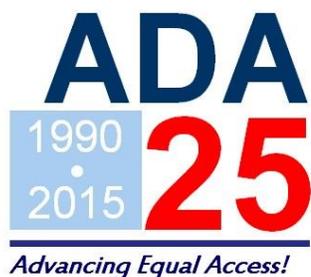


# ADA Tool Kit for S.D. State Government



## Americans with Disabilities Act

Equal Access,  
Equal Opportunity







## Americans with Disabilities Act Tool Kit for S.D. State Government



This tool kit is intended to help state departments update their plans for compliance with the Americans with Disabilities Act (ADA).

Title II of the ADA requires state and local governments to complete these five steps to be in compliance with the act.

1. Designate a responsible employee to ensure ADA compliance.
2. Provide notice of ADA requirements.
3. Establish a grievance procedure.
4. Conduct a self-evaluation.
5. Develop a transition plan.

This tool kit should provide the resources needed to update and review compliance with the ADA. The tool kit includes a brief explanation of the responsibilities of the ADA Coordinator and a sample ADA Coordinator job description (Step 1). Also included are templates recommended by the Department of Justice for the ADA notice (Step 2) and the grievance procedure (Step 3) that can be used to meet these requirements.

The first three steps are fairly straightforward and can be accomplished without a great deal of time or effort. The self-evaluation (Step 4) and transition plan (Step 5) will require more planning to complete. This tool kit includes the state Department of Human Services (DHS) policies that cover most of the ADA non-discrimination requirements. If they choose, other agencies can use these documents as examples when developing similar policies. Also included is a checklist that can be used to help assess the physical accessibility of facilities. Any barriers identified can then be used to develop a transition plan to remove them.

There is also a list of resources and websites available to help you.

Questions? Call DHS at 773-3195 and ask for:

- Eric Weiss, DHS ADA Coordinator
- Steve Stewart, DRS Rehabilitation Engineer

The 25th anniversary of the ADA is July 26, 2015. Many positive changes have taken place since the ADA was signed into law, but there is still much that can be done. We hope this tool kit will help you to provide equal access and equal opportunity to people with disabilities.

– DHS

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## STEP 1: Designation of an ADA Coordinator

Section 35.107 of U.S. Department of Justice regulations, states “a public entity that employs fifty or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint



communicated to it alleging its non-compliance with this part or alleging any action that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone

number of employee or employees designated pursuant to this paragraph.”

The requirement for designation of a particular employee helps to ensure that individuals dealing with large departments are able to easily find a responsible person who is familiar with the requirements of the Act and can communicate those requirements to other individuals in the agency who might be unaware of their responsibilities. This does not limit a public entity’s obligation to ensure that all of its employees comply with the requirements of the ADA, but helps ensure there is a contact at each location where services are provided who has the resources to resolve compliance issues.

This information should be made available to all staff within the state unit. It should include a description of the ADA coordinator’s duties and responsibilities.

## ADA Coordinator Duties and Responsibilities

### Sample Job Description for an ADA Coordinator

The ADA Coordinator is responsible for coordinating agency efforts to comply with Title II of the ADA.

#### *Duties of an ADA Coordinator:*

- Interpret ADA regulations regarding equal access for people with disabilities.
- Develop and maintain relationships with local disability advocacy groups and the local disability community.
- Monitor and improve the physical, electronic and programmatic access to services.
- Provide guidance to staff regarding issues relating to disabilities and accommodation.



#### *Preferred Skills:*

- Ability to learn about ADA and other laws addressing the rights of people with disabilities.
- Ability to work cooperatively with employees and people with disabilities.
- Familiarity with local disability groups.
- Organizational and analytical skills.

#### *Preferred Experience:*

- Experience with people with a broad range of disabilities.

## STEP 2: Public Notice Concerning Compliance Action

Section 35.106 of Department of Justice regulations state, “a public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to appraise such person of the protections against discrimination assured them by the Act and this part.”

Enclosed on the next page is an ADA public notice taken from a Department of Justice Settlement Agreement that will meet the requirements of this part. You will need to include your agency name and contact information in the notice.



The ADA requires Title II entities to post these in conspicuous locations in public buildings.

Please post these in your office in a location where the public and employees can easily find them when they enter your facility. You probably already have some type of equal opportunity non-discrimination notice posted, so these could go in the same location. Public or employee bulletin boards would also be a good location.

In addition, the public notice should be available on your agency’s website.

Please let all staff know the ADA Notice has been posted in your facility.

## Notice under the Americans with Disabilities Act (ADA)

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, the “insert your agency name here” will not discriminate against qualified individuals with disabilities on the basis of disability in the Department’s services, programs, or activities.



**Employment:** The Department does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act.

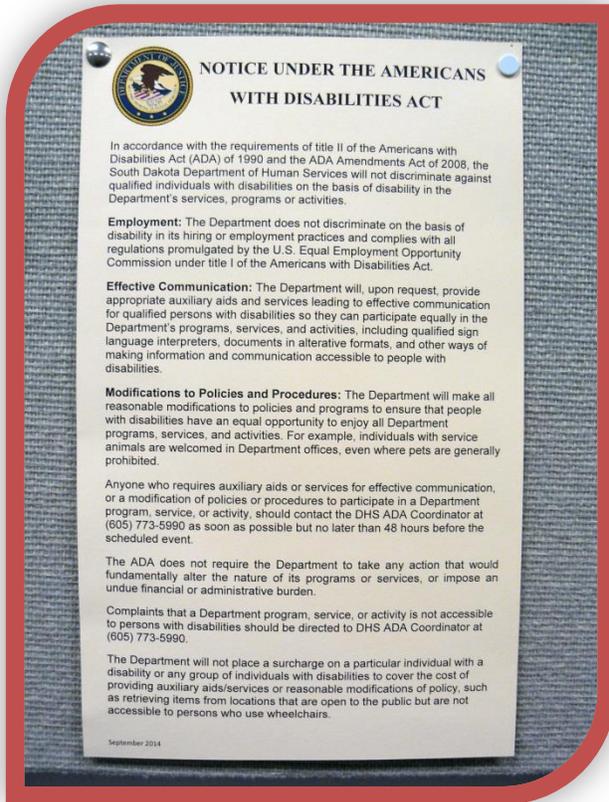
**Effective Communication:** The Department will, upon request, provide appropriate auxiliary aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Department’s programs, services, and activities, including qualified sign language interpreters, documents in alternative formats, and other ways of making information and communication accessible to people with disabilities.

**Modifications to Policies and Procedures:** The Department will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all Department programs, services, and activities. For example, individuals with service animals are welcomed in Department offices, even where pets are generally prohibited.

*[Continued next page]*

Anyone who requires auxiliary aids or services for effective communication, or a modification of policies or procedures to participate in a Department program, service, or activity, should contact the “insert your agency name

here” ADA Coordinator at “insert your contact information here” as soon as possible but no later than 48 hours before the scheduled event.



The ADA does not require the Department to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a Department program, service, or activity is not accessible to persons with disabilities should be directed to “insert your agency name here”

ADA Coordinator at “insert your contact information here”.

The Department will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

## STEP 3: Complaint Procedure

Section 35.107 (b) states “a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.”

State agencies are required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the federal complaint procedures. The grievance procedure must be formally adopted and published.



Enclosed on the next page is a template ADA Grievance Procedure taken from a Department of Justice settlement agreement you can use to meet this requirement. The ADA requires Title II entities to post these in conspicuous locations in our public buildings. Please post the notice in your offices in a location where the public and employees can easily find them when they enter your facility. You probably already have some type of equal opportunity non-discrimination notice posted so these could go in the same location. Public or employee bulletin boards would also be a good location.

Also please let all staff know the new ADA Grievance Procedure has been adopted and posted in your facility.

## “Insert your agency name here” Americans with Disabilities Act Grievance Procedure

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the South Dakota “insert your agency name here”. The “insert your agency name here” Personnel Policy governs employment-related complaints of disability discrimination.



The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the

problem. Alternative means of filing complaints, e.g., personal interviews, recording of the complaint, etc. will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

“insert your agency name and ...  
agency address and contact information here”

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator or his/her designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, electronically, or audio recording . The response will explain the position of the “insert your agency name here” and offer options for substantive resolution of the complaint.

If the response by the “insert your agency name here” ADA Coordinator or his/her designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the “insert your agency name here” Secretary or his/her designee.

Within 15 calendar days after receipt of the appeal, the “insert your agency name here” ADA Coordinator or [his/her] designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the “insert your agency name here” Secretary or his/her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator or his/her designee, appeals to the “insert your agency name here” Secretary or his/her designee, and responses from these two offices will be retained by the “insert your agency name here” for at least three years.

## Request for ADA Grievance Resolution Form South Dakota “insert your agency name here”

Date: \_\_\_\_\_

I, \_\_\_\_\_, am requesting resolution of a complaint filed under the grievance procedures \_\_\_\_\_ (name of agency), located in \_\_\_\_\_ (city).

### Statement of Grievance

Date of Grievance: \_\_\_\_\_

Location of Grievance: \_\_\_\_\_

Names of Involved Parties:

\_\_\_\_\_  
\_\_\_\_\_

**Specific Occurrences in Relation to Grievance** (include any documentation that may support your grievance):

\_\_\_\_\_  
\_\_\_\_\_

**Prior Attempts to Resolve** (please indicate any previous efforts to resolve your complaint including dates and parties involved):

\_\_\_\_\_  
\_\_\_\_\_

**Resolution Sought** (please provide a clear statement that reflects the resolution you believe will satisfy your complaint):

\_\_\_\_\_  
\_\_\_\_\_

**Name of Individual (Grievant):**

(Print Name): \_\_\_\_\_

(Signature): \_\_\_\_\_

**Mail a copy of this form and copies of any supporting documentation to:**

“insert your agency name, address and contact information here”



## STEP 4: Self-Evaluation/Policies and Practices Review

Section 35.105 of the ADA Title II regulations require a public entity to review policies and practices used in their programs and activities. This is to ensure that written policies as well as actual operating practices used for the provision of programs are not discriminating against people with disabilities.

- You should have a general non-discrimination policy that includes the definition of a qualified individual with a disability and statements that cover employment, effective communications, modifications of policies and procedures and maintenance of accessibility features.
- You should review how you will communicate with participants and members of the public with disabilities in a manner that is as effective as its communication with others and have an effective communications policy.
- You should have procedures in place to accommodate individuals with visual, hearing or manual impairments, e.g., readers, interpreters, accessible telephones.
- Policies should be in place to deal with service animals and other power driven mobility devices (OPDMD) that individuals may need to participate in your programs, services or activities.



- Procedures on how to evacuate individuals with disabilities during an emergency should also be reviewed. If appropriate, training should be provided to employees.



- Review of written and audio-visual materials to ensure individuals with disabilities are not portrayed in an offensive or demeaning manner, people first language.

- Review Section 8.2000 from the ADA Title II Technical Assistance Manual is enclosed on the next pages. This is intended to give you a better understanding of what to think about and address

when reviewing existing policies or developing new procedures to avoid discrimination against people with disabilities.

- We have enclosed on subsequent pages the Department of Human Services policies and other documents as examples. We have also included a list of resources and websites to assist you in completing a self-evaluation.

## ADA Title II Technical Assistance Manual: Review Section 8.2000

**Editor's note:** *The Americans with Disabilities Act of 1990 was amended in 2010 “to restore the intent and protections” of the original act; some Title II regulations were also amended in 2010. The original dates related to self-evaluation are retained here, and the content remains relevant.*

**II-8.2000 Self-evaluation.** All public entities subject to Title II of the ADA must complete a self-evaluation by January 26, 1993 (one year from the effective date of the Department’s regulation).

Does the fact that a public entity has not completed its self-evaluation until January 26, 1993, excuse interim compliance? No. A public entity is required to comply with the requirements of Title II on January 26, 1992, whether or not it has completed its self-evaluation.

**Which public entities must retain a copy of the self-evaluation?** A public entity that employs 50 or more employees must retain its self-evaluation for three years. Other public entities are not required to retain their self-evaluations but are encouraged to do so because these documents evidence a public entity’s good faith efforts to comply with Title II’s requirements.

**What if a public entity already did a self-evaluation as part of its obligations under section 504 of the Rehabilitation Act of 1973?** The Title II self-evaluation requirement applies only to those policies and practices that previously had not been included in a self-evaluation required by section 504. Because most section 504 self-evaluations were done many years ago, however, the Department expects that many public entities will re-examine all their policies and practices. Programs and functions may have changed significantly since the section 504 self-evaluation was completed. Actions that were taken to comply with section 504 may not have been implemented fully or may no longer be effective. In addition, section 504’s coverage has been changed by statutory amendment, particularly the Civil Rights Restoration Act of 1987, which expanded the definition of a covered “program or activity.” Therefore, public entities should ensure that all programs, activities, and services are examined fully, except where there is evidence that all policies were previously scrutinized under section 504.



**What should a self-evaluation contain?** A self-evaluation is a public entity’s assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II’s requirements. As part of the self-evaluation, a public entity should:

- 1) Identify all of the public entity’s programs, activities, and services; and
- 2) Review all the policies and practices that govern the administration of the public entity’s programs, activities, and services.

Normally, a public entity's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom.

Once a public entity has identified its policies and practices, it should analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities, and services. In this regard, a public entity should be mindful that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services. Areas that need careful examination include the following:

- 1) A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan (see [II-8.3000](#) at [ada.gov/taman2.html](http://ada.gov/taman2.html)).
- 2) A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.
- 3) A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that TDD's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD's and computer modems.
- 4) A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of a public entity's program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained in operable working order.
- 5) A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.
- 6) A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.

- 7) If a public entity operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.
- 8) A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by Title II, are made properly and expeditiously.
- 9) A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.
- 10) A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.
- 11) A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under the Title II regulation.
- 12) A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.
- 13) If a public entity limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs.

***If a public entity identifies policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, when should it make changes?*** Once a public entity has identified policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, it should take immediate remedial action to eliminate the impediments to full and equivalent participation. Structural modifications that are required for program accessibility should be made as expeditiously as possible but no later than January 26, 1995.

***Is there a requirement for public hearings on a public entity's self-evaluation?*** No, but public entities are required to accept comments from the public on the self-evaluation and are strongly encouraged to consult with individuals with disabilities and organizations that represent them to assist in the self-evaluation process. Many individuals with disabilities have unique perspectives on a public entity's programs, activities, and services. For example, individuals with mobility impairments can readily identify barriers preventing their full enjoyment of the public entity's programs, activities, and services. Similarly, individuals with hearing impairments can identify the communication barriers that hamper participation in a public entity's programs, activities, and services.



Department of Human Services (DHS)

Americans with Disabilities Act (ADA)

## General Non-Discrimination Policies

The South Dakota Department of Human Services (DHS) is committed to providing equal opportunity to everyone participating in our programs, services and activities. The following is a list of DHS Americans with Disabilities Act (ADA) policies for providing equal access to qualified individuals with disabilities.

A qualified individual with a disability is defined as: 1) Individuals who have a physical or mental impairment that substantially limits one or more major life activities; 2) Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities; or 3) Individuals who are regarded as having such an impairment, whether they have the impairment or not.

**Employment:** The Department does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act. The department will provide reasonable accommodations if available to allow qualified individuals with disabilities to perform essential job functions.

**Effective Communication:** The Department will generally, upon request, provide appropriate auxiliary aids and services leading to effective communication for qualified individuals with disabilities so they can participate equally in the Department's programs, services, and activities.

**Modifications to Policies and Procedures:** The Department will make all reasonable modifications to policies and programs to ensure that qualified individuals with disabilities have an equal opportunity to enjoy all Department programs, services, and activities.

**Maintenance of Accessibility Features:** The department will maintain in working order equipment and features of facilities that are required to provide ready access to individuals with disabilities. Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited. DHS will promptly repair all accessibility features or equipment when needed.

**Fundamental Alteration/Undue Burden:** The ADA does not require the Department to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

**Personal/Individual Prescribed Devices or Services:** The ADA does not require DHS to provide individuals with disabilities with personal or individually prescribed devices, such as wheelchairs,

prescription eyeglasses, or hearing aids, or to provide services of a personal nature, such as assistance in eating, toileting, or dressing.

**Illegal Use of Drugs:** The ADA does not require the Department to provide services to anyone engaged in the current and illegal use of drugs.

**Direct Threat:** The ADA does not require the Department to provide services to an individual who poses a direct threat to the health or safety of others. Direct threat is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids or services. The department will not base a direct threat determination based on generalizations or stereotypes about the effects of a particular disability.

The determination must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence, to assess -- 1) The nature, duration, and severity of the risk; 2) The probability that the potential injury will actually occur; and, 3) Whether reasonable modifications will mitigate or eliminate the risk.

**Retaliation or Coercion:** Individuals who exercise their rights under the ADA, or assist others in exercising their rights, are protected from retaliation. The prohibition against retaliation or coercion applies broadly to any individual or entity that seeks to prevent an individual from exercising his or her rights or to retaliate against him or her for having exercised those rights. Any form of retaliation or coercion, including threats, intimidation, or interference, is prohibited if it interferes with the exercise of rights under the ADA.

**Surcharges:** The Department will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy.

**Existing Facilities:** DHS must operate each program, service or activity so that when viewed in its entirety, is readily accessible to and useable by individuals with disabilities. DHS is not required to make structural changes in existing facilities where other methods are effective in providing access. In choosing available methods DHS will give priority alternative methods that offer programs services and activities in the most integrated setting appropriate. Some examples of alternative methods are redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, or any other methods that result in making DHS programs, services or activities readily accessible to and usable by individuals with disabilities.





Department of Human Services (DHS)

Americans with Disabilities Act (ADA)

## **Policy Number 1A.16: Accommodating All Participants**

The Department of Human Services is committed to providing access to everyone participating in department-sponsored public or employee events. The department will hold events in accessible facilities and make appropriate accommodations and provide appropriate auxiliary aids or services, if advance notice of such needs is provided. Walk-in requests for aids and services will be honored to the extent possible. See attached effective communications/auxiliary aids and services guidance document (provided below) for resources.

All registration forms, brochures, pamphlets, announcements, and press releases for department-sponsored events will include a statement indicating how to request an accommodation or specific auxiliary aid or service needed to participate in the event. The statement will include specific timelines for how much advance notice is required to ensure that the requested accommodations and/or auxiliary aids or services will be available at the event. Appropriate accommodations and/or auxiliary aids or services will be determined on a case-by-case basis.

### **Effective Communications/Auxiliary Aids and Services Guidance**

The Department of Human Services (DHS) will take appropriate steps to ensure that persons with disabilities, including persons who are deaf, hard of hearing, or blind, or who have other sensory or manual impairments, have an equal opportunity to participate in our programs, services, and activities. This will be accomplished through the provision of auxiliary aids and services at no cost to the individual.

When an individual requests an auxiliary aid or service, or self-identifies as a person with a disability that affects the ability to communicate or to access or manipulate written materials, staff will consult with the individual to determine what aids or services are necessary to provide effective communication in particular situations. See Auxiliary Aids and Services Resources below to identify where to acquire needed aids or services.

### **American Sign Language as Primary Means of Communication**

DHS must use a qualified interpreter and must give primary consideration to the auxiliary aid or service requested. "Primary consideration" means that we must honor the choice, unless we can demonstrate that another equally effective means of communication is available. For an interpreter

to be qualified, they must be able to convey the information effectively accurately, and impartially, through the use of any necessary specialized vocabulary.

South Dakota uses NAD certified interpreters with level III, IV, and V certifications. Level III will qualify for most communications regarding DHS programs and services or general training events, however, level IV and V certifications may be needed depending on the length and complexity of the communications involved, e.g., major medical or legal communication. DHS staff interpreters will be used if available. If a second interpreter is needed the choice of the individual will be honored to the extent possible.

**For other aids and services refer to the Auxiliary Aids and Services Resources table below.**

Staff who are unfamiliar with the auxiliary aid or service being requested should contact:

Eric Weiss, DHS ADA Coordinator  
 Hillsview Plaza, E. Highway 34 Pierre, SD 57501  
 Ph. 605-773-3195 Email: [eric.weiss@state.sd.us](mailto:eric.weiss@state.sd.us)

### Auxiliary Aids and Services Resources

Aid or Service	Agency/Provider	Telephone	Email
American Sign Language (ASL) Staff Interpreter	Julie Paluch	Home 605-224-8821 Cell 605-222-8705 Work 605-773-5301	<a href="mailto:julie.paluch@state.sd.us">julie.paluch@state.sd.us</a>
ASL Staff Interpreter	Michele Huber	Cell 605-661-0857	<a href="mailto:michele.huber@state.sd.us">michele.huber@state.sd.us</a>
ASL Interpreter	Interpreter Services	605-331-7800	Cory Knudtson <a href="mailto:cory@interpreterservicesinc.com">cory@interpreterservicesinc.com</a>
ASL Interpreter	InterpreCorps	605-362-3507 888-631-9110	<a href="mailto:info@interprecorps.com">info@interprecorps.com</a>
ASL Interpreter Communication Access Realtime Translation (CART) Services	Grate Interpreting Caption First	605-366-1481 800-825-5234	LeAnn Grate – (Owner) Sioux Falls <a href="mailto:scheduling@captionfirst.com">scheduling@captionfirst.com</a> <a href="http://www.captionfirst.com">www.captionfirst.com</a>
Video Remote Interpreting (VRI)	Pre-arranged from provider CSD	800-642-6410	<a href="mailto:inquiry@c-s-d.org">inquiry@c-s-d.org</a>
Video Relay Service (VRS)	Sorenson Communications	801-287-9400	<a href="http://www.sorensonvrs.com">www.sorensonvrs.com</a>
Video Relay Service (VRS)	ZVRS	Video: 866-932-7891 Voice: 800-216-9293	<a href="http://www.zvrs.com/services/services/vrs">www.zvrs.com/services/services/vrs</a>
South Dakota Relay (TRS)	Sprint	711 or 800-877-1113	<a href="http://www.relaysd.com">www.relaysd.com</a>
Assistive Listening Device	DRS/SBVI State office	605-773-4644	
Braille Large Print Other Aids and Services	DRS State office	605-773-3195 Enlarge on copy machine Contact Eric Weiss, DHS ADA Coordinator at 605-773-4644 for assistance in finding resources	Use local Braille printer if available



Department of Human Services (DHS)

Americans with Disabilities Act (ADA)

## Service Animal Policy

### Purpose

The purpose of this policy is to define the term service animal and provide the Department of Human Services staff with guidance on the allowed use of Service Animals in our facilities or when participating in any DHS programs services or activities.

### Service Animals and the Law

- Beginning on March 15, 2011, only dogs are recognized as service animals under the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability, e.g., physical, sensory, psychiatric, intellectual, other mental disabilities, etc.
- Generally, DHS must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.
- The work or task a dog has been trained to provide must be directly related to the person's disability.
- Emotional support or comfort animals often used for medical treatment as therapy animals are NOT considered service animals under the ADA.

### Service Animal Defined

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, reminding individuals with mental illness to take prescribed medications, and helping persons with psychiatric, neurological disabilities by preventing or interrupting impulsive or destructive behaviors, and calming individuals with Post Traumatic Stress Disorder during anxiety attacks. The crime deterrent effects of an animal's presence and the provision of emotional

support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

### Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

### Service Animal or Pet

When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask only two questions:

- Is the dog a service animal required because of a disability?
- What work or task has the dog been trained to perform?

Staff cannot ask about the person's disability, require medical documentation, require a special identification card, or harness, or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.

Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.

The person with the service animal may request that others avoid: petting or addressing his/her service animal as it may distract it from the task at hand, feeding the service animal, deliberately startling the service animal, and separating or attempting to separate the person from his/her service animal.

### Service Animal Exclusion

A person with a disability cannot be asked to remove his service animal from the premises unless:

- The dog is out of control and the handler does not take effective action to control it.
- The dog is not housebroken.
- The dog's presence would fundamentally alter the nature of a service, program, or activity.



When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain services or participate in programs or activities without the animal's presence. In determining whether a service animal poses a direct threat, or significant risk, to the health or safety of others, staff will make an individualized assessment, based on reasonable judgment relying on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures can mitigate the risk. A direct threat assessment will be made on a case-by-case basis, specific to a particular service animal's actual behavior or history, not based on fears or generalizations about how an animal or breed might behave.

### Miniature Horse

Staff will make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability, if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability. Miniature horses, as a reasonable modification of policies, are subject to the same policies and conditions as dogs used as service animals. Miniature horses are typically no larger than dogs commonly used as service animals, ranging in height from 24 inches to 34 inches measured to the shoulders, and generally weighing between 70 and 100 pounds.

The assessment factors that may be considered in determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility include:

- The type, size, and weight of the miniature horse and whether the facility can accommodate these features
- Whether the handler has sufficient control of the miniature horse
- Whether the miniature horse is housebroken
- Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation

Reasonable modifications DHS will make reasonable modifications in policies, practices, or procedures, unless we can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or would pose a direct threat to the health or safety of others or in undue financial or administrative burdens. Reasonable modifications will be addressed on a case by case basis.

### Maintenance

It is the responsibility of the service animal's owner or handler to make or arrange any cleaning necessary due to the presence of the Service Animal. Feces must be cleaned immediately and disposed of properly.



Department of Human Services (DHS)

Americans with Disabilities Act (ADA)

## Other Power-Driven Mobility Devices (OPDMD) Policy

### Purpose

The purpose of this policy is to provide the Department of Human Services staff with guidance on the use of Other Power-Driven Mobility Devices in our facilities or when needed to participate in DHS programs, services, or activities.

### Definitions

*Wheelchair* – “a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.”

*Other power-driven mobility device* – “any mobility device powered by batteries, fuel, or other engines ... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices... such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.”

DHS will allow people with disabilities to use manual or power wheelchairs or scooters, and manually-powered mobility aids such as walkers, crutches, and canes, if needed to participate in DHS programs, services and activities.

DHS will allow people with disabilities to use OPDMDs unless a particular type of device cannot be accommodated because of legitimate safety requirements. When DHS does not allow a particular type of device, we will provide the service using alternative methods if possible, e.g., provide services in an alternate location.

DHS staff will not ask people using OPDMDs about their disability.

### Credible Assurance

DHS staff are allowed to ask the person using an OPDMD device to provide credible assurance that the device is being used because of a mobility disability. If the person presents a valid, State-issued disability parking placard or card or a State-issued proof of disability, staff will accept this as a credible assurance. If the person does not have this documentation, but states verbally that the OPDMD is being used because of a mobility disability, staff will also accept this as credible assurance unless the person is observed doing something that contradicts this assurance. The fact

that a person with a disability is able to walk for a short distance does not necessarily contradict a verbal assurance.

In order to determine if a particular type of OPDMD can be used in our facilities or is needed to participate in DHS programs, services or activities the following five factors will be considered.

1. The type, size, weight, dimensions, and speed of the device;
2. The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
3. The facility's design and operational characteristics (e.g., whether its business is conducted indoors or outdoors, its square footage, the density and placement of furniture and other stationary devices, and the availability of storage for the OPDMD if needed and requested by the user);
4. Whether legitimate safety requirements (such as limiting speed to the pace of pedestrian traffic or prohibiting use on escalators) can be established to permit the safe operation of the OPDMD in the specific facility; and
5. Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources.



DHS staff will consider these assessment factors as related to an entire class of device type, not to how a person with a disability might operate the device.

All types of devices powered by fuel or combustion engines will be excluded from DHS indoor facilities for health and environmental reasons, but may be deemed acceptable in some outdoor DHS activities. Also, for safety reasons, larger electric devices such as golf cars will be excluded from indoor areas.

DHS will allow smaller devices such as Segways in most circumstances. Each decision on use of OPDMD will be made on a case-by-case basis.

If DHS allows use of an OPDMD we will require users to operate them at a safe speed and let them know if there are any areas where the devices cannot be used. If a device cannot be used DHS will provide storage for the device if available.

### Staff Training

DHS will provide ongoing staff training to ensure people with disabilities who use OPDMDs for mobility are not turned away or treated inappropriately. Training will include instruction on the types of OPDMDs that can be accommodated, the rules for obtaining credible assurance, and the rules for operation of the device while participating in DHS programs, services, or activities.

## STEP 5: Preparation of Transitional Plan

Section 35.150 (d) indicates that in the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employees fifty or more persons shall develop a Transition Plan setting forth the steps necessary to complete such changes. The Transition Plan relates primarily to the physical accessibility of existing facilities. The Transition Plan is an extremely important document. Even if you have already completed a transition plan, updating it now will ensure a good faith effort to comply with the accessibility and program access requirements of the ADA.

The plan shall, at a minimum:

- (i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- (ii) Describe in detail the methods that will be used to make the facilities accessible;
- (iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- (iv) Indicate the official responsible for implementation of the plan.



It is important to remember that for Title II entities the ADA does not necessarily require a public entity to make each of its existing facilities accessible to and useable by individuals with disabilities. The first thing you need to do is identify physical elements that do not comply with the ADA Accessibility Guidelines. Then you need to evaluate the barriers and determine which ones can be eliminated by using alternative methods. As long as the alternative methods do not result in unnecessary segregation or significantly reduce the quality or scope of the service, the barrier does not need to be removed. If alternative methods will be used staff needs to be aware of what barriers they are eliminating.

## ADA Checklist for Existing Facilities

This is an ADA checklist for existing facilities that may be helpful to identify barriers for your transition plan. The full checklist can be found at [www.ADAchecklist.org](http://www.ADAchecklist.org).

The full checklist includes four priorities:

- **Priority 1: Approach & Entrance**
- Priority 2: Access to Goods & Services
- Priority 3: Toilet Rooms
- Priority 4: Additional Access – Drinking Fountains, Public Telephones & Fire Alarms

Enclosed (as separate document packet) is the checklist for **Priority 1 – Approach & Entrance**. This is to give you an idea of format the checklists use.

There are also checklists available for recreational facilities that may be needed for some agencies such as:

- Fishing Facilities
- Play Areas
- Swimming Pools, Wading Pools & Spas
- Amusement Rides
- Golf Facilities
- Miniature Golf Facilities
- Recreational Boating Facilities
- Areas of Sports Activities
- Team or Player Seating
- Bowling Lanes
- Saunas & Steam Rooms
- Shooting Facilities
- Exercise Machines & Equipment

## Resources: Americans with Disabilities Act (ADA)

- ADA Technical Assistance Center serving South Dakota – Rocky Mountain ADA Technical Assistance Center  
1-800-949-4232 | [www.adainformation.org](http://www.adainformation.org)
- ADA home page – Department of Justice information and technical assistance on ADA  
1-800-514-0301 | [www.ada.gov](http://www.ada.gov)
- Resource for Self-Evaluation and Transition Plan – Meeting the Challenge, Inc.  
1-800-949-4232 | [www.mtc-inc.com](http://www.mtc-inc.com)
- ADA Update: A Primer for State and Local Governments – 2010 Title II amendments  
[www.ada.gov/regs2010/titleII\\_2010/title\\_ii\\_primer.html](http://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html)
- Accessible standards and guidelines – U.S. Access Board  
[www.access-board.gov](http://www.access-board.gov)
- 2010 ADA Standards for Accessible Design  
[www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards](http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards)
- ADA Checklist for Existing Facilities – Self-use checklist for facility access  
[www.adachecklist.org](http://www.adachecklist.org)
- ADA Title II Technical Assistance Manual  
[www.ada.gov/taman2.html](http://www.ada.gov/taman2.html)
- ADA Title I Technical Assistance Manual  
[www.askjan.org/links/ADAtam1.html#V](http://www.askjan.org/links/ADAtam1.html#V)
- Job Accommodation Network  
[www.askjan.org](http://www.askjan.org)





