

Regulatory Requirements

Auxiliary Aids and Services for Persons with Disabilities

Applicable Regulatory Citations:

Section 504 of the Rehabilitation Act of 1973: 45 CFR Part 84

§84.3 Definitions

(h) **Federal financial assistance** – means any grant, loan ... or any other arrangement by which [DHHS] makes available ... funds; services ...

(j) **Handicapped person** – means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(k) **Qualified handicapped person means** - (4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§84.4 Discrimination prohibited

(l) **General.** No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

Discriminatory actions prohibited –

(l) A recipient, in providing any aid, benefits, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded other;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

- (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;
- (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Subpart F – Health, Welfare and Social Services

§84.51 Application of this subpart

Subpart F applies to health, welfare, or other social service programs and activities that receive or benefit from Federal financial assistance ...

§84.52 Health, welfare, and other social services.

(a) General. In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered non-handicapped persons;
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 84.4(b)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(d) Auxiliary aids. (1) A recipient with fifteen or more employees “shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such person an equal opportunity to benefit from the service in question.” (2)

Pursuant to the Department's discretion, recipients with fewer than fifteen employees may be required "to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services."

NOTE: In 2000, the OCR's Director developed policy guidance, which requires facilities with fewer than fifteen (15) employees to provide appropriate auxiliary aids and services to persons with disabilities. Notice of Exercise of Authority under 45 CFR 84.52(d)(2) Regarding Recipients with Fewer than Fifteen Employees Pursuant to Section 504 of the Rehabilitation Act of 1973: Federal Register: December 19, 2000 (Volume 65, Number 244): "the ...Department of Health and Human Services (HHS) is announcing that it is exercising its authority under 45 CFR 84.52(d)(2) of the regulation....., to require recipients with fewer than fifteen employees to provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from their services."

(3) "Auxiliary aids may include brailed and taped material, interpreters, and other aids for persons with impaired hearing or vision."

504 Notice

The regulation implementing Section 504 requires that an agency/facility "that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified disabled persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their disability." (**45 CFR §84.52(b)**)

Note that it is necessary to note each area of the consent, such as:

1.
 1. Medical Consent
 2. Authorization to Disclose Medical Information
 3. Personal Valuables
 4. Financial Agreement
 5. Assignment of Insurance Benefits
 6. Medicare Patient Certification and Payment Request

Resources:

U.S. Department of Justice at www.ada.gov

ADA Business Brief: Communicating with People Who are Deaf or Hard of Hearing in Hospital Settings at <http://www.ada.gov/business.htm>

A new on-line library of ADA documents is now available on the Internet. Developed by Meeting the Challenge, Inc., of Colorado Springs with funding from the National Institute on Disability and Rehabilitation Research, this website makes available more than 3,400 documents

related to the ADA, including those issued by Federal agencies with responsibilities under the law. It also offers extensive document collections on other disability rights laws and issues. By clicking on one of the general categories in the left column, for example, you will go to a catalogue of documents that are specific to the topic. <http://www.dbtac.vcu.edu/adaportal/>

See Policy Examples Section for an example of a policy for providing auxiliary aids and services for persons with disabilities AND for an example of a notice of accessibility.