 Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES	POLICY		
	ADA – INMATES AND THE PUBLIC		
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EFFECTIVE: November 13, 2020


SUMMARY of REVISION/REVIEW

New Policy created from previous 004.01, ADA Policy.
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APPROVED:



 Scott R. Frakes, Director
 Nebraska Department of Correctional Services

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PURPOSE

To provide the Nebraska Department of Correctional Services (NDCS) with policies that support and implement the provisions of Title II of the Americans with Disabilities Act (ADA) as Amended in 2008 and the Rehabilitation Act of 1973. To define those policies and establish the process for requesting reasonable modifications, team members responsibilities, and request procedures as they apply to the incarcerated population and members of the public (1C-07).

GENERAL


NDCS subscribes to a policy of non-discrimination toward individuals and inmates with disabilities in all elements of institutional incarceration to include programming, housing assignments, health services, recreation, and public access to facilities and services. This policy includes strict prohibitions against actions by individuals that create an intimidating or offensive environment through any verbal or physical conduct of a discriminatory nature.

NDCS will provide qualified inmates with reasonable modifications that allow them equal access to the benefits, services, programs, and other opportunities offered to the incarcerated population. Reasonable modifications cannot pose a threat to the security of its facilities or place an undue burden on the Department. Reasonable modifications shall not alter the nature of the goods, services, facilities, privileges, or advantages offered by NDCS. As a public entity, NDCS will provide reasonable modifications to authorized public visitors in order to access approved public areas, services, and programs available to the public. (1C-07)

NDCS has a designated ADA Coordinator accessible to inmates and the public who is qualified and educated in the challenges faced by persons with disabilities. The Department ADA Coordinator in conjunction with NDCS Legal Counsel will lead Department efforts in complying with and carrying out the legal requirements and responsibilities as defined by the Americans with Disabilities Act and the Rehabilitation Act of 1973. (5E-03)

DEFINITIONS

- I. **ASSISTIVE DEVICE** – Devices and technologies whose primary purpose is to maintain or improve an individual’s functioning and independence to facilitate participation and to enhance overall well-being. Examples of assistive devices include wheelchairs, walkers, hearing aids, canes, and teletype (TTY) machines.
- II. **DISABILITY** – A physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.
- III. **MAJOR LIFE ACTIVITY** – Activities that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, thinking, concentrating, communicating, and working.
- IV. **QUALIFIED INMATE OR PUBLIC** – A person with a physical or mental impairment which substantially limits their ability to perform a major life activity and who can meet the essential eligibility requirements or conditions of a program, classification, service, activity, or other benefit/privilege with or without reasonable modification.
- V. **REASONABLE MODIFICATION** – A modification to a policy, practice, or procedure necessary to avoid discrimination on the basis of disability. The modification shall not alter the fundamental

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nature of the service, program, or activity and shall not pose a threat to the security of the facilities or place an undue burden on the Department.

- VI. **UNDUE BURDEN** – A modification that would be unduly costly, extensive, substantial, disruptive, or would otherwise fundamentally alter the nature of the program or service to be performed or compromise the safety or security of facilities, team members, inmates, or visitors.

PROCEDURE

I. NDCS TEAM MEMBER ROLES AND RESPONSIBILITIES

A. NDCS ADA Coordinator


NDCS provides inmates with access to an ADA Coordinator who is appropriately trained and qualified in the challenges and problems faced by inmates with disabilities, programs designed to assist disabled inmates, and the legal requirements for protection of inmates with disabilities (5E-03). Specific duties of the NDCS ADA Coordinator include:

1. Process all requests for reasonable modifications from inmates within NDCS custody.
2. Coordinate the procurement of assistive devices or other modifications with purchasing team members and health services team members.
3. Review medical documentation associated with requests for reasonable modifications.
4. Maintain NDCS records on all ADA related matters.
5. Advise NDCS leadership and facility administration on issues related to disability policy and the issues faced by disabled inmates.
6. Train and educate NDCS personnel on issues affecting the disabled inmate population, compliance with applicable disability discrimination laws, and strategies and methods to better manage and interact with inmates with disabilities.

B. NDCS Facility ADA Coordinator

Each facility Warden will appoint a Facility ADA Coordinator to assist the NDCS ADA Coordinator and the disabled population of their facility. The specific duties of the Facility ADA Coordinators may be auxiliary to their primary duties and include:

1. Assist the NDCS ADA Coordinator in facilitating an interactive process with inmates requesting reasonable modifications.
2. Advise the NDCS ADA Coordinator and facility Warden on emerging ADA related issues and other issues affecting the disabled inmate population within their facility.
3. Assist the NDCS ADA Coordinator in implementing reasonable modifications.

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4. Monitor the efficacy of approved modifications.
5. Promote the cause of ADA compliance and the ethical treatment of inmates with disabilities.

C. Other NDCS Team Members

All NDCS team members play a role in ensuring ADA compliance and promoting the rehabilitation of inmates with disabilities. General NDCS team member responsibilities include:


1. Informing the Facility ADA Coordinator or NDCS ADA Coordinator on issues or deficiencies related to ADA compliance.
2. Maintain an atmosphere that promotes the ethical treatment and respect of inmates or other persons with disabilities.
3. Refer inmates with disabilities to the NDCS ADA Coordinator for assistance when appropriate.
4. Provide assistance to inmates with disabilities when appropriate.
5. Remain aware of the specific and unique needs of inmates with disabilities and tailor interactions and communication with them to accommodate their communicative needs when appropriate.

II. REQUESTING REASONABLE MODIFICATIONS

A. Inmate Requests and Appeal Process

Inmates may request reasonable modifications by contacting the NDCS ADA Coordinator or their Facility ADA Coordinator in writing utilizing the Inmate Interview Request or Grievance system, or in any other reasonable format that is accessible to the inmate and adequately conveys the nature of their request. Any NDCS team member who receives an inmate grievance that references an inmate's rights under the ADA shall send a copy of the grievance to the NDCS ADA Coordinator. The written response to the inmate grievance shall indicate that the grievance has been forwarded to the NDCS ADA Coordinator for investigation. Upon receipt of the request for modification, the following will occur:

1. Within 10 business days, the NDCS ADA Coordinator will issue a response to the request and formally begin the interactive process to accommodate the inmate or resolve the complaint. If the request is received by the Facility ADA Coordinator, the request will be forwarded to the NDCS ADA Coordinator who will issue a response within 10 business days of receiving the request from the Facility ADA Coordinator.
2. The NDCS ADA Coordinator will work with health services team members to review the nature of the inmate's disability as needed and to assess any medically recommended modifications.

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3. The NDCS ADA Coordinator will provide updates on the status of the request and seek the inmate’s input on potential modifications, options, or resolutions. The NDCS ADA Coordinator will conduct an interview with the inmate if needed to assess the request and the feasibility of modifications or potential resolutions.
4. The NDCS ADA Coordinator will consult with relevant stakeholders to determine the feasibility of all modification and resolution options. Prior to issuing a decision to the inmate, the NDCS ADA Coordinator will receive final approval from the corresponding facility’s Deputy Director.
5. The NDCS ADA Coordinator will notify the inmate in writing (or another accessible form) of the decision regarding their request for a reasonable modification.
6. If an inmate disagrees with the decision issued by the NDCS ADA Coordinator, they may appeal the decision to Agency Legal Counsel. The inmate may outline or submit additional evidence as to why they disagree with the decision.
7. Within 20 business days of receiving the appeal, Agency Legal Counsel or their designee will respond to the inmate in writing (or in another accessible form) and inform them of their final decision.

B. Public Modification Requests

NDCS provides reasonable modifications to ensure that all parts of the facility that are accessible to the public are accessible and usable by visitors and members of the public with disabilities (2C-11). Requests for modifications may be submitted, in writing, or through another accessible format that adequately conveys the nature of the request to the NDCS ADA Coordinator. Upon receipt of the request, the following will occur:

1. Within 10 business days, the NDCS ADA Coordinator will contact the requesting individual and formally begin an interactive process to assess their specific needs and the feasibility of the requested modification.
2. If the disability is not obvious, the NDCS ADA Coordinator may request medical or other documentation that denotes the nature of the individual’s disability.
3. The NDCS ADA Coordinator will provide updates on the status of the request and seek input from the individual regarding potential modifications. As needed, the NDCS ADA Coordinator will conduct an interview with the individual to assess the request and the feasibility of modifications or resolutions.
4. The NDCS ADA Coordinator will consult with relevant stakeholders to determine the feasibility of any possible modifications. Prior to issuing a decision, the NDCS ADA Coordinator will receive final approval from the corresponding facility’s Deputy Director.
5. The NDCS ADA Coordinator will notify the individual in writing (or another accessible form) of the decision regarding their request.

C. Complaints Regarding NDCS ADA Compliance

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Complaints regarding NDCS ADA compliance may be filed with the Nebraska ADA Task Force. The task force can be reached at:

Nebraska ADA Coordinator/Employee Relations Representative
 1526 K Street, Suite 120, Lincoln, NE 68508
 (402) 471-2075
nebraska.ada.coordinator@nebraska.gov

III. SCREENING AND IDENTIFICATION OF INMATES WITH DISABILITIES


A. Intake Screening and Identification of Disabilities

Upon entering NDCS custody, the following will occur to inform inmates of their rights under the ADA and to identify inmates with disabilities:

1. Inmates will be provided with information that outlines their rights under the ADA, the process for requesting reasonable modifications, and the name and contact information of the NDCS ADA Coordinator.
2. Inmates will be screened for disabilities during their initial intake period upon entering NDCS custody in accordance with Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*. During this period, health services team members will determine the medical necessity of assistive devices or other modifications that may be provided to inmates to assist in their independent functioning and living ability.
3. If an inmate believes that health services has failed to provide an assistive device or modification that is of medical necessity, they may contact the NDCS ADA Coordinator through an Inmate Interview Request form who will independently review the decision of health services team members and the inmate's medical/disability history.
4. Inmates will be provided with appropriate modifications that allow them to fully participate in the intake and health screening process. In the event that an inmate requires a reasonable modification, interpreter, or other assistive device to participate in the intake and health services/disability screening process that is not readily available, health services or other appropriate NDCS team members will contact the ADA Coordinator who will arrange for the appropriate modifications as soon as possible based on the level of need of the inmate.
5. NDCS health services or other appropriate intake team members will notify the ADA Coordinator of inmates with significant disabilities or impairments so that modifications can be planned and evaluated for when the inmate leaves the intake facility and transitions to another NDCS facility.

B. Post Intake Screening and Identification of Disabilities

1. NDCS will monitor and routinely screen inmates for the development of new disabilities or other impairments during their time in NDCS custody in accordance with Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*.

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2. Inmates requesting health services or medical attention to monitor or identify new or pre-existing disabilities outside of the prescribed schedule in Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews* shall request such services through the Inmate Interview Request form addressed to their facility health services team members.
3. Inmates may direct requests for medical attention related to a disability to their facility health services team members. If an inmate believes that they are being denied access to medical care that is needed to treat or manage a disability, they should contact the ADA Coordinator through an Inmate Interview Request form or personal correspondence.
4. Inmates will be provided reasonable modifications, interpretative services, or other assistive devices that allow them to fully participate in all medical screening and health services processes.

IV. HOUSING INMATES WITH DISABILITIES

NDCS will provide equal and accessible housing to all inmates regardless of disability status.


- A. Inmates with disabilities are housed in a manner that provides for their safety and security. Housing used by inmates with disabilities is designed for their use and provides for integration with other inmates. Inmates will be housed in the least restrictive setting that is appropriate to ensure safety and security in accordance with their classification (2C-11).
- B. Inmates with disabilities will be integrated into the general population to the maximum extent possible. Inmates with disabilities will not be housed in more restrictive settings or within medical facilities without cause or due to a lack of accessible cells.
- C. NDCS will make available education, equipment, facilities, or other support to ensure that inmates with disabilities are able to perform self-care and personal hygiene in a reasonably private environment (2C-13).
- D. Questions or concerns regarding the design compliance or overall accessibility of physical space, facilities, or cells may be directed to the ADA Coordinator who will consult with Facility maintenance who will consult with Engineering.
- E. Inmates may make requests for reasonable modifications to facilities or physical spaces by contacting the ADA Coordinator and providing an overview of their specific request and needs.

V. ACCESS TO PROGRAMS, SERVICES, AND ASSISTIVE DEVICES

A. Access To Programs and Services

NDCS subscribes to a policy of non-discrimination within offered services and access to programming. No qualified inmate shall be denied the right participate in a service or program solely on the basis of a disability (3D-04).

1. Programs and services are accessible to inmates with disabilities who reside in NDCS facilities (2C-11).

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2. Inmates shall direct requests for reasonable modifications to access programs or services to the ADA Coordinator. Requests for modifications related to the participation in programs and services should be made as soon as reasonably possible to allow the ADA Coordinator and the service/program team members time to procure or implement the requested modification prior to the beginning of the program/service.
3. After a request for reasonable modification has been approved, the program/service manager or their designee will work with the ADA Coordinator to develop an Individual Modification Plan that outlines how the program or service will be modified to ensure the disabled inmate has full access and the ability to fully participate in the program/service.
4. Requests for interpreters to accommodate disabled inmates who communicate through a means other than spoken English shall be made and granted in accordance with Policy 200.03, *Interpretation and Translation Services*.

B. Access to Assistive Devices and Technology

NDCS will provide assistive devices and technology to inmates that allow them to participate in programs and services that they are qualified for and to promote independent living. The technology provided to an inmate with hearing or speech disabilities shall be determined based on an individual assessment of the needs of the inmate. Telephones with volume control are also made available to inmates with hearing impairments. Inmates shall not be denied access to assistive technology, except when the facility Warden, their designee, or a higher authority can present clear and convincing evidence that access will jeopardize the safety and security of the institution or of others (7D-13).

VI. NEBRASKA PAROLE BOARD HEARINGS

When hearings conducted by the Nebraska Parole Board occur within NDCS facilities, NDCS will have the primary responsibility of ensuring that inmates have reasonable modifications allowing them to participate in the hearings. Inmates should request reasonable modifications for parole hearings as soon as reasonably possible to allow NDCS the proper time evaluate and implement the modification if appropriate. Inmates will follow the normal NDCS reasonable modification request process to receive reasonable modifications for parole hearings.


REFERENCE

I. STATUTORY REFERENCE

- A. Americans with Disabilities Act of 1990 (Pub. L. 101-336) and the ADA Amendments Act of 2008 (Pub. L. 110-325).
- B. 29 CFR § 1614.203 - Rehabilitation Act of 1973.

II. NDCS POLICIES

- A. Policy 115.05, *Health Screenings, Examinations, Appraisals & Reviews*

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- B. Policy 200.03, *Interpretation and Translation Services*
- III. ATTACHMENTS – None noted
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA)
 - A. Expected Practices for Adult Correctional Institutions (ACI) (5th Edition): 5-ACI-1C-07, 5-ACI-5E-03, 5-ACI-2C-11, 5-ACI-2C-13, 5-ACI-3D-04, 5-ACI-7D-13