



## **HHS Circular C-039**

### **Reasonable Modifications in the Licensing and Certification Examination Process**

#### **Purpose**

To establish processes for compliance with state and federal laws prohibiting discrimination on the basis of disability in the examination process for health and human services (HHS) agency licensing and certification programs.

#### **Legal Bases and Guidelines**

- Americans with Disabilities Act (ADA) of 1990, as amended (42 U.S.C. 12101 et seq.), and implementing regulations at 28 C.F.R. Part 35
- Texas Occupations Code, Title 2, Chapter 54, Section 54.003

#### **Background**

The Americans With Disabilities Act (ADA), as amended, prohibits discrimination on the basis of disability in employment, public services, and public accommodations. Title II of the ADA requires that public entities make reasonable modifications in policies, practices and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that doing so would create an undue hardship or fundamentally alter the nature of the service, program, or activity.

The Texas Occupations Code requires state agencies that administer licensing examinations to provide reasonable accommodation during the licensing or certification examination process to examinees who have been diagnosed with dyslexia.

#### **Policy**

The HHS agencies are required to comply with all state and federal laws prohibiting discrimination on the basis of a disability. HHS agencies include the Health and Human Services Commission, Department of Aging and Disability Services, Department of Assistive and Rehabilitative Services, Department of Family and Protective Services, and Department of State Health Services. HHS agencies maintain licensing or certification processes for many occupations and professions.



HHS agencies will make reasonable modifications in procedures for a qualified person with a disability during the licensing or certification examination process. As defined in federal regulations, a “qualified person with a disability” with respect to licensing or certification is a person with a disability who meets the essential eligibility requirements for taking the license or certification examination and/or completing the associated training. HHS agencies will not charge applicants the cost for the modification. The program involved will be responsible for cost, if any.

HHS policy does not require a modification that produces a fundamental alteration of the knowledge or skills being measured by an examination. Also, this policy does not require modifications that offer an unfair advantage to a person with a disability, compromise examination security, or impose an undue financial or administrative burden on the program, as determined through the interactive process.

## **Procedures**

The following procedures will be used in processing requests for reasonable modification in a licensing or certification examination process administered by HHS agencies.

## **Responsibilities**

### Applicant

An applicant for licensure or certification has a duty to cooperate in an interactive process by:

- Filling out the Reasonable Modification Request for Licensing or Certification Examinations form (Attachment 1) and submitting it to the program specialist who oversees the licensing and certification program for that agency.
- Submitting any necessary medical or diagnostic documentation and/or the Documentation and Release of Medical or Provider Information Form for Licensing or Certification Process (Attachment 2) to the program overseeing the licensing or certification.
- Responding to any requests for additional information.
- Participating in discussions about the type of modification needed and any alternate modifications, if necessary.

### HHS Agencies

Inform applicants of their right to reasonable modifications by giving them the Civil Rights Office (CRO) contact information (<http://hhscx.hhsc.state.tx.us/Admin/CR/locations.html>) and



placing the following statement on applications for the licensing or certification examination process:

*A disability is a physical or mental impairment that substantially limits one or more major life activities. If you have a disability and need a reasonable modification, we will make every effort to accommodate your needs. Please fill out a Reasonable Modification Request form, gather medical and diagnostic documentation that describes the nature of your disability and modifications you request, and submit both with this application.*

- Inform applicants who ask for reasonable modifications that the CRO coordinates the modification process and provide them CRO contact information.
- Give any applicant who expresses the need for a modification a copy of the Reasonable Modification Request for Licensing or Certification Examinations form (Attachment 1).
- Inform applicant that medical or diagnostic documentation may be needed to make a disability determination and provide applicant a copy of Documentation and Release of Medical or Provider Information Form for Licensing or Certification Process (Attachment 2).
- As soon as the agency licensing or certification program receives a request form from an applicant, staff must complete Section II of the form and send the form immediately to the CRO.
- Participate in the interactive process and consult with the applicant and the CRO on the specific needs and types of reasonable modifications appropriate for (that will help) the applicant in the examination process for the licensure or certification sought.
- HHS agencies may not need medical or diagnostic documentation if the applicant has an obvious disability. Any information the applicant provides as proof of the disability, including relevant medical, diagnostic, or other information is confidential and should be forwarded to the CRO immediately upon receipt. The CRO maintains medical and diagnostic information in a separate, confidential file, and agency staff shall inform applicants of this.
- Once a reasonable modification has been identified, work with HHS agency management and/or third-party testing administrator to make necessary modifications for the applicant in a timely manner.

#### Civil Rights Office (CRO)

- Request additional medical or diagnostic information, if needed, using the Documentation and Release of Medical or Provider Information form.
- Provide technical assistance when needed.
- Determine if the applicant qualifies as a person with a disability.



- Consult with the HHS agency licensing or certification program in identifying a reasonable modification.
- Facilitate the interactive process that includes the applicant, program staff, subject matter experts, and medical providers and determine if a modification is reasonable.
- Maintain custody of records.

The CRO will issue a memorandum to the HHS agency staff and provide a copy to the applicant when a determination is reached regarding the request for a reasonable modification. The memorandum will either state the HHS agency approves the request and then describe the modifications the agency or testing entity will make for the applicant, or it will explain why the agency will not make the modification(s) requested. Although the CRO issues the letter, the final decision on whether to approve a request rests with the HHS agency.

Any records created or maintained during this process are confidential to the extent allowed by law and stored separately from the program's licensing or certification files. The CRO keeps the records and responds to any requests for disclosure.

The CRO is available to agency licensing or certification program staff for consultation at any time during this process.

### **Related Policies and Procedures**

For additional guidance refer to HHS Circular C-001, Civil Rights Policy for HHS Service Delivery.

### **Inquiries**

Inquiries regarding the content of this circular can be directed to Jennifer L. Hall, Civil Rights Director, HHSC Civil Rights Office, at (512) 424-6615 or by e-mail at [Jenny.Hall@hhsc.state.tx.us](mailto:Jenny.Hall@hhsc.state.tx.us). Inquiries can also be e-mailed to [HHSCivilRightsOffice@hhsc.state.tx.us](mailto:HHSCivilRightsOffice@hhsc.state.tx.us).