

94-348 ADOPTED CHANGES TO RULES

Me. Hum. Rights Comm'n Reg., Chapter 2, is revised as follows:

Chapter 2: PROCEDURAL RULE

DESCRIPTION: The following rule describes the process by which complaints of discrimination will be filed, processed, and considered by the Maine Human Rights Commission, with the exception of complaints alleging unlawful education discrimination, which are governed by Chapter 4-A.

2.01 DEFINITIONS

All terms used in these regulations, unless the context otherwise indicates, shall have the same definition as in the Maine Human Rights Act, 5 M.R.S.A. §§ 4551 *et seq.* (the Act).

2.02 COMPLAINTS

A. Who may file

- (1) Any person who believes that he or she has been subjected to unlawful discrimination may file a complaint with the Maine Human Rights Commission (the Commission).
- (2) Any employee of the Commission may file a complaint with the Commission alleging an act or practice of unlawful discrimination.

B. Contents

A complaint should briefly set forth the facts and circumstances surrounding the alleged discrimination.

C. When to file

A complaint of discrimination must be filed with the Commission not more than 300 days after the act of alleged discrimination occurred.

D. Where to file

Complaints must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051; complaints filed with the Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD) pursuant to work sharing agreements between the Commission and EEOC and HUD shall be deemed filed with the Commission on the date of filing with EEOC or HUD.

E. How to file

Complaints may be filed in person or by mail by filling out a form provided by the Commission or by EEOC or HUD pursuant to work sharing agreements between the Commission and EEOC or HUD. Complaints must be sworn to under oath before a Notary Public or other person authorized by law to administer oaths, or before a representative of the EEOC or HUD pursuant to work sharing agreements signed between the Commission and the EEOC and HUD.

Upon request, Commission staff will assist in the preparation of the necessary complaint forms. Aggrieved persons may provide information by mail, telephone, or email. Commission staff may request that intake forms be prepared and submitted. If the information received alleges a violation of the Act, Commission staff will reduce the information to writing on the appropriate complaint form and send it to the aggrieved person to be notarized and filed with the Commission.

F. Amendment of complaints

Complaints may be amended to cure technical defects or omissions, including failure to swear to the complaint under oath before a Notary Public, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts that constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

G. Withdrawal of complaints

- (1) A complaint may be withdrawn at any time, by written request, prior to the issuance of a statement of finding by the Commission, by the person who originally filed it provided, however, that where the investigation and processing of a complaint has been completed prior to the receipt of a written request for withdrawal, withdrawal is subject to Commission approval. Upon notification or approval of withdrawal, the Commission shall cease its investigation.
- (2) Withdrawal of an individual complaint will not, however, preclude the investigation and processing of any complaint filed by any employee or member of the Commission, which alleges the same acts of discrimination.

H. Administrative dismissal

The Commission's Executive Director may, in her/his discretion, administratively dismiss complaints of discrimination for such reasons as:

- (1) lack of jurisdiction;
- (2) failure to substantiate the complaint of discrimination;

- (3) failure to file a complaint of discrimination within 300 days of the date of alleged discrimination;
- (4) failure by complainant to proceed or cooperate with the investigation; or
- (5) failure by complainant to accept reasonable offers to resolve the allegations in the complaint.

Immediately following administrative dismissal, the Commission shall notify the complainant and the respondent of its action, and shall inform the complainant of her/his right to proceed pursuant to 5 M.R.S.A. §4621.

I. Notice of Right to Sue

A right to sue letter may be requested by a complainant, in writing, 180 days or more after the filing of a complaint with the Commission. If the Commission has not filed a civil action in the case or has not entered into a conciliation agreement in the case, the Commission's Executive Director or her/his designee shall issue a right-to-sue letter, provided, however, that where the investigation and processing of the complaint have been completed and an Investigator's Report issued prior to the receipt of a written request for a right-to-sue letter, the issuance of the right-to-sue letter is subject to the Commission's approval. Upon issuance of the right-to-sue letter, the Commission shall end its investigation.

J. Conflict of Interest

- (1) As used in the subsection, "conflict of interest" means that:
 - a) a Commissioner has an adverse or pecuniary interest as defined by 5 M.R.S.A. §18; or
 - b) a Commissioner is a complainant or respondent in a case under investigation; or
 - c) a Commissioner is an employee or member of an entity that is a party in a case under investigation by the Commission, or an employee or member of an entity operating as an advocate for a party appearing before the Commission.
- (2) The Commission will not provide any information to a Commissioner with a conflict of interest as defined in (1) above, which it would not provide to any other respondent or complainant.
- (3) All communications with the Commission made by the Commissioner with the conflict of interest relative to the merits of the case prior to the conclusion of the investigation as defined in 5 M.R.S.A. §4612(1)(B), will be directed to the investigator assigned to the case, not to the Executive Director, the Commission Counsel, or any other Commissioner. All such communications will be noted in the case file.

- (4) Any Commissioner who has a conflict of interest in a case before the Commission will excuse himself or herself from the Commission decision affecting that case pursuant to Rules 2.07 and 2.08.

2.03 NOTIFICATION

Within 10 days after a complaint has been pre-screened, notarized, filed, and assigned a case number, the party against whom the complaint has been filed, referred to as respondent, will be notified and provided with a copy of the complaint. The complainant will be provided with a copy of the notification. The notice will advise the parties of time limits applicable to complaint processing under this chapter and of the procedural rights and obligations of the parties under the Act and this chapter; the complainant's right to commence a civil action in the Superior Court; and that it is unlawful to discriminate against any person because the person made a complaint or testified, assisted, or participated in an investigation, proceeding, or hearing under the Act.

2.04 EARLY RESOLUTION SETTLEMENT

- A. Subsequent to notification and separate from the investigation of the allegations in the complaint, the Commission's Compliance Manager or her/his designee will provide an opportunity to the parties for discussion of settlement. This may include an opportunity for the parties to participate in a third-party neutral mediation program established by the Commission.
- B. Evidence of conduct or statements made in settlement negotiations, mediation, settlement offers, and any final agreement are confidential and may not be disclosed without the written consent of the parties, nor used as evidence in any subsequent proceeding, except in an action for breach of agreement. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate settlement.
- C. Prior to a determination by the Commission of whether there are reasonable grounds to believe that unlawful discrimination has occurred, if the matter is resolved to the mutual satisfaction of the parties and to the satisfaction of the Commission's Executive Director or her/his designee, the Executive Director or her/his designee shall have the authority to sign any settlement agreement on behalf of the Commission, together with the parties. When the Commission agrees in any negotiated settlement not to process that complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. The complaint will be dismissed by the Commission's Executive Director or her/his designee upon ascertainment that the terms of settlement have been met.
- D. In the alternative, the Commission's Compliance Manager or her/his designee or a mediator assigned pursuant to a third-party neutral mediation program established by the Commission may facilitate a settlement between the parties resulting in the withdrawal of the complaint pursuant to 2.02(G).

2.05 INVESTIGATION

- A. After a complaint has been pre-screened, notarized, filed, and assigned a case number, a Commission investigator will conduct such preliminary and impartial investigation as is necessary. An investigation may involve fact-finding meetings and interviews with the complainant, the respondent, and any other persons whose statement may provide a source of evidence. The investigator may record, by mechanical, electronic or other means, all statements by all persons involved. If the investigator calls for a fact-finding meeting, the parties shall be given reasonable notice in advance of the meeting.
- B. The Commission's investigator shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission's investigators are hereby delegated the authority to administer oaths. The investigator shall maintain a written record of all interviews. The parties shall have the right to review the interview record, but the timing of such review shall be subject to the investigator's discretion.
- C. Documents, records, files or other possible sources of evidence shall be produced within the time specified by a Commission representative's written request for their production, unless the person possessing them shows cause to the Commission's representative that production within the time specified would impose an unjustifiable burden. Excessive delay or failure to produce the requested materials may result in the issuance of a subpoena by the Commission for their production.
- D. Subpoena power
- (1) Form. Subpoenas shall be issued in the name of the Maine Human Rights Commission, shall designate the Commission as recipient of the material or testimony specified, and shall designate a specific time and place for the production of the documents and/or testimony.
 - (2) When available. A subpoena may be used to compel testimony or the production of documents whenever there is reasonable cause to believe that those materials or the testimony of the persons are material to the complaint.
 - (3) Procedure. When the Commission's Executive Director or Commission Counsel determines that there is reasonable cause to believe that the testimony or documents withheld are material to investigation of the complaint, the Executive Director or Commission Counsel may issue a subpoena.

The subpoena shall include: the name and address of the respondent subject of the subpoena; if the subject of the subpoena is not an individual, the name of the senior officer or person in charge; a brief

description of the documents requested and/or the name and title of the person(s) whose testimony is requested; and the date, time and place such production and/or testimony is requested.

If a subpoena is issued, notice must be given to the complainant and the respondent.

- (4) **Service.** Subpoenas may be served by any person who is not a party to the proceeding and who is not less than eighteen (18) years of age. Service shall be made by delivering a copy of the subpoena to the person named therein and tendering to that person the fees and mileage paid to witnesses in the Superior Court of this State.
 - (5) **Return.** The person serving the subpoena shall make proof of service by filing the original of such subpoena and an affidavit of acknowledgment of service with the Commission. However, failure to make such proof of service shall not affect the validity of such subpoena and service.
 - (6) **Enforcement.** If any person refuses to obey a subpoena, the Commission may apply to any justice of the Superior Court for an order compelling compliance with the subpoena.
 - (7) **Opposition.** Any person served with a subpoena may oppose it by applying for judicial review in Superior Court.
- E. Prior to the conclusion of an investigation, all information possessed by the Commission relating to the investigation is confidential and may not be disclosed, except that the Commission and its employees have discretion to disclose such information as is reasonably necessary to further the investigation. The complaint and evidence collected during the investigation, other than data identifying persons who are not parties, shall become a matter of public record upon issuance of a letter of dismissal or upon listing of the complaint on a published Commission meeting agenda. The complaint and evidence collected may be used as evidence in any subsequent proceeding, civil or criminal.
- F. Upon completion of the investigation, the Commission's investigator will make and transmit a report of the investigation together with recommendations concerning the disposition of the complaint (hereafter referred to as Investigator's Report), to the complainant and the respondent. The Investigator's Report shall be approved for legal sufficiency by the Commission Counsel or her/his designee before it is issued. All parties to a complaint shall be given a reasonable opportunity to review and respond to all evidence considered by the Commission before the Investigator's Report is issued, but the timing of any such review shall be subject to the investigator's discretion. With respect to complaints alleging unlawful housing discrimination, unless it is impracticable to do so, the Commission will issue an Investigator's Report within 100 days of the filing of the complaint. If the Commission is unable to do so, it will notify the complainant and respondent by mail of the reasons for the delay.
- G. Upon receipt of the Investigator's Report described in 2.05(F), a party shall have an opportunity to make a written submission to the Commission setting forth

specific items of disagreement with the report and/or recommendations. The written submission shall be filed with the Commission's office within seventeen (17) days of issuance of the Investigator's Report. Only specific items of disagreement that address the following will be considered:

- (1) relevant factual errors;
 - (2) relevant omissions of fact; and/or
 - (3) relevant issues and questions concerning interpretation of the law.
- H. At the expiration of the seventeen (17) day period, a Commission representative will transmit the Investigator's Report and the written matter submitted by the complainant and/or respondent to the Commission.
- I. The Commission must conclude its investigation within 2 years after a notarized complaint is filed with the Commission. An investigation is concluded for purposes of this requirement upon issuance of a letter of dismissal or upon listing of the complaint on a published commission meeting agenda, whichever first occurs.
- J. With respect to complaints alleging unlawful housing discrimination, the Commission must make final administrative disposition of the complaint within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so.

2.06 COMMISSION MEETING

The Commission may allow the parties to make an oral presentation on information related to the complaint of discrimination at a monthly Commission meeting. Information presented must comply with 2.05(G). The Commission may impose time limits.

2.07 COMMISSION DECISION UNDER NON-EMERGENCY PROCEDURE

After considering the Investigator's Report, complainant's and respondent's submissions, if any, and other related information, the Commission will make a determination of whether or not reasonable grounds exist to believe that unlawful discrimination has occurred. The Commission shall issue a statement of finding in support of its determination.

- A. No reasonable grounds. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will dismiss the complaint. The Commission will promptly notify the parties of the dismissal and provide them a copy of its statement of finding.
- B. Reasonable grounds. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, it will so notify the parties of its determination and provide them a copy of its statement of finding. The

Commission's Compliance Manager or her/his designee will then endeavor to resolve the matter by informal means such as conference, conciliation, or persuasion.

- C. New investigation. If, subsequent to a finding, the Commission determines that there have been relevant, factual errors or relevant omissions of fact that, if they are true, would likely change the finding of the Commission, it may order a new investigation of the matter. The Commission will promptly notify the parties of its decision to investigate the matter again.

2.08 COMMISSION DECISION UNDER EMERGENCY PROCEDURE

If the preliminary investigation of the complaint persuades the Commission's Executive Director or other designated employee that a situation comparable to those described in 5 M.R.S.A. §4612(4)(B) exists, the Executive Director or other designated employee shall so notify the Commission. As soon as practical after notification, the Commissioners will consider the matter by means of a special meeting or other appropriate method. The Executive Director or other designated employee will take all reasonable steps to notify the parties of the special meeting or other appropriate method and of their right to participate.

- A. If the Commission finds no reasonable grounds to believe that unlawful discrimination has occurred, it will issue an order dismissing the complaint. The Commission shall issue a statement of finding in support of its determination.
- B. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred, but does not believe that irreparable injury or great inconvenience will be caused to the victims of such discrimination if relief is not immediately granted; it will notify the parties of its determination, provide them with a copy of its statement of finding and process the complaint under its non-emergency procedure.
- C. If the Commission finds reasonable grounds to believe that unlawful discrimination has occurred and further believes that irreparable injury or great inconvenience will be caused the victim or victims of such discrimination if relief is not immediately granted, it may request the Commission Counsel or her/his designee to file a civil action in the Superior Court seeking appropriate relief. As soon thereafter as practicable, the Commission shall issue a statement of finding in support of its determination.

2.09 POST-DETERMINATION CONCILIATION

- A. Conference, conciliation and persuasion

In conciliating a matter in which a determination of reasonable grounds has been made pursuant to the non-emergency procedure of section 2.07(B) of these regulations, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful discrimination and take any appropriate corrective action. Disposition of a matter pursuant to

this section shall be in the form of a written agreement and approved by a majority of the Commission, and notice thereof shall be sent to the parties. Upon ascertainment by the Commission's Executive Director or her/his designee that the terms of the signed agreement have been met, the proceeding shall be dismissed.

B. Refusal of respondent to cooperate

If a respondent fails or refuses to confer with the Commission or its representatives, or fails or refuses to make a good faith effort to resolve any dispute, the Commission may terminate its efforts to conciliate the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful.

C. Refusal of complainant to agree

If a complainant fails or refuses to agree to the terms of a conciliation agreement or settlement that the Commission believes represents a just resolution of the complaint of discrimination, the Commission may execute a conciliation agreement with the respondent limited to assurances that the respondent will eliminate such unlawful discrimination and take any appropriate corrective action. The proceeding shall be dismissed upon ascertainment by the Commission's Executive Director or her/his designee that the terms of the signed agreement have been met. Where the complainant is not a party to such a conciliation agreement, the execution of the agreement by the Commission and the respondent shall not extinguish or in any way prejudice the complainant's right to pursue any and all appropriate individual remedies.

D. Confidentiality of conciliation efforts

Everything said or done during and as part of the Commission's informal endeavors to eliminate unlawful discrimination by conference, conciliation and persuasion is confidential and may not be disclosed without the written consent of the parties concerned or used as evidence in any subsequent proceeding, civil or criminal, except in a civil action alleging a breach of agreement filed by the Commission or a party. Notwithstanding this provision, the Commission and its employees have discretion to disclose such information to a party as is reasonably necessary to facilitate conciliation. In addition, the Commission will insist that the executed conciliation agreement contain a provision that the agreement shall be made public, unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act.

2.10 PROCEDURE AFTER FAILURE OF CONCILIATION

- A. If the Commission's Compliance Manager or her/his designee determines that conciliation efforts have failed, she/he shall so notify the complainant and respondent.

- B. When post-determination conciliation efforts have failed, the Commission Counsel or her/his designee is authorized to file a civil action in the Superior Court seeking appropriate relief, including, but not limited to, temporary restraining orders and preliminary injunctions.
- C. When the Commission's Counsel or her/his designee is unable to file expeditiously such a civil action, the Commission shall so notify the complainant of her/his right to file a civil action pursuant to 5 M.R.S.A. §4621, and make available a referral list of attorneys who have indicated an interest in undertaking such litigation. The Commission shall furnish to the complainant, the respondent, or their cooperating attorneys, upon request, with access to the investigatory case file and will provide such technical assistance as possible under the existing circumstances. Referral under this subsection does not terminate the Commission's jurisdiction of the proceeding.

2.11 TIME LIMITS

- A. When these regulations establish any time limit for the filing, submission, or production of any document, record, file or other possible source of evidence, or for the filing of any request with the Commission, such item must be received in the office of the Commission before the close of business on the last day of the time limit.
- B. In computing any period of time prescribed or allowed by these regulations, the day of the act, event or default from or after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal state or federal holiday, in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal state or federal holiday.
- C. The Commission's Executive Director or her/his designee, or the Commission, may extend any time limit provided in this chapter for good cause shown, and shall notify the parties of any such extension.

2.12 ADVISORY RULINGS

- A. Upon written request of any interested person, the Commission's Compliance Manager or her/his designee may make an advisory ruling with respect to the applicability of the Maine Human Rights Act or the rules promulgated by the Commission to that person or an actual state of facts.
- B. Advisory rulings made pursuant to this section shall not be binding upon the Commission, provided that, in any subsequent civil action initiated by the Commission, any person's justifiable reliance upon the ruling shall be considered in mitigation of any civil penal damages or punitive damages sought by the Commission.

STATUTORY AUTHORITY: This rule is adopted pursuant to 5 M.R.S.A. §4566(7).

94-348 ADOPTED CHANGES TO RULES

Me. Hum. Rights Comm'n Reg., Chapter 6, is rescinded in its entirety.

**Chapter 6: ACCESSIBILITY REQUIREMENTS FOR PUBLIC
 ACCOMMODATIONS AND PLACES OF EMPLOYMENT**

94-348 ADOPTED CHANGES TO RULES

Me. Hum. Rights Comm'n Reg., Chapter 7, is revised as follows:

Chapter 7: ACCESSIBILITY REGULATIONS OF THE MAINE HUMAN RIGHTS COMMISSION

PART ONE - GENERAL

7.00 Application

A. General

This Chapter applies to any -

- (1) Public accommodation;
- (2) Commercial facility; or
- (3) Private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.

B. Public accommodations

- (1) The requirements of this Chapter applicable to public accommodations are set forth in Parts Two, Three, and Four of this Chapter.
- (2) The requirements of Parts Two and Three of this Chapter obligate a public accommodation only with respect to the operations of a place of public accommodation.
- (3) The requirements of Part Four of this Chapter obligate a public accommodation only with respect to-
 - (i) A facility used as, or designed or constructed for use as, a place of public accommodation; or
 - (ii) A facility used as, or designed and constructed for use as, a commercial facility.

C. Commercial facilities

The requirements of this Chapter applicable to commercial facilities are set forth in Part Four of this Chapter.

D. **Examinations and courses**

The requirements of this Chapter applicable to private entities that offer examinations or courses as specified in paragraph (a) of this section are set forth in Sec. 7.23.

E. **Exemptions and exclusions**

This Chapter does not apply to any private club (except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation), or to any religious entity (unless the building or facility is open to the public for any reason).

7.01 Definitions

1991 Standards means requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to 28 CFR part 36.

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in subpart D of 28 CFR part 36.

Alteration means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Current illegal use of drugs means illegal use of drugs 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.

Drug means a controlled substance, as defined in the State or federal Controlled Substances Act.

Existing facility means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the State or federal Controlled Substances Act. The term “illegal use of drugs” does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the State or federal Controlled Substances Act or other provisions of State or federal law.

New construction includes, but is not limited to, the design and construction of a facility for first occupancy or an alteration if the cost of the alteration is 75% or more of the replacement cost of the completed facility.

Other power-driven mobility device means any mobility device powered by batteries, fuel, or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. 12207(c)(2).

Physical or mental disability is defined in 5 M.R.S. §4553-A.

Place of public accommodation means a facility, operated by a public or private entity, whose operations fall within at least one of the following categories:

- (1) A place of lodging, whether conducted for the entertainment or accommodation of transient guests or those seeking health, recreation or rest. For purposes of this Chapter, a facility is a "place of lodging" if it is –
 - (i) An inn, hotel, or motel; or
 - (ii) A facility that –
 - (A) Provides guest rooms for sleeping for stays that primarily are short-term in nature (generally 30 days or less) where the occupant does not have the right to return to a specific room or unit after the conclusion of his or her stay; and
 - (B) Provides guest rooms under conditions and with amenities similar to a hotel, motel, or inn, including the following –
 - (1) On- or off-site management and reservations service;
 - (2) Rooms available on a walk-up or call-in basis;
 - (3) Availability of housekeeping or linen service; and

- (4) Acceptance of reservations for a guest room type without guaranteeing a particular unit or room until check-in, and without a prior lease or security deposit.
- (2) A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;
- (3) A motion picture house, theater, concert hall, stadium, roof garden, airdome or other place of exhibition or entertainment;
- (4) An auditorium, convention center, lecture hall or other place of public gathering;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;
- (6) A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment;
- (7) All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation;
- (8) A museum, library, gallery or other place of public display or collection;
- (9) A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course, golf club, country club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, seashore accommodation or boardwalk or other place of recreation, exercise or health;
- (10) A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;
- (11) A day-care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;
- (12) Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants;
- (13) A municipal building, courthouse, town hall or other establishment of the State or a local government; and
- (14) Any establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public.

Private club means a private club or establishment exempted from coverage under Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a (e)).

Private entity means a person or entity other than a public entity.

Public entity means -

- (1) Any State or local government;
- (2) Any department, agency, special purpose district, or other instrumentality of the State or local government; and
- (3) A state, local or private commuter authority as defined in the federal Rail Passenger Service Act, Section 103 (8).

Public accommodation means a public or private entity that owns, leases, leases to or operates a place of public accommodation.

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include:

- (1) The nature and cost of the action needed under this Chapter;
- (2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- (3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- (4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Religious entity means a religious organization, including a place of worship.

Service animal means a 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 such work or tasks include, but are not limited to, assisting an individual who is totally or partially blind with navigation and other tasks, alerting an individual who is deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting an individual to the presence of allergens, retrieving items such as medicine or a telephone, providing physical support and assistance with balance and stability to an individual with a mobility disability and helping a person with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors. 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.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

Undue burden means an action requiring undue financial or administrative hardship. In determining whether an action would result in an undue burden, factors to be considered include:

- (1) The nature and cost of an accommodation needed under this Act;
- (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or the impact otherwise of the action upon the operation of the facility;
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities;
- (4) The type of operation or operations of the covered entity, including the composition, structure and functions of the work force of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity;
- (5) All the resources available to meet the costs of the accommodation, including any government funding or other grants available for making public accommodations and places of employment accessible;
- (6) The extent to which current costs of accommodations have been minimized by past efforts to provide equal access to persons with physical or mental disabilities;

- (7) The extent to which resources spent on improving inaccessible equipment or service could have been spent on making an accommodation so that service or equipment is accessible to individuals with physical or mental disabilities, as well as the individuals without physical or mental disabilities;
- (8) Documented good faith efforts to explore less restrictive or less expensive alternatives;
- (9) The availability of equipment and technology for the accommodation;
- (10) Whether an accommodation would result in a fundamental change in the nature of the public accommodation;
- (11) Efforts to minimize costs by spreading costs over time; and
- (12) The extent to which resources saved by failing to make an accommodation for persons who have physical or mental disabilities could have been saved by cutting cost in equipment or services for the general public.

“Undue burden” is a higher standard than “readily achievable” and requires a greater level of effort on the part of the public accommodation.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 7.17(F).

Wheelchair means 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. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

PART TWO - GENERAL REQUIREMENTS

7.02 General

A. Prohibition of discrimination

No individual shall be discriminated against on the basis of physical or mental disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any public or private entity who owns, leases (or leases to), or operates a place of public accommodation.

B. Landlord and tenant responsibilities

Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

7.03 Activities

A. Denial of participation

A public accommodation shall not subject an individual or class of individuals on the basis of a physical or mental disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

B. Participation in unequal benefit

A public accommodation shall not afford an individual or class of individuals, on the basis of physical or mental disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

C. Separate benefit

A public accommodation shall not provide an individual or class of individuals, on the basis of a physical or mental disability or disabilities of such individual or class directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

D. Individual or class of individuals

For purposes of this subsection, the term “individual” or “class of individuals” refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement.

7.04 Integrated Settings

(a) **General**

A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a physical or mental disability in the most integrated setting appropriate to the needs of the individual.

(b) **Opportunity to participate**

Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a physical or mental disability an opportunity to participate in such programs or activities that are not separate or different.

(c) **Accommodations and services**

(1) Nothing in this part shall be construed to require an individual with a physical or mental disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

7.05 Administrative Methods

A public accommodation shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods or administration that have the effect of discriminating on the basis of physical or mental disability, or that perpetuate the discrimination of others who are subject to common administrative control.

7.06 Association

A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known physical or mental disability of an individual with whom the individual or entity is known to have a relationship.

7.07 Retaliation or Coercion

- A. No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this Chapter.
- B. No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this Chapter.
- C. Illustrations of conduct prohibited by this section include, but are not limited to:
 - (1) Coercing an individual to deny or limit the benefits, services, or advantages to which he or she is entitled under the Act or this Chapter;
 - (2) Threatening, intimidating, or interfering with an individual with a disability who is seeking to obtain or use the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation;
 - (3) Intimidating or threatening any person because that person is assisting or encouraging an individual or group entitled to claim the rights granted or protected by the Act or this part to exercise those rights; or
 - (4) Retaliating against any person because that person has participated in any investigation or action to enforce the Act or this Chapter.

7.08 Places of Public Accommodation Located in Private Residences

- A. When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this Chapter, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for residential purposes is covered by this Chapter.
- B. The portion of the residence covered under paragraph (a) of this section extends to those elements used to enter the place of public accommodation, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by customers or clients, including restrooms.

7.09 Direct Threat

- A. This Chapter does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages

and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others.

- B. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.
- C. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or 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 or the provision of auxiliary aids or services will mitigate the risk.

7.10 Illegal Use of Drugs

A. General

- (1) Except as provided in paragraph (b) of this section, this Chapter does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.
- (2) A public accommodation shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who-
 - (i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;
 - (ii) Is participating in a supervised rehabilitation program; or
 - (iii) Is erroneously regarded as engaging in such use.

B. Health and drug rehabilitation services

- (1) A public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.
- (2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

C. Drug testing

- (1) This part does not prohibit a public accommodation from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who

formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

- (2) Nothing in this paragraph (c) shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

7.11 Smoking

This Chapter does not preclude the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation.

7.12 Maintenance of Accessible features

- A. A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with physical or mental disabilities by the Act or this Chapter.
- B. This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.
- C. If the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 Standards, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.

7.13 Insurance

- A. This Chapter shall not be construed to prohibit or restrict-
 - (1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
 - (2) A person or organization covered by this Chapter from establishing the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
 - (3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.
- B. Paragraphs (a) (1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of the Act or this Chapter.

- C. A public accommodation shall not refuse to serve an individual with a physical or mental disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

7.14 Relationship of Part Two to Parts Three and Four of This Chapter

Part Two of this Chapter sets forth the general principals of nondiscrimination applicable to all entities subject to this Chapter. Parts Three and Four of this Chapter provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

PART THREE - SPECIFIC REQUIREMENTS

7.15 Eligibility Criteria

- A. **General**

A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with physical or mental disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

- B. **Safety**

A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with physical or mental disabilities.

- C. **Charges**

A public accommodation may not impose a surcharge on a particular individual with a physical or mental disability or any group of individuals with physical or mental disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this Chapter.

7.16 Modifications in policies, practices, or procedures

- A. **General**

A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with physical or mental disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

B. Specialties

(1) General

A public accommodation may refer an individual with a physical or mental disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation's area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a physical or mental disability who seeks or requires the same treatment or services.

(2) Illustration - medical specialties

A health care provider may refer an individual with a physical or mental disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a physical or mental disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition is not required to treat the individual for a different condition.

C. Service animals

(1) Policies, practices, and procedures

Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) Removal of service animal

A public accommodation may ask an individual with a disability to remove a service animal from the premises if:

(i) The animal is out of control and the animal's handler does not take effective action to control it; or

(ii) The animal is not housebroken.

(3) If an animal is properly excluded

If a public accommodation properly excludes a service animal pursuant to section 7.16(C)(2), it shall give the individual with a disability the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.

(4) Animal under handler's control

A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (*e.g.*, voice control, signals, or other effective means).

(5) Care or supervision

A public accommodation is not responsible for the care or supervision of a service animal.

(6) Inquiries

A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (*e.g.*, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(7) Access to areas of a public accommodation

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.

(8) Surcharges

A public accommodation shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public accommodation normally charges individuals for the damage they cause, an individual with a

disability may be charged for damage caused by his or her service animal.

D. Check-out aisles

A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with physical or mental disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

E. Reservations made by places of lodging

- (1) A public accommodation that owns, leases (or leases to), or operates a place of lodging shall, with respect to reservations made by any means, including by telephone, in-person, or through a third party –
 - (i) Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;
 - (ii) Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs;
 - (iii) Ensure that accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented and the accessible room requested is the only remaining room of that type;
 - (iv) Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest rooms requested are blocked and removed from all reservations systems; and
 - (v) Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others.

(2) Exception

The requirements in paragraphs (iii), (iv), and (v) of this subsection do not apply to reservations for individual guest rooms or other units not owned or substantially controlled by the entity that owns, leases, or operates the overall facility.

F. **Ticketing**

(1)

(i) For the purposes of this subsection, "accessible seating" is defined as wheelchair spaces and companion seats that comply with sections 221 and 802 of the 2010 Standards along with any other seats required to be offered for sale to the individual with a disability pursuant to paragraph (4) of this subsection.

(ii) **Ticket sales**

A public accommodation that sells tickets for a single event or series of events shall modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating –

- (A) During the same hours;
- (B) During the same stages of ticket sales, including, but not limited to, pre-sales, promotions, lotteries, wait-lists, and general sales;
- (C) Through the same methods of distribution;
- (D) In the same types and numbers of ticketing sales outlets, including telephone service, in-person ticket sales at the facility, or third-party ticketing services, as other patrons; and
- (E) Under the same terms and conditions as other tickets sold for the same event or series of events.

(2) **Identification of available accessible seating**

A public accommodation that sells or distributes tickets for a single event or series of events shall, upon inquiry –

- (i) Inform individuals with disabilities, their companions, and third parties purchasing tickets for accessible seating on behalf of individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event or events at the facility;
- (ii) Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to assess independently whether a given accessible seating location meets his or her accessibility needs; and
- (iii) Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating and information relevant thereto with the same text or

visual representations as other seats, if such materials are provided to the general public.

(3) **Ticket prices**

The price of tickets for accessible seating for a single event or series of events shall not be set higher than the price for other tickets in the same seating section for the same event or series of events. Tickets for accessible seating must be made available at all price levels for every event or series of events. If tickets for accessible seating at a particular price level cannot be provided because barrier removal in an existing facility is not readily achievable, then the percentage of tickets for accessible seating that should have been available at that price level but for the barriers (determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area) shall be offered for purchase, at that price level, in a nearby or similar accessible location.

(4) **Purchasing multiple tickets**

(i) **General**

For each ticket for a wheelchair space purchased by an individual with a disability or a third-party purchasing such a ticket at his or her request, a public accommodation shall make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that at the time of purchase there are three such seats available. A public accommodation is not required to provide more than three contiguous seats for each wheelchair space. Such seats may include wheelchair spaces.

(ii) **Insufficient additional contiguous seats available**

If patrons are allowed to purchase at least four tickets, and there are fewer than three such additional contiguous seat tickets available for purchase, a public accommodation shall offer the next highest number of such seat tickets available for purchase and shall make up the difference by offering tickets for sale for seats that are as close as possible to the accessible seats.

(iii) **Sales limited to fewer than four tickets**

If a public accommodation limits sales of tickets to fewer than four seats per patron, then the public accommodation is only obligated to offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as it would offer to patrons without disabilities.

(iv) **Maximum number of tickets patrons may purchase exceeds four**

If patrons are allowed to purchase more than four tickets, a public accommodation shall allow patrons with disabilities to purchase up to the same number of tickets, including the ticket for the wheelchair space.

(v) **Group sales**

If a group includes one or more individuals who need to use accessible seating because of a mobility disability or because their disability requires the use of the accessible features that are provided in accessible seating, the group shall be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the individuals in the group who use wheelchairs are not isolated from their group.

(5) **Hold and release of tickets for accessible seating**

(i) **Tickets for accessible seating may be released for sale in certain limited circumstances**

A public accommodation may release unsold tickets for accessible seating for sale to individuals without disabilities for their own use for a single event or series of events only under the following circumstances –

- (A) When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
- (B) When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
- (C) When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

(ii) **No requirement to release accessible tickets**

Nothing in this paragraph requires a facility to release tickets for accessible seating to individuals without disabilities for their own use.

(iii) **Release of series-of-events tickets on a series-of-events basis**

- (A) **Series-of-events tickets sell-out when no ownership rights are attached**

When series-of-events tickets are sold out and a public accommodation releases and sells accessible seating to individuals without disabilities for a series of events, the public accommodation shall establish a process that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series, so that individuals with disabilities who require the features of accessible seating and who become newly eligible to purchase tickets when these series-of-events tickets are available for purchase have an opportunity to do so.

(B) Series-of-events tickets when ownership rights are attached

When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to a public accommodation, the public accommodation shall make reasonable modifications in its policies, practices, or procedures to afford individuals with mobility disabilities or individuals with disabilities that require the features of accessible seating an opportunity to purchase such tickets in accessible seating areas.

(6) Ticket transfer

Individuals with disabilities who hold tickets for accessible seating shall be permitted to transfer tickets to third parties under the same terms and conditions and to the same extent as other spectators holding the same type of tickets, whether they are for a single event or series of events.

(7) Secondary ticket market

- (i) A public accommodation shall modify its policies, practices, or procedures to ensure that an individual with a disability may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who hold a ticket acquired in the secondary ticket market for the same event or series of events.
- (ii) If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, a public accommodation shall make reasonable modifications to its policies, practices, or procedures to allow the individual to exchange his ticket for one to an accessible seat in a comparable location if accessible seating is vacant at the time the individual presents the ticket to the public accommodation.

(8) Prevention of fraud in purchase of tickets for accessible seating

A public accommodation may not require proof of disability, including, for example, a doctor's note, before selling tickets for accessible seating.

(i) **Single-event tickets**

For the sale of single-event tickets, it is permissible to inquire whether the individual purchasing the tickets for accessible seating has a mobility disability or a disability that requires the use of the accessible features that are provided in accessible seating, or is purchasing the tickets for an individual who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(ii) **Series-of-events tickets**

For series-of-events tickets, it is permissible to ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating.

(iii) **Investigation of fraud**

A public accommodation may investigate the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

7.17 Auxiliary Aids and Services

A. General

A public accommodation shall take those steps that may be necessary to ensure that no individual with a physical or mental disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

B. Examples

The term "auxiliary aids and services" includes:

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems;

telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

C. **Effective communication.**

- (1) A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with physical or mental disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities.
 - (i) For purposes of this section, "companion" means a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate.
 - (ii) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the public accommodation, provided that the method chosen results in effective communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

- (2) A public accommodation shall not require an individual with a disability to bring another individual to interpret for him or her.
- (3) A public accommodation shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –
 - (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
- (4) A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

D. Telecommunications

- (1) When a public accommodation uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.
- (2) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using the public accommodation's equipment on more than an incidental convenience basis shall make available public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.
- (3) A public accommodation may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.
- (4) A public accommodation shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.
- (5) This part does not require a public accommodation to use a TTY for receiving or making telephone calls incident to its operations.

E. **Closed caption decoders**

Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

F. **Video remote interpreting (VRI) services**

A public accommodation that chooses to provide qualified interpreters via VRI service shall ensure that it provides –

- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
- (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
- (3) A clear, audible transmission of voices; and
- (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

G. **Alternatives**

If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, service, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with physical or mental disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

7.18 **Removal of Barriers**

A. **General**

A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

B. **Examples**

Examples of steps to remove barriers include, but are not limited to, the following actions -

- (1) Installing ramps;
- (2) Making curb cuts in sidewalks and entrances;
- (3) Repositioning shelves;
- (4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
- (5) Repositioning telephones;
- (6) Adding raised markings on elevator buttons;
- (7) Installing flashing alarm lights;
- (8) Widening doors;
- (9) Installing offset hinges to widen doorways;
- (10) Eliminating a turnstile or providing an alternative accessible path;
- (11) Installing accessible door hardware;
- (12) Installing grab bars in toilet stalls;
- (13) Rearranging toilet partitions to increase maneuvering space;
- (14) Insulating lavatory pipes under sinks to prevent burns;
- (15) Installing a raised toilet seat;
- (16) Installing a full-length bathroom mirror;
- (17) Repositioning the paper towel dispenser in a bathroom;
- (18) Creating designated accessible parking spaces;
- (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- (20) Removing high pile, low density carpeting; or
- (21) Installing vehicle hand controls.

C. Priorities

A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order or priorities.

- (1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.
- (2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.
- (3) Third, a public accommodation should take measures to provide access to rest room facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.
- (4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

D. Relationship to alterations requirements of 5 M.R.S. §4594-G

- (1) Except as provided in paragraph (D)(3) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in 5 M.R.S. §4594-G for the element being altered. The path of travel requirements shall not apply to measures taken solely to comply with the barrier removal requirements of this section.
- (2) The safe harbor provided in 28 CFR 36.304(d)(2) shall apply to the barrier removal requirements of this section.
- (3) If, as a result of compliance with the alterations requirements specified in paragraph (D)(1) and (D)(2) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of individuals with physical or mental disabilities or others.

E. **Portable ramps**

Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable. In order to avoid any significant risk to the health or safety of individuals with physical or mental disabilities or others in using portable ramps, due consideration shall be given to safety features such as non-slip surfaces, railings, anchoring, and strength of materials.

F. **Selling or serving space**

The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

G. **Limitation on barrier removal obligations**

- (1) The requirements for barrier removal under Sec. 7.18 shall not be interpreted to exceed the standards for alterations in 5 M.R.S. §4594-G.
- (2) To the extent that relevant standards for alterations are not provided in 5 M.R.S. §4594-G, then the requirements of Sec. 7.18 shall not be interpreted to exceed the standards for new construction in 5 M.R.S. §4594-G.
- (3) This section does not apply to rolling stock and other conveyances to the extent that Sec. 7.24 applies to rolling stock and other conveyances.
- (4) This requirement does not apply to guest rooms in existing facilities that are places of lodging where the guest rooms are not owned by the entity that owns, leases, or operates the overall facility and the physical features of the guest room interiors are controlled by their individual owners.

7.19 Alternatives to Barrier Removal

A. **General**

Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

B. **Examples**

Examples of alternatives to barrier removal include, but are not limited to, the following actions -

- (1) Providing curbside service or home delivery;
- (2) Retrieving merchandise from inaccessible shelves or racks;

- (3) Relocating activities to accessible locations;

C. Multiscreen cinemas

If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.

7.20 Personal Devices and Services

This Chapter does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.

7.21 Accessible or Special goods

- A. This Chapter does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with physical or mental disabilities.
- B. A public accommodation shall order accessible or special goods at the request of an individual with physical or mental disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.
- C. Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary needs.

7.22 Seating in Assembly Areas

A public accommodation shall ensure that wheelchair spaces and companion seats are provided in each specialty seating area that provides spectators with distinct services or amenities that generally are not available to other spectators. If it is not readily achievable for a public accommodation to place wheelchair spaces and companion seats in each such specialty seating area, it shall provide those services or amenities to individuals with disabilities and their companions at other designated accessible locations at no additional cost. The number of wheelchair spaces and companion seats provided in specialty seating areas shall be included in, rather than in addition to, wheelchair space requirements set forth in table 221.2.1.1 in the 2010 Standards.

7.23 Examinations and Courses

- A. **General**

Any public or private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with physical or mental disabilities or offer alternative accessible arrangements for such individuals.

B. Examinations

- (1) Any public or private entity offering an examination covered by this section must assure that-
 - (i) The examination is selected and administered so as to best ensure that when the examination is administered to an individual with a physical or mental disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the examination purports to measure);
 - (ii) An examination that is designed for individuals with impaired sensory, manual, or speaking skills is offered at equally convenient locations, as often, and in as timely a manner as are other examinations; and
 - (iii) The examination is administered in facilities that are accessible to individuals with physical or mental disabilities or alternative accessible arrangements are made.
 - (iv) Any request for documentation, if such documentation is required, is reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
 - (v) When considering requests for modifications, accommodations, or auxiliary aids or services, the entity gives considerable weight to documentation of past modifications, accommodations, or auxiliary aids or services received in similar testing situations, as well as such modifications, accommodations, or related aids and services provided in response to an Individualized Education Program (IEP) provided under the Individuals with Disabilities Education Act or a plan describing services provided pursuant to section 504 of the Rehabilitation Act of 1973, as amended (often referred as a Section 504 Plan).
 - (vi) The entity responds in a timely manner to requests for modifications, accommodations, or aids to ensure equal opportunity for individuals with disabilities.

- (2) Required modifications to an examination may include changes in the length of time permitted for completion of the examination and adaptation of the manner in which the examination is given.
- (3) A public or private entity offering an examination covered by this section shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills, unless that public or private entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden. Auxiliary aids and services required by this section may include taped examinations, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments or learning disabilities, transcribers for individuals with manual impairments, and other similar services and actions.
- (4) Alternative accessible arrangements may include, for example, provision of an examination at an individual's home with a proctor if accessible facilities or equipment are unavailable. Alternative arrangements must provide comparable conditions to those provided for non-disabled individuals.

C. Courses

- (1) Any public or private entity that offers a course covered by this section must make such modifications to that course as are necessary to ensure that the place and manner in which the course is given are accessible to individuals with physical or mental disabilities.
- (2) Required modifications may include changes in the length of time permitted for the completion of the course, substitution of specific requirements, or adaptation of the manner in which the course is conducted or course materials are distributed.
- (3) A public or private entity that offers a course covered by this section shall provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills, unless the public or private entity can demonstrate that offering a particular auxiliary aid or service would fundamentally alter the course or would result in an undue burden. Auxiliary aids and services required by this section may include taped texts, interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments, Brailled or large print texts or qualified readers for individuals with visual impairments and learning disabilities, classroom equipment adapted for use by individuals with manual impairments, and other similar services and actions.

- (4) Courses must be administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements must be made.
- (5) Alternative accessible arrangements may include, for example, provision of the course through videotape, cassettes, or prepared notes. Alternative arrangements must provide comparable conditions to those provided for non-disabled individuals.

7.24 Transportation Provided by Public Accommodations

A. General

- (1) A public accommodation that provides transportation services, but that is not primarily engaged in the business of transporting people, is subject to the general and specific provisions in Parts Two, Three, and Four of this Chapter for its transportation operations, except as provided in this section.
- (2) Examples

Transportation services subject to this section include, but are not limited to, shuttle services operated between transportation terminals and places of public accommodation, customer shuttle bus services operated by public or private companies and shopping centers, student transportation systems, and transportation provided within recreational facilities such as stadiums, zoos, amusement parks, and ski resorts.

B. Barrier removal

A public accommodation subject to this section shall remove transportation barriers in existing vehicles and rail passenger cars used for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift) where such removal is readily achievable.

C. Requirements for vehicles and systems

A public accommodation subject to this section shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Secretary of Transportation pursuant to section 306 of the Americans with Disabilities Act.

7.25 Mobility devices

A. Use of wheelchairs and manually-powered mobility aids

A public accommodation shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches,

canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.

B.

(1) **Use of other power-driven mobility devices**

A public accommodation shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public accommodation can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public accommodation has adopted pursuant to 7.15(B).

(2) **Assessment factors**

In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (B)(1) of this section, a public accommodation shall consider –

- (i) The type, size, weight, dimensions, and speed of the device;
- (ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (iii) The facility's design and operational characteristics (*e.g.*, whether its business is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- (iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- (v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

C.

(1) **Inquiry about disability**

A public accommodation shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

(2) **Inquiry into use of other power-driven mobility device**

A public accommodation may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. A public accommodation

that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued disability parking placard or card, or State-issued proof of disability, as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public accommodation shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A "valid" disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

PART FOUR - NEW CONSTRUCTION AND ALTERATIONS

The standards for new construction of and alterations to places of public accommodations and commercial facilities are set forth in 5 M.R.S. §4594-G.

STATUTORY AUTHORITY: This rule is adopted pursuant to 5 M.R.S.A. §4566(7).