working days of the request or the receipt of additional medical documentation, whichever is later, provide to the requestor notification of approval, approval with alternative modifications or denial of the request for reasonable modification. All denials and approvals with alternative modifications that were not requested will be clearly labeled a "Preliminary Notification Subject to Review."

(c) Ensure that approved modifications occur within a reasonable time.

(3) A "Reasonable Modification Team" means a two person team appointed by program managers that meet to evaluate a Request for Reasonable Modification decision that either denied the request or approved the request but with modifications other than those requested.

(4) This process may include additional communication with the individual requesting the Reasonable Modifications.

(5) Preliminary Notifications will automatically be reviewed by a Reasonable Modification Team that will notify the requestor of the final result of the review within fifteen (15) working days of the preliminary notification or within fifteen working days following receipt of medical or other supporting documentation requested by the Team, whichever is later.

(6) An individual whose request for reasonable modification has been denied or approved with alternative modifications which the individual believes to be inadequate may file a Report of Discrimination with the Department within 60 days of the final result or file a complaint with the appropriate federal regulatory agency within 180 days of the final result.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050

407-005-0030

Report of Discrimination and Other Remedies Available for Alleged Discrimination

(1) A client or client applicant or specific class of individuals or their representative(s) may file with the Department a Report of Discrimination based on disability in the following circumstances:

(a) The final result under OAR 407-005-0025 for a Reasonable Modification Request was denied or was approved with an alternative to the requested modification which is believed to be inadequate;

(b) A request for auxiliary aids and services was denied or was approved with an alternative to the request which is believed to be inadequate;

(c) A request for an alternate format communication was denied or was approved with an alternative to the request which is believed to be inadequate;

(d) Inability to access facilities used for Department programs;

(e) Denial of participation in Department programs and services.

(2) A Report of Discrimination must be filed within 60 calendar days of the date of the alleged discrimination unless otherwise set forth in these rules. In the Food Stamp program, a Report of Discrimination filed more than 60 but less than 180 days of the alleged discrimination will be referred to the Food and Nutrition Service for investigation and is not otherwise covered by this rule.

(3) A Report of Discrimination may be submitted verbally or on a Report of Discrimination Form available at any Department office or by calling any Department office.

(4) The claim of discrimination will be investigated and will include an interview with the complainant and upon conclusion of the investigation, a Letter of Determination shall be issued within (40) calendar days from the receipt of the Discrimination Report.

(5) An individual may appeal the Letter of Determination to the Civil Rights Review Board (CRRB) within thirty (30) calendar days of receiving the Letter of Determination. CRRB means a panel of Department employees appointed by the Director that reviews the decisions made by the Department ADA Coordinator or the Civil Rights Investigator on discrimination complaints filed with the Department.

(6) At the discretion of CRRB, this may include additional communication with the client.

(7) The remedies available under OAR 407-005-0000 through 407-005-0030 are available in addition to other remedies available under state or federal law or Oregon Administrative Rules, except that these remedies must be exhausted where exhaustion is a requirement of seeking remedies in another forum.

Stat. Auth.: ORS 409.050

Stat. Imp.: ORS 409.050