

**NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
658**

REASONABLE ACCOMMODATION FOR INMATES WITH DISABILITIES

Supersedes: AR 658 (04/13/15, Temporary); 5/19/15; 1/14/16; (07/05/17, Temporary)
Effective Date: 05/15/18
Change: *Expanded Policy Amended from Hearing Impaired Inmates*

AUTHORITY:

Title I, II and III of the Americans with Disabilities Act

PURPOSE:

To ensure the Nevada Department of Corrections (NDOC) is compliant with *Title I, II, and III* of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Rehab Act). The ADA gives federal civil rights protections to individuals with disabilities, similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

RESPONSIBILITY:

The Director is responsible to ensure the administration and development of regulations.

The Deputy Directors of each Division are responsible to ensure implementation in their respective areas.

The Warden, Facility Manager, and/or designee is responsible to ensure operational procedures are implemented at each facility or institution.

All employees shall recognize and take seriously any requests for disability accommodations, and any complaints or grievances alleging disability discrimination or accessibility.

The ADA Coordinator, as defined by the Warden at each institution or facility, is responsible to ensure efforts have been exhausted in ensuring the NDOC works to provide reasonable accommodations. A “*reasonable accommodation*” is any modification or adjustment to a assignment, assignment application process, or work environment that will enable a qualified applicant or inmate with a disability to participate in the eligibility process, perform the essential functions of the assignment, or enjoy the benefits and privileges of prison employment or programs.

The Director of Medical and the Director of Nursing at each of the institutions/facilities are responsible for the operational control and administration of this regulation. They are also responsible for ensuring its provisions are followed and that all inmates who have been identified as having a disability are assessed appropriately.

658.01 DEFINITIONS

A. Disability

1. A physical or mental impairment that substantially limits one or more of an individual's major life activities; or
2. A record of such an impairment; and/or
3. Perceived or regarded as having such impairment.

B. Major Life Activities: Includes such functions as caring for oneself, activities of daily living, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, eating, sleeping, walking, lifting, bending, reading, , communicating, working, the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, and reproductive functions.

C. Substantial Limitation of a Major Life Activity: A condition that renders an individual unable to perform a major life activity that the average person in the general population can perform, and the determination of which requires an individualized assessment.

D. Physical or Mental Impairments

1. Physical or mental impairments include 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.
2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
3. The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy,

multiple sclerosis, cancer, heart disease, diabetes, mental retardation, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), or tuberculosis. The phrase physical or mental impairment does not include homosexuality or bisexuality.

E. Reasonable Accommodation

1. A modification or adjustment to the physical environment, procedures, or the manner in which tasks are carried out that enable a qualified inmate with a disability to perform all essential assignment functions or to participate in a program or service or to use a facility.
2. NDOC will make reasonable modifications or adjustments to physical environment, procedures, or the manner in which tasks are carried out that are consistent with legitimate penological interests in order to allow qualified inmates with disabilities the same opportunity of usability and access as non-disabled inmates, unless doing so would create an undue hardship for Prisons, cause a fundamental alteration to a program, or pose a direct threat of substantial harm to the health and safety of the individual or others.

F. Qualified Inmate with a Disability: An inmate 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.

G. Undue Burden on the Department: An action causing either: fundamental alteration of a service, program, or activity; or financial and administrative burdens requiring significant difficulty or expense in the implementation of an accommodation, or threat to the safety and security of the facility, staff, inmates, volunteers or visitors.

H. Facility ADA Coordinator: A position designated to ensure compliance and implementation of this policy within a NDOC facility. For purposes of this policy and program, that position shall be the Associate Warden for Programs at each facility. In the absence of an Associate Warden of Programs, the Facility ADA Coordinator shall be the facility's highest ranking Program staff member under the Facility Head.

I. Utilization Review Panel: A panel consisting of institutional practitioners, Medical Director, and the Utilization coordinator, who review requests for medical care provided by an outside provider.

658.02 POLICY OBJECTIVE

1. It is the policy of NDOC to establish procedures that will provide an accommodation or allow inmates to request an accommodation for a qualified disability that affects a major life activity and to ensure that:
 - A. Every inmate, including those with a qualified disability, shall be housed in a manner that provides for his/her safety and security; Reasonable accommodations are made only if the accommodations pose no direct threat to the individual requesting the accommodation, or to others, or cause an undue hardship on facility security and orderly operations;
 - B. Reasonable accommodations shall be made to the physical structure of housing for an inmate with a qualified disability to accommodate for the physical limitations of the disabled inmate and facilitate the inmate's inclusion in facility life;
 - C. The Facility ADA Coordinator may authorize housing unit furnishings within the cell/dorm to be rearranged to best accommodate an inmate with a qualified disability and shall identify specific criteria for bottom bunk priority. A visually or mobility impaired inmate shall be given bottom bunk status;
 - D. Reasonable accommodations shall be made to facility assignment assignments, programs, activities, and services to permit participation by a qualified inmate with a disability;
 - E. No qualified individual with a disability shall, solely by reason of such disability, be excluded from participation in or be denied the benefits of assignments, programs, activities, or services offered by the NDOC.

658.03 INMATE PROGRAMS

1. No inmate shall be discriminated against in participating in a assignment, program, activity or service based on his/her disability. Consistent with this regulation, facilities are required to make reasonable accommodations to known inmates with qualifying disabilities.
2. NDOC staff will modify assignments, programs, activities or services to the extent that a qualified disabled inmate can participate unless doing so would fundamentally alter the program, adversely affect legitimate penological interests, pose undue hardships for facility operations or pose a threat to the safety and security of the facility staff, other inmates, volunteers and visitors.
3. An inmate will not be placed in a assignment, program, activity or service which clearly jeopardizes his/her safety or security.
4. Exclusion of offenders from available programs or services shall be based on the following criteria:

- A. In order to provide the modification for access, it would present an undue burden to the facility/NDOC if:
 - 1) The offender is unable to perform basic or essential functions of the program, with or without reasonable accommodations; or
 - 2) The offender is not qualified to enroll in the program

658.04 EQUAL ACCESS TO ASSIGNMENT ASSIGNMENTS, PROGRAMS, ACTIVITIES, AND SERVICES

Eligible otherwise qualified inmates with a disability shall have the same opportunity for access to assignments, programs, activity(s) or service options as eligible otherwise qualified inmates without disabilities and are able to request service for activities.

658.05 INITIAL INTAKE PROCESS

- 1. The Department will make reasonable efforts to identify inmates during the intake process who may have a disability, to include but not limited to medical, mental health, sight, mobility, deaf or hearing impaired. Additional assessments may be done by healthcare staff who notice any perceived disability, receive a request by the inmate for review, and/or receive a referral from a NDOC staff person for an evaluation by healthcare staff. The determination of ADA requires medical to determine the disability and reasonable accommodations to be done by a team of medical, the ADA coordinator and classification (caseworker).
 - A. Healthcare staff will engage in an interactive process with the inmate to assess conditions which may qualify as a disability and may require ADA accommodations. This interactive process may include interviews with the inmate, employee observations, offender reports, and/or documentation of an offender's disability. If it is determined that an identified inmate may require a level of service accommodation, the inmate will be scheduled to be evaluated by a practitioner (physician or mid-level provider) within three (3) working days. A determination must be made and documented in NOTIS.
 - B. If the healthcare practitioner is unable to determine that an identified inmate qualifies under the ADA, the practitioner will be responsible to submit a request to the Utilization Review Panel for a consult by an outside specialist to determine the level of disability and/or hearing loss and appropriate care for the inmate. Once the disability or hearing deficit has been confirmed and a course of treatment ordered, the inmate will be seen by a committee consisting of the ADA coordinator, a representative of the medical staff and classification to determine the appropriate accommodations and services based on the treatment ordered. The list of Accommodation Categories may be used to assist this process as determined by healthcare professionals. A memorandum will be generated by the ADA coordinator indicating the services that will be provided and any other special

handling instructions. Copies of the memo will be placed in the inmate's I-file and medical file.

- C. Once the appropriate level of care and the inmate's needs have been determined, the inmate will be eligible to be reviewed by Classification staff to determine appropriate institutional placement. Classification staff shall consider security concerns and appropriate programming availability at various institutions. The Facility ADA Coordinator is responsible to record ADA determinations and recommended accommodations, modifications or denial and explanation of delay to accommodation.
- D. An inmate who has a disability that he/she believes is not being reasonably accommodated will submit a grievance with a written request for accommodation, in compliance with AR 740. The grievance must be included along with the specific disability(s) being claimed as well as the specific accommodation or service the inmate seeks.
- E. The Medical Director must notify the inmate in writing of the final determination. The notice must be received by the inmate within 45 working days of the inmate's initial request. In the event a determination cannot be made within 45 working days because of circumstances beyond the control of the facility, the Medical Director shall notify the inmate requesting the accommodation within the 45-day period of the reason for the delay and the expected date that a final determination will be made. In any event, the inmate will be notified of the final determination within 60-working days of the date the inmates makes the initial request.
- F. During any part of the ADA process outlined in this section of the policy, if the inmate transfers to another prison facility, the facility ADA Coordinator is to ensure that all forms and supporting documentations are forwarded to the ADA Coordinator at the receiving facility. The appropriate information will be included in NOTIS.
- G. Justification for Denial of Request for Accommodation - A request for accommodation may be denied for any of the following reasons:
 - 1) A request for accommodation shall be denied when it would pose a risk to the safety and security of the prison facility, staff, or the public, or when the request would adversely impact other penological interests, e.g., deterrence of crime, interference with rehabilitative efforts, and maintenance of inmate discipline.
 - 2) In making determinations for reasonable accommodation, public safety, health, safety, and security of all inmates and staff shall take priority over an accommodation decision.
 - 3) Facility staff need not take an action to provide accessibility to a assignment, program, or activity, or service if the action would impose

or require an undue burden.

- H. **An Undue Burden.** An accommodation that does not meet the standard of reasonableness, as determined by the Facility ADA Coordinator and Deputy Director or designee
- 1) **A fundamental alteration of the purpose of the assignment, program, activity or service.**
 - 2) **Direct Threat.** The Facility ADA Coordinator should consult with the Warden, or his designee, , before making a final determination on the potential risk to security posed by an inmate's requested accommodation.
 - 3) **Equally Effective Means.** A request for accommodation shall be modified if equally effective access to a assignment, program, activity or service can be afforded through an alternate method that is deemed to provide equally effective access and/or equally effective communication, and will meet the standard of reasonableness.

658.06 REQUESTS FOR REASONABLE ACCOMODATIONS

1. An inmate seeking an accommodation for a possible qualifying disability which was not evaluated or identified by medical practitioner during the Inmate Intake Process, as identified in Section 658.3 above, shall submit an Inmate Disability Accommodation Request Form (DOC 2668 (12/17) to the Health Service Administrator.
2. The inmate completing the Disability Accommodation Request Form must describe his or her specific disability(ies), and the specific accommodation and/or action the inmate wishes to be taken to accommodate the alleged disability. The health care staff member handling any actions outside of the Department shall insure all HIPAA releases are documented.
3. The Health Service Administrator/designee shall:
 - A. Review the Inmate Disability Accommodation Request Form to determine its completeness. Illegible or incomplete forms shall be returned to the inmate.
 - B. Evaluate whether the inmate is disabled as described by the inmate and whether the inmate is able to perform the activities described.
 - C. Arrange for a clinical evaluation of the inmate's alleged disability and/or impairment by a medical practitioner in order to validate the disability/accommodation request. Any clinical evaluation should be an interactive process between the health care professional and the inmate. This evaluation may include a review of medical records, a medical examination and any other action deemed necessary by the medical practioner.

- D. Following the clinical evaluation, the medical practitioner shall forward the Inmate Disability Accommodation Request Form along with the results of the evaluation to the ADA Coordinator.
- E. Upon the determination that the medical condition qualifies as a disability as defined by the ADA, the ADA Coordinator, with input provided by the health care staff, security staff and caseworkers, will determine what accommodation(s) would be effective and reasonable. The NDOC will make the final determination of the reasonableness of an accommodation.

658.07 ACCESS TO AUXILIARY VISUAL, HEARING AIDS AND SERVICES

For those inmates identified with a visual impairment or hearing impairment, the ADA Coordinator, with the assistance of the medical staff, will ensure that visually-impaired and hearing-impaired inmates are provided access to auxiliary aids and services when required for effective communication in accessing and participating in department programs, services and activities.

1. Such programs, services and activities include but are not limited to the following:
 - A. Intake assessments and classification;
 - B. Institutional orientation;
 - C. Medical and mental health services;
 - D. Substance abuse and other treatment programs;
 - E. Inmate work and education programs;
 - F. Program, housing, classification, release and other status reviews;
 - G. Disciplinary hearings, grievances, discrimination complaint, and other administrative processes for review of decisions and actions by department staff affecting inmates; and
 - H. PREA reporting and/or follow-up with any PREA concerns
2. Auxiliary aids and services for deaf and hearing-impaired inmates may include but are not limited to the following:
 - A. Handwritten or typed notes if the communication is short and simple;
 - B. Qualified sign language interpreters, when available, if the communication is not short and simple (either in person or video interpretation) and for large meetings and events;

- C. Real-time captioning of video materials, when available;
 - D. Open or closed captioning of video materials, when available;
 - E. Written transcripts or outlines;
 - F. Visual notifications such as a flashing light or flashcard;
 - G. A sign on a cell door or vest/shirt notifying staff of a hearing-impaired inmate; and
 - H. Other methods of making aurally delivered materials accessible to people with hearing impairments.
3. Aids for the Visually Impaired Include, but are not limited to:
- A. Safety Glasses;
 - B. Magnifier in the computer in the law library;
 - C. Writing guides, when available; and/or
 - D. Reading books in braille, when available.
4. When an auxiliary aid or service is requested by a deaf or hearing-impaired inmate, the ADA Coordinator will consult with the inmate to determine what aid(s) will be effective. Staff will give primary consideration to the inmate's choice unless another equally effective means of communication is available and/or provision of the auxiliary aid or service requested by the inmate would result in an undue financial or administrative burden to the Department or a fundamental alteration of the program, services or activity.
5. After documenting an inmate's need for auxiliary aids and services for effective communication, staff will continue to provide auxiliary aids and services to the inmate unless the inmate affirmatively indicates that he or she does not want such services, or the Department determines such services are no longer required under the ADA.

658.08 MEDICAL AIDS

- 1. Medical staff will be responsible for keeping appropriate records regarding inmates identified with a disability including all medically necessary aids and services.
- 2. Medical staff will be responsible for purchasing and keeping an appropriate stock of the most frequently used hearing aid batteries. Batteries for hearing aids not provided by the N D O C will be ordered upon written request by the inmate. Batteries that are in stock will be replaced. Batteries that are not stocked will need to be ordered. The ordering process will be initiated by the next business day of the received written

request. Inmates must turn in their old batteries to obtain new ones.

3. Medical staff must be notified in writing by the inmate if the inmate's visual or hearing aid is damaged or in need of repair. The hearing aid will be sent out by the Department to a repair company by the next business day with a request for estimate or quote of the estimated charges to repair or replace the hearing aid. The completed estimate or quote will be sent to the Utilization Review Panel for authorization. Any damages that are determined to have been caused by the inmate may be subject to NRS 209.246 charges, which require the inmate to pay 100% of the cost of repair or replacement. Medical shall inform the inmate when the hearing aid was sent to the repair company and when it is expected to be returned. Medical will maintain written documentation of all hearing aid repairs, including the vendor used, the date of the repair and the specific repairs performed in the inmate's medical file. While a hearing aid is out on repair, the inmate will be provided with an alternative means of reasonable accommodation.
4. Annual Evaluation of Eligibility under the ADA Inmates found to meet the criteria for inclusion under the ADA will be re-evaluated annually to assure the appropriateness of ongoing inclusion and provision of accommodations under the ADA.

658.09 TELEPHONIC AIDS

1. Telecommunications Typewriters (TTY) are also known as Telecommunications Device for the Deaf. The Warden shall ensure that written procedures are developed and implemented to provide TTY's for inmates who are deaf or hearing-impaired in a manner that ensures effective access to telephone services.
2. In light of the fact that telephone calls placed via a TTY unit take three to five times longer than telephone calls placed using standard voice equipment, NDOC shall not impose on TTY calls a time limit of less than four times the time allowed for voice telephone calls.


658.10 TRAINING

1. The Facility ADA Coordinator will receive training annually in the Americans with Disabilities Act, Title II, which requires equal access to state programs and facilities to those with qualifying disabilities and any other training as designated by the Director, or his designee.
2. ADA Training will be provided to all staff on the policy and procedure regarding the ADA Process for inmates. New employees will be provided ADA Training as part of new employees' Orientation.
3. All appropriate identified Department staff will be trained through use of audio and visual methods and will be provided printed educational information on the ADA Policy and Procedures regarding the ADA and inmates.

APPLICABILITY

1. This administrative regulation requires operational procedures on equipment utilized for visual and hearing accommodations.
2. This administrative regulation requires an audit.

REFERENCE: ACA 4th Edition 4-4054, 4-4055



Medical Director, Romeo Aranas, M.D.

6/12/18

Date



Director, James Dzurenda

5-15-18

Date