

GA-06.08, "Inmates with Disabilities and the Americans with Disabilities Act (ADA)"

SCDC POLICY

NUMBER: GA-06.08

TITLE: INMATES WITH DISABILITIES AND THE AMERICANS WITH DISABILITIES ACT (ADA)

ISSUE DATE: November 13, 2020

RESPONSIBLE AUTHORITY: OFFICE OF GENERAL COUNSEL

OPERATIONS MANUAL: GENERAL ADMINISTRATION

SUPERSEDES: NONE- NEW POLICY

RELEVANT SCDC FORMS/SUPPLIES: 9-22, 9-23

ACA/CAC STANDARDS: 4-4142, 4-4278, 4-4285, 4-4348, 4-4362, 4-4363, 4-4368, 4-4369, 4-4375, 4-4429, 4-4450.

STATE/FEDERAL STATUTES: 28 CFR § 35 and 36; Americans with Disabilities Act of 1990, 42 USC § 12101-12102(1); 42 USC § 12131-12134; 29 CFR § 1630.2; 29 CFR § 1630.2

PURPOSE: To provide guidelines to ensure that the South Carolina Department of Corrections (SCDC) staff is knowledgeable of, and complies with, the Americans with Disabilities Act (ADA) Title II regulations (28 CFR Part 35 and 36).

POLICY STATEMENT: In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the South Carolina Department of Corrections (SCDC) will not discriminate against qualified inmates with disabilities and shall provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified inmate with a disability. SCDC will also ensure access to programs, activities, and services in accordance with the Americans with Disabilities Act, unless doing so would result in an undue financial or administrative burden, constitute a direct threat, endanger the health or safety of any person, or fundamentally alter the inherent nature of SCDC. In addition, SCDC will communicate effectively with all inmates including those with disabilities. The goal is to ensure that communications with inmates who have disabilities are as effective as communications with inmates without such disabilities.

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APPLICABILITY: This policy is applicable to all inmates within SCDC facilities and under SCDC custody and all staff who interact with such inmates.

1. AGENCY ADA COORDINATOR:

1.1 The Agency Director will be responsible for designating an individual to serve as the Agency ADA Coordinator. Under general supervision of the Office of General Counsel, the Agency ADA Coordinator will provide direction necessary to meet compliance with all state and federal disability laws and regulations. The responsibilities of the Agency ADA Coordinator will include, but will not be limited to, the following:

- Serve as a resource for inmates and SCDC employees with respect to ADA compliance issues;
- Plan, develop, or coordinate ADA strategies to ensure compliance with ADA Title II standards for the Agency;
- Receive, process, and respond to inquiries on any ADA-related issue to outside ADA regulatory agencies (i.e., United States Department of Justice; Protection & Advocacy for People with Disabilities, Inc., etc.).
- Review/respond to inmate communications, such as Requests to Staff Members, to ensure there are no violations of ADA Title II standards or regulations; and
- Verify ADA Title II compliance with respect to policies and procedures and validate employee training on ADA compliance related topics, policies, or procedures.

1.2 Every division and/or department should identify a primary contact to support the Agency ADA Coordinator in ADA compliance endeavors.

2. INSTITUTIONAL ADA COORDINATORS:

2.1 The Inmate Grievance Coordinator (IGC) at each institution has been designated as the Institutional ADA Coordinator in accordance with SCDC Policy GA-01.12, "Inmate Grievance System." The responsibilities of the Institutional ADA Coordinators include facilitating local compliance with ADA requirements as outlined in SCDC Policy GA-01.12, "Inmate Grievance System," and ensuring that any records of requests for auxiliary aids and services received from inmates are provided to the Agency ADA Coordinator.

3. IDENTIFYING INMATES WITH DISABILITIES:

3.1 Reasonable efforts will be made to identify inmates with disabilities at a Reception and Evaluation (R&E) Center as soon as possible after coming under SCDC jurisdiction. SCDC shall conduct an individualized assessment of the need for accommodations, aids, or services required by the inmate with a disability to determine the extent of the disability and whether he or she needs any auxiliary accommodations, aids, or services. (See SCDC Policy OP-21.04, "Inmate Classification Plan," for procedures).

3.1.1 The identification process will be interactive and include staff observations, inmate reports, and/or documentation of an inmate's disability. (See SCDC Policy OP-21.04, "Inmate Classification Plan," for procedures.)

3.1.2 Referrals will be made to Medical Services and/or Behavioral Health employees/contract staff for evaluation and determination of disabilities.

3.2 Medical Services and/or Behavioral Health, through qualified personnel or specialists, and in conjunction with the affected inmate, shall make the diagnosis of a qualified disability.

3.3 Medical Services and/or Behavioral Health will ensure that appropriate auxiliary aids and services are provided, with or without a specific inmate request, when they are deemed medically necessary. When an auxiliary aid and/or service is deemed medically necessary, consideration should be given to any requests of the inmate with the disability. Information pertaining to auxiliary aids and/or services shall be recorded in the inmate's medical file and copies of documentation regarding auxiliary aids and services must be promptly provided to the Agency ADA Coordinator.

3.4 Upon the request of the inmate, a notation shall be placed on the inmate's I.D. card that he/she has a qualified disability to alert staff that accommodations may be needed to properly communicate. See Section 6, "Special Identification Badge/Card."

3.5 During new inmate orientation, inmates with disabilities should be provided with an overview of their rights for reasonable accommodations using an effective means of communication. A notice of inmate rights to reasonable accommodations, how to request auxiliary aids or services, and procedures to request a sign language interpreter will be posted or available for review in prominent places at each SCDC facility, including reception/intake areas, living units, and libraries.

4. EFFECTIVE COMMUNICATION:

4.1 SCDC will provide appropriate auxiliary aids and services to ensure effective communication for qualified inmates with disabilities so they can participate equally in SCDC programs, services, and activities, to include: qualified interpreters on-site or through video remote interpreting ("VRI") services; note takers; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; open and closed captioning, voice, text, and video-based telecommunications products and systems, including text telephones ("TTY"), and videophones, or equally effective telecommunications devices; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf, hard of hearing, or who have a speech disability. (See SCDC Policy GA-01.03, "Inmate Access to the Courts.")

4.2 In determining the appropriate aids and services, SCDC will consider the nature, length, complexity, and context of the communication and the inmate's preferred method(s) of communication. Inmates may refuse to accept auxiliary aids or services offered. The inmate's refusal must be documented utilizing SCDC Form 9-23, "Refusal Of Accommodations, Auxiliary Aids, or Services."

4.3 To ensure effective communication with inmates who have hearing, vision or mobility disabilities, SCDC will provide appropriate auxiliary aids and services free of charge as set forth in Section 9.1.

4.4 SCDC will send inmates' hearing aids, cochlear processors, and other such devices to appropriate repair companies as soon as possible, but no later than 24 hours (excluding weekends and holidays) following a request for the repair of such device. Inmates will be informed when the device was sent for repair and its expected return date. Inmates will be offered written documentation of all repairs to include the date and description of the repair. SCDC will take appropriate steps to ensure effective communication with the inmate during any period in which the inmate is without his or her hearing aid, cochlear processor, or other such device. If it is determined that repair is not possible or feasible, SCDC may provide another accommodation, auxiliary aid, or device in lieu of repair. If this occurs and the affected inmate wishes to keep the original accommodation, auxiliary aid, or device, the inmate will be allowed to send the accommodation, auxiliary aid, or device to his or her home or other permissible destination.

4.5 SCDC will supply appropriate types of hearing aid and cochlear processor replacement batteries as needed by inmates with hearing disabilities utilizing such hearing devices at no cost to the inmate. Replacement batteries will be provided to those requesting them and installed as soon as possible, but no later than 24 hours after such request, including weekends and holidays.

4.6 SCDC will provide an effective visual or other notification system so that inmates who have a hearing disability do not miss announcements, alarms, or other auditory information, including times for meals, recreation, education, work assignments, and other events.

4.7 SCDC will ensure that the contents of inmate policies and similar publications are available to all inmates who have a hearing disability in an accessible format including inmates for whom written language is not an effective means of communication.

4.8 SCDC will ensure that all inmate televisions located within a housing unit, in the dayroom, or on the wings (rock area), are to be set on "closed captioning." The closed captioning setting should be on to ensure the hearing impaired and/or visual impaired inmates are afforded the same opportunity to watch television as the inmates without a hearing impairment.

5. COMMUNICATION ASSESSMENTS AND CONSULTATION:

5.1 In addition to the initial communication assessment done at the time the need for auxiliary aids and services is first identified, SCDC will reassess communication effectiveness approximately every three years, or more frequently as necessary, and will consult with inmates on a continuing basis to assess what measures are required to ensure effective communication.

6. SPECIAL IDENTIFICATION BADGE/CARD:

6.1 SCDC will offer inmates who have qualified hearing or vision disabilities a special ID badge and/or card which will provide notice of the disabilities and his or her preferred auxiliary aids and services to all personnel having contact with the inmate so that effective communication with inmate may be achieved. An inmate's identity as someone needing appropriate auxiliary aids and services for effective communication will not be treated as confidential medical information.

7. ACCOMMODATIONS, AUXILIARY AIDS AND SERVICES REQUESTS:

7.1 Request for Accommodations, Auxiliary Aids, and Services:

7.1.1 Inmates with disabilities who are housed in SCDC facilities are responsible for making their needs known to the Health Care Authority (HCA), Qualified Mental Health Professional (QMHP), and/or ADA Coordinator. If an inmate requests an accommodation, auxiliary aid, or service, SCDC will consider the request in good faith, interview the inmate if necessary, and refer the inmate to Medical Services for a medical evaluation as needed.

7.1.2 For inmates identified as intellectually disabled, the QMHP must describe the inmate's specific disability(ies), the specific activity(ies), and the specific action(s) the inmate wishes SCDC to take to allow him/her to perform the activity(ies).

7.1.3 Safety and security concerns will take precedence when considering any accommodation and may result in temporary suspension of an accommodation.

7.1.4 Inmates have the option to decline any auxiliary accommodation offered; however, this must be documented utilizing SCDC Form 9-23, "Refusal Of Accommodations, Auxiliary Aids, or Services."

7.1.5 If the action needed to provide effective communication would create an undue burden by fundamentally altering a service, program, or activity, or undue financial and administrative burdens on the Agency, the action may not be required. If an accommodation is denied for this reason, the denial will be referred through the Agency ADA Coordinator, and SCDC will find other means to provide effective communication.

7.1.6 Temporary disabilities and/or accommodations will receive case-by-case evaluation and review.

7.2. Review of an Inmate's Request:

7.2.1 The HCA/designee review shall include the following:

- Review of the inmate's request to determine if it is comprehensible (capable of being understood) and complete. An incomprehensible or incomplete request shall be returned to the inmate, but SCDC will follow up with the inmate to attempt to address his or her concerns appropriately;

- Evaluate whether the inmate is disabled as described in the inmate's request;

- Assess the inmate's ability to perform the activity(ies) described in the inmate's request and whether the requested accommodation, auxiliary aid, or service will enable the inmate to perform the activity or activities;

- Arrange for a current clinical evaluation of the inmate's alleged disability(ies) and/or impairment(s) by a medical practitioner in order to validate the request;

- In evaluating the inmate's request, the HCA/designee shall take all appropriate action(s) as deemed reasonably necessary, including reviewing medical records pertaining to the inmate, arranging to have the inmate examined and/or tested by an appropriate person or persons, and/or interviewing staff and the inmate. The results of the evaluation should be summarized in a memorandum; and

- The HCA/designee shall refer the request, along with the memorandum summarizing the results of the evaluation to the Warden/designee. If the modification of a facility is required, the request and memorandum shall be referred to the Director of Facilities Management for review.

7.2.2 Director of Facilities Management/designee responsibilities shall include the following:

- Review the inmate's request, the HCA's memorandum summarizing the results of the investigation, and all other relevant records, and make a recommendation on the requested accommodation; and
- Submit his/her recommendation to the Warden and the Division Director of Classification/designee along with the request and the HCA's memorandum.

8. REASONABLE ACCOMMODATIONS:

8.1 Inmates with disabilities will be provided reasonable accommodations that allow participation in services, programs, and activities, which may include:

- Modifying policies, practices, or procedures, when reasonable;
- Removing barriers to access; and/or
- Providing auxiliary aids and services in accordance to SCDC policies.

NOTE: Restraint of inmates with disabilities will be in accordance with OP-22.10, "Transportation of Inmates Outside The Institution."

9. DURABLE MEDICAL EQUIPMENT IN PRISON:

9.1 The need for durable medical equipment (i.e., wheelchair, crutches, portable oxygen tank, c-pap machine, etc.) or other accommodation for a disability will be evaluated by Medical Services and/or Behavioral Health.

- Health Care providers will document all medically necessary devices or accommodations.
- Medical Services Managers may permit inmates with medically necessary durable medical equipment and/or customized assistive devices to retain these items upon transfer to another institution.

- Durable medical equipment may be permanently removed only by order of a medical practitioner.

9.2 If the durable medical equipment or assistive device presents a threat to safety and security, the Health Care Authority/designee will collaborate with the warden on a decision regarding removal.

9.3 The Chief Medical Doctor and Deputy Director of Operations/designee, as applicable, will resolve the issue if the Health Care Authority/designee and the warden cannot come to an agreement.

10. FACILITY/PROGRAM PLACEMENT:

10.1 In addition to all other factors considered by SCDC in making facility assignments of an inmate, consideration may be given to facilities and programming available at various facilities to accommodate an inmate's particular qualified disability(ies) if the inmate meets the criteria for assignment. An inmate diagnosed with a qualified disability may be assigned to a facility where accommodations exist to provide for this population. An inmate diagnosed as mentally and/or physically impaired may be assigned to a specialized unit, depending on the severity of the disability, and may be assigned to a facility with a Mental Health Unit or a facility where accommodations exist to provide for this population.

10.2 Accommodations that pose undue hardships for SCDC or pose a threat to security need not be provided. An inmate will not be placed in a program which clearly jeopardizes his/her safety or security.

10.3 Inmates with disabilities will receive reasonable education, equipment, and support necessary to perform activities of daily living and personal hygiene in a reasonably private environment.

10.4 Work and Educational Programming - SCDC shall not deny an otherwise qualified inmate with a disability access to work, vocational, or educational programming on the basis of that inmate's disability.

10.5 Work Release Centers and Reentry Programs - SCDC will not refuse to send a qualified inmate with a disability to a community work release program or reentry program because the inmate has a qualified disability.

10.6 Program Eligibility - Refer to SCDC Policy OP-21.04, "Inmate Classification Plan."

10.7 Nondiscrimination on the Basis of Disability - Refer to SCDC Policy OP-22.15, "Inmate Governance."

10.8 Appropriately trained inmates may be assigned to provide assistance to inmates with disabilities.

11. QUALIFIED INTERPRETER:

11.1 Upon request, SCDC will provide a qualified sign language interpreter for inmates whose first or preferred language is sign language.

11.2 The following non-exhaustive list provides examples of activities, services, programs, or circumstances where SCDC will provide appropriate auxiliary aids and services, including qualified interpreters, to ensure effective communication with SCDC inmates who have a hearing disability:

- Critical communication, complex information, lengthy exchanges, or anything involving legal due process;

- Intake;

- Orientation;

- Classification;

- Medical care and health programs and services, including physicals, medical screenings and treatment, dental, visual, and/or mental health examinations or treatment, and drug and alcohol recovery services;

- Counseling or psychological services;

- Educational and vocational programming, including any programming required for parole or early release;

- Due process hearings; including disciplinary hearings, and hearings in which the inmate is a witness;

- Classification review interviews;

- Grievance interviews or processes;

- Religious services;

- Non-criminal investigations conducted by SCDC; and

- Pre-release instructions.

11.3 On-site interpreter services are required when VRI is not available or the use of the VRI is not feasible or does not result in effective communication, such as where the inmate is unable to clearly see the video monitor (for example, due to vision difficulties or because the video monitor is out of the inmate's sight line), where the signal is interrupted causing unnatural pauses in communication, or where the image is grainy or otherwise unclear.

12. TIME FOR INTERPRETER RESPONSE:

12.1 In the event a qualified interpreter is necessary to provide effective communication, SCDC will provide a qualified interpreter at the earliest reasonable time. The activity, service, or program may be delayed until the interpreter is made available, or the inmate may elect to delay his or her participation in the activity, service, or program until the interpreter is available, except in situations or circumstances involving an emergency as described in the policies and procedures implemented in accordance herewith.

12.2 Unless an interpreter is scheduled in advance (for example, for an upcoming disciplinary hearing) the qualified interpreter will be provided at the earliest reasonable time taking into consideration, without limitation, the time of day, day of the week, distance to be traveled, and the circumstances and location at which the service is to be provided; however, should that time exceed 8 hours from the inmate's initial request until the interpreter is on-site, or 2 hours from the inmate's initial request for VRI, except in medical emergencies as described below, the event shall be rescheduled until such time as an interpreter can participate, but no later than 24 hours from the initial request, absent extraordinary circumstances.

12.3 SCDC will use the most effective, readily available means of communicating with the inmate until such time as a qualified interpreter is present. SCDC will inform the inmate of the current status of efforts being taken to secure a qualified interpreter on his or her behalf within 30 minutes of the inmate making the request to SCDC for the interpreter service. SCDC will provide additional updates to the inmate as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen SCDC's obligation to provide qualified interpreters in timely manner.

12.4 If an inmate who has a hearing disability expresses or demonstrates a medical condition or need that cannot wait for the assistance of a qualified interpreter to facilitate communication, or SCDC suspects that there is a medical need or condition requiring immediate treatment or other immediate response, SCDC will not delay in providing whatever medical care, treatment, evaluation, or service would be provided to other inmates under similar circumstances. In such an event, SCDC will use the most effective, readily available means of communicating with the inmate and will provide a qualified interpreter as quickly as possible, and

barring extraordinary circumstances, SCDC will provide a qualified interpreter within four hours.

13. USE OF INTERPRETING SERVICE AGENCIES:

13.1

13.2 Consistent with state procurement requirements, procedures, and timelines, one or more interpreter service agencies may be used to ensure that qualified interpreting services, including on-site and VRI as necessary to ensure effective communication consistent with the time frames herein, are available 24 hours per day and 7 days a week. NOTE: For additional information, see the ATTACHMENT.

13.3 Alternatively, SCDC may make other appropriate arrangements such as contracting directly with or hiring qualified interpreters on a fee-for-service basis. SCDC will document all requests it receives pursuant to SCDC policy "GA-06.04 Request to Staff Member" for qualified interpreters and the action taken in response to each request, including denials of services.

13.4 Consistent with its custodial role, SCDC has an affirmative duty to request a qualified interpreter, in person or via VRI, from the interpreting service for planned events within 24 hours from when the event is scheduled, or within one hour of an inmate request.

14. USE OF OTHER INMATES TO FACILITATE COMMUNICATION:

14.1 SCDC will not require an individual who has a hearing disability to bring another inmate to interpret for him or her.

14.2 SCDC will not use another inmate to interpret for an individual who has a hearing disability unless (1) the individual with a hearing disability specifically requests such assistance from another inmate, the inmate agrees, and reliance on that inmate is appropriate under the circumstances; or (2) in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

15. USE OF SCDC PERSONNEL TO FACILITATE COMMUNICATION:

15.1 Except for SCDC personnel hired specifically to serve as qualified sign language interpreters, SCDC will not use its other personnel to serve as a sign language interpreter 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.

16. INMATE SEARCHES:

16.1 Inmates will be searched consistent with prudent security practices and with consideration for their specific disability(ies). The Warden/designee will provide directions for searching an inmate whose disability prevents a search as outlined in SCDC Policy OP-22.19, "Searches of Inmates."

17. EMERGENCY EVACUATION PROCEDURES:

17.1 All facilities will develop emergency procedures for the rapid identification and safe evacuation of all inmates with disabilities.

17.2 Employees will be trained regarding the evacuation of inmates with disabilities.

17.3 In an emergency or extended disruption of normal facility operations, the Warden or higher authority may suspend any provision or section of this policy for a specific period.

18. STAFF TRAINING:

18.1 SCDC Division of Training and Staff Development will provide "effective communication training" for all employees who may have direct contact with inmates with disabilities. SCDC Training Academy will provide the training as a component of Correctional Officer Basic Training and/or Agency Orientation.

18.2 SCDC Division of Training and Staff Development will maintain records of each training and include attendance, dates, and times of training.

18.3 Housing Unit Staff who have primary supervisory responsibility for an affected inmate may obtain outside training to learn methods of communicating with the inmate and/or managing his/her specific disability in accordance with SCDC Policy ADM 17.03, "Administration of Agency Training Programs."

19. SERVICE ANIMALS:

19.1 Visitors should request and receive prior approval for service or guide dogs needed in the visitation area, but such animals may be admitted with the approval of the warden or designee based on the specific circumstances. SCDC Form 9-22, "Service Animal Information Sheet," must be completed by the handler prior to entering a SCDC institution. NOTE: Service animals must be current on their vaccinations.

- A service animal is generally permitted to accompany the individual with a disability (handler) to correctional facilities where members of the public can go. However, SCDC may ask the handler to remove a service animal from any of its facilities if the service animal is (1) out of control and the individual with a disability does not take effective action to control it or (2) not housebroken.

19.2 If a service animal is disruptive, staff should ask the handler to bring the service animal under control. If this doesn't happen quickly, staff may ask the handler to remove the service animal. Note: The handler with a disability should always be given the option to return without the service animal. However, the service animal cannot be left unattended at any SCDC property.

19.3 SCDC may also ask the handler to remove a Service Animal from any of its facilities if the use or presence of the Service Animal poses a direct threat to the health or safety of others or if the animal's behavior is unreasonably disruptive to the other participants within the facility, such as:

- Barking repeatedly, growling, snarling, biting; and/or
- Wandering around and/or bothering other visitors, inmates or staff.

19.4 Service animals are working and should not be petted.

19.5 Food or treats for the service animal should generally not be required or allowed during the visit. Water will be allowed; however, the handler is responsible for cleaning up any spills and removing the empty container used.

19.6 Searches of service animals:

- The service animal and the handler must not be separated during the search. The staff conducting the search should explain the search steps and request cooperation of the handler in the search process.
- Any pockets, flaps, etc. on the harness or collar should be thoroughly searched.
- If the harness must be removed for the search, it should be replaced very quickly since removal indicates to the animal they are off duty. The harness is to be removed and replaced by the handler unless the handler is physically or mentally unable to do so.
- Visual inspection should be adequate for short-haired animals; a frisk search may be required for animals with long, fluffy coats.

19.7 Service animal handlers are not required to show any type of identification as no registration or documentation for service animals is required or recognized by the federal government.

19.8 Service animals are also not required to wear a vest.

19.9 Care and supervision of service animals:

19.10 The individual with the disability using a service animal is responsible for the care or supervision of a service animal. The service animal must be under the control of the individual always and must have a harness, leash, or other tether. If the use of a harness, leash, or other tether would interfere with the performance of the work or tasks performed by the service animal or is impractical because of an individual's disability, a harness, leash, or other tether may not be required. However, in that case, the individual must be able to control the service animal by other effective means such as voice controls or signals.

9.11 The individual with a disability must abide by current city, county, and state ordinances/laws/regulations pertaining to licensing, vaccination, and other requirements for animals. It is the individual's responsibility to know and understand these ordinances, laws and regulations. The individual with a disability is responsible to clean up after and properly dispose of the animal's feces in a safe and sanitary manner.

19.12 SCDC will not ask for or require an individual with a disability to pay a surcharge or to comply with other requirements generally not applicable to people without service animals. However, an individual with a disability may be charged for any damage caused by his or her service animal.

19.13 Verification of service animal:

When it is not obvious that a dog is a service animal, staff may ask only two specific questions:

- Is the dog a service animal?
- What task or work does this dog perform for you?

Staff is not allowed to:

- Request any documentation for the service animal as proof that the service animal has been certified, trained, or licensed as a service animal.
- Require that the service animal demonstrate its task.
- Inquire about the nature of the person's disability.

NOTE: Emotional support animals, comfort animals, and therapy dogs are not covered and protected by the ADA and will not be permitted to accompany an individual with a disability to any correctional facilities where members of the public can go.

20. PRIVACY OF COMMUNICATIONS:

20.1 SCDC will ensure that the privacy of telephone calls involving inmates using a videophone, TTY, or a telephone with volume control is equal to the privacy afforded to other inmates' telephone calls.

20.1 Records related to inmates with disabilities, including assessments of accessibility and compliance with the Americans with Disabilities Act, will be retained per the Agency's records retention schedule.

21. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY:

21.1 Release of Information:

- This policy document is public information and may be released upon request.
- Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Office of Legal Counsel & Compliance. Confidential procedures may be released to a SCDC employee on an as needed basis.

NOTE: Distribution of this policy shall be in accordance to SCDC Policy GA-01.01, "Policies, Publications, and Forms."

22. RETALIATION:

22.1 SCDC and its employees shall not retaliate against any person who filed or may file a complaint, provides information or assistance, or participates in any other manner in an investigation or proceeding relating to Title II of the ADA. Also see SCDC Policies OP-22.15, "Inmate Governance;" GA-01.12, "Inmate Grievance System;" OP-22.14, "Inmate Disciplinary System;" (Disciplinary Offense 861); and

23. RIGHTS UNDER THIS POLICY:

23.1 This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of SCDC policies.

24. DEFINITIONS:

Assistive Device: Any device designed or adapted to help people with physical or emotional disorders to perform actions, tasks, and activities.

Auxiliary Aids and Services (as defined in 42 USCS § 12102 (1)): The term "auxiliary aids and services" includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals who are deaf or hard of hearing. The term also includes qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.

Braille: A system of writing and printing for the visually impaired, in which varied arrangements of raised dots representing letters and numerals can be identified by touch.

Deaf: A condition in which perceivable sound (including speech) have no meaning for ordinary life purposes.

Direct Threat: A significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

Disability (as defined in 42 USCS §12102(2); 28 CFR §35.104): A person with a qualified disability is defined as an individual who:

- Has a physical or mental impairment that substantially limits one or more major life activities;

- Has a record of such an impairment; and/or

- Is perceived or regarded as having such an impairment.

Durable Medical Equipment: Devices which are very resistant to wear and may be used over a long period of time. They include items such as wheelchairs, hospital beds, artificial limbs, etc.

Effective Communication: SCDC shall ensure that its communications with individuals with disabilities are as effective as communications with others, which means whatever is written or spoken must be as clear and understandable to inmates with disabilities as it is for people who do not have disabilities. Effective communication may be achieved by furnishing appropriate auxiliary aids and services where necessary to

help an inmate access programs, services and other activities. This obligation, however, does not require SCDC to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

Essential Job Functions (as defined in 29 CFR §1630.2(n)): The fundamental job duties of the position the inmate with a disability holds or seeks. Essential job functions are those that bear more than a marginal relationship to the job at issue.

Hard of Hearing: A condition in which there is some degree of hearing loss varying from mild to profound. The sense of hearing is partially, but not completely functional for ordinary life purposes.

Health Care Authority (HCA): The individual with authority and responsibility for arranging all levels of inmate health care at the institutional level, including management of specific Medical Services employee management, pursuant to a written job description.

Medical Practitioner: A person whose primary employment role is to diagnose physical and mental illnesses, disorders and injuries and prescribe medications and treatments that promote or restore good health.

Major Life Activities (as defined in 28 CFR §35.104): Includes such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Permanent Vision Impairment: Individuals who are permanently blind or have a vision impairment not correctable to central vision acuity of less than 20/200, even with corrective lenses.

Physical or Mental Impairments (which affect a major life activity)(as defined in 28 CFR§ 35.104): Physical or mental impairments include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- Neurological;

- Musculoskeletal;

- Special Sense Organs;

- Respiratory (including speech organs);

- Cardiovascular;

- Reproductive;

- Digestive;

- Genitourinary;

- Hemic and lymphatic;

- Skin; and

- Endocrine.

Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as:

- Orthopedic;

- Visual, speech, and hearing impairments;

- Cerebral palsy;

- Epilepsy;

- Muscular dystrophy;

- Multiple Sclerosis;

- Cancer;

- Heart disease;

- Diabetes;

- Intellectual disability;

- Emotional illness;

- Specific learning disabilities;

- HIV disease (whether symptomatic or asymptomatic);

- Tuberculosis;

- Drug addiction; and

- Alcoholism.

Qualified Individual with Disability (as defined in 28 CFR §35.104): An individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified Interpreter (as defined in 28 CFR §35.104): Refers to an interpreter for the deaf or hard of hearing who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

Qualified Mental Health Professional (QMHP): An individual in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness.

Reasonable Accommodation (condensed from 29 CFR§1630.2): A modification or adjustment that will enable a qualified inmate with a disability to perform all essential functions and which does not create an undue hardship for the Department.

Service Animal: A service animal means any 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. Tasks performed can include, among other things, guiding people who are blind, pulling a wheelchair, retrieving dropped items, alerting a person to a sound, reminding a person to take medication, alerting and protecting a person who is having a seizure, pressing an elevator button, or performing other duties. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA. NOTE: Under Title II and III of the ADA, service animals are limited to dogs. However, entities must make reasonable modifications in policies to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for individuals with disabilities.

Text Telephone/Teletype Terminal/Teletypewriter" ("TTY"): A device that allows individuals with hearing disabilities to use a telephone to type and send text messages.

Videophone: A telephone with a camera and screen for visual, real-time communication.

Video Relay Service (VRS): A telephone service using interpreters connected to callers by video hook-up that is designed to provide persons who are deaf and use American Sign Language with telephone services that are functionally equivalent to those provided to users without a hearing impairment.

Video Remote Interpreting (VRI): An interpreting service that uses video conference technology over dedicated lines or wireless technology offering a high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in 28 C.F.R.§35.160 (d).

Undue Hardship (condensed from 29 CFR §1630.2(p)): An action requiring significant difficulty or expense in the implementation of an accommodation or which would result in a threat to facility security.

SIGNATURE ON FILE

s/Bryan P. Stirling, Director

Date of Signature

ORIGINAL SIGNED COPY MAINTAINED IN THE OFFICE OF POLICY DEVELOPMENT

ATTACHMENT A

EXTERNAL SLI REQUEST PROCEDURE

The ADA requires SCDC to communicate effectively with inmates who have communication disabilities. The goal is to ensure that communication with inmates with these disabilities is equally effective as communication with inmates without disabilities. For Deaf/Hard of Hearing inmates (whose preferred method of communication is American Sign Language) SCDC must provide a qualified Sign Language Interpreter (SLI) for those participating in any program, service or activity in which they are qualified to participate.

It is the organizer or person responsible for the event to arrange to have a SLI present for all programs, services and activities when a Deaf inmate attends. It is not the inmate's responsibility to arrange for a SLI. Often SLIs are on high demand, therefore it is important to schedule one with as much advanced notice as possible. (forty-eight hours in advance when possible.) The SCDC staff member should notify the Agency SLI or the Agency ADA Coordinator any weekday, except holidays, between 8:00 AM to 4:00 PM once you know that a Deaf/Hard of Hearing inmate will be in attendance. Information needed for proper scheduling:

- Name/title* of the program, service or activity;
- Date(s) and times of the event; and
- Name and SCDC # of all Deaf inmate(s) attending.

Appointments cancelled by SCDC with less than 48 hours' notice may be considered for invoicing at one half (1/2) of the minimum (2) hour rate.

Emergencies: Situations or circumstances involving a Deaf/Hard of Hearing inmate needing emergency assistance weekdays before 8:00 AM or after 4:00 PM, weekends or holidays can contact the Emergency Action Center (EAC) to schedule a SLI Telephone: (803) 896-2258, (803) 896-2256; and (803) 896-7232

Notes:

- External Interpreting Services are remunerated for two-hours minimum; Subsequent hours are billed in 15-minute increments.
- Lecture Events, Presentation Events and/or events lasting more than 2 hours typically require team interpreting (2 interpreters).
- The organizer or person responsible for the event is responsibility to notify the Agency SLI or ADA Coordinator when an event is cancelled or exceeds the allotted time originally requested.
- Office of General Counsel - Main Phone number - (803) 896-8508.
- The person requesting an Emergency SLI services must complete a SCDC Form 19-29, "Incident Report," and forward a copy to the Agency ADA Coordinator.

Agency SLI Esmeralda Concepcion - (803) 896-4726; Cell (803) 904-5589 or concepcion.esmeralda@doc.sc.gov

Agency ADA Coordinator David Martinez - (803) 896-4138 or martinez.david@doc.sc.gov

*If it is not evident by the Events Title, please provide a brief description of the event.

