



# STATE OF HAWAII

## PROGRAMS AND SERVICES MANUAL FOR PERSONS WITH DISABILITIES

### DISABILITY AND COMMUNICATION ACCESS BOARD

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# CHAPTER 1

## ACCESS TO PROGRAMS AND SERVICES

### 1.1 Introduction and legal requirements

The State of Hawaii shall strive to have people who have disabilities included in all programs, services, or activities which are available to the general public. The “Disability Access to Programs and Services Manual” establishes a consistent approach to providing good public service and equal access for people who have disabilities to programs and services offered by the State of Hawaii consistent with federal and state laws. The purpose of this Manual is to provide program managers and staff with a reference guide when planning a program or service to ensure the inclusion of individuals who have disabilities as customers or program participants.

This Manual is not intended for use when accommodating employees with disabilities, although many of the principles are the same. A separate guide, entitled the “Accommodations for Employees with Disabilities Manual,” has been issued by the State of Hawaii to provide guidance to you in meeting your responsibilities as an employer.

To obtain either Manual, contact your department ADA Coordinator or:

Disability and Communication Access Board  
919 Ala Moana Blvd., Room 101  
Honolulu, HI 96814  
(808) 586-8121 (V/TTY)

The Manual contains many examples, especially in Chapters 1 to 3. The examples noted are for illustrative purposes only to highlight a requirement or rule. The examples do not necessarily reflect poor or incorrect past practices of any department or agency mentioned.

The State of Hawaii is covered in its entirety by the provisions of Title II of the federal Americans with Disabilities Act (ADA) which relates to state and local government. In addition, those programs which receive federal financial assistance are covered by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended. It should be noted that the provisions for both laws are virtually identical, although failure to comply with the latter may result in additional penalties and withdrawal of federal financial assistance. Both laws prohibit discrimination in accessing programs and services against qualified individuals who have disabilities.

State law (Hawaii Revised Statutes Chapter 368-1.5) also states that no otherwise qualified individual shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination by state agencies solely by reason of disability. Thus, both Chapter 368-1.5 and the ADA may be violated if access to programs and services are not provided to a qualified person with a disability.

The requirements, guidelines, and examples set forth in this Manual are primarily chosen to ensure compliance with federal law, Title II of the Americans with Disabilities Act. The information in this Manual does not constitute a legal opinion. It represents informal technical assistance and guidance based upon federal documents relating to the Americans with Disabilities Act, supplemented by relevant state documents and examples. Ongoing technical assistance on aspects of this Manual is available from your departmental ADA Coordinator or the Disability and Communication Access Board. Legal advice should be obtained from your respective Deputy Attorney General.

Some programs or services may have additional service requirements (e.g., in-class educational or instructional curricula for students with disabilities, housing services for tenants, rehabilitation for incarcerated prisoners) which may be mandated by other laws. This Manual does not intend to cover all aspects of programming for every possible state service. More information can be obtained from the Disability and Communication Access Board (DCAB) in those areas and about their laws, (e.g., Individuals with Disabilities Education Act (IDEA), Federal Fair Housing Act (FFHA), Uniform System for Handicapped Parking Act (USHPA), Air Carrier Access Act (ACAA), which impact the civil rights of people who have disabilities. These laws may overlap provisions described in this Manual within certain program areas and may require additional programming.

## **1.2 People with disabilities protected under the law**

Federal and state laws prohibit discrimination against any “qualified person with a disability.”

A “person with a disability” means an individual who has a physical or mental impairment which substantially limits one or more of the person’s major life activities, has a record of such impairment, or is regarded as having such an impairment.

### **1.2.1 Person with a physical or mental impairment**

Physical impairments include physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting one or more of the body systems.

**EXAMPLES:** Orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Mental impairments include mental or psychological disorders.

**EXAMPLES:** Mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Simple physical characteristics such as baldness, left-handedness, the color of one's eyes, hair, or skin or age do not constitute physical impairments. Similarly, disadvantages attributable to environmental, cultural, or economic factors are not impairments. The definition does not include common personality traits such as poor judgment or a quick temper, where these traits are not diagnosed symptoms of a mental or psychological disorder.

Physical or mental impairment does NOT include homosexuality or bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

Drug addiction is an impairment under the ADA. A department or agency, however, may base a decision to withhold services or benefits in most cases on the fact that an addict is engaged in the "current and illegal" use of drugs. "Illegal use" of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other federal law. "Current use" is the illegal use of a controlled substance that occurred recently enough to justify a reasonable belief that a person's drug use is

current or that continuing use is a real and ongoing problem. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in the current illegal use of drugs. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in the current illegal use of drugs.

Alcohol is not a “controlled substance,” but alcoholism is considered a disability.

To constitute a “disability” a condition must substantially limit a major life activity. Major life activities include, but are not limited to, activities such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

### **1.2.2 Person with a record of impairment**

Federal and state laws protect not only those individuals with disabilities who actually have a physical or mental impairment that substantially limits a major life activity, but also those individuals with a record of such an impairment. This protected group includes a person who has a history of an impairment that substantially limited a major life activity but who has recovered from the impairment, as well as a person who has been misclassified as having an impairment.

**EXAMPLE:** A man had cancer five years ago. The cancer was significantly limiting in his life at that time, with an inability to work due to intensive and severely debilitating chemotherapy and radiation treatments. The cancer is now in remission and the man is now functioning well. He is a person with a record of an impairment (cancer).

**EXAMPLE:** A man with a severe episode of Post Traumatic Stress Disorder (PTSD) during his early 20’s voluntarily sought psychiatric care. After treatment and in-patient hospitalization, he is now able to function adequately. Even though he does not now have an impairment, he has a record of an impairment (mental illness).

### **1.2.3 Person regarded as having an impairment**

Federal and state laws also protect certain individuals who are regarded as having a physical or mental impairment that substantially limits a major life activity, whether or not those individuals actually have an impairment.

EXAMPLE: A woman with mild diabetes controlled by medication, is barred by the staff of a state-sponsored summer camp from participation in certain sports because of her diabetes. Even though she does not actually have an impairment that substantially limits a major life activity, she is protected under the law because she is treated as though she has an impairment.

EXAMPLE: A three-year old child born with a prominent facial disfigurement, is refused admittance to a state-run day care program on the grounds that her presence in the program might upset the other children. This child is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.

EXAMPLE: A man is excluded from a state-sponsored soccer team because the coach believes rumors that he is infected with the HIV virus. Even though these rumors are untrue, he is protected under the law, because he is being subjected to discrimination by the state based on the belief that he has an impairment that substantially limits his major life activities (i.e., the belief that he is infected with HIV).

### **1.2.4 Qualified person with a disability**

In order to be an individual protected under disability discrimination laws, an individual must be a “qualified” individual with a disability. To be qualified, an individual with a disability must meet the essential eligibility requirements for the receipt of services or participation in programs, activities, or services of the state with or without reasonable modifications to a public entity’s rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services.

The “essential eligibility requirements” for participation in many activities of the state may be minimal.

EXAMPLE: The Department of Taxation provides information about their programs, activities, and services upon request. In such situations, the only “eligibility requirement” for receipt of such information would be a request for it.

However, under other circumstances, the “essential eligibility requirements” imposed by a state entity may be quite stringent.

EXAMPLE: The medical school at the University of Hawaii may require those admitted to its program to have successfully completed specified undergraduate science courses.

Health and safety factors can be taken into consideration in determining who is qualified. An individual who poses a direct threat to the health or safety of others will not be “qualified.” A “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. Determination that a person poses a direct threat to the health or safety of others may not be based on generalization 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 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 will mitigate or eliminate the risk.

EXAMPLE: An adult individual with active tuberculosis wishes to tutor elementary school children in a volunteer mentor program operated by the Department of Education. The board/department may refuse to allow the individual to participate on the grounds that the mentor’s condition would be a direct threat to the health or safety of the children participating in the program, if the condition is contagious, and the threat cannot be mitigated or eliminated by reasonable modifications in its policies, practices, or procedures.

### 1.3 Customer service needs of people with disabilities

This section provides information about individuals categorized into five general groupings: individuals with mobility impairments; individuals who are blind or have low vision; individuals who are deaf or hard of hearing; individuals with chronic health conditions; and individuals with learning challenges. Although the groupings are not exhaustive, nor specifically categorized as such in the ADA, the groupings will guide you when anticipating how to provide customer service to individuals with disabilities. Remember that every individual is unique and specific needs will always be personalized. Use the information in this section to provide a framework for your planning, but always remember to talk specifically to any individual with a disability who has self-identified in order to provide the best service to his or her unique needs.

Providing quality service in a nondiscriminatory manner to individuals with disabilities involves an understanding of the needs described above and being prepared, should the need arise, to respond in a timely manner as an agent of the State of Hawaii.

Quality service also involves using language which reflects a sensitivity to current preferred terminology.

☞ *Refer to ATTACHMENT A for information on language and terminology relating to persons with disabilities.*

Service to customers and other program participants can be greatly enhanced by training your staff on the most appropriate way to interact or communicate with people with disabilities, learning to respect their individual needs and preferences without being patronizing, stigmatizing, or presuming stereotypes.

☞ *Refer to ATTACHMENT B for good customer service practices when you encounter members of the public who have disabilities.*

#### 1.3.1 Individuals with mobility impairments

Individuals with mobility impairments include those who use wheelchairs, as well as those who are ambulatory but who have restrictions in their mobility.

A person using a wheelchair may use either a standard manual wheelchair or a motorized, battery-operated chair. The person may

have anywhere from full to no use of his or her arms or legs. Some people use a wheelchair due to paralysis or loss of one or more of their lower extremities; others may use a wheelchair because walking on their own creates fatigue.

The primary needs of individuals who have mobility impairments who use wheelchairs are:

- an accessible facility which allows for full, independent mobility;
- safe emergency exit;
- access for a service dog or assistance animal;
- personal assistance handling food, materials, and other items, especially if the individual has quadriplegia and is paralyzed in the upper extremities.

Individuals who have mobility impairments but are ambulatory include those who use crutches, canes, braces, walkers, or other support devices. They usually require the use of their hands to maintain stability on their support devices. They may also have respiratory or cardiac conditions which preclude their ability to walk long distances.

The primary needs of individuals who have mobility impairments but are ambulatory are:

- an accessible facility in which major activities are located in close proximity to each other, minimizing walking distance;
- safe emergency exit;
- personal assistance handling food, materials, and other items, particularly if the individual uses a support device.

If your facility is particularly large, such as a convention center, orientation of the facility by way of a map is important, indicating the location of accessible features, especially if all elements are not accessible. For example, if only one set of rest rooms in the facility is accessible, knowing the location is important to minimize unnecessary walking. It is also important to inform a person who has a mobility impairment of the appropriate emergency exit procedures at the site.

### **1.3.2 Individuals who are blind or have low vision**

Individuals who are blind or who have low vision may have a variety of residual visual skills and mobility capabilities. They may utilize a guide dog, white cane, or no assistive mobility device at all; some individuals will prefer a sighted guide to provide mobility and orientation.

Persons who are blind or have low vision will have differing levels of residual vision and will have different preferences for reading printed materials. The most common alternate formats are Braille, large print, audiocassette tape, or computer disk. Many individuals who are blind or have low vision cannot read Braille, especially those who have lost their sight later in life; others may not even be able to use large print. Therefore, it is important that all the options be offered to an individual, with the preferences of the person taken into consideration.

The primary needs of individuals who are blind or who have low vision are:

- an accessible facility, particularly free from safety hazards and protruding objects, with tactile signage;
- safe emergency exit;
- written information presented in an alternate format such as Braille, large print, audiocassette, or computer disk;
- access for a guide dog;
- a well-lit facility to maximize seeing;
- personal assistance in picking up and handling items such as food and materials.

Regardless of an individual's level of independent mobility, a person who is blind or who has low vision may need some orientation to your site if he or she must navigate the site. The orientation should include the location of the rest rooms, telephones, drinking fountains, registration desk, elevators and/or stairs, eating facilities, and guest accommodations, if appropriate. An orientation can be provided by a sighted person navigating the person who is blind or who has low vision through the facility, by an audiocassette tape and tape player explaining the site layout, or by a tactile map of the site. When orienting a person

to the site, it is important to note where a person might take their guide dog to be relieved or walked. It is also important to inform a person who is blind or who has low vision of the appropriate emergency exit procedures at the site.

### **1.3.3 Individuals who are deaf, hard of hearing or deaf-blind**

Individuals who are deaf or hard of hearing may have a range of hearing capabilities. The residual hearing of people who are deaf or hard of hearing will vary considerably. Some may not be able to hear any sound, while others may have difficulty with certain decibel levels or being able to distinguish between various types of sound (voice, music, background noise, etc.).

The primary needs of persons who are deaf or hard of hearing are:

- enhancement of information which is presented orally or aurally by an assistive listening system, sign language interpreter, or captioning;
- an accessible facility, particularly with a text telephone and amplification devices;
- access for a signal dog;
- safe emergency exit.

Although some people who are deaf or hard of hearing may have lip-reading skills, it is not appropriate to rely upon lip-reading for communication. Under the best circumstances of one-to-one communication, a person who is a good lip reader will still only comprehend 30-40 percent of what is spoken. Therefore, it is necessary to plan an alternative to lip-reading. The most common solution is to utilize a sign language interpreter. Real-time captioning and computer-assisted note taking are also options. The availability of speeches and other presentations in written text to be read will also help a person who is deaf or hard of hearing to understand the context more comprehensively.

Persons who are hard of hearing may rely upon an assistive listening device to augment their hearing. They may have a hearing aid or use a portable listening amplification system such as an audio loop, FM system, or infrared system.

### **1.3.4 Individuals with chronic health conditions**

Persons with chronic health conditions have various needs, each unique to his or her medical condition. Many people with chronic health conditions will not be visibly disabled. As someone planning your program, service, or activity, you will most likely only know that a person needs special arrangements through special request. Some of the more common conditions and their requirements include:

- a person with diabetes may need access to refrigeration in order to store insulin;
- a person who has hemophilia may need access to refrigeration to store blood clotting Factor K;
- a person who is hypoglycemic may need immediate and around-the-clock access to food such as juices or fruit;
- a person who uses a portable respirator or dialysis may need space for treatment;
- a person with a metabolic condition may need special meals;
- a person with chemical sensitivity may need an environment that is smoke-free or otherwise minimizing in toxic chemicals or pollutants.

### **1.3.5 Individuals with learning challenges**

Individuals with learning challenges include those who have mental retardation or learning disabilities. The nature of an individual's learning challenge will vary according to the specific impairment or neurological deficit. Individuals may have difficulty writing or reading (particularly at a fast pace), processing auditory information (particularly complex information), maintaining attention, comprehending directions, or processing input from multiple sources. Similar to individuals with chronic health conditions, people with learning challenges will probably not be visibly disabled and you will likely only know that a person needs special arrangements through a special request.

Many of the accommodations or aids which are suitable for individuals

with other disabilities will also be appropriate to meet the needs of individuals with learning challenges. Some of the possible accommodations for an individual with a learning challenge include:

- written materials in an alternate format such as audiocassette tape, in simplified outline format, or in summary format;
- color coding of materials for easy reference;
- personal assistance in note taking, providing orientation, etc.;
- permission to use personal audiocassette tape recorders to record information for later re-listening.

It is important to recognize that the ADA does not expect that the content of your program be changed in order to be understood by a person with a learning challenge. In fact, there are presentations which are not understood by many people in an audience, not because of a learning challenge but because of the sophistication of the content. However, efforts should be made to maximize the ability of a person to understand the content of whatever is being presented if his or her difficulty is the result of an impairment which can be at least partially compensated for by an accommodation or auxiliary aid.

The following summary chart is a compilation of the needs of individuals with disabilities as described in this section.

SUMMARY CHART  
THE NEEDS OF INDIVIDUALS WITH DISABILITIES

<b>Person with a Disability</b>	<b>(Possible) Needs</b>
Individuals with a mobility impairment	Accessible facility Safe emergency exit Access for a service dog or assistance animal Personal assistance
Individuals who are blind or have low vision	Accessible facility Safe emergency exit Written information in alternate format Access for a guide dog Well-lit facility Personal or mobility assistance
Individuals who are deaf or hard of hearing	Oral or aural information in an alternate format Accessible facility Access for a hearing/signal dog Safe emergency exit
Individuals with chronic health conditions	Access to refrigeration Access to special foods Smoke-free or non-toxic environment
Individuals with learning challenges	Written information in an alternate format Color coding of important information Personal assistance

## CHAPTER 2

### GENERAL NONDISCRIMINATION REQUIREMENTS

It is the policy of the State of Hawaii to ensure that people who have disabilities are not denied access to programs and services offered by the State solely on the basis of their disabilities. This policy is based on federal legislation, including the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, and State legislation, Hawaii Revised Statutes, Chapter 368. It is reaffirmed by the Governor's Executive Memorandum 06-02 that all previous Administrative Directives related to accessibility for people with disabilities are still in effect.

☞ *Refer to ATTACHMENT C for a copy of the Governor's Administrative Directive 97-03 on Non-Discrimination to Programs, Services, and Activities of the State of Hawaii on the Basis of Disability.*

This policy applies to all programs, services, and activities of departments and agencies of the State of Hawaii.

An EXAMPLE of a "program" is a hospital or health clinic or quarantine station.

An EXAMPLE of a "service" is licensing or testing or an information hotline.

An EXAMPLE of an "activity" is a tour or public hearing or groundbreaking ceremony.

This chapter discusses the major principles of nondiscrimination as applicable to departments and agencies of the State of Hawaii.

#### **2.1 Equal opportunity to participate**

In providing access to programs and services of the State of Hawaii, departments and agencies must ensure that:

(a) qualified individuals with disabilities are not denied an opportunity to participate in and benefit from any program or service;

(b) individuals with disabilities are afforded an opportunity that is equal to or as effective as that provided others; and

(c) individuals with disabilities are not required to meet criteria for participation that screen out people with disabilities either directly or indirectly, unless such criteria are necessary for the provision of the program's activities.

EXAMPLE: An individual who is deaf does not receive an equal opportunity to participate in a public hearing conducted by the state if he or she is unable to hear the proceedings.

EXAMPLE: A student who uses a wheelchair does not receive an equal opportunity to participate in a tour if the site is not accessible to individuals who use wheelchairs.

This policy, consistent with the Americans with Disabilities Act, requires an equal opportunity to participate, but does not guarantee equality of results.

## **2.2 Reasonable modifications of policies, practices, or procedures**

Departments and agencies of the State of Hawaii must reasonably modify their policies, practices, or procedures in order to avoid discrimination toward people with disabilities.

EXAMPLE: The Department of Land and Natural Resources maintains parks for the public. There is a 'no pets - no animals' policy when camping in state parks. An individual with a disability is accompanied by a service animal and wishes to have that animal accompany him or her when camping. The Department of Land and Natural Resources must modify the 'no pets - no animals' policy to permit access for this person and the service animal.

EXAMPLE: The Department of Labor and Industrial Relations operates the Unemployment Insurance Program for those individuals displaced from work. The policy requires in-person meetings at the Department's office on a periodic basis to maintain one's eligibility status. For a person with a severe mobility impairment whose disability precludes leaving the house, the Department must modify its policy to permit phone or mail participation or a home visit.

EXAMPLE: The Department of Defense operates a program for veterans through the Office of Veterans Services. This may include assistance with burial for eligible veterans. The application process, however, may be difficult for a person with a mental disability, particularly someone with a mental illness such as Post-Traumatic

Stress Disorder, who may not be able to successfully complete the application process. In this case, the office has an obligation to make reasonable modifications to its application process to ensure that otherwise eligible individuals are not denied benefits. Modifications to the process may include providing applicants who have mental disabilities with individualized assistance to complete the process.

A modification is NOT required, however, if it would fundamentally alter the nature of the program or activity.

EXAMPLE: A person with a mobility impairment asks the Department of Land and Natural Resources to pave all trails so people in wheelchairs are able to travel on a smoother path. This action would likely alter the fundamental nature of the outdoor trail.

EXAMPLE: The King Kamehameha Celebration Commission arranges the annual Kamehameha Day parade and ceremony to drape leis around the statue of King Kamehameha. A person with an environmental disability who cannot tolerate sunlight and is a pa'u (horse) rider wants the program to change its route to be all in the shade. Doing so, especially to avoid the statue of King Kamehameha, located in the sunlight, would fundamentally alter the program.

### **2.3 Surcharges and additional requirements**

At times, compliance with equal opportunity laws may require an additional cost. Although an additional cost may be incurred by the department or agency, and the cost may be unforeseen or unbudgeted, the department or agency cannot impose extra charges solely upon people with disabilities to cover the costs of these expenses for effective communication, program modifications, or access features.

EXAMPLE: The Hawaii State Library System provides interpreter services to students who are deaf, removes architectural barriers for students who are mobility impaired, and provides readers for students who are visually impaired. A library cannot place a surcharge on an individual student with a disability (such as a single student who is deaf who benefited from interpreter services) or on a group of students who have disabilities (such as all students who have mobility impairments who benefited from barrier removal).

The program or service may not impose any additional requirements or burdens on people with disabilities that they do not require of all other participants in the program.

EXAMPLE: The Department of Commerce and Consumer Affairs has a thirty-page set of administrative rules. When the public asks for a copy, the Department provides a printed copy and charges \$.25 per page for administrative costs, totaling \$7.50. A person with a visual impairment asks for a set in large print. The Department prints a new set on its computer using a larger font, but the large print copy is ninety-pages in length. The person may not be charged for ninety pages, but only for thirty pages, the same price charged to other individuals.

## **2.4 Integrated settings and separate programs**

A primary goal of nondiscrimination legislation is the equal participation and inclusion of individuals with disabilities in the “mainstream” of society. A major principle of mainstreaming is that individuals with disabilities must be integrated to the maximum extent appropriate. Programs, services, or activities must be delivered in the most integrated setting appropriate to the person's level of need.

Separate programs to provide equal opportunity to benefit from the program are permitted only when necessary. Such programs, however, must be specifically designed to meet the individual needs of people who have disabilities for whom they are provided.

EXAMPLE: The Department of Human Services, Vocational Rehabilitation and Services for the Blind Division, operates Hoopono, an adult rehabilitation program for persons who are blind and visually impaired. Special skills, such as mobility orientation, Braille reading, and a low vision clinic are offered. Such a program is permitted, as the services are specifically designed to meet the needs of persons who are blind.

EXAMPLE: The Department of Health operates a residential community at Kalaupapa, Molokai, for individuals who have Hansen's Disease. Although segregated, this community is permitted as a specialized program whose services are specifically designed to meet the needs of the residents who have disabilities.

EXAMPLE: The Department of Education, Hawaii State Public Library System, operates a specialized library, the Library for the Blind

and Physically Handicapped. Because this library specializes in printed materials in alternate format such as Braille, audio tape or computer diskettes, a separate program is acceptable.

EXAMPLE: The State Foundation on Culture and Arts hosts an exhibit. Viewers are not allowed to touch the exhibits because handling can cause damage to the objects. The Foundation may offer a special tour for individuals with vision impairments where such individuals are permitted to touch and handle specific objects on a limited basis.

However, when separate programs are provided, qualified people who have disabilities still cannot be excluded from participating in the regular program or required to accept special services or benefits. Individuals may not be required to accept special benefits or programs if they choose not to do so.

EXAMPLE: Residents at Kalaupapa, Molokai, cannot be forced to stay there, but must be permitted to participate in other programs and services of the Department of Health.

EXAMPLE: People who have disabilities may not be denied access to all state libraries even though the Library for the Blind and Physically Handicapped exists. Furthermore, they must not be forced to go to a specialized library if they choose not to participate.

EXAMPLE: People who have visual impairments may not be denied access from the standard exhibit, although they may be required to abide by the “no-touching” policy for regular exhibit pieces.

Qualified individuals with disabilities are entitled to participate in regular programs, even if the program sponsor does not reasonably believe that the person can benefit from the regular program, assuming there are no health and safety factors to be considered.

EXAMPLE: The Department of Education offers hula classes or photography classes through their adult education program. The instructor may not exclude a person who is deaf from the hula class or a person who has low vision from the photography class. The individual who is deaf may benefit from the vibrations of the music beat and the individual who has low vision may benefit from seeing photographs at close range. Even if they don't, they have a right to participate.

The ability to provide full integration, if separate programs are available, will vary on a case-by-case basis.

EXAMPLE: The University of Hawaii conducts theater performances for the public at-large. For a single play performed three nights per week for a month, the University decides to provide a performance interpreted in sign language at one show per week. In setting up the schedule, the University consults the deaf and hard of hearing community, decides on a different show time and day each week in order to offer a full range of choices, and publicizes the availability of the interpreted performances. Given this range of choices, it may not be necessary to provide a sign language interpreter at any other performance to offer complete integration at all performances.

## **2.5 Eligibility criteria**

Programs or services of the State of Hawaii may not impose eligibility criteria which tend to screen out individuals with disabilities unless it can show that such requirements are necessary for the provision of the program, service, or activity or would fundamentally alter the nature of the program, service, or activity.

EXAMPLE: The community college system may not require students who have certain disabilities to be accompanied to class by attendants, when such individuals prefer to attend classes unaccompanied. The policy would have to change unless the college can demonstrate that it is necessary for some compelling reason to adopt such a policy.

EXAMPLE: The community college system may not prohibit people who use wheelchairs from participating in state-sponsored scuba diving classes solely because it believes that individuals who use wheelchairs probably cannot swim well enough to participate. Each student's situation must be considered individually. A blanket exclusion would violate the rights of people who have disabilities. Likewise, requiring only individuals with disabilities to demonstrate swimming competency would be discriminatory.

## **2.6 Safety requirements**

Departments and agencies may impose legitimate safety requirements for the safe operation of their services, programs, or activities. However, a specific program or service must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals who have disabilities, and must apply these safety requirements to others at risk.

EXAMPLE: A community college may establish a legitimate criteria of swimming as a pre-requisite to enrolling in a scuba diving class if it can demonstrate that being able to swim is necessary for safe participation in the class. It can require all participants to be individually tested to meet that criteria. This is permitted even if requiring such a test would tend to screen out people who have certain kinds of disabilities.

EXAMPLE: The Department of Human Services may require CPR certification for child care operators, if it can demonstrate the need for the health and safety of the children. It can require all participants to be individually tested to meet that criterion. This is permitted even if the criterion eliminates certain people due to their disabilities (e.g., a person with a tracheotomy, a person who has a severe respiratory disorder, a person who has quadriplegia, all of whom may not physically be able to administer CPR).

## **2.7 Unnecessary inquiries**

A program or service may not make unnecessary inquiries into the existence of a disability.

EXAMPLE: A Department of Education recreation program may require parents to fill out a questionnaire and to submit medical documentation regarding their children's ability to participate in various after school and recreation activities. The questionnaire is acceptable, if given to all applicants, and if the Department can demonstrate that each piece of information requested is needed to ensure safe participation in the activity. The Department may not selectively ask only certain children to provide medical documentation based upon a perception of the child's limitation. The Department also may not use this information to screen out children who have disabilities from admittance to the program.

EXAMPLE: A community college program is seeking volunteers to work with at-risk high school students. A person with a disability signs up to be a volunteer. The only eligibility criterion to be a volunteer is to be over 18 years of age and have a high school diploma. The program's application form asks whether the applicant has ever had a history of a physical or mental impairment. A much more rigorous investigation is undertaken of applicants who answer "yes." This action would place an additional burden on individuals who have disabilities through unnecessary inquiries because such inquiries are not imposed on others without disabilities.

EXAMPLE: A state office open to the public notices that an individual enters with a dog. The office has a “no pets except for service animals policy,” which is appropriate. Asking a person to show proof of licensure of the dog as an assistance animal is an unnecessary inquiry.

## **2.8 Personal devices and services**

A program or service is not required to provide individuals who have disabilities with personal or individually prescribed devices, (e.g., wheelchairs, prescription eyeglasses, or hearing aids) or to provide services of a personal nature (e.g., assistance in eating, toileting, or dressing).

EXAMPLE: The Department of Education offers adult education classes in the community. Upon enrolling in a course, one of the students indicates that he is having difficulty seeing the chalkboard for instructions. The Department is not required to purchase glasses for the person to enable him to see better. However, if the person were to need an auxiliary aid or service, such as materials in alternate format, these aids would not be considered personal services, and therefore, must be considered.

EXAMPLE: The Stadium Authority operates a public event at the Aloha Stadium. A person who is hard of hearing wishes to attend and listen to the information announced over the public address system. The Stadium Authority is not required to buy the person a hearing aid customized to her hearing loss in order to hear. This is a personal device. However, the Stadium is required to have assistive listening systems and amplification systems which are not customized and can be “checked out” and used by any patron to augment hearing, as a general assistive listening system, not as a personal device or service.

Of course, if personal services or devices are customarily provided to the individuals served by the department or program (such as in a hospital, nursing home, or social service agency), these personal services should also be provided to individuals who have disabilities.

EXAMPLE: The Department of Human Services provides personal care services in its Medicaid Waiver Program. Because it provides services such as bathing, toileting, and grooming to all participants, it must do so for people who have disabilities who are otherwise eligible for the program.

EXAMPLE: The Hawaii Health Systems Corporation provides in-patient care to persons hospitalized in one of its community hospitals. Because it provides services such as nursing services to all patients, it must do so for people who have disabilities who are otherwise eligible for the service.

## **2.9 Maintenance of accessible features**

Programs or services must 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 permitted. Also, when an accessible route is provided to the location of a program, service, or activity, the route must remain accessible and not blocked by obstacles such as furniture, cabinets, or potted plants.

EXAMPLE: The State Department of Defense has a three-story building with an elevator. It would not be appropriate if, in order to save energy, the passenger elevator is turned off during the hours when the building is open.

EXAMPLE: The State Department of Accounting and General Services has a lift to provide access for people with mobility impairments to an auditorium stage. The lift is not working. The Department must take reasonable steps to repair the lift to meet its obligations to maintain accessible features.

## **2.10 Contracting with external organizations and procurement contracts**

Departments may not discriminate, on the basis of disability, in contracting for the purchase of goods and services or in any procurement contract.

EXAMPLE: The University of Hawaii, in its contract for food service operations, may not discriminate in its selection of contractors on the basis of disability, either because the company is owned by an individual who has a disability or employs individuals who have disabilities who might be working on the campus.

EXAMPLE: The Department of Transportation, in its contract for parking lot attendant services at the airports, may not discriminate in its selection for or against contractors on the basis of disability, either because the company is owned by an individual with a disability or

employs individuals with disabilities who might be working in one of the attendant toll booths at the airport.

EXAMPLE: The Department of Accounting and General Services, in its procurement of goods and services on the State's bid lists, may not discriminate in its selection of contractors for suppliers of equipment, either because the company is owned by an individual who has a disability or employs individuals who have disabilities.

EXAMPLE: The Department of Public Safety, in its solicitation for consultants to provide services to inmates, may not discriminate in its selection of consultants on the basis of disability by eliminating a consultant who uses a wheelchair because the location of the site where the consultant will be working is not accessible.

## **2.11 Licensing and certification**

Departments and agencies may not discriminate on the basis of disability in their licensing, certification, and regulatory practices. When the state administers an examination as a requirement toward obtaining a license, it must provide auxiliary aids for applicants who have disabilities and administer the examination in an accessible location. An applicant is a "qualified person who has a disability" if he or she meets the essential eligibility requirements for that license or certification.

EXAMPLE: The Department of Commerce and Consumer Affairs Professional and Vocational Licensing Division administers an examination for persons wishing to be licensed as hearing aid dealers. The examination must be held in a location which permits a person who has a mobility impairment to attend. If the examination has a written component and a person who is visually impaired wishes to take the exam, auxiliary aids such as a reader, large print, Braille, or audio cassette tape must be provided. If the examination has an audio or oral component and a person who is deaf or hard of hearing wishes to take the exam, auxiliary aids such as a sign language interpreter or computer-assisted notetaker must be provided.

EXAMPLE: The Public Utilities Commission issues licenses for those entities wishing to operate a vehicle on the street for transportation commerce. In the licensing application process, the agency may have to provide an auxiliary aid or service (e.g., reader, sign language interpreter) or modify the licensing application process.

While many programs and activities of the State of Hawaii do not have significant eligibility requirements, licensing programs often do require applicants to demonstrate specific skills, knowledge, or abilities. Those licensing departments may not discriminate against qualified individuals who have disabilities who apply for licenses but may consider factors related to the disability in determining whether a person is qualified.

The department or agency does not have to lower or eliminate licensing standards that are essential to the licensed activity. Whether or not particular requirements are essential must be determined on a case-by-case basis.

EXAMPLE: The Department of Health licenses facilities for adult residential care homes. The Department may have a requirement that operators pass a CPR exam. If a person cannot pass the exam due to a disability, the Department would not have to lower its standards and eliminate the requirement if it is an essential criterion.

EXAMPLE: The Department of Agriculture licenses farm produce dealers. In the licensing application process, the Department may have to provide an auxiliary aid or service (e.g., reader, sign language interpreter) or modify the licensing application process (e.g., to provide additional time). However, the Department is not required to eliminate a requirement to pass a written examination because it is too difficult for an applicant with a disability to complete.

In addition, departments and agencies may not establish requirements for programs that are certified or licensed that have the effect of limiting opportunities for participation or employment of people who have disabilities.

This requirement does not impose a responsibility to regulate the activities of privately-run programs that are merely licensed by the state beyond the administrative requirements set forth by state law or state administrative rules. An activity of a licensee does not become a “program or activity” of the state merely because it is licensed by the state.

## **2.12 Retaliation or coercion**

Individuals who assert their rights under disability discrimination laws, or assist others in asserting 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 rights of that person.

**EXAMPLE:** A department receives a complaint from a person who uses a wheelchair regarding the lack of accessibility at one of its facilities which recently underwent alterations. In fixing the problem, the department official releases the name, address, and phone number of the complainant and tells the staff to make sure they let the person who has a disability know that he or she is a troublemaker. If this has the effect of intimidating the complainant, it may be considered retaliation by the state department.

### **2.13 Association**

Programs or services may not discriminate against individuals, organizations, or other entities because of their known relationship or association with people who have disabilities. This prohibition applies to cases where the state program or service has knowledge of both the individual's disability and his or her relationship to another individual, organization, or entity. In addition to familial relationships, the prohibition covers any type of association, if the discrimination is actually based on the disability.

**EXAMPLE:** A recreation center may not refuse admission to a summer camp program to a child whose brother is HIV positive.

**EXAMPLE:** A sports facility refuses to admit an individual with cerebral palsy as well as his sister, because they are together. In addition to the individual with cerebral palsy, his sister would have an independent action against the program for discriminating on the basis of association.