

CF OPERATING PROCEDURE
NO. 60-10, Chapter 1

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, February 4, 2019

Human Resources

AMERICANS WITH DISABILITIES ACT (ADA) ACCOMMODATION PROCEDURES FOR
APPLICANTS/EMPLOYEES/GENERAL PUBLIC

1-1. Purpose. This operating procedure describes the Department's policies and procedures for considering and responding to requests for reasonable accommodations, effective communication, and equal access under the Americans with Disabilities Act.

1-2. References.

- a. 42 USCA 12101 et seq., Americans with Disabilities Act of 1990 (ADA), Titles I and II, as amended.
- b. The Americans with Disabilities Act Amendments Act of 2008.
- c. Americans with Disabilities Act Handbook.
- d. Article I, Section 2, Florida Constitution.
- e. Chapter 760, Florida Statutes, Florida Civil Rights Act of 1992.
- f. EEOC Guidance on the ADA and Psychiatric Disabilities.
- g. 29 USCA 701, Section 504 of the Rehabilitation Act of 1973, as amended.
- h. 29 USCA 701, Section 508 of the Rehabilitation Act of 1973, as amended.
- i. Title VI of the Civil Rights Act of 1964, as amended.
- j. Title VII of the Civil Rights Act of 1964, as amended.
- k. Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) 42 U.S.C. 2000 et seq.

1-3. Definitions. The definitions of the terms used in this operating procedure may be found in the Glossary of Terms in Attachment 1 to this chapter.

1-4. Policy.

- a. It is the policy of the Department to afford individuals with disabilities equal accessibility to programs, services, and employment.
- b. The Department, its contracted client services providers, and subcontractors must ensure all meetings, conferences, hearings, trainings, interviews, eligibility determinations, programs, services, and activities are held in facilities that are accessible.

This operating procedure supersedes CFOP 60-10, Chapter 1, dated September 18, 2014.

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1-5. Procedures.

a. Requests for Reasonable Accommodation from Job Applicants.

(1) Any job applicant for employment may request a reasonable accommodation. The request for accommodation must state the type of accommodation requested. The local Employee Relations Representative must contact the Headquarters/Region/Mental Health Treatment Facility ADA Coordinator or the Department's Office of Civil Rights if they are unsure that the ADA is applicable.

(2) A job applicant may request reasonable accommodations anytime during the job application process.

(3) All job announcements must include the statement "If an accommodation is needed in order to participate in the application process, please contact the appropriate local Employee Relations Representative."

b. Requests for Reasonable Accommodations from Employees.

(1) Any employee may request a reasonable accommodation under the ADA. The request for accommodation may be submitted on the "Request for Reasonable Accommodation" (form CF 764, available in DCF Forms) to their immediate supervisor or the local Employee Relations Representative. If the request is submitted to the supervisor, the supervisor shall acknowledge to the requestor receipt of the accommodation request within five days and forward the request along with a copy of the employee's position description to the local Employee Relations Representative for coordination.

(2) The local Employee Relations Representative shall acknowledge to the requestor receipt of the request for accommodation within five days, determine if additional medical information is needed, and coordinate consideration of and responding to the request for accommodation with management.

(3) If an employee requests reasonable accommodation to perform the essential functions of the job, the supervisor or the local Employee Relations Representative may request supporting documentation about his/her disability and functional limitations. The documentation must be from an appropriate health professional(s), who is treating the employee as of the date of the request. The request must include an instruction to the health care provider not to provide genetic information as part of the health care provider's response. See Attachment 2 to this chapter for a sample letter to a medical provider requesting supporting documentation. Remember to attach to the letter an "Authorization for Release of Medical Information for ADA Purposes" (form CF 765, available in DCF Forms) signed by the employee and a "Medical Provider Report for ADA Accommodation" (form CF 766, available in DCF Forms).

(4) If the employee provides insufficient information to determine if the disability is covered by the ADA or that a requested accommodation is reasonable, the Department may require that the employee be examined by an appropriate health professional of the Department's choice. The examination must be job-related, and the Department must pay all costs associated with the examination.

(5) Any cost involved in accommodating the applicant/employee must be approved and paid for by the Regional Managing Director, Hospital Administrator, or designee in the Region where the accommodation is being requested. All costs associated with accommodations made at Headquarters shall be approved and paid for by the appropriate Assistant Secretary or designee.

(6) The local Employee Relations Representative shall initiate a "Reasonable Accommodation Approval/Denial" (form CF 767, available in DCF Forms) and forward the form to the appropriate authorities listed below for review and recommended action(s):

(a) Local Employee Relations Representative;

(b) Region Legal for review for legal sufficiency only, not for recommendation to approve/deny the accommodation;

(c) Program/Unit Manager; and,

(d) Region Managing Director/Hospital Administrator.

(7) If the recommendation is approved at the Region level then the requested accommodation or an accommodation that is equally effective shall be provided. If the recommendation at the Region level is denied, the request must be forwarded to the Human Resources Director. Only the Human Resources Director may deny a reasonable accommodation in consultation with the Headquarters Legal Office.

(8) The local Employee Relations Representative shall notify the job applicant/employee in writing of the action to be taken regarding the request for accommodation. The supervisor and/or local Employee Relations Representative shall discuss the accommodation with the employee and provide either the accommodation requested or an accommodation that is equally effective.

(9) All requests for accommodations shall be forwarded to the Region Civil Rights Officer within 10 days after completion. Copies pertaining to a request for accommodation shall be maintained by the Human Resources Service Center in a secured area as part of the employee's medical record.

(10) The immediate supervisor and/or local Employee Relations Representative will follow-up on the employee's status/progress on an annual basis, or earlier if necessary.

(11) If the applicant/employee is not satisfied with the decision, he or she may file a complaint using the complaint process below.

c. Program Accessibility and Accommodations for the Public.

(1) Any member of the public with a disability who requires auxiliary aids when visiting or conducting business at any Department facility may contact the local ADA Coordinator, Single Point of Contact, Client Relations Coordinator, or the Department's Office of Civil Rights. The person may submit their request in writing or verbally.

(2) Contracted client service providers shall inform their applicants and recipients of the procedure for obtaining auxiliary aids and services and any other accommodation needed to access services being delivered by that agency.

(3) Individuals must be given the opportunity to request the auxiliary aid or service that meets their needs. The individual's preference must be given primary consideration. If a different method of accommodation is provided, it must be equally effective.

(4) Each Region/Facility and Headquarters must develop an Auxiliary Aids and Services Plan. The Plan must be submitted annually to the Office of Civil Rights by March 31st.

d. Complaint Process.

(1) Job applicants, employees, and members of the public who want to file a discrimination complaint may file internally or externally. Internal complaints are filed with the Department's Office of Civil Rights or the local Civil Rights Officer. Complaints received by the Region or Facility must be forwarded to the Office of Civil Rights within 24 hours of receipt. External complaints must be filed with one of the agencies listed in paragraph (7) below.

(2) All complainants, witnesses, and other participants must be advised of their right to request reasonable accommodations for any phase of the complaint process. All correspondence issued to participants shall contain contact information for requesting accommodations.

(3) Employees alleging violation of Title I of the ADA must file a complaint within 365 days of the alleged violation.

(4) Employees, customers, or companions alleging violation of Title II of the ADA must file a complaint within 180 days of the alleged violation.

(5) Internal complaints alleging a violation of Title I of the ADA must be filed within 365 days of the alleged violation with the Department's Office of Civil Rights at 1317 Winewood Boulevard, Building 1, Suite 140, Tallahassee, Florida 32399-0700.

(6) Internal complaints alleging a violation of Title II of the ADA must be filed within 180 days of the alleged violation with the Department's Office of Civil Rights or the local Civil Rights Officer. The local Civil Rights Officer will forward the complaint to the Headquarters Office of Civil Rights.

(7) Job applicants, employees, and members of the public may file an external complaint with one of the following agencies:

United States Department of Health and Human Services (HHS)
Attention: Office for Civil Rights
Atlanta Federal Center, Suite 3B70
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909
(404) 562-7888; TDD (404) 331-2867; Fax (404) 562-7881

United States Department of Agriculture (USDA)
Director, Office of Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410
(800) 795-3272 or (202) 720-6382(TTY)

United States Department of Agriculture (USDA)
Attention: Office of Civil Rights
Atlanta Federal Center, Suite 8T36
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-3247
(404) 562-0532; TDD/TTY (202) 720-5964; or Fax (404) 527-4517

United States Department of Justice (USDOJ)
Office for Civil Rights – Office of Justice Programs
810 7th Street, NW
Washington, D.C. 20531
(202) 307-0690; TDD/TTY (202) 307-2027; Fax (202) 616-9865

United States Department of Justice (USDOJ)
Civil Rights Division – Disability Rights Section
1425 New York Avenue
Washington, DC 20530
(800) 514-0301; (800) 514-0383

District Director, Miami District Office (EEOC)
United States Equal Employment Opportunity Commission
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131
(305) 808-1740; (800) 669-4000; Fax (305) 808-1855

Executive Director (FCHR)
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 200
Tallahassee, Florida 32301-4857
(850) 488-7082; Fax (850) 488-5291

1-6. Training. All managers, supervisors, and Single Points of Contact must receive annual training on compliance activities relating to the ADA. The ADA Coordinator and Single Point of Contact provide guidance in the administration of the provisions of the act and coordinate with DCF Office of Training and Development to provide necessary training to Department employees, managers and supervisors in the requirements of the ADA.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

SHELBY JEFFERSON
Acting Human Resources Director

SUMMARY OF REVISED, ADDED, OR DELETED MATERIAL

In paragraph 1-5b(7), changed the authority to deny a reasonable accommodation request from the "Secretary or designee" to the "Human Resources Director."

GLOSSARY OF TERMS

a. Accessibility. A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

b. Americans with Disabilities Act Amendments of 2008. Signed into law on September 25, 2008, clarify and reiterate who is covered by the law's civil rights protections. The "ADA Amendments Act of 2008" revises the definition of "disability" to more broadly encompass impairments that substantially limit a major life activity. The amended language also states that mitigating measures, including assistive devices, auxiliary aids, accommodations, medical therapies and supplies (other than eyeglasses and contact lenses) have no bearing in determining whether a disability qualifies under the law. Changes also clarify coverage of impairments that are episodic or in remission that substantially limit a major life activity when active, such as epilepsy or post-traumatic stress disorder. The amendments took effect January 1, 2009.

c. Americans with Disabilities Act of 1990, as amended (ADA). Comprehensive law which prohibits discrimination against people with disabilities in employment (Title I), in public services (Title II), in public accommodations (Title III) and in telecommunications (Title IV). The ADA Amendments Act of 2008 expanded the scope of the ADA to be consistent with the Congressional intent of the original law.

d. Assistive Listening Devices and Systems (ALDs). Amplification systems designed to improve hearing ability in large areas and in interpersonal communications. These systems deliver the desired signal directly to the ears, hearing aids, or cochlear implants of the listener, thus overcoming the negative effects of noise, distance and echo. Some examples that are available could include, but are not limited to: hardwire, loop, infrared, and FM systems.

e. Auxiliary Aids and Services. Includes DCF qualified interpreters or certified interpreters, Communication Access Realtime Translation (CART) providers or other effective methods of making aurally delivered materials available to individuals who are deaf or hard of hearing; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual loss; acquisition or modification of equipment or devices; and other similar services and actions. These auxiliary aids and services will enable customers/clients/companions to fully benefit from and participate in Departmental programs and services. Auxiliary aids and services include, but are not limited to, Braille and taped materials; DCF qualified or certified ASL interpreters, certified CART providers, qualified foreign language interpreters, readers, assistive listening devices and systems, television decoders, visual fire alarms using strobe lights, captioned films and other assistive devices. See 45 C.F.R. § 84.52(d)(3); 28 C.F.R. § 35.104; and P.L.110-325, the ADA Amendments Act of 2008.

f. Blind. Lacking visual perception.

g. Certified CART Provider (CCP). This level reporter possesses the knowledge, skill, and ability to produce complete, accurate, simultaneous translation and display of live proceedings utilizing computer-aided translation in a live event setting at speeds exceeding 180 wpm.

h. Certified Deaf Interpreter (CDI). Individuals who are deaf and certified by the Registry of Interpreters for the Deaf (RID) to interpret as part of a team to facilitate communication.

i. Certified Realtime Reporter (CRR). This, designation demonstrates a proficiency in real time translation at a greater level than Registered Professional Reporter (RPR).

j. Civil Rights Officer. Employee responsible for investigations, compliance monitoring and review, technical assistance, and coordination of civil rights activities.

k. Client. As used in this operating procedure, this term includes anyone applying for or participating in the services provided by the Department, its contracted client services providers and their subcontractors. It includes persons making general inquiries or in any way seeking access to or receiving information from the Department, its contracted client services providers and their subcontractors, either in person, in writing or via telecommunications. May also be referred to as a customer.

l. Communication Access Realtime Translation (CART). The simultaneous conversion of spoken words to text through computer-assisted transcription or court reporting and displaying that text on a video screen. Several display options are available. This communication service is beneficial to individuals who are deaf or hard of hearing who do not use sign language or for whom assistive listening devices and systems are ineffective. A verbatim or word-for-word transcription is created. CART can be provided on-site or remotely. Several professional certifications are offered through the National Court Reporters Association.

m. Companion. Any person who is deaf or hard of hearing and is one of the following:

(1) A person whom the Customer indicates should communicate with DCF or its Contracted Client Services Provider personnel about the Customer, such as a person who participates in any treatment decision, a person who plays a role in communicating the Customer's needs, condition, history, or symptoms to DCF or its Contracted Client Services Provider personnel, or a person who helps the Customer act on the information, advice, or instructions provided by DCF or its Contracted Client Services Provider personnel;

(2) A person legally authorized to make healthcare or legal decisions on behalf of the Customer; or,

(3) Such other person with whom DCF or its Contracted Client Services Provider personnel would ordinarily and regularly communicate about the Customer.

n. Contracted Client Services Provider. Any public, private or nonprofit agency or corporation that has entered into a contractual agreement with DCF to provide services directly to the public. Also referred to as "DCF Contract Provider."

o. Customer. Any individual who is seeking or receiving services from the Department, its Contracted Client Service Providers and their subcontractors. May also be referred to as "client or clients".

p. DCF or Department. Florida Department of Children and Families.

q. Deaf. An individual whose sense of hearing is nonfunctional, with or without technology, for the purpose of communication and whose primary means of communication is visual. For those clients who use a form of visual communication or signed language, there is also an important cultural aspect. There is a distinction between "Deaf" with a capital "D" and "deaf" with a lowercase letter "d," with "Deaf" referring to those individuals (usually deaf from birth) who use American Sign Language and who consider themselves identified with Deaf culture; and "deaf" referring to individuals who cannot hear, but who may or may not use American Sign Language.

r. Deaf-Blind. An individual who has significant combined vision and hearing loss that can affect the way they gain information, communicate, orient and move within the environment and live on a daily basis.

s. Deaf Interpreter (DI). Individuals who are deaf and certified by RID to interpret as part of a team to facilitate communication.

t. Disability. A condition that substantially limits a major life activity, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, lifting, sleeping, and working. A person with a disability is any person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded by a recipient of federal financial assistance as having such impairment.

u. Effective Communication. Whatever is written or spoken must be as clear and understandable to individuals who are deaf or hard of hearing as it is for individuals who are not deaf or hard of hearing.

v. Essential Functions. The fundamental duties of a job. To determine essential functions, consideration must be given to whether employees in the position are required to perform the function, and then consider if whether removing that function would fundamentally change the job.

w. Genetic Information. Information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e., family medical history).

x. Hard of Hearing. An individual who has a hearing loss that results in the possible dependence on visual methods to communicate in addition to the use of residual hearing, with or without the assistance of technology, such as hearing aids or cochlear implants.

y. Interpreters. Someone who has rudimentary familiarity with sign language or finger spelling is not a qualified sign language interpreter. Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into proper signs or to observe someone else signing and change their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter.

z. Major Life Activities. Those functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, which are hampered by one or more permanent conditions.

aa. Mental Disability. The Americans with Disabilities Act defines this term to include mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness and learning disabilities.

bb. Mitigating Measures. Determination of whether impairment substantially limits a major life activity must be made without regard to the ameliorative (improve) effects of mitigating measures (except for ordinary eyeglasses and contact lenses). Examples include, but are not limited to, any medication, medical supplies, equipment, prosthetics, hearing aids and cochlear implants, use of assistive technology, and learned behavioral or adaptive neurological modifications.

cc. Physical Disability. Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting the neurological, musculoskeletal, respiratory, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, sensory, skin, or endocrine systems.

dd. Program Accessibility. An American with Disabilities Act standard, which means a public entity's programs, services, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. The concept of program accessibility is intended to make the contents of the program, service or activity equally available and accessible to persons with disabilities without excessive renovations of facilities.

ee. Reasonable Accommodation. Modification or adjustment to the job, work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy equal employment opportunity.

ff. Sign Language Interpreter. A person who engages in the practice of interpreting using sign language.

gg. Single Point of Contact. Operations Program Administrator (OPA) or other individual designated to coordinate the provision of auxiliary aids and services to Customers or Companions who are deaf or hard of hearing according to their obligations under Section 504 and/or the ADA.

hh. TDD (Telecommunications Device for the Deaf). Devices that are used with a telephone to communicate with persons who are deaf or hard of hearing or who have speech impairments by typing and reading communications.

ii. TTY (Teletypewriter). Devices that are used with a telephone to communicate with persons who are deaf or hard of hearing or who have speech impairments by typing and reading communications.

jj. U.S. Department of Health and Human Services (HHS), Office for Civil Rights. The federal agency responsible for Departmental compliance with federal regulations including but not limited to Title VI of the Civil Rights Act of 1964, as amended, Title IX, Section 504, the Age Discrimination Act of 1978, and the Omnibus Budget Reconciliation Act of 1981, as amended.

kk. U.S. Department of Justice, Office for Civil Rights, Office of Justice Programs. The Office for Civil Rights investigates complaints from members of the public who believe that an agency that receives funding from the Justice Department has discriminated against them, either in employment or in the delivery of services or benefits. OCR has jurisdiction to investigate agencies that receive funding from the Office of Community Oriented Policing Services (COPS Office), the Office of Violence Against Women (OVW), and the Office of Justice Programs and its components. The OCR can investigate not only recipients that receive funding directly from the Justice Department, but it can also investigate agencies that receive Justice Department funding from state and local government agencies.

ll. United States Equal Employment Opportunity Commission. The federal agency responsible for enforcing compliance with Title I (employment) of the ADA.

SAMPLE LETTER

To Medical Provider Requesting Supporting Documentation
for a Reasonable Accommodation under the ADA

(Use Department Letterhead)

Date:

Doctor's Name and Address

Re: (Employee Name)

Dear Dr. _____:

Your patient, _____, is an employee of the Department of Children and Families and has requested an accommodation of their disability under the Americans with Disabilities Act. The request is under consideration and we need medical information about the nature and effect(s) of the employee's disability to determine what accommodation, if any, we can offer or provide to the employee. Please read all of the questions on the attached form (entitled "Medical Provider Report for ADA Accommodation") and answer each question. A Release of Medical Information signed by the employee is attached.

Please do not send copies of medical records. Additionally, we ask that you **not provide any genetic information when responding to this request.**

Thank you for your anticipated and prompt reply. If you prefer to discuss this on the telephone or have questions, please feel free to contact me at _____.

Sincerely,