

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

POLICIES AND PROCEDURES

Effective Date:
April 1, 2023

Policy Number:
23-1

Subject:
**DISABILITY ACCOMMODATIONS
FOR SERVICE RECIPIENTS**

Revision Date:
-NA-

Responsible Entity:
DGC/ADA Director

1. Purpose

The Tennessee Department of Mental Health and Substance Abuse Services (the department) is committed to ensuring equal access for service recipients with disabilities and to ensuring they are not otherwise discriminated against due to disability.

2. Policy

It is the department’s policy that no disabled individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of the department, or otherwise be subjected to disability discrimination by the department, in any manner which would violate the Americans with Disabilities Act, any applicable federal regulations thereunder, or any other state or federal law protecting the rights of disabled persons.

3. Definitions

As used in this policy, unless context requires otherwise, the following words and terms or words to the same effect have the meanings indicated below:

- 3.1 “ADA” means Americans with Disabilities Act, Title II, and its implementing regulations 28 C.F.R. Part 35.
- 3.2 “Disability” or “qualifying disability” means as a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.
- 3.3 “Disability accommodation” or “accommodation” means action taken to facilitate a disabled individual’s participation in or receipt of the department’s services, programs, or activities.
- 3.4 “Disabled individual” or “qualified individual with a disability” means a service recipient with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the department.
- 3.5 “Department’s legal counsel” means attorneys employed by the department working

within the Division of General Counsel. This includes the attorneys stationed at and working from the department's central office and regional mental health institutes.

- 3.6 "Chief of Hospital Operations" means the departmental employee responsible for the overall management of the department's regional mental health institutes or his or her designee.
- 3.7 "General Counsel" means the Department's General Counsel or his or her designee.
- 3.8 "Service recipient" or "individual" means a person who is participating in or seeking to participate in the services, programs, or activities of the department.
- 3.9 "Reasonable accommodation" means any reasonable accommodation required under state or federal law. The law does not specifically define what is or is not a reasonable accommodation. This must be determined on a case-by-case basis as it can vary depending on the specific facts and circumstances. Seek guidance from the Director of ADA Services and/or General Counsel when there is any question as to whether a specific accommodation is reasonable and required.
- 3.10 "RMHI" means a department regional mental health institute.

4. Accommodation Requests

- 4.1 When a qualified individual with a disability requests accommodations or it is otherwise apparent that a disabled individual requires accommodation, reasonable accommodations are to be provided at no cost to the recipient.
- 4.2 The request for accommodation can be made in any form (e.g., written or verbal) by either the service recipient or someone acting on their behalf. The request does not have to use terms like "ADA" or "accommodation" or any other specific terms so long as the need is ascertainable and reasonable. Department employees are to make an accommodation request on behalf of service recipients where the need is apparent, or the service recipient has asked that they do so. All requests are to be directed to the local RMHI ADA Coordinator. They shall engage in an informal, interactive process to determine whether an accommodation is needed and, if so, to ensure an accommodation is provided. The RMHI ADA Coordinator shall consult, as needed, with the Director of ADA Services and/or the department's legal counsel. Should the request arise out of the department's central office, the request will go directly to the Director of ADA Services, who shall handle it.
- 4.3 Whenever an accommodation cannot be promptly granted or it is unclear as to whether an accommodation is required, the matter is to be referred to the Director of ADA Services. If the service recipient refuses to accept an accommodation, the matter is to be referred to the Director of ADA Services. The Director of ADA Services shall contact the individual and shall make a reasonable effort to reach a solution consistent with this policy and applicable legal standards. The Director of ADA Services shall consult, as needed, with the department's legal counsel.

- 4.4 Where an accommodation is not provided as requested or to the satisfaction of the requesting individual, the RMHI ADA Coordinators and/or Director of ADA Services shall ensure that the individual is aware of the department's ADA Grievance Procedure.

5. Prohibited Practices

Prohibited practices include, but are not limited to, the following:

- 5.1 Unlawfully denying or limiting access to any service, program, or activity for a qualified individual with a disability;
- 5.2 Engaging in generalizations, based on stereotypes or preconceived notions, about a person or his or her disability;
- 5.3 Subjecting a qualified individual with a disability to separate treatment based upon his or her disability;
- 5.4 Addressing an individual in a manner that denotes inferiority because of disability;
- 5.5 Subjecting an individual to discrimination, harassment, or a hostile environment based on disability;
- 5.6 Failing to provide a reasonable accommodation such as an auxiliary aide or service when an accommodation is needed at no charge to the disabled individual;
- 5.7 Failing to provide reasonable modifications to rules, policies, or practices to lawfully accommodate a disabled individual; or
- 5.8 Failing to remove or make a reasonable accommodation for architectural, communication, or transportation barriers that inhibit or prevent participation in programs, services, or activities for a qualified individual with a disability.

6. ADA Grievance Procedure

- 6.1 The purpose of this ADA Grievance Procedure, pursuant to 28 C.F.R. 35.107, is to informally resolve conflicts or disputes which arise when an individual believes the department is not in compliance with its obligations under the ADA or any other federal or state law requiring disability accommodation or protecting the rights of the disabled.
- 6.2 This ADA Grievance Procedure is an informal means within the department by which service recipients, or others acting on their behalf, may address concerns regarding disability discrimination or accommodation. No individual is required to utilize this procedure and may directly file a formal complaint with the respective enforcement agencies or in court as permitted under law. Filing a grievance under this ADA Grievance Procedure is not a substitute for filing a formal complaint with any outside entity or in court and does not toll or satisfy any procedural or statutory requirements related to any such outside action.
- 6.3 A grievance may be submitted at any time. However, it is strongly encouraged that grievance be submitted as soon as possible. Grievances are to be submitted to:

Austin Nichols
Director of ADA Services
Division of General Counsel
500 Deaderick Street, Nashville TN 37243
615-532-6520
TDMHSAS.ADAGrievances@tn.gov

- 6.4 Unless the grievance has already been addressed (e.g., a requested accommodation was granted), the Director of ADA Services will promptly schedule a meeting or otherwise appropriately communicate with the grieving party or their representative after receipt of the grievance. The purpose of the meeting or communication will be to find a prompt and equitable resolution to the grievance.
- 6.5 If a satisfactory resolution to the grievance is reached at the meeting or communication, a letter or other appropriate communication will be forwarded to the grieving party providing a description of the grievance and how the grievance was resolved.
- 6.6 If the grievance is not resolved, the grieving party will be notified in writing or by other appropriate communication as to the decision on how to handle the grievance. This notification will include instruction on how the grieving party can request a second consideration of their grievance.
- 6.7 A grieving party may request a second consideration of their grievance after receiving the notification of the outcome of their grievance. If it has been more than 30 days and the request for a second consideration has new information or allegations, then it shall be handled as a new grievance. The request for a second consideration is to be made to the Director of ADA Services. If the request is not made in writing, then the Director of ADA Services shall summarize the request in writing. The request will be forwarded to the department's Step One Hearing Officer or such other person as is identified by the department's Commissioner. Although a step one hearing officer may be handling the second consideration, this process does not require or involve a hearing. The person handling this second consideration will look over available information, may interview relevant persons, may consult with the department's legal counsel, or take other action they deem appropriate to provide a second opinion as to the appropriate outcome of this matter. However, this second consideration is an informal process, and no specific action is required so long as the grieving party's concerns are given a neutral review. The person conducting this second consideration shall conclude their work and provide an opinion as quickly as possible. If the person conducting the second consideration agrees with the action originally taken by the department, this will conclude this grievance process. If the person conducting the second consideration disagrees with or has concerns about the action originally taken by the department, they shall consult with the relevant deputy commissioner, Director of ADA Services, and the General Counsel. If after that consultation a consensus opinion has not been reached as to how to handle the matter, they shall meet with the Commissioner or Commissioner's designee who shall make a final determination. The grieving party will be advised in writing or by other appropriate communication of the outcome of this second consideration.
- 6.8 If additional investigation is needed or the grievance asserts facts which would require investigation or action pursuant to the department's other practices or policies (e.g., abuse, workplace discrimination, etc.), then the Director of ADA Services or the person handling the second consideration will refer the matter to the General Counsel for

appropriate action. Where possible, multiple investigations, claims, grievances, etc., will be consolidated and handled in the manner best suited to ensure timely, consistent, and appropriate resolution.

6.9 Reasonable accommodations or other appropriate communication will be provided as necessary to facilitate effective communication throughout this process.

7. **Notices**

The department shall ensure that all employees, service recipients, and other appropriate persons are aware of the ADA and this Policy, of how to file an internal grievance, and of how to contact other appropriate entities should they need assistance regarding the ADA or other federal or state laws protecting the rights of disabled individuals. This may be accomplished by posting information in common areas, handing out written notice of such information, and/or other appropriate means.

8. **Authority**

Title II of the Americans with Disabilities Act (ADA), 28 C.F.R Part 35, T.C.A. § 33-1-303, and T.C.A. § 4-5-102(10).

9. **Miscellaneous**

Should any of the departmental positions referred to within this policy not be available when called upon under this policy, the Commissioner shall identify a person to act in the place of that position for the purpose of operationalizing this policy.

Approved:



Commissioner

9.22.23

Date