

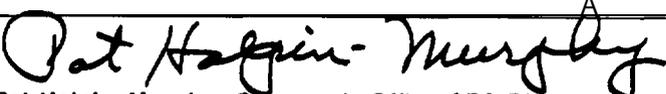
# MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE

205.26  
Number

Subject: The Americans With Disabilities Act of 1990, Title II, Subtitle A, Nondiscrimination in State and Local Government Services

By Direction of:

  
Pat Halpin-Murphy, Governor's Office ADA Director

Date:

July 22, 1992

1. **PURPOSE.** To provide policies, procedures, and responsibilities for implementing provisions of Title II, Subtitle A of *The Americans With Disabilities Act of 1990 (ADA)*, P.L.101-336, which prohibits Commonwealth agencies from discriminating against qualified individuals with disabilities on the basis of their disabilities in the provision of agency services, programs, and activities.

2. **SCOPE.** This directive applies to all agencies, independent boards, and commissions under the Governor's jurisdiction (hereinafter referred to as "agencies").

3. **DEFINITIONS.** All of the definitions contained in Management Directive 205.25, *The Americans With Disabilities Act of 1990, Title I, Employment*, P.L.101-336, also apply to this directive. The following definitions apply specifically to this directive.

**a. Auxiliary aides and services.**

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods for making aurally delivered materials available to individuals with hearing impairments.

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods for making visually delivered materials available to individuals with visual impairments.

(3) Acquisition or modification of equipment or devices.

(4) Other similar services and actions.

**b. Facility.** 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.

**c. Historic preservation program.** Programs whose primary purpose is to preserve historic properties.

**d. Historic properties.** Properties that are listed on or that are eligible to be listed in the *National Register of Historic Places* or properties designated as historic under Pennsylvania or local law.

**e. Structural change.** All physical changes to a facility, including but not limited to removal of or alteration to a loadbearing structural member.

**f. Transition plan.** An agency-developed plan that identifies structural changes which must be made to agency facilities in order to make the agency's services, programs, and activities, when viewed in their entirety, accessible to and usable by individuals with disabilities.

**g. Qualified individual with a disability.** An individual with a disability who meets the essential eligibility requirements for receipt of services or participation in an agency's programs, activities, or services with or without:

(1) reasonable modifications to the agency's rules, policies, or practices;

(2) removal of architectural, communications, or transportation barriers; or

(3) the provision of auxiliary aids and services.

#### 4. OBJECTIVES.

a. To establish policies which provide to individuals with disabilities access to services, programs, and activities offered by agencies under the Governor's jurisdiction.

b. To establish procedures, priorities, and responsibilities for implementing corrective action, where necessary, to make agency services, programs, and facilities, when viewed in their entirety, accessible to and usable by individuals with disabilities.

#### 5. POLICY.

a. Executive Order 1992-3 establishes the Commonwealth's basic policy for implementing the ADA, including implementation of Title II, Subtitle A, Nondiscrimination in State and Local Government Services.

**b. General statement of principles.** Title II, Subtitle A of the ADA and the policy of this Commonwealth make it unlawful for an agency, on the basis of a person's disability to:

(1) Discriminate against a qualified person with a disability in the provision of the agency's services, programs, and activities;

(2) Exclude that person from participating in the agency's services, programs, or activities; or

(3) Deny that person the benefits of the agency's services, programs, or activities.

**c. Policy concerning denials of equal treatment.** The ADA provides for equality of opportunity, but does not guarantee equality of results. Thus, in providing any aid, benefit, or service, an agency may not, on the basis of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the agency's services, programs, or activities.

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the agency's aid, benefit, or service which is less than equal to the opportunity which the agency affords to others,

(3) Provide a qualified individual with a disability an aid, benefit, or service that is not as effective as the aid, benefit, or service which the agency provides to others in affording an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement.

(4) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than the agency provides to others, unless that action is necessary to provide such individuals with aids, benefits, or services that are as effective as those provided to others.

(5) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to another agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of a Commonwealth agency's program.

(6) Deny a qualified individual with a disability the opportunity to participate as a member of the agency's planning or advisory boards.

(7) Limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the agency's aid, benefit, or service.

**d. Discriminatory effects of policies and practices.** Agencies may not have policies or practices which have the effect of discriminating against qualified individuals with disabilities because of their disabilities. Thus, an agency may not, directly or through contractual or other arrangements, use official written policies or practices that have:

(1) the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; or

(2) the purpose or effect of defeating or substantially impairing accomplishment of the agency's program objectives with respect to individuals with disabilities.

e. **Selecting sites.** In selecting sites for the construction of new facilities or in selecting existing facilities for an agency's services, programs, or activities, an agency may not make selections which have:

(1) the effect of excluding individuals with disabilities from participation in or denying them the benefits of the agency's service, program, or activity; or

(2) the purpose or effect of defeating or substantially impairing the accomplishment of the agency's service, program, or activity with respect to individuals with disabilities.

f. **Procurement.** In the selection of procurement contractors, an agency may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

g. **Licensure.** An agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. An agency also may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. Under the law, a person is a qualified individual with a disability with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification. Whether a specific requirement is "essential" will depend on the facts of the particular case.

The programs or activities of licensed or certified entities are not, themselves, covered by Title II of the ADA or by this directive.

h. **Exceptions.** Every agency covered by this directive should modify its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the agency can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.

**i. Eligibility criteria.** The law and policies of this Commonwealth also prohibit agencies from imposing eligibility criteria that screen out or tend to screen out an individual with a disability or a class of such individuals from enjoying fully and equally the services, programs, or activities of an agency, unless the agency can show that such criteria are necessary for the provision of the service, program, or activity.

**j. Integration and segregation.**

(1) The law and the policies of this Commonwealth require agencies to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This means that agencies must administer their services, programs, and activities in settings that enable individuals with disabilities to interact with nondisabled persons to the fullest extent possible. It also means that even when separate or different aids, benefits, or services would be more effective in providing persons with disabilities an equal opportunity to participate in or benefit from an agency's programs or activities, persons with disabilities must be provided the option of declining to accept that particular accommodation. For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. Modified participation for persons with disabilities must be a choice, not a requirement.

(2) Issues of integration and segregation must be assessed on a case by case basis. The starting point is to question whether the separate program created for a person with a disability is in fact necessary or appropriate for the particular individual. Assuming the separate program would be appropriate for the individual, the extent to which that individual must be provided with modifications in the integrated program will depend not only on the individual's needs but also on the limitations and defenses described elsewhere in this directive and in the ADA. For example, it may constitute an undue burden for an agency which provides a full-time interpreter in its special guided tour for individuals with hearing impairments to hire an additional interpreter for those individuals who choose to attend the integrated program.

**k. Surcharges.** An agency may not place a surcharge on a particular individual with a disability or upon any group of such individuals to cover the cost of measures that the law may require, such as the furnishing of a necessary auxiliary aid.

**l. Associational discrimination.** An agency may not exclude or otherwise deny equal access to its services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

**m. Illegal use of drugs.** Except as provided in paragraph n., below, nothing contained in Title II of the ADA or in this directive prevents an agency from denying access to its services, programs, or activities, when such denial of access is based on that individual's current illegal use of drugs. An agency, however, may not discriminate on the basis of illegal use of drugs where the individual is not engaging in the **current** illegal use of drugs and he or she:

(1) has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(2) is participating in a supervised rehabilitation program; or

(3) is erroneously regarded as engaging in such use.

**n. Health and drug rehabilitation services.** An agency may 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. A drug rehabilitation or treatment program may, however, deny participation to individuals who engage in illegal use of drugs while they are in the program.

**o. Drug testing.** Nothing in Title II of the ADA or in this directive prohibits an agency 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 the current illegal use of drugs.

**p. Accessibility to agency facilities.** Except as provided in paragraph q., below, no qualified individual may be excluded from participating

in an agency's services, programs, or activities or be denied the benefit of such services, programs, or activities because its facilities are inaccessible to or unusable by individuals with disabilities.

**q. Existing facilities.** An agency shall operate each service, program, or activity so that the service, program, or activity, **when viewed in its entirety, is** readily accessible to and usable by individuals with disabilities. In doing so, an agency does not:

(1) have to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) have to take any action that would threaten or destroy the historic significance of historic property; or

(3) take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. If an action would result in such an alteration or in such burdens, an agency must take any other action that would not result in such an alteration or in such burdens but which would nevertheless provide individuals with disabilities with the agency's benefits or services.

In determining whether financial and administrative burdens are undue, all resources of an agency that are available for use in the funding and operation of the service, program, or activity should be considered.

The decision not to make a particular service, program, or activity accessible because it would result in a fundamental alteration of the service, program, or activity or because it would result in an undue administrative or financial burden must:

(a) be made by the agency head or a designee who has budgetary authority and responsibility for making spending decisions for the agency; and

(b) be accompanied by a written statement of the reasons supporting that conclusion.

**r. Methods for making existing facilities accessible and usable.** There is no single method for making existing facilities readily accessible to and usable by individuals with disabilities. The redesign

of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities, and construction of new facilities are all methods which may be used in appropriate circumstances. In choosing among available methods, an agency must give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. Also, an agency is not required to make structural changes in existing facilities where other methods are effective in meeting accessibility requirements of the ADA.

**s. The historic property exception.** An agency may avail itself of the historic property exception to program accessibility described in section 5.q.(2), above, only if a principal purpose of the program in question is to preserve historic property. Thus, for example, a government program whose primary purpose is not the preservation of historic property but which happens to be located in an historic building, such as the state capitol building, cannot take advantage of the ADA's historic property exception; it must make its program accessible through methods such as those described in section 5.r., above.

If an agency cannot feasibly provide physical access to an historic property because a primary purpose of its program is historic preservation and because providing such access would threaten or destroy the historic significance of the building or facility in question, an agency must then consider alternative methods of achieving accessibility to its historic preservation program. Those methods might include the following:

(1) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; or

(2) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible.

**t. Maintenance of accessible features.** Except for isolated or temporary interruptions in service or access because of the need to repair or maintain facilities and equipment, agencies must

maintain in operable working condition those features of facilities and equipment required to be readily accessible to and usable by persons with disabilities.

**u. New construction and alterations.** For construction commenced after January 26, 1992, each facility or part of a facility constructed by, on behalf of, or for the use of an agency shall be readily accessible to and usable by individuals with disabilities. Alterations to a facility which are commenced after January 26, 1992, and which affect or potentially affect usability of the facility shall, to the maximum extent feasible, be made in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

The design, construction, or alteration of an agency facility shall be deemed to meet the requirements of this subsection if such design, construction, or alteration conforms to the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and state law. Alterations to historic properties shall comply, to the maximum extent feasible, with Section 4.1.7 of the ADAAG. This means that if an agency wishes to make structural alterations to what it believes may be an historic property, it must first consult with the Executive Director of the Pennsylvania Historical and Museum Commission to determine if the resource is an historic property. If it is, the agency must further consult with the Commission to determine if compliance with ADAAG and state law would threaten or destroy the historic characteristics or qualities of the building in question. If it would, the agency must then consult with the Commission to consider alternative designs or technologies that may be used. **Agencies** must follow these same procedures when making structural changes to potentially historic properties under their transition plans.

Departures from particular requirements of ADAAG by the use of other methods shall be permitted only when it is clearly evident to the agency head and the Governor's ADA Director that the agency is providing equivalent access to the facility or part thereof.

**v. Communications.** Except as provided in w, below, each agency must:

(1) Take steps to see that its communications with applicants, participants, and members of the public with disabilities are effective.

(2) Furnish appropriate auxiliary aids and services, when necessary, to afford an individual with a disability equal opportunity to participate in, and enjoy the benefits of, the agency's service, program, or activity.

(3) Use **TDDs** or equally effective telecommunication systems where the agency communicates by telephone with applicants and beneficiaries who have hearing or speech impairments.

(4) Take steps to see that interested persons, including persons with impaired vision and hearing, can obtain information as to the existence and location of accessible services, activities, and facilities of the agency.

(5) Provide **signage** at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

**w. Exceptions to telecommunications requirements.** An agency need not comply with any action otherwise required by v., above, if it can demonstrate that such action would result in a fundamental alteration of its service, program, or activity or in undue financial or administrative burdens. That decision must:

(1) Be made by the agency head or designee who has budgetary authority and responsibility for making agency spending decisions.

(2) Be made after considering all resources available for use in the funding and operation of the service, program, or activity.

(3) Be accompanied by a written statement of the reasons supporting that conclusion.

**x. Personal devices and services.** A n agency is not required to provide to individuals with disabilities:

(1) personal devices, such as wheelchairs;

(2) individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) readers for personal use or study; or

(4) services of a personal nature, such as assistance in eating, in toileting, or dressing.

If personal services or devices are customarily provided to individuals served by an agency, such as a Commonwealth health care or correctional facility, then these same personal services should be provided to individuals with disabilities.

**y. Retaliation and coercion.** An agency may not discriminate against any individual because that individual has opposed any act or practice made unlawful by Title II, Subtitle A of the ADA or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act.

An agency also may not coerce, intimidate, threaten, or interfere with any individual who exercises his or her rights under the ADA or who encourages any other individual to exercise such rights.

## **6. RESPONSIBILITIES.**

**a. The Governor's Office ADA Director** shall:

(1) Communicate overall ADA policy to agency heads and agency ADA Coordinators and provide information to such agency heads and ADA Coordinators to enable them to perform their responsibilities under Title II, Subtitle A of the ADA.

(2) Coordinate and provide training and information for agency ADA Coordinators and ADA support staff on their roles and responsibilities under Title II, Subtitle A of the ADA.

(3) Coordinate and oversee the ADA self-evaluation process.

(4) With the appropriate agency heads, coordinate and oversee the development and implementation of agency transition plans.

(5) Collect all requests for accommodations/access from the public which are disapproved at the agency level.

(6) Act as the final step in the internal ADA grievance process for all grievances which concern access to Commonwealth services, programs, and activities and which are denied at the agency level and then appealed.

**b. The Secretary of General Services shall:**

(1) In accordance with the procedure set forth in this part and in 7.d., below, direct the Department of General Services (DGS) to oversee the renovation of existing facilities owned and managed by DGS where such changes are consistent with:

(a) approved agency transition plans; and/or

(b) approved requests for reasonable accommodation/access.

(2) Ensure that the Bureau of Buildings and Grounds shall take steps to see that common areas of Commonwealth-owned and DGS managed facilities are accessible.

(3) Develop for inclusion in leases which become effective after January 26, 1992, such language as needed to enable Commonwealth agency/tenants to meet their responsibilities under Title II, Subtitle A of the ADA.

(4) Pursuant to approved transition plans and/or approved requests for reasonable accommodation/access, work with lessors and agency/tenants to make structural changes to leased premises where the agency or the ADA Director have determined that no other method is effective for making the agency's service, program, or activity, when viewed in its entirety, readily accessible to and usable by individuals with disabilities.

(5) For construction commenced under DGS authority after January 26, 1992, direct DGS to design and construct (or oversee the design and construction of) Commonwealth-owned facilities or parts thereof so that those facilities or their newly constructed parts are readily accessible to and usable by individuals with disabilities.

(6) For alterations to existing facilities commenced under DGS authority after January 26, 1992, direct DGS to design and construct (or oversee the design and construction of) such alterations so that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

(7) With the assistance of the Bureau of Occupational and Industrial Safety and other appropriate Commonwealth agencies, provide appropriate Title II, Subtitle A technical assistance to agency heads, agency ADA Coordinators, and agency facility managers.

(8) Provide technical assistance and advice to agencies and the ADA Director concerning accessibility standards and other methods for making agency services, programs, and activities accessible to individuals with disabilities.

**c. The Secretary of the Budget shall:**

(1) Participate in the review and approval of agency transition plans.

(2) Assist the Governor's ADA Director and agency heads in determining the most appropriate method for agencies to finance structural changes required by the ADA.

**d. The Department of Labor and Industry, Office of Vocational Rehabilitation and Bureau of Occupational and Industrial Safety shall provide technical assistance and advice within their spheres of expertise to agencies and the ADA Director concerning accessibility standards, adaptive devices, and other methods for making agency programs, services, and activities accessible to individuals with disabilities.**

**e. The Governor's Office of Policy shall:**

(1) Provide to the Governor's ADA Director technical support regarding program access.

(2) Assist the Governor's ADA Director in developing and carrying out an overall strategy for implementing and monitoring all titles of the ADA.

**f. The Governor's Office of General Counsel shall provide legal advice and assistance to the Governor's ADA Director and to Agency Chief**

Counsel. Legal issues relating to provisions of Title II, Subtitle A and how they relate to the accessibility of agency programs, services, and activities will be reviewed in the first instance by agency legal offices, with assistance from the Office of Chief Counsel in the Department of General Services to the extent such issues relate to structural changes, lease modifications, and similar matters arising under approved agency transition plans. The Office of General Counsel shall also review all agency-produced ADA-related materials intended for public dissemination.

**g. The Governor's Deputy Chief of Staff for Communications shall:**

(1) Make available to interested members of the public information regarding the provisions of Title II, Subtitle A of the ADA; and

(2) Oversee and approve the dissemination of public information about the ADA from agencies.

**h. Each agency head shall:**

(1) Designate the Deputy Secretary for Administration or equivalent as a single contact person to serve as the agency ADA Coordinator and to make available to all interested individuals the name, office address, and telephone number of that individual.

(2) Consistent with the size and need of the agency, identify ADA deputy coordinators for regional facilities.

(3) Direct his or her agency to:

(a) perform and maintain on file a self-evaluation of the agency's services, policies, and practices; and

(b) make any necessary modifications to those services, policies, and practices to the extent required by Title II, Subtitle A of the ADA.

(4) Subject to coordination with the ADA Director, direct his or her agency to develop and make available to the public information about Title II, Subtitle A of the ADA and how it relates to the provision of the agency's services, programs, or activities.

(5) Direct his or her agency to implement all non-structural modifications to services, programs, and activities which can be made immediately in order to make that service, program, or activity accessible to and usable by individuals with disabilities.

(6) Direct his or her agency to develop a transition plan, as described in section 7.c., below.

(7) Direct his or her agency to submit the transition plan to the Governor's ADA Director for review and approval.

(8) Upon review and approval, direct his or her agency to submit the transition plan to the Department of General Services in accordance with the procedures set forth in section 7.d., below.

(9) Consider, and, where appropriate, honor request for accommodation/access from otherwise qualified individuals with disabilities or classes of such individuals seeking access to the services, programs, or activities of the agency.

(10) Require that his or her agency comply with all provisions of Title II, Subtitle A of the ADA and this directive.

**i. Agency ADA Coordinators shall:**

(1) Oversee and direct their agencies' compliance with the provisions of Title II, Subtitle A of the ADA and this directive.

(2) Establish and coordinate an agency ADA internal work team where appropriate.

(3) Provide technical assistance and training to agency managers and supervisors on the ADA, with help from their support staff.

(4) Provide advice and assistance to supervisors and managers who, as a result of the self-evaluation or other internal review process, seek to modify agency policies, practices, or procedures in order to make agency services, programs, or activities readily accessible to and usable by individuals with disabilities,

(5) Provide advice and assistance to supervisors and managers who are addressing requests for reasonable accommodation/access from members of the public.

(6) Forward to the Governor's ADA Director a copy of all agency approved requests for reasonable accommodation/access costing \$500.00 or more, or for which the agency will need to request additional funding.

**(7) Forward** to the Governor's ADA Director all requests for reasonable **accommodation/access** that the agency head has disapproved.

(8) Receive, investigate, and attempt to resolve grievances from members of the public as outlined in section 8.

(9) Submit for review to the Governor's ADA Director, the Governor's Office of Communication, and Governor's Office of General Counsel all materials on the ADA intended for public dissemination.

## **7. PROCEDURES.**

### **a. Establishing the ADA team.**

(1) At the discretion of the agency Deputy Secretary for Administration or equivalent, agencies may establish an ADA work team to provide support and assistance to the agency ADA Coordinator in carrying out his or her responsibilities. This ADA work team may include the agency Affirmative Action Officer, a representative of the agency's legal office, budget and procurement staff, facilities management and any other representatives which the agency deems appropriate.

(2) In each agency, the Deputy Secretary for Administration or equivalent will be designated as the agency ADA Coordinator. This person will coordinate the agency's compliance efforts with all titles of the ADA, including Title II, Subtitle A. This position will also serve as the focal point for analysis and determination of ADA-related grievances and requests for reasonable accommodation/access at the agency level and for recommending approval or disapproval of such grievances and requests to the agency head.

(3) The ADA Coordinator or team shall establish and maintain contact with staff in the Department of General Services and the agency's Budget Office, where appropriate, for purposes of analyzing and acting upon grievances and requests for reasonable accommodation/access which impact upon building access, facilities management, lease agreements, and volume purchases of equipment.

(4) Advice and assistance on available and appropriate accommodations are available through a number of state agencies, including but not limited to:

(a) the Department of Labor and Industry, Office of Vocational Rehabilitation, Office of Deafness and Hearing Impaired, and Bureau of Occupational and Industrial Safety; and

(b) the Department of Public Welfare, Office of Mental Retardation, Office of Mental Health, and Bureau of Blindness and Visual Services.

### **b. Performing a self-evaluation.**

(1) Except as provided in subsection **b.(7)** below, each agency shall perform a self-evaluation of its services, programs, and activities to determine if they meet the requirements of Title II, Subtitle A of the ADA.

(2) In the self-evaluation process, each agency shall distinguish between and identify all services, programs, or activities which appear to be inaccessible because of physical barriers (structural barriers) and those which appear inaccessible because of existing policies and practices (non-structural barriers). Structural barriers might include, but are not limited to, inaccessible doors, common areas, restroom facilities, elevators, work stations, or parking facilities. Non-structural barriers might include an agency's lack of policies or practices for providing telecommunication devices to the public, qualified interpreters at public meetings, or information in braille needed to make a service, program, or activity accessible to and usable by individuals with disabilities.

(3) All barriers identified in the self-evaluation survey which can be removed or modified immediately and with available funding, with the exception of barriers that may hold historical significance, shall be removed or modified as expeditiously as possible.

(4) During the course of the self-evaluation process, each agency shall have interested persons participate in the process. Such persons shall include individuals with disabilities or organizations representing such individuals.

(5) All agencies shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(a) a list of interested persons consulted;

(b) a description of areas examined and problems identified; and

(c) a description of modifications made.

(6) Each agency shall periodically, but no less frequently than every two years, review any policies or practices instituted after January 26, 1993, to determine if those new policies or practices have a potential adverse effect on the ability of individuals with disabilities to gain or retain access to the agency's services, programs, and activities.

(7) Agencies that performed a self-evaluation analysis and developed a transition plan under the Rehabilitation Act of 1973 may limit any new self-evaluation to policies and practices that were not evaluated in the prior analysis,

**c. Programmatic accessibility – drafting a transition plan for structural modifications.** Consistent with the ADA, the policy objectives set forth in section 5, and the procedures set forth in section 7, each agency ADA Coordinator or agency ADA work group shall use the agency's self-evaluation results to identify all existing structural barriers to program accessibility and, by July 26, 1992, develop a transition plan setting forth the steps necessary to make all necessary structural modifications. The plan shall, at a minimum:

(1) identify physical obstacles in the agency's facilities that must be corrected in order to make the agency's programs or activities accessible to qualified individuals with disabilities.

(2) Describe in detail the methods that will be used to make the facilities accessible.

(3) Identify all funding sources for making such structural changes,

(4) Specify the schedule for taking the steps necessary to achieve accessibility and, if the time period of the transition plan is longer than one

year, identify steps that will be taken during each year of the transition period.

(5) Identify the official responsible for implementation of the plan.

Each agency shall provide interested persons, including individuals with disabilities and organizations representing them, an opportunity to participate in the development of the transition plan by submitting comments.

All structural modifications identified in the agency's transition plan shall be completed as soon as is practicable, but in no event later than January 26, 1995.

**d. Implementation of transition plans and/or approved requests for accommodation/access.** Agencies shall use the following procedure to make structural changes pursuant to their approved transition plans and/or approved requests for accommodation/access:

(1) Agencies shall submit to DGS, Bureau of Buildings and Grounds requests for renovations to facilities owned and managed by DGS which are estimated to cost less than \$25,000.

(2) Agencies shall submit for approval to DGS, Bureau of Engineering and Architecture all plans to renovate Commonwealth-owned but agency managed facilities when such renovation is estimated to cost less than \$25,000. Upon approval, agencies shall complete the work under their work authority.

(3) Agencies shall submit to DGS, Deputy Secretary for Public Works, along with a commitment of funding, all requests for renovations to Commonwealth-owned facilities which are estimated to cost more than \$25,000.

## **8. GRIEVANCE PROCEDURE.**

a. The procedures below are to be followed by agency ADA Coordinators and all agency personnel responsible for investigating and resolving grievances arising under Title II of the ADA.

b. Grievances pertaining to allegedly inaccessible common areas of buildings owned and managed by DGS should be referred to DGS for processing under the action steps below.

c. All other grievances under Title II should be processed through the agency which received the grievance initially. This includes, but is not limited to, grievances concerning non-common areas of DGS-owned and managed facilities which are allegedly inaccessible, grievances pertaining to the alleged inaccessibility of facilities not owned and managed by DGS, and grievances concerning policies and procedures which allegedly fail to comply with Title II of the ADA.

Action By	Step	Action
Governor's ADA Director.	6.	Reviews Committee's recommendation and makes final decision concerning the grievance. Forwards the decision to the agency ADA Coordinator.
Agency ADA Coordinator.	7.	Notifies the grievant in writing of the final decision.

Action By	Step	Action
Grievant.	1.	Files grievance with responsible agency ADA Coordinator, relevant program officer, or facility manager, within 45 calendar days of alleged violation. If grievance is lodged with program officer or facility manager, grievance must be forwarded immediately to agency's ADA Coordinator.
Agency ADA Coordinator or Designee.	2.	Conducts an investigation of the alleged violation within 30 calendar days. The investigation shall include contact with the grievant and other concerned parties.
	3.	Discusses findings and recommendations for resolution of grievance and determines course of action.
Agency ADA Coordinator.	4.	Notifies grievant of determination. If resolution is not found, the agency ADA Coordinator advises the grievant of his/her right to forward the grievance to the Governor's ADA Director. If the grievance is resolved, the agency ADA Coordinator notifies the ADA Director of the final status.
Governor's ADA Director.	5.	Logs receipt of grievance and convenes the ADA Interagency Committee. Committee reviews the grievance and makes a recommendation to the ADA Director for disposition,