

## § 42.520

## 28 CFR Ch. I (7–1–11 Edition)

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of handicapped persons and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

### ACCESSIBILITY

#### § 42.520 Discrimination prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

#### § 42.521 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Compliance procedures.* A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to

those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small providers.* If a recipient with fewer than fifteen employees finds, after consultation with a handicapped person seeking its services, that there is no method of complying with § 42.521(a) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other available providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within ninety days of the effective date of this subpart. However, where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible and shall be completed no later than three years from the effective date of this subpart. If structural changes to facilities are necessary, a recipient shall, within six months of the effective date of this subpart, develop a written plan setting forth the steps that will be taken to complete the changes together with a schedule for making the changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons and shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

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

(3) Specify the schedule for taking the steps necessary to achieve full accessibility under § 42.521(a) and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to insure that interested persons, including mentally retarded persons or persons with impaired vision or hearing, special

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learning problems, or other disabilities, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[45 FR 37622, June 3, 1980, as amended by Order No. 2679-2003, 68 FR 51364, Aug. 26, 2003]

### § 42.522 New construction.

(a) *Design and construction.* Each new facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of March 7, 1988, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 37622, June 3, 1980, as amended by Order 1249-88, 53 FR 3206, Feb. 4, 1988]

## PROCEDURES

### § 42.530 Procedures.

(a) The procedural provisions applicable to title VI of the Civil Rights Act of 1964 (28 CFR 42.106-42.110) apply to this subpart except that the provision contained in §§ 42.110(e) and 42.108(c)(3) which requires the Attorney General's approval before the imposition of any sanction against a recipient does not apply to programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP. The applicable provisions contain requirements for compliance information (§ 42.106), conduct of investigations (§ 42.107), procedure for effecting compliance (§ 42.108), hearings (§ 42.109), and decisions and notices (§ 42.110). (See appendix C.)

(b) In the case of programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP, the timetables and standards for investigation of complaints and for the conduct of compliance reviews contained in § 42.205(c)(1) through (c)(3) and § 42.206 (c) and (d) are applicable to this subpart except that any finding of noncompliance shall be enforced as provided in paragraph (a) of this section. (See appendix D.)

(c) In the case of programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP, the refusal to provide requested information under paragraph (a) of this section and § 42.106 will be enforced pursuant to the provisions of section 803(a) of title I of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, Public Law 96-157, 93 Stat. 1167.

(d) For acts of discrimination occurring prior to the effective date of this subpart, the 180-day limitation period for filing of complaints (§ 42.107 of this title) will apply from that date.

(e) The Department will investigate complaints alleging discrimination in violation of section 504 occurring prior to the effective date of this subpart where the language of the statute or HEW's interagency guidelines (43 FR 2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided notice that the challenged policy or practice was unlawful.