



NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION

**REASONABLE ACCOMMODATION FOR OFFENDERS
WITH DISABILITIES
ADMINISTRATIVE REGULATION – 658**

SUPERSEDES: AR 658 (04/13/15, Temporary); AR 658 5/19/15; AR 658 1/14/16; AR 658 (07/05/17, Temporary); AR 658 5/15/18; AR 658 (04/07/22, Temporary); AR 658 (08/09/22, Temporary)

EFFECTIVE DATE: August 30, 2022

AUTHORITY: *Title II of the American with Disabilities Act*

PURPOSE

To ensure the Nevada Department of Corrections (NDOC) is compliant with *Title II 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 of the Nevada Department of Corrections (NDOC and Department) is responsible for the implementation of this Administrative Regulation (AR).

The Deputy Directors are responsible for ensuring implementation in their respective areas.

The Warden, Correctional Manager, and/or designee are responsible for ensuring Operational Procedures (OPs) are implemented at each facility or institution.

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

The statewide ADA Compliance Officer and Facility ADA Coordinators, as defined by the Warden at each institution or facility, are responsible to ensure efforts have been exhausted in ensuring the NDOC works to provide reasonable accommodations.

The Medical Director 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 offenders who have been identified as having a disability are assessed appropriately.

658.01 DEFINITIONS

1. Disability
 - A. A physical or mental impairment that substantially limits one or more of an individual's major life activities; or
 - B. A record of such an impairment; and/or
 - C. Perceived or regarded as having such impairment.
2. 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, 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.
3. Substantial Limitation of a Major Life Activity: The individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.
4. Physical or Mental Impairments:
 - A. 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.
 - B. Any mental or psychological disorder such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - C. 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, cognitive limitations, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), or tuberculosis. The phrase physical or mental impairment does not include homosexuality, bisexuality, gender identity disorders not resulting from physical impairments, or sexual behavior disorders.

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5. Reasonable Accommodation:
- A. A modification or adjustment to the physical environment, procedures, or the manner in which tasks are carried out that enable an offender with a disability to perform all essential assignment functions or participate in a program or service, or use a facility.
 - B. NDOC will make reasonable modifications or adjustments to the physical environment, procedures, or the manner in which tasks are carried out in order to allow qualified offenders with disabilities the same opportunity of usability and access as non-disabled offenders unless doing so would 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.
6. Qualified Offender with a Disability: An offender 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.
7. Undue Financial and Administrative Burden on the Department: NDOC does not have to take any action that it can demonstrate would result in an undue financial and administrative burden. This applies to program accessibility, effective communication, and auxiliary aids and services. The determination of an undue financial and administrative burden must be made by the NDOC Director and/or designee, accompanied by a written statement of the reasons, and based on all resources available for use in the program.
8. Direct Threat: A significant risk to the health or safety of any individual that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.
9. Statewide ADA Compliance Officer: A position designated to ensure compliance with and implementation of this policy across all NDOC facilities. For the purposes of this policy and program, that position shall be the Statewide Medical and Safety Compliance Officer.
10. Facility ADA Coordinator: A position designated to ensure compliance with and implementation of this policy within a NDOC facility. For purposes of this policy and program, that position shall be the Associate Warden of 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.
11. Utilization Review Panel: A panel consisting of institutional practitioners, the Medical Director and/or designee, and the Utilization Coordinator, that 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 and/or allow offenders to request an accommodation for a disability that affects a major life activity and to ensure that:
 - A. Every offender, including those with a 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;
 - B. Reasonable accommodations shall be made to the physical structure of housing for an offender with a disability to accommodate for the physical limitations of the offender with a disability and facilitate the offender'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 offender with a disability and shall identify specific criteria for bottom bunk priority. A visually or mobility impaired offender shall be given bottom bunk status;
 - D. Reasonable accommodations shall be made to facility assignments, programs, activities, and services to permit participation by a qualified offender with a disability; and
 - E. No 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 OFFENDER PROGRAMS

1. No offender shall be discriminated against in participating in an assignment, program, activity, or service based on having a disability. Consistent with this regulation, facilities are required to make reasonable accommodations for qualified offenders with disabilities.
2. NDOC staff will modify assignments, programs, activities, and/or services to the extent that a qualified offender with a disability can participate unless doing so would fundamentally alter the program or pose a Direct Threat.
3. An offender will not be placed in an assignment, program, activity, or service which clearly jeopardizes his/her safety or security.

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

1. Qualified offenders with a disability shall have the same opportunity for access to assignments, programs, activities, or service options as qualified offenders without disabilities and can request service for activities.

658.05 INITIAL INTAKE PROCESS

1. During the intake process, the Department will make reasonable efforts to identify offenders who may have a disability, to include but not limited to, medical, mental health, sight, mobility, deaf or hearing impairment. Additional assessments may be done by medical staff who notice any perceived disability, receive a request from the offender for review, and/or receive a referral from an NDOC staff person for an evaluation by medical staff. The medical provider, the ADA coordinator and classification (Correctional Casework Specialist-CCS) determine the disability and reasonable accommodations once the medical provider has completed a medical assessment.
 - A. Medical staff will engage in an interactive process with the offender to assess conditions that may qualify as a disability and may require ADA accommodations. This interactive process may include interviews with the offender, staff observations, offender reports, and/or documentation of an offender's disability. If it is determined that an offender may require a service accommodation, the offender will be scheduled for evaluation by a medical provider (physician and/or mid-level practitioner) within three (3) working days. A determination must be made and documented in NOTIS.
 - B. If the medical practitioner is unable to determine that an identified offender 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 offender. Once the disability or hearing deficit has been confirmed and a course of treatment ordered, the offender will be seen by a committee consisting of the Facility ADA Coordinator, a representative of the medical staff and classification to determine the appropriate accommodations and services based on the treatment ordered. 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 offender's I-file and medical file.
 - C. Once the appropriate level of care and the offender's needs have been determined, the offender will be eligible for review by the Classification staff to determine institutional placement. Classification staff shall consider security concerns and programming availability at various institutions. The Facility ADA Coordinator will record ADA determinations and recommended accommodations, modifications, explanation of any delays in accommodation, or denial of accommodation.
 - D. An offender 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 Administrative Regulation 740. The grievance must be included along with the specific disabilities being claimed, as well as the specific accommodation or service the offender seeks.

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- E. The Medical Director must notify the offender in writing of the final determination. The notice must be received by the offender within 45 working days of the offender'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 offender requesting the accommodation within the 45 working day period of the reason for the delay and the expected date that a final determination will be made. In any event, the offender will be notified of the final determination within 45 working days of the date the offender makes the initial request.
 - F. If during any part of the ADA process outlined in this section of the policy the offender transfers to another prison facility, the Facility ADA Coordinator must ensure that all forms and supporting documentation 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) When it would pose a fundamental alteration to the program or a Direct Threat. The Facility ADA Coordinator must consult with the Warden, or his designee, before making a final determination on the potential risk to security posed by an offender's requested accommodation.
 - (2) A Request for Accommodation shall be modified if equally effective access to an assignment, program, activity, and/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.
2. Annual Evaluation of Eligibility Under the ADA: Offenders 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.

658.06 REQUESTS FOR REASONABLE ACCOMMODATION

- 1. An offender seeking an accommodation for a possible disability that was not evaluated or identified by a medical practitioner during the Offender Intake Process, as identified in Section 658.05, shall submit an Offender Disability Accommodation Request Form (DOC 2734 (03/21) to the Health Service Administrator.

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2. The offender completing the Disability Accommodation Request Form must describe the specific disability (or disabilities), the specific accommodation(s), and/or action the offender wishes to be taken to accommodate the alleged disability. The medical staff member handling any actions outside of the Department shall ensure all *Health Insurance Portability and Accountability Act* (HIPAA) releases are documented.
 3. If an offender is unable to complete a DOC 2734, they may request assistance from a Correctional Casework Specialist (CCS).
 4. The Health Service Administrator/designee shall:
 - A. Review the DOC 2734 to determine its completeness. Illegible or incomplete forms shall be returned to the offender.
 - B. Evaluate whether the offender has a disability as described by the offender and whether the offender is able to perform the activities described.
 - C. Arrange for a clinical evaluation of the offender'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 medical professional and the offender. This evaluation may include a review of medical records, a medical examination, and any other action deemed necessary by the medical professional.
 - D. Following the clinical evaluation, the medical professional shall forward the DOC 2734, along with the results of the evaluation, to the Facility ADA Coordinator.
 - E. Upon the determination that the medical condition qualifies as a disability, as defined by the ADA, the ADA Coordinator, with input from the medical staff, custody staff, and CCS, will determine what accommodation(s) would be effective and reasonable.

658.07 ACCESS TO AUXILIARY VISUAL, HEARING AIDS, AND SERVICES

1. For those offenders with communication disabilities, the facility ADA Coordinator, with the assistance of the medical staff, will ensure that such offenders are provided access to auxiliary aids and services, when required, for effective communication in accessing and participating in Department programs, services, and activities.
2. 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;

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- D. Substance abuse and other treatment programs;
 - E. Offender work and education programs;
 - F. Program, housing, classification, release, and other status reviews;
 - G. Disciplinary hearings, grievances, discrimination complaints, and other administrative processes for review of decisions and actions by Department staff affecting offender; and
 - H. *Prison Rape Elimination Act* (PREA) reporting and/or follow-up with any PREA concerns.
3. Auxiliary aids and services for deaf and hearing-impaired offenders 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 offender; and
 - H. Other methods of making aurally delivered materials accessible to people with hearing impairments.
4. Aids for individuals with vision impairments include, but are not limited to, the following:
- A. Safety glasses;
 - B. Magnifier in the computer located in the law library;
 - C. Writing guides, when available; and
 - D. Reading books in braille, when available.

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5. When an auxiliary aid or service is requested by an offender with a communication disability, the ADA Coordinator will consult with the offender to determine what aid(s) will be effective. Staff will give primary consideration to the offender's choice unless another equally effective means of communication is available and/or provision of the auxiliary aid or service requested by the offender would result in an undue financial or administrative burden to the Department or a fundamental alteration of the program, services, or activity.
 6. An offender with a speech disability may be provided with a qualified speech-to-speech transliterator, or the means to write out words that are not understood.
 7. After documenting an offender's need for auxiliary aids and services for effective communication, staff will continue to provide auxiliary aids and services to the offender unless the offender affirmatively indicates that he/she no longer wants and/or needs 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 adequate records regarding offenders identified with a disability, including all medically necessary aids and services.
2. Medical staff will be responsible for purchasing and keeping adequate stock of the most frequently used hearing aid batteries. Batteries for hearing aids not provided by NDOC will be ordered upon written request by the offender. 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. The offender must turn in their old batteries to obtain new ones.
3. Medical staff must be notified in writing by the offender if the offender'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 an 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 offender may be subject to NRS 209.246 charges, which require the offender to pay 100% of the cost of repair or replacement of the hearing aid. The medical staff shall inform the offender when the hearing aid was sent to the repair company and when it is expected to be returned. Medical staff 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 offender's medical file. While a hearing aid is out on repair, the offender will be provided with an alternative means of effective communication.

658.09 TELEPHONIC AIDS

1. Telecommunications Typewriters (TTY) are also known as Telecommunications Devices for the Deaf. The Warden shall ensure that written procedures are updated

and implemented to provide TTY's for offenders 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 Statewide ADA Compliance Officer and Facility ADA Coordinator will receive annual training in the *Americans with Disabilities Act, Title II*, which requires equal access to state programs, services, activities, and facilities for qualified offenders with disabilities, and any other training as designated by the Director, or his designee.
2. Training on the policy and procedures regarding the ADA processes for offenders will be provided as part of new hire employee orientation.
3. All designated Department staff will be trained using audio and visual methods and will be provided printed educational information on the ADA policy and procedures regarding the ADA and offenders.

APPLICABILITY

1. This Administrative Regulation requires Operational Procedures for Facility ADA Coordinator duties, internal submission process of ADA accommodation requests, and equipment utilized for visual and hearing accommodations.
2. This Administrative Regulation requires an audit.

REFERENCES:

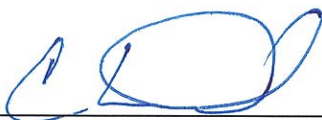
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Michael Minev, M.D., Medical Director



Date



Charles Daniels, Director



Date