

§ 36.212 Insurance.

(a) This part shall not be construed to prohibit or restrict—

(1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) A person or organization covered by this part from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(b) Paragraphs (a) (1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of the Act or this part.

(c) A public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.

§ 36.213 Relationship of subpart B to subparts C and D of this part.

Subpart B of this part sets forth the general principles of nondiscrimination applicable to all entities subject to this part. Subparts C and D of this part provide guidance on the application of the statute to specific situations. The specific provisions, including the limitations on those provisions, control over the general provisions in circumstances where both specific and general provisions apply.

§§ 36.214–36.299 [Reserved]

Subpart C—Specific Requirements

§ 36.301 Eligibility criteria.

(a) *General.* A public accommodation shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with

disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

(b) *Safety.* A public accommodation may impose legitimate safety requirements that are necessary for safe operation. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(c) *Charges.* A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

§ 36.302 Modifications in policies, practices, or procedures.

(a) *General.* A public accommodation shall make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(b) *Specialties*—(1) *General.* A public accommodation may refer an individual with a disability to another public accommodation, if that individual is seeking, or requires, treatment or services outside of the referring public accommodation’s area of specialization, and if, in the normal course of its operations, the referring public accommodation would make a similar referral for an individual without a disability who seeks or requires the same treatment or services.

(2) *Illustration—medical specialties.* A health care provider may refer an individual with a disability to another provider, if that individual is seeking, or requires, treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) *Service animals*—(1) *General.* Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) *Care or supervision of service animals.* Nothing in this part requires a public accommodation to supervise or care for a service animal.

(d) *Check-out aisles.* A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

§ 36.303 Auxiliary aids and services.

(a) *General.* A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense.

(b) *Examples.* The term "auxiliary aids and services" includes—

(1) Qualified interpreters, notetakers, computer-aided 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 (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

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

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) *Effective communication.* A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) *Telecommunication devices for the deaf (TDD's).* (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

(e) *Closed caption decoders.* Places of lodging that provide televisions in five or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) *Alternatives.* If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden,