

August 9, 2023

Notice of Proposed Rule

DEPARTMENT OF CORRECTIONS

RULE NO.: RULE TITLE:

33-210.201 ADA Provisions for Inmates

PURPOSE AND EFFECT: The rule is being amended to reflect current Department procedure requiring copies of ADA requests to be placed in the confidential section of the inmate's classification file rather than in their medical file; to add definitions for Regional ADA Coordinator and Central Office ADA Coordinator; to eliminate references to Institutional ADA Coordinators; to extend the time frame for responding to accommodation requests; to allow the Central Office ADA Coordinator to assign a designee to review whether an accommodation would constitute an unfair burden on the Department; and to make additional "clean-up" revisions as necessary.

SUMMARY: Rule amendment is necessary to reflect current Department procedure requiring copies of ADA requests to be placed in the confidential section of the inmate's classification file rather than in their medical file; to add definitions for Regional ADA Coordinator and Central Office ADA Coordinator; to eliminate references to Institutional ADA Coordinators; to extend the time frame for responding to accommodation requests; to allow the Central Office ADA Coordinator to assign a designee to review whether an accommodation would constitute an unfair burden on the Department; and to make additional "clean-up" revisions as necessary.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 944.09, F.S.

LAW IMPLEMENTED: 944.09, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, lauren.sanchez@fdc.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, FDCRuleCorrespondence@fdc.myflorida.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

33-210.201 ADA Provisions for Inmates.

(1) No change.

(2) Definitions.

~~(a) ADA Coordinator — the central office employee assigned to coordinate the department's efforts to comply with and carry out its responsibilities under the provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act.~~

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~~(a)~~~~(b)~~ Auxiliary aids and services ~~include~~ includes:

1. No change.

2. Qualified readers; taped texts; audio recordings; Braille ~~Brilled~~ materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals with visual impairments.

3. through 4. No change.

(b) Central Office ADA Coordinator – the central office employee assigned to coordinate the Department’s efforts to comply with and carry out its responsibilities under the provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act.

(c) Compelling Security Concern – exists where a reasonable accommodation, aid, or device that has been provided or may be provided to an inmate with a disability; cannot be adequately searched for contraband; has been altered; has been used as a weapon; can be weaponized; ~~or~~ poses a significant likelihood of substantial harm to the inmate, another inmate, or staff; or can be used to facilitate an escape.

(d) through (f) No change.

~~(g) Institutional ADA Coordinator – refers to the staff member at an institution who is designated to respond to requests for accommodation.~~

~~(h)~~~~(h)~~ Major life activities – refers to activities such as caring for one’s self, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

~~(h)~~~~(i)~~ Mental impairment – any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

~~(i)~~~~(j)~~ Physical Impairment – refers to any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, cardiovascular, respiratory, special sense organs, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

~~(j)~~~~(k)~~ Qualified inmate with a disability – refers to an inmate with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements of the Department for the Department program(s), service(s), or activity/activities at issue.

~~(k)~~~~(l)~~ Reasonable modification – refers to any reasonable modification that will allow a qualified inmate with a disability to participate in or make use of the programs, services, or activities of a Department institution or facility.

(l) Regional ADA Coordinator – refers to the designee assigned to respond to reasonable modification or accommodation requests and coordinate the Department’s efforts to comply with and carry out its responsibilities under the provisions of Title I and Title II of the ADA and Section 504 of the 1973 Rehabilitation Act at the direction of the Central Office ADA Coordinator.

(m) No change.

(3) Accommodation Request Procedure.

(a) The determination of whether an inmate has a disability shall be made by Department medical staff, either at reception or at the institution where the inmate is assigned, based upon the inmate’s record of an existing physical or mental impairment or clinical evaluation of the inmate. In determining if a person’s physical or mental impairment substantially limits a major life ~~life~~ activity, the following factors shall be considered:

1. No change.

2. The length of time the impairment is expected to last; and,

3. No change.

(b) All Department and privately operated facilities shall furnish to any inmate, upon request, a Reasonable Modification or Accommodation Request for Inmates, Form DC2-530A. Form DC2-530A is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrule.org/Gateway/reference.asp?No=Ref-14008>. The effective date of this form is 02/22.

(c) Inmates who are requesting an accommodation or modification shall submit a request in writing on the Reasonable Modification or Accommodation Request for Inmates, Form DC2-530A, specifying the type of

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accommodation requested and the purpose for the accommodation or modification.

1. Form DC2-530A shall be submitted to the Regional Institutional ADA Coordinator. ~~The designated Institutional ADA Coordinator shall be:~~

~~a. The assistant warden for programs (AWP) or the assistant warden (AW) at major department institutions, in the event the institution does not have an AWP;~~

~~b. The correctional officer major at department operated community release centers, or~~

~~c. The designated facility representative at private community release centers.~~

2. Inmates who cannot put their requests in writing shall make their verbal requests to classification, security, medical, or to the Regional Institutional ADA Coordinator who shall document the request in writing on Form DC2-530A. The staff member will sign the acknowledgement section to document the inmate's verbal request for the accommodation.

(d) Upon receipt of Form DC2-530A, the Regional ADA Coordinator shall review the inmate's accommodation request. The Regional ADA Coordinator shall, as necessary, utilize Form DC2-530B to request additional information from the appropriate program head ~~in order~~ to verify the inmate's disability or to otherwise assist with the review of the request. Form DC2-530B, Reasonable Modification or Accommodation Request Evaluation/Disposition, is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, Office of Research, Planning and Support Services, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-14009>. The effective date of this form is 02/22.

(e) The Regional Institutional ADA Coordinator shall return the completed Form DC2-530A to the inmate within ~~20~~ 40 business days of receipt. If the complexity of the issue requires an extension of time beyond ~~20~~ the 40 business days, the inmate shall be notified in writing of such action and the reason for the extension documented on Form DC2-530A. The completed Form DC2-530A shall reflect the Regional Institutional ADA Coordinator's recommendation to approve, deny, modify, or return without action. If the request is deemed not to be an ADA issue, Form DC2-530A will be returned to the inmate without action and shall include the reason(s) for the recommendation. The completed Form DC2-530A shall also reflect the anticipated completion date, if necessary, of the accommodation.

(f) The Regional Institutional ADA Coordinator shall forward both the completed Form DC2-530A and the completed Form DC2-530B, and any supporting documents, to the Central Office ADA Coordinator within 10 business days of completion of Forms DC2-530A and DC2-530B.

(g) The Central Office ADA Coordinator shall review the request received and notify the Regional Institutional ADA Coordinator in writing of whether s/he concurs or disagrees with the Regional Institutional ADA Coordinator's recommendation.

1. The Central Office ADA Coordinator may consult with program areas within the Department for input, when appropriate, before making a final decision.

2. If the Central Office ADA Coordinator's decision is a reversal of the Regional Institutional ADA Coordinator's decision, Forms DC2-530A and DC2-530B shall be returned to the Regional Institutional ADA Coordinator with written notification stating the reasons for this action.

(h) Upon receipt, the Regional Institutional ADA Coordinator will take steps to comply with the decision of the Central Office ADA Coordinator and provide written notification to the inmate of the actions to be taken. The Regional Institutional ADA Coordinator will provide the Central Office ADA Coordinator written notification when the action has been completed.

(i) Copies of the requests and all other documentation shall be placed in the inmate's classification file ~~medical record~~.

(4) Justification for Denial of Requests for Accommodation. A request for a particular accommodation shall be denied for any of the following reasons:

(a) No change.

(b) The ~~D~~department, taking into consideration all the available resources and giving consideration to the expressed preference, if any, of the inmate, need not take an action to provide accessibility to a service, program or activity if the action would impose or require:

1. An undue financial burden on the agency where, in a cost benefit analysis, its costs would be an unjustifiable

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expenditure of public funds; -

2. An undue administrative burden on the agency; or
3. A fundamental alteration of the nature of the service, program, or activity.

(c) An institution cannot deny a request for accommodation ~~as an~~ ~~using the~~ ~~undue burden~~ ~~defense~~ without contacting the Central Office ADA Coordinator. The Central Office ADA Coordinator ~~or designee~~ shall consult with the appropriate central office program area in which a particular accommodation is requested and any necessary ~~D~~department staff before making a determination that a requested accommodation would constitute an undue financial or administrative burden on the agency or a fundamental alteration to the nature of a service, program, or activity. The final decision that compliance with the requested accommodation would result in an undue financial or administrative burden or a fundamental alteration of the nature of a service, program, or activity shall be made by the Secretary or ~~the Secretary's~~ ~~his or her~~ designee after consideration of all resources available for use in the funding and operation of the service, program or activity. The final decision must be accompanied by a written statement of the reasons for reaching the conclusion. The decision and the statement will be retained by the Central Office ADA Coordinator.

(d) Compelling Security Concern. ~~When t~~ ~~The~~ ~~Central Office~~ ~~ADA~~ ~~C~~oordinator, ~~who~~ is notified or otherwise becomes aware of a compelling security concern relating to a reasonable modification, ~~they~~ will consult with the warden, the appropriate central office program area in which the particular modification is requested, and any other necessary ~~D~~departmental staff prior to determining whether a requested modification poses a compelling security concern.

(e) Equally Effective Means. A request for a particular accommodation, ~~after considering all available resources and the express preference, if any, by the inmate,~~ shall be denied if, ~~after considering all available resources and the express preference, if any, by the inmate,~~ an equally effective reasonable modification or access to a program, service, or activity can be afforded through a less burdensome or intrusive alternative method ~~an alternate method which is less burdensome or intrusive.~~

(f) No change.

(5) Complaints and Accommodation Appeals. Inmates who have a complaint alleging a violation of the Americans with Disabilities Act or who want to appeal the denial of a request for accommodation shall follow the grievance procedures ~~guidelines~~ set forth in Chapter 33-103, F.A.C.

(6) Auxiliary Aids and Services. The Department will provide inmates with auxiliary aids and services whenever necessary to ensure equal access to programs, services, or activities offered by the Department. When an auxiliary aid or service is deemed necessary to provide an inmate with an equal opportunity to participate in a program, service or activity, it shall be provided at the expense of the ~~D~~department.

(7) Possession of Health Care Appliances.

(a) Health care staff shall identify health care appliances as property of the inmate and appropriately document them as such in accordance with ~~R~~rule 33-602.201, F.A.C.

(b) Any health care appliance ~~a~~ ~~the~~ disabled inmate has properly obtained while in the ~~D~~department's custody shall not be removed unless:

1. there are legitimate and documented safety or security reasons for its removal; or

2. ~~(c) Health care appliances shall be removed if~~ a physician or dentist determines that the appliance is no longer medically necessary or appropriate.

(8) Educational and work programs. Inmates with disabilities shall have the opportunity to participate in educational and work programs.

(a) No change.

(b) Eligibility to participate in any program is dependent on the inmate's ability to perform the essential functions of the program, with, or without, reasonable modification to rules, policies, or practices, and on meeting the ~~D~~department's requirements for the program.

(9) No change.

Rulemaking Authority 944.09 FS. Law Implemented 944.09 FS. History--New 8-19-01, Amended 2-8-06, 11-22-06, 1-23-13, 9-30-13, 11-20-16, 1-30-19, 2-10-22, _____.

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NAME OF PERSON ORIGINATING PROPOSED RULE: Jeff Nichols, Director of Facilities Management and Building Construction and Douglas Sexton , ADA Coordinator

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 24, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 3/9/2023