

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective, as defined in §17.203(b), as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning beneficiaries or services, or written material concerning waivers of rights or consent to treatment, shall take such steps as are necessary to insure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Director may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, visual aids, and other aids for persons with impaired hearing or vision.

§ 17.251 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not

discriminate in admission or treatment against a drug or alcohol abuser or addict who is suffering from a medical condition, because of the person's drug or alcohol abuse or addiction.

§ 17.252 Education of institutionalized persons.

A recipient that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in §17.202(d)(2), in its program or activity is provided an appropriate education, as defined in the regulation set forth by the Department of Education at 34 CFR 104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under §17.216.

§§ 17.253–17.259 [Reserved]

§ 17.260 Historic preservation programs.

(a) *Definitions.* For the purposes of this section, the term "historic preservation programs" means programs receiving Federal financial assistance that has preservation of historic properties as a primary purpose.

Historic properties means those buildings or facilities that are listed or eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local governmental body.

Substantial impairment means a permanent alteration that results in a significant loss of the integrity of finished materials, design quality or special character.

(b) *Obligations.* (1) In the case of historic preservation programs, program accessibility means that, when viewed in its entirety, a program is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by qualified handicapped persons. Methods of achieving program accessibility include:

(i) Making physical alterations which enable qualified handicapped persons

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to have access to otherwise inaccessible areas or features of historic properties;

(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;

(iii) Assigning persons to guide qualified handicapped persons into or through otherwise inaccessible portions of historic properties;

(iv) Adopting other innovative methods to achieve program accessibility.

Because the primary benefit of an historic preservation program is the experience of the historic property itself, in taking steps to achieve program accessibility, recipients shall give priority to those means which make the historic property, or portions thereof, physically accessible to handicapped individuals.

(2) Where program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the program accessibility requirement. In determining whether program accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:

(i) Scale of property, reflecting its ability to absorb alterations;

(ii) Use of the property, whether primarily for public or private purpose;

(iii) Importance of the historic features of the property to the conduct of the program; and,

(iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(c) *Advisory Council comments.* Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR part 800, prior to effectuation of structural alterations.

[47 FR 29546, July 7, 1982, as amended at 55 FR 28912, July 16, 1990]

43 CFR Subtitle A (10-1-02 Edition)

§ 17.270 Recreation programs.

This section applies to recreation programs that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

(a) *Accessibility in existing recreation facilities.* In the case of existing recreation facilities, accessibility of programs or activities shall mean accessibility of programs or activities when viewed in their entirety as provided at § 17.217. When it is not reasonable to alter natural and physical features, the following other methods of achieving accessibility may include, but are not limited to:

(1) Reassigning programs to accessible locations.

(2) Delivering programs or activities at alternate accessible sites operated by or available for such use by the recipient.

(3) Assignments of aides to beneficiaries.

(4) Construction of new facilities in conformance with the requirements of § 17.218.

(5) Other methods that result in making the program or activity accessible to handicapped persons.

(b) [Reserved]

§§ 17.271-17.279 [Reserved]

§ 17.280 Enforcement procedures.

The compliance and enforcement provisions applicable to title VI of the Civil Rights Act of 1964 apply to this subpart. These procedures are found in 43 CFR part 17, subpart A, §§ 17.5-17.11 and 43 CFR part 4, subpart I.

Subpart C—Nondiscrimination on the Basis of Age

AUTHORITY: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

SOURCE: 54 FR 3598, Jan. 25, 1989, unless otherwise noted.