

§ 84.93 Existing medical diagnostic equipment.

(a) *Accessibility.* A recipient shall operate each program or activity offered through or with the use of MDE so that the program or activity, in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph (a) does not—

(1) Necessarily require a recipient to make each of its existing pieces of medical diagnostic equipment accessible to and usable by individuals with disabilities; or

(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the recipient believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, a recipient has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the recipient or their designee after considering all resources available for use in the funding and operation of the program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the recipient.

(3) A recipient meets its burden of proving that compliance with this paragraph (a) would result in a fundamental alteration under paragraph (a)(2) of this section if it demonstrates that compliance with this paragraph (a) would alter diagnostically required structural or operational characteristics of the equipment, and prevent the use of the equipment for its intended diagnostic purpose.

(b) *Methods.* A recipient may comply with the requirements of this section through such means as reassignment of services to alternate accessible locations, home visits, delivery of services at alternate accessible sites, purchase, lease, or other acquisition of accessible MDE, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. A recipient is not required to purchase, lease, or otherwise acquire accessible medical diagnostic equipment where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, a recipient shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.