

Chapter 7: PUBLIC ACCOMMODATIONS REGULATIONS OF THE MAINE HUMAN RIGHTS COMMISSION

7.00 Purpose, Effect, and Construction

1. Purpose

Pursuant to 5 M.R.S. § 4566(7), the Maine Human Rights Commission (“Commission”) has adopted the following regulations to implement Subchapter 5 of the Maine Human Rights Act, 5 M.R.S. §§ 4551-4634 (“the Act” or “MHRA”), which prohibits discrimination by public accommodations because of protected class status.

2. Effect

These regulations shall be accorded the full force and effect of interpretative administrative regulations.

3. Construction

- A. Consistent with the public policy underlying the Act (as expressed in § 4552), and with firmly established principles for the interpretation of such humanitarian legislation, the remedial provisions of the Act shall be given broad construction and its exceptions shall be construed narrowly.
- B. The provisions of these regulations are severable. If any provision or the application of any provision of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

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. Where there is a conflict between State and federal law regarding the categorization of a drug as a controlled substance (such as adult-use marijuana), State law will prevail except where the receipt of federal funds or participation in federal programs requires the application of federal standards.

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. Where there is a conflict between State and federal law regarding the categorization of a drug as a controlled substance (such as adult-use marijuana), State law will prevail except where the receipt of federal funds or participation in federal programs requires the application of federal standards.

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, whether or not the “establishment” maintains a physical building or location that is open to the public (i.e., an internet-based business).

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.

Protected class means the classes listed in 5 M.R.S. § 4591. *Protected class* also includes being perceived as a member of a protected class, as well as having a known relationship or association with a member of a protected class. *Protected class* also includes traits associated with protected class status, such as natural hair textures, Afro styles and protective hair styles (such as braids, twists, and locks) or protected-class related body modifications.

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, or which provides goods or services to the public, whether with or without a physical location open to the public (i.e., an internet-based business).

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 bona fide religious organization, including a place of worship, which does not receive public funds.

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, except that miniature horses trained to do work or perform tasks for individuals with disabilities must be permitted where reasonable. 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.

When determining whether it is reasonable for a covered entity to permit the use of a miniature horse as a service animal, the entity may consider the following assessment factors: (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the covered entity can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will compromise legitimate safety requirements necessary for safe operation of the covered entity.

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).

7.02 General

A. Prohibition of discrimination

No individual shall be discriminated against on the basis of protected class 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, but that allocation shall not be binding on the Commission when investigating and determining whether or not any covered entity has violated the Act.

C. Restrictions based on age

It is not considered unlawful discrimination for a place of public accommodation to deny access to its goods and services based on age in order to comply with generally-applicable health and safety laws or regulations. For example, it is not unlawful for a bar to deny access to individuals who are not yet legally permitted to drink alcoholic beverages, or for a store to refuse to sell goods, such as cigarettes, to individuals who have not yet reached the legal age for use of those goods, or for a preschool program to refuse to enroll adults.

7.03 Activities: Individuals with Disabilities

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 Reasonable Accommodations: Individuals with Disabilities

A. Integrated Settings

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. 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.

B. 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.

C. Reasonable accommodations/modifications

It is unlawful public accommodations discrimination for a covered entity to fail to make reasonable modifications in its policies, practices, or procedures when necessary to afford its goods, services, or other accommodations to individuals due to based on disability. Reasonable modifications may include, but are not limited to: modifications to dress codes, providing alternative methods for accessing goods or services (such as curbside pickup for retail purchases), or changes to seating type or location (such as at a theater).

In the case of a private entity, the private entity need not make the requested modification if it demonstrates that doing so would fundamentally alter the nature of its goods, services, or accommodations.

D. Auxiliary aids and services

In addition to making reasonable modifications to policies and practices, a public accommodation must provide auxiliary aids and services when necessary to ensure that no individual is excluded, denied services, segregated, or otherwise discriminated against based on disability. Auxiliary aids and services may include, but are not limited to, sign language interpreters, foreign language translators, Braille texts, or a reader or taped reading of written materials. In the case of a private entity, the private entity need not provide the requested auxiliary aid/service if it demonstrates that doing so would fundamentally alter the nature of its goods, services, or accommodations.

E. Service animals

It is unlawful for a public accommodation or its agents to refuse to permit the use of a service animal or otherwise discriminate against an individual with a disability who uses a service animal at the place of public accommodation, except that a service animal may be excluded from the public accommodation if it poses a direct threat to the health or safety of others, would result in substantial physical damage to the property of others, or would substantially interfere with the reasonable enjoyment of the public accommodation by others.

If the individual's need for a service animal is not readily observable, a public accommodation can ask two questions to determine whether or not the animal is a service animal that must be permitted: 1) Is the animal necessary because of a disability, and 2) what task or service has the animal been trained to perform. A public accommodation cannot ask for medical information, information about the individual's disability, proof that the animal has been trained, or proof that the animal has been spayed/neutered or vaccinated.

Service animals are not required to wear identification such as a vest or special harness. There is no requirement of formal training, and no special license for a service animal. Requests for "proof" such as certificates or licenses indicating that an animal is a service animal are impermissible. The fact that an individual with an animal has obtained such a document or that an animal is wearing a vest is not relevant to the question of whether the animal is a service animal within the meaning of the Act.

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. Public accommodations are not responsible for care or supervision of a service animal.

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

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

- (2) The animal is not housebroken.

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

The use of a service animal may not be conditioned on payment of a fee or deposit. If the public accommodation normally charges individuals for damage they cause, the individual is liable for any damage to the premises or facilities by the individual's service animal.

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 protected class status 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~~ their having exercised or enjoyed, or on account of ~~his or her~~ their 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 they are 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 sufficiently mitigate the risk.

7.10 Illegal Use of Drugs

- A. **General**
 - (1) Except as provided in subparagraph (2) 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. This includes the denial of continued access to the program, and removal from the premises, including any lodging or other facilities provided for program participants.

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 Single-occupancy toilet facilities: discrimination based on sex and sexual orientation or gender identity

It is unlawful for a place of public accommodation to designate a single-occupancy toilet facility as for use only by members of one sex. The toilet facility may be identified by a sign, but the sign cannot indicate that only individuals of a particular sex may use the facility. For the purposes of this subsection, a “single-occupancy toilet facility” is a restroom for use by one person at a time, or for family or assisted use, and that has an outer door that can be locked by the occupant.

A single-occupancy toilet facility may be identified as accessible by individuals with disabilities consistent with the accessibility requirements below.

SPECIFIC REQUIREMENTS

The following portions of this Chapter provide guidance on the application of the statute to specific situations specifically related to allowing individuals with disabilities access to places of public accommodation and the goods and services provided by public accommodations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

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. 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.

B. 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.

C. 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.

D. 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: Individuals with Disabilities**

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 another 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.

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.

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July 20, 2005 – filing 2005-295 adding 7.01(6)
March 21, 2007 – filing 2007-106, redefined “physical or mental disability” in 7.01, added “physical or mental” before the words “disability” and “disabilities” in many places throughout the chapter; some renumbering
April 14, 2008 - filing 2008-163, removed “Physical or mental disability” from Definitions in 7.01
November 19, 2008 – filing 2008-536, Sections 7.01 and 7.16(C)
November 26, 2012 – filing 2012-334
December 10, 2022 – filing 2022-237