



Office of the Commissioner

ADA Title II, Requests to Modify Programs, Services or Activities

Policy #: DHHS-01-18

Issue Date: 05/01/18

Revised Date: 10/19/18

I. SUBJECT

Policy Regarding Modification Requests Under Title II of the Americans with Disabilities Act

II. INTRODUCTION

The Maine Department of Health and Human Services is committed to ensuring that people have an equal opportunity to live a safe, healthy, and productive life and have equal access to the Department's programs, services, and activities.

The Maine Department of Health and Human Services is committed to ensuring that no one will be excluded from participation in or be denied the benefits of the policies, programs, services, or activities of the Department, or be otherwise discriminated against on the basis of disability.

The Maine Department of Health and Human Services is committed to complying with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*¹), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 *et seq.*²), and the Maine Human Rights Act³ by providing modifications to its policies, programs, services, and activities to individuals when the modifications are necessary, under applicable law, to avoid discrimination on the basis of disability, unless the modification fundamentally alters the nature of the policy, program, service, or activity, or causes an undue financial or administrative burden.

To effectuate these commitments, the Maine Department of Health and Human Services hereby adopts and publishes this ADA Title II Modification Request Policy ("Modification Request Policy").

III. SCOPE OF POLICY

This Modification Request Policy applies to requests for modification to policies, programs, services, and activities conducted or funded by the Maine Department of Health and Human Services. This Modification Request Policy does not apply to the terms and conditions of employment of any Department employee⁴.

Nothing in this Modification Request Policy limits, modifies, or supplants federal or state nondiscrimination laws or remedies.

¹ This federal law is available at <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html>.

² This federal law is available at <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html>.

³ This state law is available at <http://legislature.maine.gov/statutes/5/title5ch337sec0.html>.

⁴ The Department has a separate policy regarding employment-related accommodation requests under the Americans with Disabilities Act that can be found on the Department's website at <http://www.maine.gov/dhhs/>.

IV. IMPLEMENTATION

Each Department agency and all Department employees will follow this Modification Request Policy as set forth herein, and communicate commitment to this Policy to members of the public.

V. DESIGNEE FOR MODIFICATION REQUESTS

The Department will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this Modification Request Policy, including accepting and processing requests for modification to Department policies, programs, services, or activities. The designee's contact information, along with that of any other key personnel involved in the Modification Request process, will be posted on the Department's website⁵, included in the Department's "Nondiscrimination Notice"⁶ (see Appendix C) and with significant communications and publications, and provided to anyone who asks about or requests a modification.

As of the date of this Policy, the designee's contact information is:

ADA/Civil Rights Coordinator
11 State House Station
Augusta, ME 04333-0011
207.287.3707 (TTY: Maine Relay 711)
ADA-CivilRights.DHHS@maine.gov

VI. DEFINITIONS

- A. **"ADA/Civil Rights Coordinator" ("Coordinator")** means the employee(s) designated by the Department to coordinate its efforts to comply with and carry out its responsibilities under Title II of the Americans with Disabilities Act and this Modification Request Policy.
- B. **"Americans with Disabilities Act" ("ADA")** means the federal law, 42 U.S.C. §§ 12101 *et seq.*, which prohibits discrimination based on disability.
- C. **"Department"** means the Maine Department of Health and Human Services, or any of its authorized offices or agencies.
- D. **"Fundamental Alteration"** means a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.
- E. **"Individual"** means the person who is alleged to have a disability and is expected to benefit directly from the requested modification.
- F. **"Maine Human Rights Act"** means 5 M.R.S. §§ 4551, *et seq.* which prohibits discrimination based on many criteria, including physical or mental disability.

⁵ <http://www.maine.gov/dhhs/>

⁶ The Nondiscrimination Notice is posted on the Department's website at <http://www.maine.gov/dhhs/>

- G. “Modification”** means a modification or adjustment to a policy, program, service, or activity that is necessary to avoid discrimination on the basis of disability unless the modification would fundamentally alter the nature of the policy, program, service, or activity. (28 C.F.R. § 35.130(b)(7)). A “Modification” under this Modification Request Policy does not include employment related requests.
- H. “Modification Request” (“Request”)** means a written or oral request for a modification submitted in accordance with this Modification Request Policy. A Modification Request under this Modification Request Policy does not include employment related ADA requests.
- I. “Rehabilitation Act of 1973”** means Title 29, United State Code, §§ 701 *et seq.* which prohibits discrimination on the basis of disability.
- J. “Representative”** means a person acting on behalf of the individual who is alleged to have a disability and is expected to benefit directly from the requested modification.
- K. “Requester”** means the person making a Modification Request to the Department pursuant to this Modification Request Policy. The Requester may be either the Individual or his/her Representative.
- L. “Undue Burden”** means an action requiring undue financial or administrative hardship.

VII. UNIFORM PROCEDURES FOR REQUESTS TO MODIFY DEPARTMENT POLICIES, PROGRAMS, SERVICES, AND ACTIVITIES

A. Requesting a Modification

1. A Modification Request should be submitted to the ADA/Civil Rights Coordinator (See Section V above for the Coordinator’s contact information).
2. Requests may be submitted at any time.
3. Requests may be submitted by the Individual or his/her Representative.
4. Requests may be submitted either orally or in writing.
5. Written Requests may be submitted using the ADA Request for Modification form. This form is available online at <http://www.maine.gov/dhhs/> or from any Department employee or the Coordinator. (See Appendix A for the current Request template). Requests in other written formats will be accepted
6. Oral Requests may be submitted by speaking directly to the ADA/Civil Rights Coordinator. A supplemental written request must be submitted to the Coordinator within ten (10) business days of the oral request. At the time of the oral request, the Coordinator will inform the Requester of the need for a supplemental written request.

7. To ensure effective communication, the Coordinator will make alternate means of submitting Requests available for persons with limited English proficiency and/or disabilities affecting communication. Such alternate means of submission are available upon request to the Coordinator. When necessary, Requests taken by alternate means will be reduced to written form by the Coordinator.
8. In the event a Department employee other than the Coordinator receives a written ADA Modification Request, that employee will forward the written Request to the Coordinator, as soon as possible.
9. In the event a Department employee other than the Coordinator receives an oral ADA Modification Request, that employee will inform the Requester of the need to contact the Coordinator, will give the Requester the Coordinator's contact information, and will contact the Coordinator as soon as possible to notify him/her of the Request and the Requester's contact information.
10. Written Requests are deemed received on the date the Coordinator receives the ADA Modification Request form, or other substantially similar written document.
11. Oral Requests are deemed received on the date of the communication between the Requester and the Coordinator, and not the date the Coordinator receives the supplemental written Request, provided the Coordinator receives the supplemental written Request within ten (10) business days of the oral Request. In the event the Coordinator does not receive the supplemental written Request within this ten (10) business day period, processing the Request may be suspended pending receipt of the supplemental written Request.
12. Requesters are encouraged to make copies of their written Requests for their own records.
13. A Request does not have to include any special words, such as "reasonable modification," "disability," or "ADA". If the nature of the initial communication is unclear, the Coordinator will ask the Requester whether he/she intended to submit a Modification Request.
14. If a Request is denied for failure to participate in the process in a reasonably timely manner, the Individual or Representative may submit a subsequent Request for the same or similar modification.
15. If a Request is denied for a reason other than failure to participate in the process in a reasonably timely manner, a subsequent Request for the same or similar modification may not be submitted unless there is substantial change in factors relevant to the basis of the original Request.

B. Processing the Request

1. The Coordinator is responsible for processing Requests. The Department will designate another employee to process Requests if the Coordinator is unavailable for a significant length of time.
2. The Coordinator will review and decide Requests for Modification objectively, solely on the basis of information and documents provided to, or obtained by the Coordinator.

3. Department personnel knowledgeable about the Individual, and/or the policies, program, services, or activities underlying the Request will assist the Coordinator in processing the Request. This assistance will include, but is not limited to, obtaining and providing all relevant information and documentation the Coordinator determines to be reasonably necessary to evaluate the Request. To ensure a timely response to a Request, Department employees will obtain and provide all such relevant information and documentation in a timely manner.
4. The Department will use a collaborative process to determine what, if any, modification should be provided. This means that the Requester and/or Individual, if different, the Coordinator, and other relevant Department personnel will communicate about the Request. The communications may include, but are not limited to, the precise nature of the issue that is generating the Request, how a disability is prompting a need for a modification, the information and documents provided to the Coordinator by Department representatives, additional information and documents the Individual and/or Requester may wish to share with the Coordinator, alternate modifications that may be effective in meeting the Individual's needs, and other relevant matters.
5. The collaborative process will include, when beneficial, an in-person meeting with the Requester and/or Individual, if different, the Coordinator, and Department personnel from the agency responsible for the policy, program, service, or activity at issue.
6. The Coordinator will include a summary of the collaborative process in his/her Notice of Decision.
7. The Coordinator may not refuse to process a Request, and a Request may not be denied, solely because the Request could have been submitted at an earlier time.
8. Upon request, the Coordinator will make auxiliary aids and services, or language assistance services available to persons with limited English proficiency or disabilities when needed by them to participate in the Request process.

C. Requests for Information and/or Documentation

1. The Coordinator may determine that additional information and/or documentation, including confidential information and documentation, is necessary to evaluate the Request and/or design an appropriate and effective modification. This may include, but is not limited to, information and/or documentation from others, such as medical providers or other professionals, with expertise relevant to the disability and/or requested modification.
2. It is the responsibility of the Requester to provide any additional information and/or documentation, including confidential information and documentation, necessary to evaluate the Request.
3. In the event the additional information and/or documentation, including confidential information and documentation, has already been submitted to the Department in connection with another situation, the Requester may inform the Coordinator of this fact.

4. The Requester will produce the additional information and/or documentation, including confidential information and documentation, to the Coordinator within a reasonable time. If the Requester fails to provide information or documentation, including confidential information and documentation, sought by the Coordinator, in a reasonable time the Coordinator may set a deadline for compliance. If the Requester fails to comply with the deadline, such non-compliance may result in the denial of the Request.
5. The Requester may need to sign a limited release permitting the Coordinator to request information and/or documentation, including confidential information and/or documentation, from persons outside the Department. The Requester may choose to provide the requested information and/or documentation, including confidential information and/or documentation, independently to the Coordinator making the limited release unnecessary. Failure to provide this limited release, or, in the alternative, independently provide the information and/or documentation, may result in the denial of the Request.
6. In determining whether information and/or documentation, including confidential information and/or documentation, is necessary to support a Request for Modification and whether a person has a disability within the meaning of the ADA, the Coordinator will be guided by principles set forth in the ADA Amendments Act of 2008. Specifically, the ADA Amendments Act directs that the definition of "disability" be construed broadly and that the determination of whether an individual has a "disability" generally should not require extensive analysis.

D. Confidentiality/Privacy Requirements

1. Any confidential information and/or documentation obtained in connection with a Request will be kept confidential as required by the ADA, the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, its implementing regulations at 45 C.F.R. Parts 160 and 164, the Health Information Technology for Economic and Clinical Health, P.L. 111-5, and other applicable state and federal confidentiality laws.
2. In the event the Coordinator shares confidential information and/or documentation with other Department staff or third parties, the disclosure will be limited to the minimum extent reasonably necessary and the Coordinator will inform the recipient(s) of their obligation to comply with all privacy laws and regulations.

E. Time Frames for Processing Requests

1. Within five (5) business days of receiving the Request, the Coordinator will attempt to contact the Requester to acknowledge receipt and begin discussions about the Request.
2. The Coordinator will act expeditiously to process Requests and will issue written decisions on a Request in as short a period as reasonably possible. The time needed to process a Request will vary depending on a variety of factors related to the Request.
3. The Coordinator's failure to issue a written decision shall not be deemed agreement by the Department to implement the requested or any other modification.
4. If the Department receives a Request and determines that the Request is substantially similar to a matter being appealed through either an administrative appeal or grievance process the Coordinator will work with the Department and the Requester to minimize duplication of effort.

F. Extenuating Circumstances

If there are circumstances that could not reasonably have been anticipated or avoided in advance of the Request, or that are beyond the Department's ability to control, the time required to process a Request may be extended for as long as necessary to deal with the extenuating circumstance.

G. Modification Request Decision

1. The Coordinator will use a "Notice of Decision" form to communicate its decision regarding a Request (see Appendix B for the current Decision template). The Decision will state, among other things, the date of the Request, the name(s) and address(es) of the Individual and/or Requester, the nature of the request, a summary of the information and documents reviewed by the Coordinator, the dates, locations, and substance of any meetings with the Requester and Department representatives, and the date of the written decision.
2. The Coordinator will mail a copy of the Notice of Decision to the Requester and provide the Decision in an accessible format, if necessary, and will make a reasonable effort to communicate the decision directly to the Requester.
3. The Coordinator may approve the Request, deny the Request in its entirety, or approve and offer an alternate modification.
4. If the Request is denied in its entirety, or an alternate modification is offered in place of the requested modification, the Decision will explain the reasons for the denial or alternate modification. This explanation will clearly state the evidence received or considered and the specific reason(s) for the denial or alternate modification. Any claim of undue burden or fundamental alteration will be specifically addressed in the Decision.
5. If the Coordinator approves a modification, whether as originally requested, or in an alternate form, the Department will make reasonable efforts to contact the Requester to discuss implementation of the modification.
6. If the Coordinator approves a modification, whether as originally requested, or in an alternate form, but the modification cannot be provided immediately, the Coordinator will inform the Requester in writing of the projected time frame for providing the modification.

VIII. ADMINISTRATIVE APPEAL RIGHTS

A Requester who is dissatisfied with the Decision may appeal to the Department's Division of Administrative Hearings. The appeal must be submitted to the DHHS ADA/Civil Rights Coordinator by email (ADA-CivilRights.DHHS@maine.gov); phone (207-287-3707 (TTY: Maine Relay 711)); or mail (11 State House Station, Augusta, ME 04333-0011).

The appeal must be received within sixty (60) calendar days of the date of the Notice of Decision.

The Division of Administrative Hearings will assign a Hearing Officer to handle the appeal. The Hearing Officer will hold a hearing on the appeal and issue a Recommended Decision. The Commissioner of the Department will review the Recommended Decision and issue a Final Decision. Final Decisions are “Final Agency Action”.

Pursuant to 5 M.R.S. §§ 11001, *et seq.* and Maine Rule of Civil Procedure 80C, any person with legal standing may seek judicial review of Final Agency Action in the Superior Court by filing a petition for review.

The petition for review must be filed with the court within thirty (30) calendar days of receipt of the Final Agency Action.

IX. ADDITIONAL RIGHTS

You may have a right to file a complaint with the U.S. Department of Justice⁷ and/or the Maine Human Rights Commission⁸.

This Policy does not limit or supplant statutory or legal protections for persons with disabilities and the remedies they provide for the denial of modification requests. Requirements governing the initiation of statutory or legal claims remain unchanged, including the time frames for filing such claims.

This Modification Request Policy does not create new enforceable rights under the ADA, Section 504 of the Rehabilitation Act, or any other law.

This Modification Request Policy does not create new enforceable rights or benefits, substantive or procedural, enforceable at law or equity by a party against the Department.

X. DISCLAIMER

Information provided in this Modification Request Policy about legal rights and remedies available to persons with disabilities does not constitute legal advice, and should not be relied upon as a representation by the Department as to any person’s legal rights.

⁷ As of the date of this policy, Title II ADA complaints may be filed with the U.S. DOJ electronically (<https://www.ada.gov/complaint/>), or by mail (950 Pennsylvania Avenue, NW, Civil Rights Division, Disability Rights Section– 1425 NYAV, Washington, D.C. 20530).

⁸ As of the date of this policy complaints may be filed with the Maine Human Rights Commission electronically (http://www.maine.gov/mhrc/file_a_complaint/index.htm), by mail (51 State House Station, Augusta, Maine 04333-0051), or by phone (207-624-6290 (Maine Relay 711)).

XI. INQUIRES AND DISTRIBUTION

For further information about this Modification Request Policy, please contact the ADA/Civil Rights Coordinator (See Section V above).

This Modification Request Policy will be posted on the Department's website and is available in hard copy from the ADA/Civil Rights Coordinator. This Modification Request Policy will be provided in alternative formats when requested.

This Modification Request Policy will be distributed to all Department personnel by email and will be posted on the Department's intranet.

XII. ATTACHMENTS

Appendix A – Modification Request Form

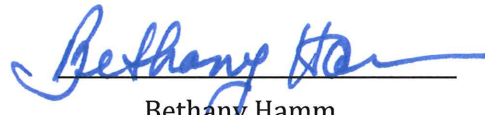
Appendix B – Notice of Decision

Appendix C – Non-Discrimination Notice

Appendix D – ADA Process Diagram

October 19, 2018

Date


Bethany Hamm
Acting Commissioner

APPENDIX A

TITLE II ADA MODIFICATION REQUEST FORM

Please use this form to request a modification of a Department policy, program, service, or activity. Be specific and provide as much detail as possible. This will allow the Department to effectively process and evaluate your Request. If you need assistance filing out this form, contact the Department's ADA/Civil Rights Coordinator whose contact information appears at the end of this form.

With respect to the individual expected to benefit directly from the modification				
Name: _____				
Address: _____				
Street / PO	City	State	Zip Code	
Home Phone: _____		Work or Cell Phone: _____		
Email Address: _____				

With respect to the person filing request, if other than individual*				
Name: _____				
Address: _____				
Street / PO	City	State	Zip Code	
Home Phone: _____		Work or Cell Phone: _____		
Email Address: _____				

The preferred method of contact regarding this request is (check one):

- mail
 phone
 email

Q #1. Please briefly describe the nature of your disability (attach additional pages, if necessary)

Q #2. Please describe what problem or issue you need addressed. What is the Department policy, program, service, or activity that is the subject of your modification request? (attach additional pages, if necessary)

Q #3. Describe the requested modification, and how this modification will help you access a Department policy, program, service, or activity. Please provide any supporting documentation necessary to assist in processing the request. (attach additional pages, if necessary)

PLEASE BE ADVISED THAT, IN ORDER TO EVALUATE THIS REQUEST, THE DEPARTMENT MAY NEED TO INQUIRE AS TO THE NATURE OF YOUR DISABILITY. IF THIS INFORMATION IS PROVIDED TO THE DEPARTMENT, IT WILL BE MAINTAINED IN A CONFIDENTIAL MANNER.

Please sign and date this form:

_____ Date: _____
Print Name: _____

Please submit this form by mail or by email to: DHHS ADA/Civil Rights Coordinator
11 State House Station
Augusta, ME 04333-0011
ADA-CivilRights.DHHS@maine.gov

*** If you are submitting this request on behalf of someone else, you MUST submit proof of your legal relationship or legal authority to access that person's confidential information.**

Examples of legal relationship or legal authority include, but are not limited to:

1. Parent of a minor child;
2. Guardian;
3. Attorney-in-fact granted the power to act on the Individual's behalf with respect to the Modification Request;
4. Attorney of record;
5. Individual authorized to act on behalf of the individual in a writing approved by the Department;
or
6. Person with verifiable legal authority to act on behalf of the Individual with respect to the Modification Request

APPENDIX B

NOTICE OF DECISION

[NAME]

[APPROVED/DENIED]

[Date]

1. NAME OF REQUESTER:

2. DEPARTMENT PROGRAM:

3. MODIFICATION REQUESTED:

4. OUTCOME:

- Approved as requested
- Alternative offered and rejected
- Alternative offered and accepted
- Denied

5. INFORMATION REVIEWED BY COORDINATOR:

6. RELEVANT FACTS:

7. MODIFICATION REQUEST DENIED FOR THE FOLLOWING REASON(S):

- Medical documentation inadequate
- No Legal Duty under the ADA
- No appropriate modification identified/exists
- Providing modification would cause a fundamental alteration and/or undue burden
- Alternative modification was offered, but rejected
- Other (*Identify*):

8. DISCUSSION OF REASON FOR THE DENIAL:

- a. No legal duty under the ADA
- b. No appropriate modification identified/exists
- c. Providing modification would cause an undue burden and/or fundamental alteration
- d. Alternative modification was offered, but rejected

ADMINISTRATIVE APPEAL RIGHTS

If you are dissatisfied with this Decision, you may appeal to the Department's Division of Administrative Hearings. The appeal must be submitted to the DHHS ADA/Civil Rights Coordinator by email (ADA-CivilRights.DHHS@maine.gov); phone (207-287-3707 (TTY: Maine Relay 711)); or mail (11 State House Station, Augusta, ME 04333-0011).

The appeal must be received within sixty (60) calendar days of the date of the Notice of Decision.

The Division of Administrative Hearings will assign a Hearing Officer to handle the appeal. The Hearing Officer will hold a hearing on the appeal and issue a Recommended Decision. The Commissioner of the Department will review the Recommended Decision and issue a Final Decision. Final Decisions are "Final Agency Action".

Pursuant to 5 M.R.S. §§ 11001, *et seq.* and Maine Rule of Civil Procedure 80C, any person with legal standing may seek judicial review of Final Agency Action in the Superior Court by filing a petition for review.

The petition for review must be filed with the court within thirty (30) calendar days of receipt of the Final Agency Action.

ADDITIONAL RIGHTS

You may have a right to file a complaint with the U.S. Department of Justice and/or the Maine Human Rights Commission.

As of the date of this policy, Complaints may be filed with the U.S. DOJ electronically (<https://www.ada.gov/complaint/>), or by mail (950 Pennsylvania Avenue, NW, Civil Rights Division, Disability Rights Section- 1425 NYAV, Washington, D.C. 20530).

As of the date of this policy complaints may be filed with the Maine Human Rights Commission electronically (http://www.maine.gov/mhrc/file_a_complaint/index.htm), by mail (51 State House Station, Augusta, Maine 04333-0051), or by phone (207-624-6290 (Maine Relay 711)).

This Policy does not limit or supplant statutory or legal protections for persons with disabilities and the remedies they provide for the denial of modification requests. Requirements governing the initiation of statutory or legal claims remain unchanged, including the time frames for filing such claims.

This Modification Request process does not create new enforceable rights under the ADA, Section 504 of the Rehabilitation Act, or any other law. This Modification Request process does not create new enforceable rights or benefits, substantive or procedural, enforceable at law or equity by a party against the Department.

DISCLAIMER

Information provided in this Modification Request Policy about legal rights and remedies available to persons with disabilities does not constitute legal advice, and should not be relied upon as a representation by the Department as to any person's legal rights.

APPENDIX C

NONDISCRIMINATION NOTICE

The Department of Health and Human Services (“DHHS”) does not discriminate on the basis of disability, race, color, sex, gender, sexual orientation, age, national origin, religious or political belief, ancestry, familial or marital status, genetic information, association, previous assertion of a claim or right, or whistleblower activity, in admission or access to, or the operation of its policies, programs, services, or activities, or in hiring or employment practices. This notice is provided as required by and in accordance with Title II of the Americans with Disabilities Act of 1990 (“ADA”); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; Section 1557 of the Affordable Care Act; the Maine Human Rights Act; Executive Order Regarding State of Maine Contracts for Services; and all other laws and regulations prohibiting such discrimination. Questions, concerns, complaints or Requests for additional information regarding the ADA and *hiring or employment practices* may be forwarded to the DHHS ADA/EEO Coordinators at 11 State House Station, Augusta, Maine 04333-0011; 207-287-4289 (V); 207-287-1871(V); or Maine Relay 711 (TTY). Questions, concerns, complaints or requests for additional information regarding the ADA and *programs, services, or activities* may be forwarded to the DHHS ADA/Civil Rights Coordinator, at 11 State House Station, Augusta, Maine 04333-0011; 207-287-3707 (V); Maine Relay 711 (TTY); or ADA-CivilRights.DHHS@maine.gov. Civil rights complaints may also be filed with the U.S. Department of Health and Human Services, Office of Civil Rights, by phone at 800-368-1019 or 800-537-7697 (TDD); by mail to 200 Independence Avenue, SW, Room 509, HHS Building, Washington, D.C. 20201; or electronically at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>. Individuals who need auxiliary aids for effective communication in program and services of DHHS are invited to make their needs and preferences known to the ADA/Civil Rights Coordinator. This notice is available in alternate formats, upon Request.

Title II ADA Reasonable Modification

