UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MICHAEL YELAPI, KATHY DYER, and **SHERRI BASTRESS**, individuals,

Plaintiffs,

v.

Case No.: 8:01-CV-00787-EAJ
CLASS ACTION

ST. PETERSBURG SURGERY CENTER, LTD., et al.,

Defendants.
_____/

ORDER ADOPTING SPECIAL MASTER'S AMENDED REPORT AND RECOMMENDATION

Before the court is the **Amended Report and Recommendation of the Special Master on Defendants' Unopposed Motion for Partial Summary Judgment** (Dkt. 111).[1] In accordance with the parties' Joint Motion for Approval of Parties' Consent to Appointment of Special Master (Dkt. 97), the undersigned referred Defendants' **Motion for Partial Summary Judgment** and the memorandum in support (Dkts. 105, 107) to special master Robert S. Fine to issue a report and recommendation (see Dkt. 102). The special master recommends that the court grant in part Defendants' partial summary judgment motion. No party has filed objections to the special master's Amended Report and Recommendation, and the deadline for filing objections has passed.

Upon consideration of the special master's Amended Report and Recommendation and the record as a whole, the undersigned adopts the findings of the special master and **GRANTS in part** Defendants' **Unopposed Motion for Partial Summary Judgment** (Dkt. 105).

[1] On December 28, 2005, the parties consented to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) (Dkt. 90).

I. Background

Plaintiffs are a class of disabled individuals who allege that Defendants have discriminated against them based on their disabilities (Dkt. 25). Defendants are wholly-owned subsidiaries or affiliates of Healthsouth Corporation, a corporation that provides healthcare services and owns or operates approximately 1,300 medical care facilities and medical office buildings throughout the country. The facilities that are the subject of this action include acute care hospitals, inpatient rehabilitation hospitals, outpatient rehabilitation clinics, diagnostic centers, surgery centers, and medical office buildings (Id.).

Plaintiffs filed this action on April 19, 2001, seeking declaratory and injunctive relief for Defendants' alleged violations of Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12181 et seq., and section 504 of the Rehabilitation Act, 29 U.S.C. § 701 et seq. (Dkt. 1). Plaintiffs allege, in part, that they have been denied access to Defendants' facilities because of architectural barriers that violate the ADA and its regulations. The ADA's regulations are codified at 28 C.F.R. part 36 and incorporate the ADA Accessibility Guidelines ("ADAAG").

On April 8, 2002, under Fed. R. Civ. P. 23(b)(2), the district judge certified a class of plaintiffs consisting of all persons in the United States with disabilities, as defined by the ADA and the Rehabilitation Act (Dkt. 25).

On December 29, 2005, after a fairness hearing, the district judge approved the parties' Procedural Settlement and Consent Decree (the "Consent Decree") (see Dkts. 88, 89, 95). The court analyzed all of the Bennett factors and held that the Consent Decree is fair, adequate, and reasonable and not the product of collusion (Dkt. 89). Bennett v. Behring Corp., 737 F.2d 982 (11th Cir. 1984). Also on December 29, 2005, the district judge approved the parties' consent to magistrate

jurisdiction (Dkt. 96).

The Consent Decree details the process by which the approximately 1,300 facilities may be inspected and modified to comply with the ADA and the Rehabilitation Act (Dkt. 95).[2] Section 2a of the Consent Decree sets forth Defendants' general obligation to "complete the accessibility modifications contemplated by this Consent Decree in compliance with the ADA, the Rehabilitation Act, and as applicable, Appendix A to 28 C.F.R. Part 36 . . . (the "ADAAG")." (Id. at 4). Section 2a does not, however, specify how these modifications are to be made.[3]

Therefore, on February 1, 2006, the undersigned ordered the parties to submit agreed-upon tolerances/equivalent facilitations to the court through a motion for partial summary judgment (Dkt. 102). Defendants filed their Unopposed Motion for Partial Summary Judgment on March 8, 2006 (Dkt. 105), requesting an order that, as a matter of law, certain tolerances from the ADAAG's requirements and/or certain equivalent facilitations do not constitute violations of the ADA and the Rehabilitation Act. Defendants' motion reflects a joint stipulation of facts (see Dkt. 97 at 2).[4]

The following elements will be affected by these tolerances and/or equivalent facilitations:

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[2] Under the Consent Decree, these inspections must be completed by December 31, 2008. The facilities shall be inspected by an accessibility expert retained by Plaintiffs. The accessibility expert will prepare an Accessibility Compliance Report ("ACR"), for each facility which the parties will submit to the court for approval (Dkt. 95 at 6-8).

[3] In all other respects, the parties have been operating under the terms of the Consent Decree since it was approved by the district judge on December 19, 2005 (Dkt. 95 at 24).

[4] In their Joint Motion for Approval of Parties' Consent to Appointment of Special Master (Dkt. 97), the parties agreed to submit a summary judgment motion based upon a joint stipulation of facts. Defendants' summary judgment motion does not contain a section titled specifically "Joint Stipulation of Facts". However, the parties did not file a memoranda addressing the points on which they disagree as provided in their Joint Motion for Approval of Parties' Consent to Appointment of Special Master (Id. at 3). It is therefore assumed that there are no disagreements relevant to the issues addressed in this order.

width and slope of accessible parking spaces and access aisles; accessible parking signage height; water closets and toilet stalls; height of grab bars in accessible stalls and toilet rooms; knee clearance under lavatories; height of lavatory mirrors; urinal rim height; height and location of toilet paper dispensers; water fountain spouts; location of strobe alarms; height for wall-hung strobe alarms; and interior signage height (Dkt. 105 at 2-3).[5] The parties concur that these agreed-upon tolerances "raise issues only of law." (Dkt. 97 at 2).

As Defendants' partial summary judgment motion was unopposed, Plaintiffs did not file a response. At the parties' request and pursuant to Fed. R. Civ. P. 53, the undersigned referred the motion to the special master for a report and recommendation (Dkts. 105, 109). The special master recommends granting Defendants' motion in part and permitting most of the agreed-upon tolerances and/or equivalent facilitations. No objections to the special master's Amended Report and Recommendation were filed.

II. Standard of Review

When a party makes a timely, specific objection to conclusions of law recommended by a special master, the court must decide the issue de novo. Fed. R. Civ. P. 53(g). Because no objections were filed in this case, a more deferential standard of review may be appropriate; however, the court applies the de novo standard of review and grants Defendants' unopposed motion. See Fed. R. Civ. P. 53(g), advisory committee's note (stating that when no timely or specific objections are filed, the court has the discretion of applying the de novo standard of review).

[5] These proposed tolerances will govern the implementation of the ACRs required under the Consent Decree. The ACRs will identify all alleged access barriers of any type and provide compliance options (Dkt. 95 at 6).

III. Legal Framework

Under Title III of the ADA, places of public accommodation and commercial facilities built after January 26, 1993, must be accessible to disabled people, and places of public accommodation and commercial facilities that are altered after January 26, 1993, must be made accessible to the maximum extent feasible. 28 C.F.R. § 35.151(b). "Accessible" is generally defined as being in compliance with the standards set by the ADAAG. Indep. Living Res. v. Oregon Arena Corp., 982 F.Supp. 698, 746 (D. Or. 1997). Thus, Title III's provisions are implemented through the ADAAG.[6] See 28 C.F.R. pt. 36 and Appendix A; Access Now, Inc. v. Ambulatory Surgery Ctr. Group, Ltd., 146 F.Supp.2d 1334, 1336 (S.D. Fla. 2001).

Section 504 of the Rehabilitation Act prohibits any entity that receives federal funding from discriminating against disabled individuals in the services it offers. 29 U.S.C. § 794. The regulations promulgated under the Rehabilitation Act adopt the Uniform Federal Accessibility Standards ("UFAS"), 28 C.F.R. § 42.522(b), located in Appendix A of 41 C.F.R. subpart 101-19.6. The regulations mandate that construction or alteration of buildings occurring on or after March 7, 1988, comply with UFAS. The Rehabilitation Act requires covered entities to remove all barriers where such removal is necessary to make a program accessible. Putnam v. Oakland Sch. Dist., No. C-93-3772CW, 1995 WL 873734, at *9-10 (N.D. Cal. June 9, 1995).

Section 3.2 of the ADAAG permits some variations or construction tolerances. The ADAAG also permit the use of alternative designs or technologies, called equivalent facilitations, that meet or exceed ADAAG's accessibility guidelines. ADAAG § 2.2. Determining tolerances and

[6] The ADAAG apply to buildings and facilities constructed or altered after the effective date of the ADA, January 26, 1993. 28 C.F.R. § 36.406.

equivalent facilitations involves issues of regulatory interpretation. See Snapp v. Unlimited Concepts, Inc., 208 F.3d 928, 933 (11th Cir. 2000) (noting that statutory interpretation is a question of law).

Thus, if Defendants make the modifications contemplated by the Consent Decree within the tolerances or equivalent facilitations approved here (or if the existing facilities' conditions are within these tolerances or provide equal facilitation), Defendants will be in compliance with the ADA and the Rehabilitation Act. However, this order does not address whether pre-existing facilities that do not meet this tolerance are in compliance with the ADA, and the court agrees with the special master that such issues, if they arise, should first be resolved by the parties, if possible, and submitted to the court for approval or should be determined by the court if necessary (Dkt. 111 at 10-11). See ADAAG § 3.5 (defining "accessible" as a site, building, facility, or portion thereof that complies with these guidelines).

IV. Proposed Tolerances and Equivalent Facilitations[7]

A. Width of Accessible Parking Spaces and Access Aisles

Defendants request a tolerance of two inches in the centerline-to-centerline spacing of accessible parking space and access aisle striping (Dkt. 107 at 6). As the ADAAG are silent on whether the measurements for accessible parking spaces and access aisles should be taken from the centerline of the stripe, the undersigned adopts the findings of the special master that a two-inch tolerance be permitted. Plaintiffs do not object to this tolerance.

[7] As the special master notes, Defendants use the terminology "design tolerances" in their memorandum in support of their summary judgment motion (Dkt. 111 at 8 n. 3). However, the ADA does not make allowance for design tolerances. See ADAAG § 3.2. Thus, this order refers instead to "proposed tolerances" for the purpose of evaluating them under the ADA.

Therefore, accessible parking spaces and access aisles in existence prior to the date of this order shall be permitted a two-inch tolerance when measuring the width of the parking space or access aisle from the centerline of the stripe. Accessible access aisles installed or restriped after the date of this order, however, shall be measured from the centerline of the stripe without the tolerance.

B. Parking Lot Slope

Defendants request a tolerance that would allow a slope of up to 3% in all directions in accessible parking spaces and access aisles (Dkt. 107 at 7). Plaintiffs do not object. The ADAAG requires surface slopes not exceeding 2% in all directions. ADAAG § 4.6.3.

Because a tolerance allowing a 3% slope in any direction in accessible parking spaces and access aisles falls within conventional industry tolerances for field conditions, the undersigned adopts the special master's finding that Defendants' request be granted. The Orange Empire Chapter of the International Code Council's "Reasonable Construction Tolerances for Disabled Access Construction" (the "Orange Empire Tolerance Guidelines") allows for a surface slope of up to 3% for no more than 50% of parking spaces and access aisles.[8] Further, in a Title III class action involving approximately 2,800 gasoline stations and convenience stores, the Southern District of Florida approved a 3% maximum slope in accessible parking spaces and access aisles in new construction (post January 26, 1993), and 5% maximum slope in existing construction (pre-January 26, 1993). Ass'n for Disabled Am. v. Amoco Oil Co., et al., No. 1:98-CV-2002, Dkt. 55 at 107 (approved by the district court at 211 F.R.D. 457 (S.D. Fla. 2002)).

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[8] This council was established in 1958 as a chapter of the International Conference of Building Officials and became a chapter of the International Code Council in 2001. See http://www.iccoec.org. The Orange Empire Tolerance Guidelines are available at http://www.iccoec.org/ReasConstTolDisAcc-Final%207-14.htm.

C. Accessible Parking Signage Height[9]

Defendants propose posting accessible parking signs between 58 inches and 60 inches from the parking space grade to the bottom edge of the sign as an equivalent facilitation allowed by the ADAAG (Dkt. 107 at 10). The undersigned adopts the special master's recommendation that Defendant's request be granted.[10]

The ADAAG provide little guidance: Section 4.6.4 states that a sign designating an accessible parking space should be located so that it is not obscured by a vehicle parked in the space. The Appendix note to this section states that a sign is visible from a driver's seat if it is mounted high enough above the ground and located at the front of the parking space.

Proposed changes to the ADAAG contemplate signs identifying accessible parking spaces be at least 60 inches above the finished floor or ground surface measured to the bottom of the sign.[11] Proposed ADAAG § 502.6. The ADAAG Manual also suggests that signs be at least 60 inches high. ADAAG Manual § 4.6.4. Therefore, Defendants' proposal is a permissible equivalent facilitation under the ADA.

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[9] Defendants' summary judgment motion refers to "handicap parking spaces". The appropriate terminology, however, is "accessible parking spaces".

[10] In cases where state law prescribes a stricter standard than the equivalent facilitation permitted here, the stricter state law standard applies.

[11] The United States Access Board ("Access Board") has revised its accessibility guidelines for buildings covered by the ADA and the Architectural Barriers Act of 1968 ("ABA"). The updated guidelines are based largely on recommendations from an advisory committee the Access Board established for the purpose of revising the ADAAG. The ADAAG were first published in 1991. The revisions are undergoing public comment and have not yet been adopted by the Department of Justice as enforceable standards under the ADA. See 69 Fed. Reg. 44,084 (July 23, 2004) (to be codified at 36 C.F.R. pts. 1190, 1191) ("Proposed ADAAG").

D. Water Closets and Toilet Stalls

1. Accessible Toilet Seat Height

Defendants propose a one-half inch increase to the ADAAG requirement that toilet seats be between 17 and 19 inches from the finished floor to the top of the toilet seat. ADAAG § 4.16.3. The undersigned adopts the special master's recommendation that given the practical implications of installing plumbing, the one-half inch tolerance falls within conventional building industry tolerances, and Defendants' proposal is approved. See also Access Now v. Ambulatory Surgery Ctr. Group, Ltd., No. 99-109-CV, 2001 WL 617529 at *7 (S.D. Fla. May 2, 2001) ("Ambulatory Surgery Center I") (permitting a one-half inch tolerance to the ADAAG requirement regarding accessible toilet seat height due to plumbing variations including rough-in of plumbing, determination of the floor slab elevation, variation for floor drainage, installation of the water closet carrier, and identification of the projected finished floor level).

2. Centerline Location for Accessible Water Closets

Defendants propose a deviation that would allow for placement of the water closet's centerline at 16 to 19 inches from the side wall (Dkt. 107 at 8).[12] Plaintiffs do not oppose this proposal.

Accordingly, the undersigned agrees with the special master, and a deviation allowing the centerline of accessible water closets to fall within 16 to 19 inches from the side wall of the toilet compartment is approved. This is a conventional building industry tolerance for field conditions and

[12] As the special master indicates, this request includes both a proposed 1-inch tolerance from the requirement in ADAAG § 4.17.3 and Fig. 30(a) that toilet seats be located 18 inches from the side wall, measured from the centerline and a request for equivalent facilitation (Dkt. 111 at 14).

an equivalent facilitation. Both the American National Standards Institute ("ANSI")[13] and the Proposed ADAAG provide for a measurement of 16 to 18 inches from the side wall to the centerline of the water closet. ANSI 98 § 604.2; Proposed ADAAG § 604.2. As the special master observed, however, it would be "double-dipping" to add a tolerance to the narrow end of the range of the equivalent facilitation (i.e., 15 to 19 inches); thus, to the extent Defendants request an additional one-inch tolerance to 15 inches, this request is denied (See Dkt. 111 at 14-15).

3. Height of Flush Controls

The special master recommends granting Defendants' request for a tolerance from ADAAG § 4.16.5 which requires that toilet flush controls be no more than 44 inches from the finished floor (Dkt. 107 at 8). ANSI 98 § 604.6 and the Proposed ADAAG provide a reach range for flush controls from 15 inches up to 48 inches; approval of Defendants' request based on equivalent facilitation is granted, and the flush controls may be mounted within a reach range of 48 inches above the finished floor. The court concurs.

E. Height of Grab Bars in Accessible Stalls and Toilet Rooms

Grab bars are required to be mounted at a height of 33 to 36 inches above the finished floor. ADAAG §§ 4.16.4, 4.17.6. However, the ADAAG does not provide clear guidance as to what location on the grab bar the measurement should be taken from.

Based on the special master's recommendation and the court's rationale in Ambulatory Surgery Center I, 2001 WL 617529, at *6, the court holds that grab bars installed prior to the date of this order are compliant with the ADA if they are mounted 33 to 36 inches above the finished

[13] ANSI-2003 and ANSI-1998 contain specifications designed to make various sites, facilities, buildings, and elements accessible to and usable by disabled people.

floor when measured to any point on the grab bar. However, grab bars installed after the date of this order shall have their height measurements taken from the centerline of the grab bar. Id.

F. Knee Clearance under Accessible Lavatories

Defendants request approval of a tolerance that allows for the 27-inch high knee space to be acceptable when it extends not less than 6.5 inches from the front edge of the lavatory.

ADAAG § 4.19.2 requires a clearance of at least 29 inches above the finished floor to the bottom of the apron and states that knee and toe clearance shall comply with Figure 31. Figure 31 illustrates a minimum knee clearance height of 27 inches, extending back eight inches from the front apron of the lavatory.

Further, as indicated by the special master, accessibility references and standards that are generally considered to provide equivalent or greater accessibility than the ADAAG permit a knee clearance of 27 inches under the lavatory extending back 8 inches from the apron of the lavatory. See ANSI 98 § 306.3; Proposed ADAAG § 306.3. Each of these standards further provides that the dip of the overflow (which typically protrudes one-half to one inch below the bottom of the bowl of a lavatory or sink at the centerline) shall not be considered in determining knee and toe clearances. ANSI 98 § 606.2; Proposed ADAAG § 606.2. Approval of knee space under an accessible lavatory of 27 inches extending back 8 inches from the apron, but excluding the dip of the overflow, is an equivalent facilitation under ADAAG § 2.2. Therefore, the undersigned adopts the findings of the special master and approves a knee space under an accessible lavatory of 27 inches extending back 8 inches, excluding the dip of the overflow, and rejects Defendants' proposal to the extent it is inconsistent with this equivalent facilitation.

G. Height of Mirror over Accessible Lavatories

Under the ADAAG, mirrors over accessible lavatories must be installed at a height no greater than 40 inches above the finished floor measured to the bottom edge of the reflecting surface of the mirror. ADAAG § 4.19.6. Defendants seek approval of a tolerance of up to three-fourths of an inch to allow the bottom of the reflecting surface of the mirror to be as high as 40.75 inches above the finished floor (Dkt. 107 at 9). This three-fourths of an inch tolerance falls within conventional building industry tolerances for field conditions (the Orange Empire Tolerances Guidelines at ¶ 6j permit a mirror to be as high as 42 inches) and was ultimately approved by the court in Ambulatory Surgery Center I, 2001 WL 617529, at *6-7 (noting that mirror framing results in measurement variations). Therefore, a tolerance allowing mirrors over accessible lavatories to have the bottom of the reflecting surface as high as 40.75 inches above the finished floor is approved, as recommended by the special master.

H. Urinal Rim Height

Section 4.18.2 of the ADAAG provides that an accessible urinal shall be a stall type or a wall hung unit with an elongated rim at a maximum of 17 inches maximum height above the finished floor (Dkt. 107 at 8-9). Defendants request a one inch tolerance to allow the rim of accessible urinals in existing construction to be as high as 18 inches above the finished floor and the special master so recommends.

The court approves this tolerance for urinals installed prior to the date of this order. See Ambulatory Surgery Ctr. I, 2001 WL 617529, at * 7 (rejecting a tolerance of two and one-fourths inch based on variations in the installation of elements leading up to the mounting of urinals and limiting the tolerance to one inch). No tolerance is allowed for new construction.

I. Height and Location of Toilet Paper Dispensers

Defendants request an equivalent facilitation allowing for the toilet paper dispensers in accessible stalls and toilet rooms to be placed seven to nine inches from the front of the water closet bowl (Dkt. 107 at 11). Also, Defendants request permission to mount the toilet paper dispenser in accessible stalls and toilet rooms between 15 inches minimum and 48 inches maximum above the floor, measured to the outlet of the dispenser.

As the special master recommends, these requests are in accord with ANSI and the Proposed ADAAG and constitute an equivalent facilitation under ADAAG § 2.2. See ANSI 98 § 604.7, Proposed ADAAG § 604.7. Therefore, an equivalent facilitation for toilet paper dispensers that are installed with the centerline of the dispenser falling within seven to nine inches of the front of the toilet and at a height to the outlet of 15 to 48 inches above the floor is approved.[14]

J. Height of Accessible Water Fountain Spouts

Defendants request a one-inch deviation from the ADAAG requirement that accessible drinking fountains be installed so that the spout is at a maximum height of 36 inches above the finished floor (Dkt. 107 at 7).

As recommended by the special master, this request is approved for existing construction only. For drinking fountains installed prior to the date of this order, a spout height of 37 inches above the finished floor is an acceptable tolerance. See Ambulatory Surgery Ctr. I, 2001 WL 617529, at *10 (noting that due to practices in the plumbing trade of mounting fixtures at a height measured to the rim of the fixture, the spout height will typically be from one to two inches higher

[14] If the toilet paper dispenser is mounted over a grab bar and the top of the grab bar is no higher than 36 inches above the finished floor, the dispenser must be mounted at 48 inches. Proposed ADAAG § 604.7, advisory note.

in existing construction).

K. Location of Visual Alarm Signaling Devices (Strobes)

Defendants agree that emergency alarm systems should be placed in general areas open to the public, including cafeterias, vending areas, retail pharmacies, gift shops, chapels, public restrooms, lobbies, waiting rooms, walkways and corridors, business office areas where the public is invited, conference rooms and classrooms open to the public, and enclosed dressing rooms (Dkt. 107 at 14). However, Defendants propose that strobe lights integrated with emergency alarm systems should not be required under Title III of the ADA and the Rehabilitation Act in the following areas:

> patient rooms in hospitals (including restrooms in patient rooms), operating rooms, surgical suites, surgical preparation areas, recovery rooms, areas where the patient is undergoing or recovering from anesthesia, emergency department examination and treatment rooms, ICU rooms and other special services areas for admitted patients such as NICU or PACU, blood draw laboratory areas, imaging rooms and diagnostic testing or procedure rooms, psychiatric wards generally, physical therapy training and rehabilitation areas to the extent supervised by medical personnel (except not if exercise areas or equipment are available for use by the general public), and other areas where admitted patients are under the supervision of facility personnel . . . .

Dkt. 107 at 14-15.

As the special master recommends, this exclusion complies with the ADA and the Rehabilitation Act and is approved. See, e.g., ADAAG § 4.1.3(14) (providing that "[e]mergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice"); Access Now, Inc. v. Ambulatory Surgery Ctr. Group, Ltd., 146 F.Supp.2d 1334, 1338 (S.D. Fla. 2001) ("Ambulatory Surgery Center II") (finding that "visual alarms are not recommended for use in patient rooms (or in the restrooms in those patient rooms), surgical or medical procedure rooms, recovery or surgical preparation areas, or in other areas where patients

are under the direct case and supervision of medical staff").

L. Mounting Height for Wall-Mounted Strobe Alarms

The ADAAG provide that visual alarm signal appliances shall be placed 80 inches above the highest floor level within the space or six inches below the ceiling, whichever is lower. ADAAG § 4.28.3(6). This section does not state whether the measurement should be made to the top, bottom, or centerline of the appliance.

This court concurs with the special master, and an equivalent facilitation allowing strobe lights to be mounted from 80 to 96 inches above the finished floor as measured to the bottom of the appliance is permitted. The Proposed ADAAG § 702.1 incorporates the National Fire Protection Association's standard mounting height for visual alarms at 80 to 96 inches measured to the center point of the lens. The National Fire Alarm Code, § 7.5.4, is in accord.

M. Interior Signage Height

As the special master recommends, Defendants' request for an equivalent facilitation permitting signs designating permanent rooms and spaces to be mounted with their centerline at a range of 59 to 61 inches above the finished floor is approved (Dkt. 107 at 10). The ADAAG require such signs be installed at a mounting height of 60 inches above the finished floor as measured to the centerline of the sign. ADAAG § 4.30.6. The purpose of this requirement is to provide uniformity of sign location and consistency in Braille location for visually impaired persons. ADAAG Manual § 4.30.

The ADAAG, however, does not require uniformity in location of Braille text on signs and "by then linking the mounting height to the centerline of the sign rather than to the center of the Brailled text, the purpose behind the guideline has been defeated, at least in part, because Brailled

text could end up being located well above or below the 60" goal depending on the size of the sign." Ambulatory Surgery Ctr. I, 2001 WL 617529, at *11.

As explained in Ambulatory Surgery Center I, a variation in the height of signage designating permanent rooms and spaces in the range of 59 to 61 inches above the finished floor to the centerline of the sign constitutes an equivalent facilitation to the ADAAG standard of 60 inches. Id.

V. Conclusion

On December 19, 2005, the district judge approved the parties' Consent Decree and directed the entry of final judgment under Fed. R. Civ. P. 54(b) (Dkt. 89). However, the parties agreed to present the issue of construction tolerances and equivalent facilitations to the undersigned in the form of a partial summary judgment motion. In accordance with the Consent Decree, the parties' stipulation (Dkt. 97), and Fed. R. Civ. P. 53, the undersigned referred the unopposed summary judgment motion to a special master.

Upon consideration, the **Amended Report and Recommendation of the Special Master on Defendants' Unopposed Motion for Partial Summary Judgment** (Dkt. 111) is adopted and incorporated by reference. Under the terms of the Amended Report and Recommendation and as stated above, **Defendants' Unopposed Motion for Partial Summary Judgment** (Dkt. 105) is **GRANTED in part**.

Accordingly, the Clerk of Court is directed to administratively close the case and to terminate all pending motions. The parties may reopen the case for the limited purposes outlined in the Consent Decree.

DONE and **ORDERED** in Tampa, Florida on this 28th day of September, 2006.

ELIZABETH A JENKINS
United States Magistrate Judge