



STATE OF WASHINGTON

OFFICE OF THE CORRECTIONS OMBUDS

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November 22, 2019


Steve Sinclair, Secretary  
Department of Corrections (DOC)

**Office of the Corrections Ombuds (OCO) Systemic Issue Report**

Attached is the official report regarding the OCO systemic issue review of disability-related concerns within DOC. We appreciate the opportunity to work collaboratively with DOC to amend current policies and practices to better ensure that all incarcerated persons who are impacted by a disability have the same access and opportunities to health, safety, programming, and services, and that their rights are protected while they are within state confinement.

Any member of the public who wishes to report a concern to OCO is welcome to contact the office at (360) 664-4749 or at the address above. All concerns are logged into the OCO database and used as part of its overall reporting to policymakers and analysis of issues within DOC.

Sincerely,

  
Joanna Carns  
Director

cc: Governor Inslee

**REPORT PREPARED BY ELISABETH KINGSBURY, MANAGEMENT ANALYST –  
SPECIAL PROJECTS  
OCO SYSTEMIC INVESTIGATION**

**Summary of Concern**

As of October 15, 2019, the Office of the Corrections Ombuds has received more than 110 complaints related to disabilities of incarcerated individuals. These do not include the hundreds of medical and mental health concerns received by OCO, although the majority of those complaints are most likely related to disabling conditions, as well.<sup>1</sup>

The Americans with Disabilities Act (“ADA”), a federal act signed into law by George H. W. Bush in 1990, offers protections to individuals with disabilities, including people incarcerated in state prisons. Specifically, Title II of the ADA states: “no qualified individual with a disability shall, by reason of such disability, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>2</sup> An incarcerated person is considered a “qualified individual” if they are a person who “with or without reasonable modifications<sup>3</sup> 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.”

Disability and the need for accommodations touches nearly every facet of life in prison, from the grievance procedure and classification to food and education. This report addresses the process by which accommodations are requested, considered, and appealed, as well as the roles and duties of the ADA Compliance Manager and ADA Coordinators. It briefly assesses several systems that are impacted, including screening, the grievance program, law library, education, programs, camp and work release, communication, and transport. This report should not be considered a comprehensive assessment of every way in which disability and one’s need for accommodations or modifications are handled by DOC.

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<sup>1</sup> Washington DOC has divided ADA accommodations into Accommodation Status Records (“ASRs”) and Health Status Reports (“HSRs”). This practice is seen in many states. While the reasoning is sound, the result is the creation of two distinct siloes that do not have established means of communicating with one another. In fact, OCO’s analysis revealed that a significant number of complaints related to disabilities were medical in nature, and thus would be handled according to DOC’s HSR protocol. Examples include the need for ongoing medical treatment, supplies, and equipment related to chronic illnesses or disorders, mobility and hearing impairments, and other accommodations that are determined by DOC health services providers to be “medically necessary.” OCO has already begun a systemic review of medical care and health services within DOC, and a review of HSRs will accompany that report. For this report, we have focused primarily on the ASR silo.

<sup>2</sup> 42 U.S.C. § 12132. The ADA defines “disability” as “(A) a physical or mental impairment that substantially limits on or more major life activities...; (B) a record of such an impairment; or (C) being regarded as having such an impairment...” 42 U.S.C. § 12102(2)(A)-(C).

<sup>3</sup> Title II of the ADA describes “modifications.” However, in this report we will refer to modifications as “accommodations,” as this has become common terminology and has been adopted by DOC.

## **OCO Jurisdiction**

Per RCW 43.06C.040, OCO has the authority to initiate ... an investigation upon his or her own initiative, or upon receipt of a complaint from an inmate, a family member, a representative of an inmate, a department employee, or others, regarding any of the following that may adversely affect the health, safety, welfare, and rights of inmates:

- (ii) Department decisions or administrative actions;
- (iii) Inactions or omissions;
- (iv) Policies, rules, or procedures; or
- (v) Alleged violations of law by the department that may adversely affect the health, safety, welfare, and rights of inmates.

Under RCW 43.06C.040, OCO has the authority to initiate an investigation into issues identified as systemic within DOC.

## **OCO Investigative Actions**

OCO analyzed data regarding the unmet needs of incarcerated individuals with disabilities which had been collected between November 2018 and September 2019;

OCO conducted extensive interviews of DOC staff at facilities as well as at headquarters;

OCO interviewed incarcerated individuals;

OCO reviewed grievances regarding disabilities and accommodations and their responses;

OCO analyzed several states' policies regarding disabled incarcerated individuals, including sister states of Oregon and Idaho;

OCO reviewed nationwide best practices as identified by state and national organizations and scholars; and

OCO reviewed DOC policies

- 690.400 (*"Offenders" with Disabilities*);
- 590.500 (*Legal Access for Incarcerated Individuals*);
- 440.020 (*Transport of Property*); and
- the "Offender" Grievance Program Manual.

In June 2019, OCO arranged to send a kiosk message regarding disability-related needs to all adults in DOC custody. The message explained that OCO would be reviewing the issue of reasonable accommodations and encouraged individuals who had experienced difficulty securing accommodations within DOC to contact us. Using data collected by OCO between November 2018 and September 2019, we identified more than 100 individuals who had experienced problems accessing appropriate treatment, supplies, equipment, programs, services, or activities due to a disability. OCO believes it is reasonable to assume that there are many more instances

of access difficulties that have occurred but were not reported to OCO, possibly due to incarcerated individuals' fear of reprisal or limited ability to self-advocate.

### **Investigative Findings, OCO Recommendations, and DOC Responses**

**OCO found that most ADA coordinators feel that they receive good support and training from the ADA Compliance Manager. OCO also found that opportunities exist to further strengthen their training.**

- ADA Coordinators (“ADACs”) indicated that ADA Compliance Manager Risa Klemme is an outstanding source of knowledge and support. Specific comments about Ms. Klemme included:
  - Very responsive.*
  - Outstanding.*
  - Always available as a resource.*
  - Fantastic leader.*
  - Open to discussion.*
- Some ADACs mentioned that links to free ADA webinars provided by Ms. Klemme are helpful and appreciated.
- All ADACs who had attended annual training said that they found it helpful. Specific comments regarding the training included:
  - Well thought out.*
  - Materials were helpful.*
  - Bringing TBI to the forefront was great and needed to be done.*
  - Bringing in the ARC [as a speaker] was great.*
  - Great training.*
  - I got a lot out of it because it was engaging.*
  - The 2019 training was exceptional.*
- Elements of the training that ADACs found particularly helpful:
  - Bringing in outside experts to discuss topics such as TBI [traumatic brain injury].
  - Offering an engaging training, including facilitated discussion, that is not exclusively lecture-style.
  - Having an opportunity to network with other ADACs to learn from their experiences.
  - Participating in the exercise which required everyone to imagine the experience of being a person who uses a wheelchair.
- DOC ADA Coordinators offered several of their own OCO recommendations to further improve the annual ADA training, such as:

- Allowing custody supervision staff to attend this or a similar ADA/disability training in order to pass the information down to line staff.
- Increase discussion of invisible/unseen disabilities.
- Enhancing the opportunities for ADACs to network and learn from each other.
- Incorporate discussion of job duties and expectations for newer ADACs.
- Increase focus on issues frequently seen in facilities, such as accessing education for people with learning disabilities.
- Include elements that are relevant to camps and work release programs. Examples include supporting people with disabilities as they prepare for reentry and supporting people with invisible disabilities who did not screen in during reception as having a disability.

**OCO Concern:** Opportunities exist to enhance the annual ADA training.

**OCO Recommendations:**

1. Increase discussion of invisible/unseen disabilities at annual training.

**DOC Response:** The ADA compliance manager has started preparing the annual ADA Coordinator Training agenda to take place in March of 2020. Discussion of invisible/unseen disabilities will be incorporated into the agenda.

2. Enhance the opportunities for ADACs to network and learn from each other.

**DOC Response:** During the annual ADA coordinator training in March 2020, there will be opportunities for ADACs to network and learn from each other. The agency has created an iDOC ADA webpage to share training and encourage networking between ADACs. The ADA compliance manager sent out an announcement of this new webpage for reference on December 19, 2019.

Please see Exhibits B and F.

3. Incorporate discussion of job duties and expectations for newer ADACs.

**DOC Response:** Discussing job duties and expectations for newer ADACs will be incorporated into the annual ADA coordinator training in March of 2020.

4. Include elements that are relevant to camps and work release programs. Examples include supporting people with disabilities as they prepare for reentry; supporting people with invisible disabilities who did not screen in during reception as having a disability.

**DOC Response:** Supporting all incarcerated individuals with all types of disabilities, including scenarios for work release programs and camps will be incorporated into the annual ADA coordinator training in March of 2020. Elements include but are not limited to reentry and invisible disabilities.

**OCO Concern:** Some ADACs expressed interest in attending outside ADA-focused trainings or conferences to further build contacts and enhance learning.

**OCO Recommendation:**

5. Remind ADACs of opportunities available for professional development.

**DOC Response:** The ADA compliance manager receives professional development opportunities via email which are then forwarded out to the ADACs. The department has created a webpage on iDOC for all ADA related information where these training opportunities will be posted as well for reference.  
Please see Exhibits B and F.

**OCO Concern:** Some ADA coordinators did not indicate awareness that the ADA extends to people with mental illness and other unseen disabilities. Some ADA coordinators said that their role did not apply to issues concerning mental health because “mental health is its own system.”

**OCO Recommendations:**

6. Increase discussion of mental health as a disability at trainings.

**DOC Response:** The agency’s mental health unit and the ADA compliance manager will work in tandem to expand the breadth of the ADA training to include mental health as a disability and extend examples. This will be incorporated into the annual training taking place in March of 2020.

7. Enhance training for new ADACs regarding ADA relevance to mental health diagnoses and other unseen disabilities.

**DOC Response:** The agency’s mental health unit and the ADA compliance manager will work in tandem to expand the breadth of the ADA training to include mental health as a disability and extend examples. This will be incorporated into the annual training taking place in March of 2020.

**OCO found that some ADA coordinators are uncertain of their role and specific duties. OCO also found that many ADA coordinators do not have sufficient time to complete their duties.**

**OCO Concern:** Some ADACs indicated that they do not have sufficient time to accomplish their duties. These ADACs attributed this to the fact that they hold other job titles and associated job duties. Comments on this topic included:

*I do not feel that I have sufficient time [to perform my ADA duties]. It would be helpful to have a part time person dedicated to ADA work.  
The [ADA Coordinator] work deserves a lot more attention than I’m able to give it.  
I can’t stay on top of the [ADA] work as well as I should.  
Do I have sufficient time [for ADA Coordinator duties]? Absolutely not.*

**OCO Recommendations:**

8. Conduct assessment of all job duties and analysis of time allocation for each facility.  
If assessments indicate the need, DOC should: re-allocate job duties so that the workload is reduced for existing ADA coordinators; consider hiring part-time staff who focus solely on disability-related issues, including accommodation requests.

**DOC Response:** In coordination between the agency's ADA compliance manager and the human resources unit, there will be an assessment conducted of prison ADACs during the first four months of 2020.

Pending the assessment, the agency will determine next steps of action.

**OCO Concern:** Some ADACs indicated that the ADA Coordinator role takes up minimal time and that they typically do not spend much or any time on ADA duties in any given month.

**OCO Recommendations:**

9. Create and distribute written guidelines that delineate ADAC duties.

**DOC Response:** As part of the human resources assessment, the ADA compliance manager will create the draft written guidelines delineating the ADAC duties. The draft will be reviewed and finalized at the annual training in March 2020. The final version will be posted to the ADA iDOC webpage.

10. Conduct training by ADA Compliance Manager of all ADACs' supervisors to ensure their awareness and understanding of the duties and expectations of ADA Coordinators.

**DOC Response:** The ADA compliance manager attended December's Superintendent meeting and informed them of the training that will be done at the next scheduled Superintendent's meeting outlining the duties and expectations of ADA coordinators. The assistant secretary for prisons will be inviting the associate superintendents, who serve as the ADAC supervisors, to attend this meeting and be part of the training as well.

**OCO Concern:** Some ADA coordinators indicated that they do not routinely take part in the monthly Accommodation Review Committee (ARC) calls.

**OCO Recommendation:**

11. Instruct ADACs to participate monthly, even when not presenting an Accommodation Status Report (ASR) request.

**DOC Response:** The ADA Compliance Manager distributed a reminder on December 12, 2019, to all ADACs of the importance of their attendance and has implemented a procedure to track attendance with the expectation that an ADAC cannot miss three or more consecutive meetings.  
Please see exhibit A.

**OCO found that other DOC staff would benefit from additional disability-focused training.**

**OCO Concern:** Custody staff would benefit from additional ADA/disability-focused trainings.

**OCO Recommendations:**

12. Update ADA component of core training. Incorporate special attention to vulnerable populations, including individuals with disabilities.

**DOC Response:** In coordination between the Training and Development Unit and the ADA compliance manager in 2020, there can be an update to the existing ADA training provided to all staff. The update made can incorporate special attention to vulnerable populations, including individuals with disabilities.

13. Provide orientations and awareness for custody staff on ADA requirements as well as the broad range of what disabilities may look like.

**DOC Response:** Orientations and awareness for custody staff on ADA requirements will be updated to reflect current practices, including the agency's current ASR process.

14. Require recurring mental health awareness trainings and unseen disability trainings for custody staff at place safety musters and/or as part of annual information sharing.

**DOC Response:** The ADA compliance manager in collaboration with security specialists, mental health staff, and other stakeholders will be preparing fact sheets with applicable information regarding mental health awareness and unseen disabilities for presentation at the facility place safety musters.

15. Evaluate need for new staff position dedicated to providing recurring trainings and supporting the ADA Compliance Manager.

**DOC Response:** The ADA compliance manager has developed a questionnaire to send out to other state correctional system ADA compliance managers to gather information about staffing levels and number of ADACs, support position, etc. The questionnaire is attached. It is expected to take 30 days from the date of sending, to get responses.

Please see Exhibit L.

**OCO found that current screening methods at reception are insufficient to accurately identify people with disabilities. OCO also found that some needs of people with disabilities are not able to be readily recognized by staff due to insufficient identification methods.**

**OCO Concern:** People with disabilities often have no record of having a disability in their files; it appears some people were never properly screened or identified at reception or later.

**OCO Recommendation:**

16. Implement enhanced screening methods and procedures to identify people with functional disabilities (including disabilities resulting from TBI, Fetal Alcohol Syndrome, intellectual, learning, and psychiatric disorders) at reception and periodically throughout incarceration.

**DOC Response:** Corrections has partnered through a grant with University of Washington to help implement additional screening at reception. The Traumatic Brain Injury (TBI) screener is expected to debut in early 2020. In September 2020, the current grant will expire. The department is considering a new grant request to work toward screening tools for additional functional disabilities.



There is currently an intellectual disability review form (13-457) that walks through the evaluation process and a pathway in practice for any staff person who suspects an incarcerated individual may have a general intellectual disability.

Please see Exhibit J.

**OCO Concern:** Reports of inaccurate PULHES codes.

**OCO Recommendation:**

17. Review PULHES codes data entry process and provide additional training as needed.

**DOC Response:** The assistant secretary for health services and the chief medical officer issued a reminder on December 30, 2019, to all health services staff ensuring they follow the PULHES coding guidelines put into place by the department to help remedy any inaccurate entries.

Please see attachment K.

18. Issue a reminder to providers to review PULHES codes for accuracy during each patient encounter.

**DOC Response:** The assistant secretary for health services and the chief medical officer issued a reminder on December 30, 2019, to all health services staff ensuring they follow the PULHES coding guidelines put into place by the department to help remedy any inaccurate entries.

Please see attachment K.

**OCO Concern:** Staff are often unaware that a person has a disability and associated accommodation or modification, especially when the disability is “invisible.”

**OCO Recommendation:**

19. Document ASRs in a specific location in OMNI with an ASR link on the front page.

**DOC Response:** The health records supervisor sent all health records staff an email on December 3, 2019, reminding of the process to document ASRs in comments to custody.

Please see Exhibit C.

The resources previously used to enhance the OMNI-HS system are no longer available and the agency will work toward this recommendation in the future.

**OCO Concern:** Some individuals with significant needs are unable to effectively advocate for themselves to secure accommodations, but need them nonetheless.

**OCO Recommendation:**

20. Ensure ADACs receive transfer manifests with PULHES codes as well as incoming transfer job screenings so as to identify individuals who may be in need of accommodations.

**DOC Response:** During the review of policy 300.380 *Classification and Custody Plan Review* the agency will add ADACs to the list of members on the job screening committee. The agency will implement this process change beginning in January of 2020.

**OCO found that most ADA coordinators are not familiar with the findings and recommendations of the self-audit completed in 2014.**

**OCO Concern:** Several ADACs were not familiar with the self-audit done in/around 2014. Some ADACs were familiar with it but did not know how much of it had been implemented at their facility.

**OCO Recommendations:**

21. Distribute a copy of every facility's transition plan to the appropriate ADA coordinator and superintendent for review and written acknowledgment of awareness.

**DOC Response:** The ADA compliance manager will be on the agenda for February's Superintendents meeting and will address the need to update the transition plans and require the ADA coordinators review and post within the appropriate facilities.

22. Update transition plans to reflect what has been accomplished since last update.

**DOC Response:** Facility managers will update the transition plan by the end of the fiscal year. Implementation of the updated plans will be contingent on the work of the legislature.

23. Complete implementation of each audit's OCO Recommendations.

**DOC Response:** Implementation of each audit's recommendations are contingent upon budget received from the state legislature. As an example, due to the legislature's granting of monies during 2017-19 budget cycle, \$1M of the \$4.2M requested was allotted to retrofit the Monroe Correctional Complex facilities to comply with standards mandated by the ADA. The department requested additional funding of roughly \$2M for other ADA retrofit projects, which were not funded in the 2017-19 budget cycle. The department will continue in future years to advocate for ADA compliance dollars to implement audit recommendations.

**OCO found that elements of the process for requesting an accommodation (known as an Accommodation Status Report, or ASR) are unclear to staff and incarcerated individuals. OCO also found other flaws in the process. OCO also found that significant confusion exists system-wide regarding the distinction between Accommodation Status Reports (ASRs) and Health Status Reports (HSRs).**

Several ADA Coordinators indicated that the ASR request process as implemented in 2017 has been an improvement over past methods. Most ADACs indicated that the ASR process is becoming more consistent across facilities, which is a positive development.

**OCO Concern:** ADA Coordinators indicated a variety of interpretations of their role in the ASR process, including:

- (1) submit only viable requests to the Accommodation Request Committee (ARC), thereby acting as a gatekeeper;
- (2) submit only requests to the ARC that are denied at the “local accommodation review” level; or
- (3) try to resolve ADA-related issues without requesting an ASR, resulting in no documentation of the ASR.

These interpretations are at odds with external stakeholders’ understanding of ADACs’ mandate to forward all accommodation requests to the ARC.

**OCO Recommendations:**

24. Reminder and re-training of ASR protocol for ADACs, so as to ensure consistency across the system.

**DOC Response:** Reminders and re-training of ASR protocol for ADACs will be incorporated into the March 2020 ADA coordinator training. An email reminder was sent to all ADACs on December 2, 2019.

Please see Exhibit A.

25. Issue written guidance to all ADACs and superintendents clarifying that any request for an accommodation must be forwarded to the ARC unless they are clearly under the purview of a health care provider (e.g., wheelchair, mattress, etc.).

**DOC Response:** The agency will be updating the ASR protocol on January 21, 2020, and will then disseminate to the superintendents and ADACs for review and implementation. These changes will also be discussed at the annual training taking place in March of 2020.

**OCO Concern:** The ASR process still has inconsistencies across facilities, resulting in problems maintaining ASRs upon transfer even when new facility has the capability of maintaining the ASR.

**OCO Recommendations:**

26. Create ASR link in OMNI (as described in Identification section).

**DOC Response:** The resources previously used to enhance the OMNI-HS system are no longer available to the agency and the agency will work toward this recommendation in the future.

27. Implement enhanced identification processes for ADACs (as described in Identification section).

**DOC Response:** Corrections has partnered through a grant with University of Washington to help implement additional screening at reception. The Traumatic Brain Injury (TBI) screener is expected to debut in early 2020. In September 2020, the current grant will expire. The department is considering a new grant request to work toward screening tools for additional functional disabilities.

There is currently an intellectual disability review form (13-457) that walks through the evaluation process and a pathway in practice for any staff person who suspects an incarcerated individual may have a general intellectual disability.

Please see Exhibit J.

28. Remind ADACs and custody staff that ASRs are to remain intact upon transfer unless logistically unable to be implemented.

**DOC Response:** The assistant secretary for prisons will issue a reminder in early January 2020 to ADACs and custody staff that ASRs are to remain intact upon transfer unless logistically unable to be implemented.

**OCO Concern:** OCO has received reports that ADA Coordinators fail to respond to requests and inquiries about accommodations and other disability-related matters.

**OCO Recommendations:**

29. Ensure ADA Coordinators are all aware of duties, including:

- *Participating in monthly ARC calls even when they do not have an ASR to present. This is a critical networking and ongoing training opportunity.*
- *Establish an acknowledgment response deadline for ADA Coordinators of 14 days.*
- *Instruct ADACs to respond in writing to any written request or inquiry regarding a disability.*

**DOC Response:** An email was distributed on December 12, 2019, by the ADA compliance manager to remind staff of these procedures and expectations. Please see Exhibit A.

The ADA compliance manager will incorporate training on these procedures and expectations at the March 2020 annual training.

*\* OCO recognizes the challenges that result when an incarcerated individual submits several inquiries regarding the same concern to the same ADAC over a short period of time. Whenever possible, OCO will inform those who contact our office that we recommend only submitting one request to an ADAC in a 14 day period.*

**OCO Concern:** Significant confusion exists system-wide with regard to Health Status Reports (HSRs) versus ASRs. We have received reports that mental health staff are reluctant or unauthorized to issue HSRs to address a medical necessity for a psychiatric concern. We have also received reports that medical staff are reluctant to issue medically necessary HSRs when they are uncertain whether the item or modification should be issued as an HSR or ASR. This often results in an incarcerated person in need of assistance being sent back and forth between silos, ultimately receiving no assistance.

**OCO Recommendations:**

30. Ensure HSR index of available items is current and circulated to all ADA Coordinators as well as all medical and mental health care staff/providers.

**DOC Response:** The HSR index is current and available on the new iDOC page that was created for ADA reference. The ADA compliance manager announced this new webpage to staff on December 19, 2019. Please see Exhibit B and F.

31. Ensure medical/mental health providers have access to the ASR Request form (Form 13-508) which lists possible ASRs for reference.

**DOC Response:** On December 30, 2019, form 13-508 was sent out with a reminder to all staff on where this form is located and the intended use for future reference. Please see Exhibit G.

32. Instruct DOC staff to automatically forward an HSR or ASR request to the appropriate staff member when it is received in error. Notify the requesting individual that this action was taken.

**DOC Response:** The department is strengthening policy language in policy 690.400 *Offenders with Disabilities* to reflect that an incarcerated individual can make their ADA needs known to any staff person and that the respective staff person is responsible for then transferring the information in writing to the health services manager and ADAC.

**OCO found that individuals with mental health disabilities may experience additional difficulties obtaining an ASR for their disability.**

**OCO Concern:** OCO observed several incidences in which individuals with disabilities were unable to properly secure any accommodation due to the strict separation of the HSR and ASR processes. For instance, OCO received a report of a person whose mental health provider had issued an HSR for specific housing arrangements due to a psychiatric disability. OCO's understanding is that the ARC would not consider this as an ASR, citing this subject as one belonging solely to mental health. However, OCO was also informed that mental health providers are not authorized to write HSRs for accommodations that relate to mental health diagnoses. Federal law is clear that individuals with functional disabilities stemming from mental health disorders would be eligible for ADA accommodations (modifications) where appropriate. OCO is concerned that no clear process exists within DOC or DOC policy for an individual to secure an accommodation that stems from a mental health disorder.

**OCO Recommendation:**

33. Develop and implement a clear protocol for issuing accommodations for people with psychiatric disabilities. This may involve a multi-disciplinary team approach in which the incarcerated person, ADA Compliance Manager, local ADA Coordinator, local mental health providers, and other necessary staff meet to address this need.

**DOC Response:** The agency's director of mental health will establish a multi-disciplinary team in calendar year 2020 to develop a clear protocol for issuing accommodations to people with psychiatric disabilities.

**OCO Concern:** OCO observed HSRs being used as an incentive to ensure treatment compliance. One mental health provider maintained that an HSR related to housing modifications was part of an incarcerated person's treatment plan. It appeared as though DOC was making this person's accommodation dependent upon the person's treatment compliance. This is counter to the mandate of the ADA, which views accommodations as rights, not rewards.

**OCO Recommendation:**

34. Ensure that medical and mental health providers are aware and acknowledge that they must not conflate accommodations with compliance.

**DOC Response:** The department understands the difference between accommodations and treatment compliance and will work with providers to clarify that the two must not be conflated.

**OCO found several flaws in the ARC denial appeal process.**

**OCO Concern:** OCO received reports that the formal appeal process is unclear. Some ADACs did not indicate awareness that the proper channel for appealing an ASR denial is through the grievance process. Further, the process of grieving ARC denial as the formal means of appeal may be unproductive. This is especially true in instances where the Grievance Coordinator for a facility also holds the role of ADA Coordinator. Several parties consulted for this report relayed concerns that an ASR appeal should rest with a committee, not an individual.

**OCO Recommendation:**

35. Implement a new appeal protocol in which the ASR denial is sent to a small committee consisting of the ADA Compliance Manager, the Chief Medical Officer, and the Medical Director of Quality Assurance for reconsideration.

**DOC Response:** The ADA compliance manager distributed an email to all ADAC staff on December 12, 2019, informing them of the plan for a revision to the appeals process for ASRs that are denied. The revised process will allow incarcerated individuals to appeal directly to the ADA compliance manager and the appeal committee. This process has been officially revised and a formal memo of the new process was distributed to all staff from the assistant secretary for health services and the assistant secretary for prisons on December 19, 2019. Please see Exhibits A, C, and D.

**OCO found that elements of the grievance program may be inaccessible for some individuals with disabilities.**

**OCO Concern:** Some individuals with learning disabilities, intellectual disabilities, and other disabilities may have difficulty meaningfully accessing the grievance process. OCO has observed that a person's disability may impact the clarity of some grievances, resulting in grievance coordinators either (1) devoting extra time to determining the details of the grievance, or (2) rejecting the grievance which may result in a total lack of resolution for the grievant.

**OCO Recommendations:**

36. Require ADA/disability awareness training for grievance coordinators, including recognizing situations in which it is appropriate to connect the grievant with the facility ADA Coordinator.

**DOC Response:** The ADA compliance manager has been in contact with the grievance manager and will be attending the next statewide grievance meeting to provide training.

37. Ensure that grievance coordinators are trained to recognize grievances that relate to disabilities (particularly when the words *disability* or *accommodation* are not used in the grievance).

**DOC Response:** The ADA compliance manager has been in contact with the grievance manager and will be attending the next statewide grievance meeting to provide training.

38. Ensure grievance coordinators are aware of their responsibility per the OGPM to provide audio recorders or other assistance to individuals who may have difficulty preparing an adequate grievance because of their disability.

**DOC Response:** The ADA compliance manager has been in contact with the grievance manager and will be attending the next statewide grievance meeting to provide training. Prior to the training, a reminder to bring recorders for use during the training will be sent out.

**OCO found that law library and legal access may be inaccessible for some individuals with disabilities.**

**OCO Concern:** Confusion exists regarding access to law libraries and completion of legal work, specifically as it relates to the role of Access Assistants.

**OCO Recommendation:**

39. Amend DOC policy 590.500 to clarify that Access Assistants are allowed to be paid when performing routine tasks related to legal documents (reading, transcribing, etc.) as long as they are not providing legal advice or assistance. Clarify that assignment of an Access Assistant may not obstruct or limit law library access for the person who is assigned the Access Assistant. Ensure that it remains clear that an inmate may still receive unpaid help from other incarcerated people in the law library.

**DOC Response:** Policy 590.500 *Legal Access for Incarcerated Individuals* has been revised to include this language which will be posted in early 2020.

**OCO Concern:** Speech to text software may not be available on at least one computer in every law library.

**OCO Recommendation:**

40. Require law librarians at each facility to ensure at least annually that functioning speech to text software is available on at least one computer in each law library.

**DOC Response:** The department has added a subsection in policy 590.500 *Legal Access for Incarcerated Individuals* that requires annual checks on facility speech to text software. The agency is also analyzing the need for software updates to ensure a user friendly experience.

Please see Exhibit E.

**OCO found that education and acquiring a GED may be inaccessible for some individuals with disabilities.**

**OCO Concern:** Reports of incarcerated people having difficulty understanding/participating in education classes.

**OCO Recommendation:**

41. Establish protocol for how ADA coordinators and staff interface with educational faculty to (1) flag individuals who may need accommodations in any given class, as well as (2) determine what accommodation may be reasonable and appropriate for individuals who need them.

**DOC Response:** The department's education administrator, in partnership with the Health Services Division, is in agreement that there is a need for a dedicated psychologist trained in the administration of intellectual and learning disabilities. The department will need to secure funding to support a contract for these services. At such a time, the department will be equipped to implement the recommendation.

**OCO Concern:** OCO has received multiple reports in which an incarcerated person with an intellectual or learning disability who is working towards their GED cannot secure accommodations for the exam. Our understanding is that people have sometimes been unsuccessful in securing these accommodations from the GED testing company because no DOC staff is trained, authorized, or available to conduct evaluations of intellectual and/or learning disabilities.

**OCO Recommendations:**

42. Hire a dedicated psychologist or equivalent who is trained in administration of LD/ID evaluations, and/or train mental health staff based in eastern and western Washington to conduct LD/ID evaluations.

**DOC Response:** The department's education administrator, in partnership with the Health Services Division, is in agreement that there is a need for a dedicated psychologist trained in the administration of intellectual and learning disabilities. The department will need to secure funding to support a contract for these services. At such a time, the department will be equipped to implement the recommendation.

43. Implement thorough screening for LD/ID at reception.

**DOC Response:** The department's education administrator, in partnership with the Health Services Division, is in agreement that there is a need for a dedicated psychologist trained in the administration of intellectual and learning disabilities. The department will need to secure funding to support a contract for these services. At such a time, the department will be equipped to implement the recommendation.



**OCO found that some programming and jobs may be inaccessible for some individuals with disabilities.**

**OCO Concerns:** OCO received reports of some incarcerated individuals not being able to participate fully in programming because of a disability, and that some incarcerated individuals needing but not receiving modifications to job duties or assigned to a job that's not appropriate given their disability.

**OCO Recommendations:**

44. Ensure reasonable accommodations are issued when necessary for an individual with a disability to be able to access their assigned programming.

**DOC Response:** The department has ensured that this language is included in policy 690.400 *Offenders with Disabilities* and will audit facility practice to match policy.

45. Remind program and classification staff of requirements under the ADA and DOC policy as well as general disability awareness.

**DOC Response:** The ADA compliance manager distributed a notice out to all staff for awareness of the live ADA iDOC webpage which has a link to the ADA and DOC policy for awareness and review on December 19, 2019.

Please see Exhibits B and F.

**OCO Concern:** Reports of incarcerated individuals being infraacted for not programming, even though the programming is inaccessible without an accommodation.

**OCO Recommendation:**

46. Remind hearing officers of requirements under the ADA and DOC policy as well as general disability awareness. Instruct hearing officers to contact local ADAC as a resource in those cases.

**DOC Response:** The hearings and violations administrator will send a notice in early January 2020, to all hearings staff letting them know of the new iDOC webpage with the contact information for all ADAC resources and reminding them to adhere to the requirements under the ADA and DOC policy.

**OCO Concern:** OCO has received reports that some individuals with disabilities who are housed long-term in infirmaries are not able to access programming or outside yard time. This is also the situation in some facilities where people with medium or minimum classification are managed as maximum classification because the infirmary itself is maximum security.

**OCO Recommendation:**

47. Where possible, implement protocol for allowing similar programming and yard time for individuals with disabilities who are assigned to infirmary housing.

**DOC Response:** It is the department's practice that infirmary housing is used for incarcerated individuals who are typically too ill to be involved in programming or yard time. Policy 610.600 *Infirmiry/Special Needs Unit Care* does state that 'the housing level is for patients who need temporary or longer term housing due to security/vulnerability concerns.' Due to capacity limitations, there is a small part of the infirmary used for vulnerable incarcerated individuals that are restricted to the

same yard/programming time as those who are housed there due to illness. The department is exploring options to allow those who are able more yard/programming time.

48. Establish a unit to support individuals with complex medical and mental health needs, similar to Sage Unit, for individuals who require medium custody. Beyond creating improved programming and therapy options for incarcerated individuals, this would be a cost-savings measure for the agency.

**DOC Response:** There is a decision package that has been put together for the next biennium requesting funding for an additional medium custody unit.

49. Ensure that all beds in Sage Unit are assigned to individuals with medical or mental health needs as appropriate for the unit. Avoid housing individuals who do not have a medical or mental health need in Sage Unit. Access Assistants and other individuals who are employed by DOC to assist individuals with disabilities typically do not require housing in the same unit. Appropriate housing assignments will likely reduce instances of intimidation/strong-arming and would be a cost-savings measure for the agency.

**DOC Response:** The department acknowledges that access assistants typically are not required to be housed in the same unit as the incarcerated individual they are assigned to support. For circumstances where housing in the same unit is required, the agency put into place a strict access assistant program procedure that prohibits any incarcerated person from becoming an access assistant that:

1. *is identified as a potential predator on the PREA screening criteria and/or*
2. *has a criminal history offending against any person who was residing in a nursing home, mental hospital, or other non-prison institution.*

Through the screening process implemented on this program the department hopes to reduce instances of intimidation/strong-arming.

Please see Attachment H.

### **OCO found that camps and work release facilities and programs may be inaccessible for some individuals with disabilities.**

**OCO Concern:** OCO has received reports that individuals with disabilities are not routinely assigned to camps because they are screened out on the basis of disability. OCO has also received reports of incarcerated individuals taking steps to reduce their own PULHES scores (e.g. discontinuing prescription mental health medications) in hopes of being assigned to camp. OCO has received reports that people with disabilities are underrepresented at camps.

#### **OCO Recommendations:**

50. Collect and analyze data to evaluate the rate at which people with functional disabilities are represented at camps.

**DOC Response:** The agency can begin collecting for later analysis regular snapshots in time based on ADA PULHES codes of persons assigned to minimum security units.

51. Collect and analyze data to evaluate the rate at which people with disabilities receive accommodations while at camp.

**DOC Response:** The agency has put in place a system to begin collecting the rate at which people with disabilities receive accommodations while at a minimum security unit beginning January 1, 2020.

**OCO Concern:** OCO has received reports that individuals with disabilities are not routinely assigned to work release because they are screened out on the basis of disability. OCO has also received reports that people with disabilities are not sufficiently supported and accommodated while at work release. OCO has received reports that people with disabilities are underrepresented at work release facilities.

**OCO Recommendations:**

52. Collect and analyze data to evaluate the rate at which people with functional disabilities are represented at work release.

**DOC Response:** The agency has put in place a system to begin collecting the rate at which people with disabilities receive accommodations while on work release beginning January 1, 2020.

53. Collect and analyze data to evaluate the rate at which people with disabilities receive accommodations while at work release.

**DOC Response:** Beginning January 1, 2020, the agency will begin collecting for later analysis any ASR provided at work release.

54. Open work release program that is better equipped to support people with mental health disabilities.

**DOC Response:** The Health Care Authority has clarified with the federal government that the Affordable Care Act (ACA) and associated expansion of Medicaid is applicable to the work/training release population. This expansion would allow the work release population to receive increased general and mental health care from community based providers anywhere in the state. The Health Services and Reentry divisions have agreed to work collaboratively to provide services at all twelve work/training release facilities.

55. Evaluate possibility of formal collaboration or MOU between DOC/work release facilities and community mental health centers.

**DOC Response:** The Reentry Division is working to leverage community-based mental health care (CMHC) providers to allow patient/participants to use the program, free of charge and under the care of the CMHC in or near the intended release area.

56. Ensure that work release supervisors (ADACs) receive additional awareness orientations and trainings related to disabilities and accommodations.

**DOC Response:** The ADA compliance manager has started preparing the annual ADA coordinator training agenda to take place in March of 2020. Ensuring that work

release supervisors (ADACs) receive additional awareness orientations and trainings related to disabilities and accommodations will be incorporated into the training.

57. Instruct ADACs to disseminate information regarding awareness orientations and trainings related to disabilities and accommodations to staff (including contract staff).

**DOC Response:** The agency has created an iDOC webpage where there are trainings and orientations related to disabilities and accommodations posted and available to all staff. On December 19, 2019, the ADA compliance manager distributed an email announcing the placement of these trainings.  
Please see Exhibits B and F.

**OCO found that some individuals have experienced difficulty with communication needs due to a disability.**

**OCO Concern:** Securing an ASL interpreter may delay callouts, medical appointments, etc.

**OCO Recommendations:**

58. Issue written reminder to patient services representatives and their supervisors instructing them to notify the DOC Deaf Services Coordinator when scheduling appointments for an individual who is deaf and requires an ASL interpreter.

**DOC Response:** The process of notifying the DOC deaf services coordinator when scheduling appointments for an individual who is deaf and requires an ASL interpreter will be included in the upcoming patient services representative training.

59. Ensure access to a readily accessible pool of interpreters for each facility in which an individual who is deaf resides.

**DOC Response:** On the newly created ADA iDOC webpage there is a direct hyperlink to the deaf services coordinator who is the contact person for the accessible pool of interpreters for each facility as well as a direct hyperlink to the Deaf Services webpage for reference.  
Please see attachment F.

60. Ensure VRI (Video Remote Interpreting) or Skype services for emergent situations when an on-site ASL interpreter is not available, particularly in clinics and infirmaries. VRI or Skype should only be used in emergencies and with the permission of the person with the hearing impairment.

**DOC Response:** ADA compliance manager and information technology unit will work together to analyze and make a recommendation on the best telecommunications relay service for emergent situations when an on-site ASL interpreter is not available in clinics and infirmaries.

**OCO Concern:** OCO has received many reports of individuals being unable to have their DOC-issued hearing aids serviced appropriately. OCO has also received reports that individuals whose

hearing aids have been damaged or lost have been told that they cannot obtain replacement hearing aids until five years have elapsed since the original hearing aid was issued.

**OCO Recommendations:**

61. Ensure that DOC-issued hearing aids and other assistive devices are serviced and cleaned regularly and can be adjusted as needed in a timely manner. Ensure that damaged or lost hearing aids are replaced as needed in a timely manner.

**DOC Response:** Health services is currently working on a revision to the Offender Health Plan (OHP). There is an inclusion of the servicing/cleaning of hearing aids as a practice throughout the department. A memo from the assistant secretary for health services will be sent to all health services staff detailing the changes made to the OHP upon completion in early 2020.

62. Reword Hearing Aid protocol to clarify that individuals are not required to wait five years from the time they received their hearing aid to have one replaced. Issue memo that explains this clarification and disseminate amended protocol to health services staff.

**DOC Response:** On October 8, 2019, the department amended the hearing aid protocol to clarify that individuals are not required to wait five years from the time they receive their hearing aid to have one replaced. A memo was distributed explaining this change to all health services staff on December 30, 2019. Please see attachment I.

**OCO Concern:** Reports that the DOC protocol that allows only a monaural (one) hearing aid to be issued to someone who is diagnosed with a hearing impairment in both ears, but not a significant sight or sensory impairment, has resulted in individuals being infractioned for failure to follow orders because they could not hear them properly.

**OCO Recommendation:**

63. Amend DOC protocol so that individuals who have bilateral hearing loss are provided binaural (two) hearing aids regardless of the presence of other diagnoses.

**DOC Response:** DOC utilizes the same standard as used by community health providers and Medicaid, per the OHP. DOC will check its current protocol against that standard.

**OCO found that medical equipment and prescription medications are frequently not transported according to DOC policy 440.020.**

**OCO Concern:** OCO has received numerous reports of individuals' authorized health care equipment/devices and prescription medications being left behind upon transfer and subsequently taking excessively long to reach the incarcerated individual.

**OCO Recommendations:**

64. Ensure that all durable medical equipment and accommodation devices are properly documented on individuals' property matrices (both form and OMNI versions).

**DOC Response:** The department will revise the men's and women's facilities prison matrix forms to include all accommodation devices. The department will work toward standardizing the OMNI form to reflect the men's and women's forms attached to policy 440.000 *Personal Property for Offenders*.

65. Ensure that all durable medical equipment/accommodation devices and medications are transported in the vehicle with the incarcerated individual, as per DOC policy 440.020.

**DOC Response:** The department is creating a multi-disciplinary meeting with the assistant secretaries of health services and prisons to ensure that all facilities are following policy 440.020 *Transport of Property* when transporting medical equipment/accommodation devices of incarcerated individuals.

66. Provide additional training to property staff to ensure knowledge and understanding of proper handling of durable medical equipment/accommodation devices and medications during transfers.

**DOC Response:** The director of nursing services and the ADA compliance manager will provide this training to property staff at the next all staff property meeting scheduled in early 2020.

**OCO found that DOC policy 690.400 does not provide clear and sufficient definitions of key terms.**

**OCO Concern:** DOC policy 690.400 defines individuals with disabilities as “those with identifiable disabilities as defined by federal law.” This fails to clearly define critical terms, such as *disability*, as other states’ policies do. Unless the reader has knowledge and understanding of federal law regarding disabilities, it is not clear who is covered under this policy or what kind of protections are afforded.

**OCO Recommendation:**

67. Amend DOC 690.400 to offer explicit definitions of critical terms, including *disability*. For reference, consider adopting definitions offered in Oregon DOC's revised disability policy.

**DOC Response:** The Department of Corrections is working with the Attorney General's office to create a definition of the word *disability* and reviewing respective current definitions for clarity and accuracy. The department will have these changes incorporated and added to the agency policy glossary by March 1, 2020. These definitions will be included in agency training modules.

**OCO found that people with disabilities often do not receive assistance reinstating SSI benefits prior to release.**

**OCO Concern:** OCO has received many reports from individuals who need assistance getting their SSI benefits reinstated upon release (SSI is terminated after one year of incarceration). This is a critical component of successful reentry for individuals who previously received SSI. If not done through pre-release agreements, benefits can take several months to be re-established post-release.

**OCO Recommendation:**

68. DOC facilities should establish pre-release agreements with local Social Security offices to facilitate reinstatement of benefits that were terminated after 1 year of incarceration. Encourage open lines of communication between ADA coordinators, discharge planners/reentry specialists, and other relevant staff members on this topic.

**DOC Response:** DOC agreed to the need for agreements with SSA to facilitate prompt reinstatement of SSI benefits. DOC is in the exploratory phase of this issue. DOC leadership visited Oregon during the fall of 2019 to determine whether their centralized system could be replicated in Washington. It has been determined that the system in Washington does not support replication of the Oregon model, and the department will seek alternative ways to establish agreements.

**Outcomes**

The Office of Corrections Ombuds acknowledges the swift response taken by the Department of Corrections to address the majority of the concerns raised in this systemic report with changes in policy, protocol, and training. OCO looks forward to DOC implementing these changes, in addition to enforcing existing policy and protocol already in place to ensure that the rights of individuals with disabilities are protected.