

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 450.02

EFFECTIVE DATE: 15 December 2021

**SUBJECT: INMATES/RESIDENTS WITH
DISABILITIES AND THE
AMERICANS WITH
DISABILITIES ACT (ADA)**

POLICY DIRECTIVE

PURPOSE:

To provide guidelines for the management and provision of reasonable accommodations to inmates and residents with disabilities housed in West Virginia Division of Corrections and Rehabilitation facilities, and to protect against unlawful discrimination based on an individual's disability, in accordance with Title II of the *Americans with Disabilities Act of 1990*, as amended, 42 U.S.C. §§12101 *et seq.* ("ADA").

REFERENCE:

Title II (Subtitle A) of the *Americans with Disabilities Act of 1990*, as amended, 42 U.S.C. §§121.01 *et seq.*; and Section 504, Rehabilitation Act of 1973.

RESPONSIBILITY:

Superintendents shall be responsible for enacting Operational Procedures and Post Orders to ensure compliance with this Policy Directive.

CANCELLATION:

Any previous written instruction on the subject, including DCR Policy Directive 450.02, dated 01 November 2021 and DCR Commissioner's Instruction #DCR21-06, dated 27 October 2021.

APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution and is to be made available for inmate/resident review.

DEFINITIONS:

Americans with Disabilities Act or ADA: Federal law which makes it illegal to discriminate against people with disabilities, including incarcerated individuals, and which ensures equal opportunities for these inmates/residents to access the benefit of facility jobs, programs, services, and activities.

ADA Coordinators:

DCR ADA Coordinator: Agency-level employee designated by the Commissioner to oversee the implementation and coordination of this Policy within DCR facilities and to address ADA-related issues for DCR facilities at a state-wide level as set forth herein.

Facility ADA Coordinator: Employee designated by the Superintendent at each facility to serve as the contact person to oversee the implementation and coordination of this Policy and address ADA-related issues at that facility.

Auxiliary Aids and/or Services: Such aids or services which may include, but are not limited to:

- Qualified interpreters or other effective methods of making aurally communicated materials available to individuals who are deaf or with hearing impairments.
- Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals who are blind or have visual impairments.
- Functional devices to increase mobility including, but not limited to, walkers, canes, crutches, and wheelchairs for individuals with mobility impairments.

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 or services.

Disability: In order for an inmate/resident to demonstrate a legal right to ADA protection, a “disability” must be established. Not everyone who has a medical condition is protected by the ADA. A person must have a disability as defined by the law. To establish a disability an inmate/resident must show that he or she:

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

“Disability” is very broadly defined under both federal and state law. Questions regarding whether a certain impairment qualifies as a disability should be directed to the DCR ADA Coordinator. The term “disability” as used in this Policy designates a disability which is entitled to ADA protection.

Major Life Activities: Include, but are not limited to, functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, working, eating, sleeping, standing, lifting, bending, concentrating, thinking, communicating, and the operation of major bodily functions that include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, lymphatic, musculoskeletal and reproductive functions.

Medical Staff/Medical Providers: As used herein, the terms “medical staff” and “medical providers” encompass physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals, and others who by virtue of their education, credentials, and experience are permitted by law to evaluate and care for patients.

Mobility Impairment: Requiring use of a wheelchair or being able to have independent mobility over only short distances or only on a level surface.

Prosthesis or Orthotic: An artificial device to replace a missing body part or to compensate for a defective body function, including, but not limited to, artificial limbs, eyeglasses, contact lenses, dentures, hearing aids, orthopedic shoes, crutches, wheelchair, braces, support bandages, etc.

Qualified Person (Inmate/Resident) with a Disability: A person with a disability who, with or without a reasonable accommodation or modification meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the facility.

Reasonable Accommodation: Any reasonable modification, change, or adjustment of a service, program, activity or environment that will assist an inmate/resident with a disability in performing essential functions, or that is necessary to prevent an inmate/resident with a disability from being excluded from participation in or being denied the benefits of the services, programs and/or activities of the facility, or being subjected to discrimination by the facility without causing an undue hardship to the facility. A reasonable accommodation may not impose undue hardship, as defined below, on the facility by, among other things, adversely impacting the safe and secure operations of a facility and so creating an undue administrative or financial burden or constituting a direct threat to the health and safety of others. The terms reasonable accommodation and reasonable modification are used interchangeably in this Policy and are intended to have the same effect.

Note: DCR is not required to permit an individual to participate in or benefit from the services, programs, or activities of the facility, when that individual poses a direct threat to the health or safety of the individual or others.

Undue Hardship: The condition under which a requested accommodation cannot be provided without (1) significant difficulty or expense constituting an undue financial or administrative burden; (2) fundamentally altering the nature or operation of the service, program or activity or (3) adversely impacting the safe and secure operations of a facility

by significantly increasing and adversely impacting the administration burden of ensuring safety and security of the facility operations, causing a direct threat and/or fundamentally altering the facility's operations.

POLICY:

It is the policy of the West Virginia Division of Corrections and Rehabilitation (DCR) to comply with the Americans with Disabilities Act (ADA) by providing opportunities for participation in facility jobs, services, programs and activities to inmates/residents with disabilities covered under the ADA and by establishing procedures for inmates/residents to request accommodations for qualifying disabilities. *No inmate/resident shall be denied participation in any of the benefits or services based solely upon his/her disability.*

I. ADA Coordinators

- A. The **DCR ADA Coordinator** is responsible for coordinating the DCR's efforts to comply with and carry out its responsibilities under the ADA.
 1. The DCR ADA Coordinator provides guidance and direction to agency leadership and Facility ADA Coordinators with respect to planning, developing, implementing, and monitoring the DCR's policies and procedures to ensure compliance with this Policy and that appropriate services are offered to inmates/residents with disabilities.
 2. The DCR ADA Coordinator shall be knowledgeable about the requirements of the ADA and shall be appropriately trained and educated in the problems and challenges faced by inmates/residents with physical and/or mental impairments.
 3. The DCR ADA Coordinator will advise agency leadership and serve as the subject matter expert in the area of ADA compliance on issues related to inmates/residents with disabilities, reasonable accommodations, and the application of this Policy Directive. To the extent necessary, the DCR ADA Coordinator will consult with the Department's Legal Division, or with the West Virginia State ADA Office regarding the applicability of the ADA to a given situation.
 4. The DCA ADA Coordinator acts as the agency's primary point of contact on issues affecting inmates/residents with disabilities and on behalf of Central Office responds to, or requests responses to, inquiries related to disabilities.
 5. The DCR ADA Coordinator has oversight of the administrative remedy procedure, inmate/resident grievances, or investigations into complaints alleging non-compliance with the ADA or DCR policy related to compliance with ADA Title II.
 6. The DCR ADA Coordinator provides oversight to the Facility ADA Coordinators and in consultation with Bureau of Training and Staff Development (BTSD) leadership is responsible for ensuring that Facility Superintendents and Facility

ADA Coordinators receive instruction, at least annually, related to the provision of reasonable accommodations for inmates/residents with disabilities and the requirements of this Policy.

7. The DCR ADA Coordinator is responsible for developing and implementing a system to collect and track statistical data related to the provision of reasonable accommodations across the DCR system and grievances related to disability. The DCR ADA Coordinator will be responsible for periodic audits of such data and for issuing an annual report to leadership on the status of inmates/residents with ADA covered disabilities in the DCR.
- B. Each **Facility ADA Coordinator** is responsible for ensuring proper implementation of this Policy within the assigned facility and serves as the facility's liaison with the DCR ADA Coordinator on all issues pertaining to ADA compliance.
1. The Facility ADA Coordinator shall be trained as directed by the DCR ADA Coordinator regarding ADA requirements and reasonable accommodations but may also have other duties within the facility.
 2. Facility ADA Coordinators are responsible for ensuring that all facility staff (to include contractual staff) receive appropriate training and/or education on issues related to inmates/residents with disabilities and the applicable provisions of this Policy. The Facility ADA Coordinator is also responsible for assuring that documentation memorializing said training and/or education is maintained.
 3. The Facility ADA Coordinator is responsible for responding to, and coordinating responses, to inmate/resident Requests for Accommodation. He or she will review all written inmate/resident requests for a reasonable accommodation and, in consultation with the Superintendent and other staff as appropriate, make a determination on the request.
 4. The following conditions will be considered when making a determination regarding the request for a reasonable accommodation:
 - a. The disability, as recognized by the ADA, must be known to the facility and the DCR.
 - b. If necessary, input from medical providers and/or historical records will be considered.
 - c. The requested reasonable accommodation must not pose an undue hardship, as defined in this Policy.
 5. If necessary, in evaluating a request for accommodation, the Facility ADA Coordinator will consult with a qualified medical professional or other qualified

person to determine if the request is reasonable and appropriate for the individual's particular disability or circumstance.

6. In reviewing and making determinations of inmate/resident requests for reasonable accommodation, the Facility ADA Coordinator and/or the DCR ADA Coordinator may (with written inmate/resident authorization) request historical records demonstrating prior diagnoses, including medical records, special education files, and Social Security Administration documents. In the event the Facility ADA Coordinator and/or the DCR ADA Coordinator deem necessary, they may refer the inmate/resident to appropriate evaluations to confirm a suspected disability.
 7. Information on the nature and extent of an inmate's/resident's disability and any reasonable accommodations related to the disability is considered protected health information. This information is confidential and will only be disclosed to staff as necessary to comply with this Policy, to provide assistance to the inmate/resident, or as authorized and/or permitted by the inmate/resident.
 8. The Facility ADA Coordinator will also maintain documentation of the facility accommodation process, to include approvals, denials, and appeals.
- C. Staff and inmates/residents have access to the DCR ADA Coordinator and Facility ADA Coordinator.
1. Upon arrival at a DCR facility, all inmates and residents will be provided a copy of the *Notice of Inmate/Resident Rights Under the Americans with Disabilities Act (Attachment #1)*. This *Notice* includes the DCR ADA Coordinator's contact information and informs inmates/residents of their right to non-discrimination on the basis of a disability and the procedure they must follow for requesting a reasonable accommodation as outlined in this Policy.
 2. The Facility ADA Coordinator's name and contact information shall also be readily available and accessible to inmates/residents.
 3. The Facility ADA Coordinator will ensure that this Policy is available for inmate/resident viewing in the library or other location accessible by inmates/residents, and that a copy is provided to inmates/residents, who after initial screening or intake, have been assessed as disabled. A copy of this Policy will be posted on the DCR's public website; and will be provided in formats accessible to individuals with disabilities.

II. Inmates/Residents with Disabilities

- A. A qualified inmate/resident with a disability will not be excluded from participation in, or be denied the benefits of, the services, programs, or activities of the facility, or be subjected to discrimination solely on the basis of that disability.

- B. Reasonable accommodations will be made for inmates/residents with disabilities, consistent with and as required by the ADA, subject to the limitations provided therein and as contained herein. Such reasonable accommodations will allow for participation in services, programs, and activities that may include, but not be limited to:
1. Provision of auxiliary aides and services;
 2. Sign language or interpreter services;
 3. Durable medical equipment;
 4. Wheelchair or other mobility devices;
 5. Adapted showers, toilets and other related personal hygiene needs;
 6. Removal of barriers to physical access or transfer to a facility that meets the inmate's/resident's needs; and
 7. Modification to procedure and/or facility practice, unless the facility can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity or compromise the safe and secure operation of the facility, thereby creating an undue administrative burden and/or constituting a direct threat.
- C. Staff and contract staff are responsible for communicating information, announcements, procedures, and other directions to inmates/residents with communication disabilities in a manner that is as effective as communications with others by furnishing appropriate auxiliary aids and services.
1. When a disability affects an inmate's/resident's ability to communicate, necessary accommodations to assist them during psychological, educational testing, evaluations, and scheduled medical appointments inside and outside the facility.
 2. For all inmates/residents with communications disabilities who are transported for offsite health care, a facility medical provider will ensure that the inmate's/resident's communication disability and the need for an accommodation is documented in the inmate's/resident's health record.
 3. A notice of any communications disabilities (e.g., hard of hearing, speech impairment, language translation, vision impairment) must be noted on the health record of any inmate/resident whose disability affects their ability to communicate and an appropriate advisory regarding this disability must be provided to facility staff and designated in the Offender Information System (OIS).
- D. Facility staff will determine appropriate housing and bed assignments for inmates/residents with disabilities based upon information known at the time of

housing assignment in accordance with relevant policies. Medical staff is responsible for communicating any assessed individual accommodation needs to facility staff upon completion of Intake/Receiving Screening of the inmate/resident.

1. Inmates/residents with disabilities will be housed in a manner that provides for their safety and security. Housing used by inmates/residents with disabilities provides for integration with and among other inmates/residents. Programs and services will be made accessible to inmates/residents with disabilities who reside in the facility.
2. To the extent feasible, inmates/residents with disabilities should be placed in general population settings. Inmates/residents with disabilities requiring special health care and services will be placed in settings that provide health services appropriate to the inmate's/resident's health needs.
3. Inmates/residents with disabilities should be housed in the most integrated setting appropriate to the needs of the individual and unless it is deemed necessary to make an exception, are not to be:
 - a. Placed in inappropriate security classifications because no accessible cells or beds are available;
 - b. Placed in designated medical areas unless they are actually receiving medical care or treatment;
 - c. Placed in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and
 - d. Deprived of reasonable visitation with family members by placing them in distant facilities where they would not otherwise be housed. This does not preclude gathering groups of offenders with similar special needs (i.e., geriatric, deaf and hard of hearing, dialysis, etc.) into one or more locations where special resources can be provided to meet those needs.
4. If a transfer is necessary in order to provide accessible housing, the Superintendent of a facility, or designee, at intake, in consultation with the medical staff, security staff and the Facility ADA Coordinator, will determine reasonable and accessible housing accommodations for inmates/residents with disabilities until transfer. The DCR ADA Coordinator shall be contacted when reasonable housing accommodations are not available, so that proper, accessible housing decisions are made.
5. Inmates/residents assigned to medical units may have access to one or more programs and services temporarily suspended as deemed appropriate by the facility medical staff based on the inmate's/resident's medical condition and level of medical care needed. Services and programs will continue to be provided with reasonable modifications to the extent possible.

- a. Inmates/residents assigned to medical units for long-term care will be periodically evaluated by the facility medical staff who will determine the appropriate level of access to programs and services.
 - b. Determinations regarding an inmate's/resident's access to programming and services will be by medical order and documented in the inmate's/resident's health record.
6. Durable medical equipment, including auxiliary aids, in appropriate working order, supplies, disability aids, and prostheses will be ordered and provided for inmate/resident use by the facility medical staff if failure to do so will inhibit the inmate's/resident's mobility, or ability to communicate, or result in deterioration of the inmate's/resident's health while incarcerated as determined by medical staff, and to prevent an inmate/resident from being excluded from participation in, or denied the benefits of, the services, programs, or activities of the facility, or from being subjected to discrimination by the facility. **It is the responsibility of the inmate/resident to maintain possession of, seek repairs to, and report malfunctions of these medical items.** Where feasible, the process of ordering a device will be performed so as to allow enough time for completion prior to release from incarceration.
- a. Prostheses or orthotics (including dental) will be made available only by order of facility medical staff in coordination with the Facility ADA Coordinator.
 - b. DCR and/or its medical vendor will determine the style, type, and manufacturer of the device based on the inmate's/resident's needs as described by the facility medical staff or the inmate's/resident's treating physician and with consideration of relevant security considerations. This includes dental prosthesis.
 - c. **Inmates/residents are responsible for maintaining possession of keep-on-person medical devices such as, but not limited to, dentures, hearing aids, glasses, auditory devices, and other aids.** Such devices will be replaced based upon a typical usage/renewal schedule as established by DCR and/or its medical vendor. In the event of inmates/resident abuse of the medical device and/or inmate/resident loss of the medical device, such medical device may be subject to the renewal schedule for the particular item. Replacement outside the typical usage/renewal schedule will be determined on a case-by-case basis depending on the circumstances of the loss or damage to the auxiliary aid.
 - d. Designated staff will periodically check/search keep-on-person medical devices.
- E. No inmate/resident shall be denied participation in any of the benefits or services based solely upon his/her disability.

1. No inmate/resident shall be denied access to any work assignment based solely upon his/her disability; however, an inmate/resident must be able to fulfill the essential job functions of any work assignment with or without reasonable accommodation.
2. No inmate/resident shall be denied access to any program assignment based solely upon his/her disability. However, any inmate/resident having a disability must meet the same criteria for admittance to a program as any other inmate/resident. An inmate/resident demonstrating a need for or requesting a reasonable accommodation to attend and/or participate in a program shall be provided that accommodation based upon his/her individual needs, so long as the accommodation does not constitute an undue hardship, or direct threat for the facility as defined above, or adversely impact security.
3. Services shall be available to each inmate/resident regardless of the existence of any disability. Reasonable accommodations shall be decided on a case-by case basis, as needed, to ensure access to services, so long as the accommodation does not constitute an undue hardship or direct threat for the facility as defined above, or adversely impact security.
4. Inmates/residents with vision, hearing and/or speech disabilities are afforded access to auxiliary aids or services, including but not limited to, a Telecommunications Device for the Deaf (TDD), or comparable equipment. Access to auxiliary aids and services must be made available in the same or comparable manner as the service is made to non-disabled inmates/residents. For example, access to TDD devices must be provided for the same amount of time and with the same frequency as access to telephones or video equipment is provided to non-disabled inmates/residents.
5. Inmates/residents with disabilities will be provided the same access to recreation as other inmates/residents in the same housing in accordance with the terms of the ADA and this Policy.
 - a. Such opportunities for recreation will include, but are not limited to, provision of reasonable accommodations so that disabled inmates/residents may participate in recreational programs to the greatest extent possible.
 - b. In addition, disabled inmates/resident may seek and be granted reasonable accommodations in scheduling such that they may experience and participate in recreation in a safe environment.
6. Inmates/residents will be evaluated for reasonable accommodation and participation in educational programs, where applicable and available, on a case-by-case basis. Inmates/residents can request reasonable accommodations in

educational testing, academic programs or career and technical education programs in accordance with this Policy.

III. Determination of Disability and Reasonable Accommodations

- A. All inmates/residents will receive a medical and mental health screening by facility medical staff at intake in accordance with applicable Policy Directives.
1. Inmates/residents will be provided the opportunity to disclose their present and prior disabilities and needs, and to request accommodation(s) for their disability(s) during their medical and mental health screening. The medical provider will:
 - a. Question the inmate/resident about any previous accommodations.
 - b. Discuss modified or additional accommodations as appropriate.
 - c. Make appropriate notations in the inmate's/resident's health record based on information learned during the screening process.
 - d. Report information regarding any verified accommodation needs to the Facility ADA Coordinator upon completion of the Intake/Receiving Screening of the inmate/resident.
 - e. Ensure the inmate/resident has received a copy of the *Notice of Inmate/Resident Rights Under the Americans with Disabilities Act (Attachment #1)*, which includes the DCR ADA Coordinator's contact information.
 - f. Provide an *ADA Accommodation Request Form for Inmates/Residents (Attachment #2)* as appropriate.
 2. If an inmate/resident arrives at a facility with a previously approved/prescribed accommodation or auxiliary aid that presents any security or operational concerns, facility staff will notify the Facility ADA Coordinator who will consult with the facility medical provider and the Superintendent regarding whether or not the auxiliary aid, medical equipment or assistive device is within the scope of the ADA, whether it should be removed to minimize security risk(s) and undue hardship, and if so, to further determine what alternative appropriate reasonable accommodations can be provided that would pose less of a security risk and undue hardship.
- B. Conditions that may qualify as disabilities under the ADA, that become apparent after the initial intake screening and that are identified by facility staff, facility medical providers, or reported by the affected inmate/resident shall be reported to the Facility ADA Coordinator, who will forward the information to the facility medical practitioner for evaluation and diagnosis. The referral and diagnosis will be documented in the inmate's/resident's health record.

1. The facility medical practitioner, in consultation with specialists if deemed necessary, and in conjunction with the affected inmate/resident, will diagnose any disability not previously diagnosed and will document and report the same to the Facility ADA Coordinator.
2. Facility medical practitioners shall evaluate each inmate/resident identified as having a disability covered under ADA on an individual case-by-case basis. If an inmate/resident has an obvious disability that appears to require an accommodation or modification but has not requested an accommodation or modification, facility medical staff shall initiate the reasonable accommodation analysis described below with the inmate/resident and document the same in the inmate's/resident's health record.
3. When a disability covered under the ADA is identified, the facility medical provider will determine the type and level of medically prescribed reasonable modification or accommodation needed, if any, and provide appropriate medical treatment as is required by the inmate's/resident's condition. An inmate/resident remains free to refuse any such medical treatment as is his/her right; such refusal shall be documented in the inmate's/resident's health record.
 - a. The appropriate medical staff shall make a recommendation on the specific medically prescribed modification or accommodation provided and will assist in determining the type of auxiliary aids or services to be provided.
 - b. The preference or request of the inmate/resident with a disability is considered but is not determinative. This information will be recorded in the inmate's/resident's health record.
4. If there are operational or security concerns about a medically prescribed accommodation, the Facility ADA Coordinator may discuss with the DCR ADA Coordinator and Facility Superintendent, if necessary, as to whether the proposed accommodation poses an undue hardship to the facility as defined above prior to a final decision regarding the requested accommodation.
5. If the medically prescribed accommodation or modification, such as auxiliary aids or services, poses an undue hardship to the facility as defined above, the Facility ADA Coordinator, in collaboration with medical staff and the Superintendent, will evaluate and document alternate appropriate accommodations considered.
6. The DCR ADA Coordinator will resolve the issue if the Facility ADA Coordinator and the medical staff cannot come to an agreement and may contact the office of legal counsel for the Department and/or the West Virginia State ADA Office for consultation in any given situation.
7. After review of the relevant information from medical staff and the Facility ADA Coordinator, the DCR ADA Coordinator, as necessary, will provide written

documentation to the Superintendent and Facility ADA Coordinator regarding the proposed reasonable modification or accommodation for the inmate/resident.

8. All inmate/resident requests for reasonable accommodation, determinations whether an inmate/resident has a disability, and whether the inmate/resident will receive medical accommodations for the disability must be recorded in the inmate's/resident's health record.
9. A copy of the decisions, including but not limited to, medical diagnosis(es), disability determination, the reasons for denial or modification of any medically prescribed accommodation request, and reasonable accommodations will be provided to the inmate/resident upon request and appropriate authorization. An inmate/resident may file a grievance upon the denial of a reasonable accommodation or modification.

IV. Requests for Accommodation

- A. Inmates/residents who believe they have a disability that is not being reasonably accommodated may submit a written request for the accommodation using the *ADA Accommodation Request Form for Inmates/Residents* ("Request Form") (**Attachment #2**) and the *Inmate/Resident ADA Reasonable Accommodation Request Authorization for Release of Health Information* ("Authorization Form") (**Attachment #3**) to the Facility ADA Coordinator.
 1. While the *Authorization Form* is not required to request a reasonable accommodation, the inmate/resident should be aware that medical information is often an important consideration in evaluating the *Request Form*.
 2. These forms will be readily accessible upon request from facility staff. Inmates/residents who have difficulty in communicating, understanding or writing a Request should contact a unit management team member for assistance.
 3. In the event of an emergency or exigent circumstance an affected inmate/resident, or someone on their behalf may make a verbal or written request to obtain immediate assistance from medical providers, facility staff, and the Facility ADA Coordinator.
 - a. Upon receipt of a verbal request for an accommodation, facility staff shall comply with the request if it is: (i) reasonable; and (ii) within the employee's authority and ability to provide.
 - b. If the staff member is unable to comply with the request for any reason, he or she will: (i) refer the request to his or her supervisor and the Facility ADA Coordinator before the end of the staff member's shift; (ii) inform the inmate/resident of the DCR's accommodation request procedure, and if

requested, provide the inmate/resident with the *Form*; and (iii) document the request for accommodation to the Facility ADA Coordinator.

4. An individual receiving assistance with completing the *Form* shall indicate on the *Form*: (i) the name and contact information for person providing the assistance; (ii) the person's relationship to the individual; and (iii) the date assistance was received. The person assisting with the completion of the *Form* shall also sign and date the document.
 5. The completed *Request Form* must include the inmate's/resident's specific disability and the specific accommodation or service being requested. If any staff member assists the inmate/resident in completing the *Form*, the information about the extent of the alleged disability must be recorded on the *Form* using as close to the inmate's/resident's actual words or verbiage as possible.
- B. *Request Forms* will be acted upon in writing within ten (10) business days, or a shorter time if appropriate, by either granting the request, denying the request, requesting additional time for further investigation and consultation, or granting it with modification. A specific reason must be stated if the request is denied or modified.
1. A copy of all *Request Forms* with respect to medical accommodation and/or care will be placed in the inmate's/resident's health record with a copy forwarded to the inmate/resident upon request and a copy maintained by the Facility ADA Coordinator.
 2. *Accommodation Request Forms* not specifically involving medical care will be maintained in the offender's record in OIS with a copy forwarded to the inmate/resident upon request and a copy also maintained by the Facility ADA Coordinator.
- C. The Facility ADA Coordinator will review the *Request Form* and, in consultation with appropriate mental health and/or medical staff, the Superintendent, and facility staff, as necessary, will consider the request, assess its medical, mental, and/or cognitive functioning validity, evaluate the inmate's/resident's need (if any), decide whether an accommodation is necessary, determine the undue hardship to the facility in cases where an accommodation is recommended, and make a decision to either approve or deny the request.
- D. If a facility healthcare practitioner determines that a medically prescribed accommodation is warranted, they will make provisions to provide for the auxiliary aid or service as a medical accommodation, but only after such medically prescribed accommodation has been reviewed by the Facility ADA Coordinator to address any facility safety and security concerns. If a medically prescribed accommodation poses an undue hardship on the facility as defined above, the Facility ADA Coordinator will notify a facility medical staff of the safety/security concerns so that the prescribed accommodation can be appropriately and safely modified if possible.

- E. In determining whether an inmate's/resident's disability or accommodation (requested or existing) poses an undue hardship, including a direct threat to the health or safety of themselves or others, the Facility ADA Coordinator, in consultation with the Superintendent and appropriate facility staff, must make an individualized assessment based on reasonable judgment.
- F. The Facility ADA Coordinator will complete the *Inmate/Resident ADA Reasonable Accommodation Request Resolution Form (Attachment #4)*, review the decision with the inmate/resident in person and provide the inmate/resident with a copy for his/her records. Additionally, the completed form and all accompanying documentation not medical in nature must be scanned into OIS or placed in the inmate's/resident's file. **Do not upload medical records into OIS.**
- G. An inmate or resident may file a grievance upon the denial of a reasonable accommodation through the grievance process as discussed below.

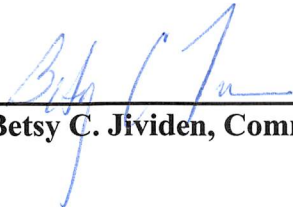
V. **Appeals and Complaints**

- A. Inmates/residents who believe they were discriminated against because of their disability, or who wish to appeal any denial or modification of an Accommodation Request or the denial of modification of a requested accommodation submitted through a *Request Form (Attachment #2)* may do so by filing a grievance in accordance with Policy.
- B. The inmate/resident will be able to indicate on the standard grievance form whether the grievance is ADA related.
- C. For any grievance form submitted in an adult facility that indicates it is ADA-related, or if the Unit Manager believes it is ADA-related, the Unit Manager will provide a copy to the Facility ADA Coordinator for review and coordination on the response to ensure its compliance with requirements. As with all grievances, it shall be answered within the timeframes prescribed by Policy.
- D. For any grievance form submitted in a juvenile facility that indicates it is ADA-related, or if the Grievance Coordinator believes it is ADA-related, the Grievance Coordinator will provide a copy to the Facility ADA Coordinator for review and coordination on the response to ensure its compliance with requirements. As with all grievances, it shall be answered within the timeframes prescribed by Policy.
- E. If the inmate/resident wishes to appeal the first level decision, they can appeal directly to the Facility Superintendent (Level 2 of the grievance process), for review and determination within the timeframes prescribed by Policy.
- F. If the inmate/resident wishes to appeal the Facility Superintendent decision, they can appeal to the Commissioner/designee who shall consult with the DCR ADA

Coordinator (Level 3 of the grievance process) within the timeframes prescribed by Policy.

ATTACHMENT(S):

- #1 Notice of Inmate/Resident Rights Under the Americans with Disabilities Act
- #2 ADA Accommodation Request Form for Inmates/Residents (2 pages)
- #3 Inmate/Resident ADA Reasonable Accommodation Request Authorization for Release of Health Information (3 pages)
- #4 Inmate/Resident ADA Reasonable Accommodation Request Resolution Form

APPROVED SIGNATURE:  _____ 12-1-21
Betsy C. Jividen, Commissioner **Date**

NOTICE OF INMATE/ RESIDENT RIGHTS UNDER THE AMERICANS WITH DISABILITIES ACT

HOW TO GET HELP

If you have a disability and as a result of your disability you need...

- A modification to a program or activity,
- A change in the way you are communicated with,
- Access to medication or other assistive devices,

Or anything else to give you an equal chance to use the facilities and take part in programs or services, **you can request a change, called a Reasonable Accommodation.**

If you believe you need a reasonable accommodation or modification, you can submit an *ADA Accommodation Request Form*, that is available from any facility staff member. If you need help filling out the form, facility staff will help you.

If you have a specific request or need additional information, contact your Facility ADA Coordinator. The Facility ADA Coordinator's contact information will be provided to you by the facility staff.

If your request for reasonable accommodation is denied or modified, or if you believe you were discriminated against because of your disability, you have the right to file a grievance under the Grievance Policy and the ADA Policy. You have the right to appeal the grievance through Level 3 of the procedure.

QUESTIONS

If you have a question about the policy or your rights, contact your Facility ADA Coordinator or the Division of Corrections and Rehabilitation ("DCR") ADA Coordinator. The DCR ADA Coordinator can be contacted at **Mr. Dave Farmer, Assistant Commissioner, WV Division of Corrections and Rehabilitation, 1409 Greenbrier Street, Charleston, WV 25311.**

The West Virginia Division of Corrections and Rehabilitation ("DCR") will not discriminate against qualified individuals with disabilities and will provide reasonable accommodations to qualified inmates/residents with disabilities if required under the Americans with Disabilities Act. DCR Policy Directive 450.02 ("ADA Policy") sets forth information regarding ADA compliance and reasonable accommodation requests.

NOTE: All information you provide will be kept confidential and be used only to help you have an equal opportunity to participate in programming and services.

WV DIVISION OF CORRECTIONS & REHABILITATION
ADA Accommodation Request Form for Inmates/Residents

COMPLETE THIS FORM to request a Reasonable Accommodation from DCR regarding certain housing and other conditions of confinement. Should you need assistance with reading and/or in completing this form, please ask a unit management team member.

Approval of Reasonable Accommodation requests are not guaranteed. If a Reasonable Accommodation poses a direct threat to the health and safety of the inmate/resident; causes a fundamental change in the service, program or activity at issue; or otherwise causes an undue hardship as defined by the Policy, the accommodation request may be denied.

INMATE/RESIDENT INFORMATION

Full Name: _____ OID Number: _____

Current Facility: _____

Do you have a work assignment? (circle one) Yes / No

If so, what is your job? _____

1. Describe what you believe your disability is and indicate whether medical department is aware of the condition/illness/diagnosis?

2. What major life activity or function is limited by your disability and how is it limited? Be specific and list all the major life activities or functions impacted. (Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, reading, working, eating, sleeping, standing, lifting, bending, concentrating, thinking, and communicating.)

3. What assistance or Reasonable Accommodation are you requesting and how will it assist you to overcome the limitations you listed above? Be specific.

4. Do you need help identifying what Reasonable Accommodations may assist you to work through the limitation(s) of your perceived disability? If so, please tell us what assistance you would find helpful. Be specific.

5. Have you received a diagnosis or an accommodation in the past? Have you used any assistance such as a device, aid or service (such as medication, special housing assignment, wheelchair, hearing aids, etc.) in the past? If so, describe the assistance or accommodation you received and the effect of that on your ability to participate in any activity of daily living, service, or program?

Printed Name

Date

Signature of Inmate/Resident

OID Number

Received by Facility ADA Coordinator on: _____, 20____.

DCR Facility ADA Coordinator Printed Name

DCR Facility ADA Coordinator Signature

**INMATE/RESIDENT ADA REASONABLE ACCOMODATION REQUEST
AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION**

Name: _____ SSN: _____

Date of Birth: _____ OID No. _____

I hereby authorize _____ (medical provider) at _____ (facility) to release copies of the portions of my health care records described below to the Facility ADA Coordinator _____ [insert name] or his/her designee, for the purpose of evaluating my Request for Reasonable Accommodation consistent with DCR Policy Directive 450.02.

Specific Information Covered by this Authorization

THE FOLLOWING INFORMATION IS SPECIALLY PROTECTED BY FEDERAL AND STATE LAWS. IF ANY OF THIS INFORMATION APPLIES TO YOU, PLEASE INDICATE ANY OR ALL OF THE INFORMATION YOU WOULD LIKE TO MAKE SUBJECT TO THIS AUTHORIZATION:

*() Alcohol/Drug Abuse Records ** Complete Page 2*
() Mental Health Records _____ Initials*
**Excluding Psychotherapy Notes.*
() HIV Related Info. _____ Initials

- Discharge Summary _____ Initials
- History/Physical Info. _____ Initials
- Laboratory Studies _____ Initials
- X-ray Reports _____ Initials
- Operative Reports _____ Initials
- Pathology Reports _____ Initials

Date(s) of Service and/or medical information specific to this request:

This Authorization will expire sixty (60) days from the date that I sign it; however, I understand that the Facility and the Facility ADA Coordinator, or his/her designee, will retain copies of relevant protected health information for purposes of my ADA Request. I understand that I may revoke this Authorization, in writing, at any time. I also understand that my revocation of this Authorization will not impact any action taken in reliance on this Authorization prior to [medical vendor's] receipt of my written revocation.

I understand the nature of this Authorization.

I understand that my treatment, payment, enrollment in any health plan, or eligibility for benefits or accommodation may not be, and are not, conditioned upon my agreeing to sign this authorization.

Signature

Date

If this Authorization authorizes the release of Mental Health Records or HIV-related information, the following statement must be included with the information being released:

This information has been disclosed to you from records whose confidentiality is protected by Federal and State laws. These laws prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written authorization of the patient to whom it pertains or is otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose.

AUTHORIZATION FOR RELEASE OF CONFIDENTIAL SUBSTANCE USE DISORDER (“SUD”) PATIENT RECORDS TO FACILITY ADA COORDINATOR

Name: _____ SSN: _____

Date of Birth: _____ OID No. _____

I hereby authorize _____ [medical provider] at _____ (facility) to disclose the following information relevant to my treatment and case management plan (*initial*):

- | | |
|---|---|
| <input type="checkbox"/> Course and results of treatment | <input type="checkbox"/> Treatment plans |
| <input type="checkbox"/> Attendance in treatment | <input type="checkbox"/> Disciplinary records |
| <input type="checkbox"/> Substance use history | <input type="checkbox"/> Legal history |
| <input type="checkbox"/> Diagnostic summary and diagnosis | <input type="checkbox"/> Discharge summary |
| <input type="checkbox"/> Medical history / treatment | <input type="checkbox"/> Social / Family history |
| <input type="checkbox"/> Drug / Alcohol test results | <input type="checkbox"/> Eligibility |
| <input type="checkbox"/> Biopsychosocial assessments | <input type="checkbox"/> Psychiatric Evaluation / Treatment |
| <input type="checkbox"/> Evaluations and recommendations | <input type="checkbox"/> Verbal Exchange of information |

To _____ [insert name], Facility ADA Coordinator, for the purpose of evaluating my Request for Reasonable Accommodation consistent with DCR Policy Directive 450.02.

I understand that my substance abuse disorder records are protected under federal law, including the federal regulations governing the confidentiality of substance abuse disorder patient records, 42 CFR Part 2, and the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”), 45 CFR Parts 160 and 164, and cannot be disclosed without my written consent unless otherwise provided for by the regulations.

I understand that I may revoke this authorization at any time except to the extent that action has been taken in reliance on it. Unless I revoke my consent earlier, this consent will automatically expire in 60 days from the date that I sign it. I also understand that my revocation of the Authorization will not impact any action taken in reliance on this Authorization prior to [medical vendor] receipt of my written revocation.

I understand that my treatment may not be conditioned on my agreement to sign this Authorization. I also understand that information used or disclosed pursuant to this Authorization may be subject to re-disclosure by the person(s) listed above and may no longer be protected.

I understand I have the right to receive a list of entities to which my patient identifying Part 2 information has been disclosed; all requests must be submitted in writing. _____ (initial)

I understand the nature of this authorization. I have signed this Authorization voluntarily.

I understand I have the ability to obtain a copy of this form upon release or request.

Signature

Date

Notice to Recipient:

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR Part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or otherwise permitted by 42 CFR Part 1. General Authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.

In addition to the above, the records from which this information has been disclosed are protected by other applicable Federal and State Laws which prohibit you from making any further disclosure of this information unless expressly permitted by the written authorization of the patient or is otherwise permitted by law.

**INMATE/RESIDENT ADA REASONABLE ACCOMMODATION REQUEST
RESOLUTION FORM**

To be completed by Facility ADA Coordinator, reviewed with inmate or resident, and inmate or resident provided a copy for his/her records. Additionally, this completed form and all accompanying documentation must be scanned into the Offender Information System (OIS). DO NOT UPLOAD MEDICAL RECORDS INTO OIS.

INMATE/RESIDENT INFORMATION

Full Name: _____ OID Number: _____

Current Facility: _____

REASONABLE ACCOMODATION REQUEST INFORMATION

1. Attach the inmate's/resident's ADA Accommodation Request Form.
2. Is the inmate's/resident's requested accommodation being granted , denied , additional time requested for further investigation and consultation , or granted with modification ?
3. If denied or modified, state specific reason:

4. Date and time the inmate/resident was notified of this decision: _____

Facility ADA Coordinator Print Name

Date

Facility ADA Coordinator Signature